

The Texas Animal Health Commission (Commission) proposes amendments to Title 4, Texas Administrative Code, Chapter 51 titled "Entry Requirements." Specifically, the Commission proposes amendments to §51.1 regarding Definitions.

BACKGROUND AND PURPOSE

The Texas Animal Health Commission proposes amendments to §51.1, concerning Definitions. The purpose of the amendment is to clarify requirements for dairy cattle and dairy crosses entering the state.

Commission rules set forth testing requirements for cattle entering the state. Specific tuberculosis testing requirements apply for dairy cattle. Commission staff responsible for permitting movement has noticed confusion surrounding the definition of dairy cattle and whether certain dairy crosses must be tested prior to entry.

Currently, Commission rules do not define dairy cattle. Staff relies on the USDA's definition when applying and explaining Commission rules. The USDA's definition states that all cattle, regardless of age or sex or current use, that are of a breed(s) or offspring of a breed used to produce milk or other dairy products for human consumption, including, but not limited to, Ayrshire, Brown Swiss, Holstein, Jersey, Guernsey, Milking Shorthorn, and Red and Whites.

The proposed amendment would incorporate the USDA's definition into Commission rules to clarify the meaning of dairy cattle and ease confusion as to what testing requirements must be met prior to entry.

SECTION-BY-SECTION DISCUSSION

Section 51.1 includes definitions. The proposed amendments add a definition for "dairy cattle," adjust numbering, and make minor formatting changes.

FISCAL NOTE

Ms. Jeanine Coggeshall, General Counsel for the Texas Animal Health Commission, determined that for each year of the first five years that the rule is in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state or local governments. Commission employees will administer and enforce these rules as part of their current job duties and resources. Ms. Coggeshall also determined for the same period that there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFIT NOTE

Ms. Coggeshall determined that for each year of the first five years the rule is in effect, the anticipated public benefits are more accurate rule language and reduced confusion regarding entry requirements.

TAKINGS IMPACT ASSESSMENT

The Commission determined that the proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. Therefore, the proposed rules are compliant with the Private Real Property Preservation Act in Texas Government Code §2007.043 and do not constitute a taking.

LOCAL EMPLOYMENT IMPACT STATEMENT

The Commission determined that the proposed rules would not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission pursuant to Texas Government Code §2001.022.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

The Commission determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. "Major environmental rule" is defined

to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, the Commission prepared the following Government Growth Impact Statement. The Commission determined for each year of the first five years the proposed rules would be in effect, the proposed rules:

- Will not create or eliminate a government program;
- Will not require the creation or elimination of employee positions;
- Will result in no assumed change in future legislative appropriations;
- Will not affect fees paid to the Commission;
- Will not create new regulation;
- Will not change existing regulations;
- Will change the number of individuals subject to the rule; and
- Will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Ms. Coggeshall also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities pursuant to Texas Government Code, Chapter 2006. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

COSTS TO REGULATED PERSONS

The proposed amendments to Chapter 51 do not impose additional costs on regulated persons and are designed to clarify entry requirements for dairy cattle. The proposed rules do not otherwise impose a direct cost on a regulated person, state agency, a special district, or a local government within the state.

PUBLIC COMMENT

Written comments regarding the proposed amendments may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by e-mail to comments@tahc.texas.gov. To be considered, comments must be received no later than thirty (30) days from the date of publication of this proposal in the *Texas Register*. When faxing or emailing comments, please indicate "Comments on Proposed Rule-Chapter 51, Entry Requirements" in the subject line.

STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.006, entitled "Documents to Accompany Shipment", if required that a certificate or permit accompany animals or commodities moved in this state, the document must be in the possession of the person in charge of the animals or commodities, if the movement is made by any other means.

Pursuant to §161.046, entitled "Rules", the Commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products", the Commission may require testing, vaccination, or another

epidemiologically sound procedure before or after animals are moved. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

Pursuant to §161.054, titled "Regulation of Movement of Animals; Exception", the Commission, by rule, may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. The Commission is authorized, through §161.054(b), to prohibit or regulate the movement of animals into a quarantined herd, premises, or area. The executive director of the Commission is authorized, through §161.054(d), to modify a restriction on animal movement, and may consider economic hardship.

Pursuant to §161.113, entitled "Testing or Treatment of Livestock", if the Commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. The Commission may require the owner or operator of a livestock market to furnish adequate equipment or facilities or have access to essential equipment or facilities within the immediate vicinity of the livestock market.

Pursuant to §161.114, entitled "Inspection of Livestock", an authorized inspector may examine livestock consigned to and delivered on the premises of a livestock market before the livestock are offered for sale. If the inspector considers it necessary, the inspector may have an animal tested or vaccinated. Any testing or vaccination must occur before the animal is removed from the livestock market.

No other statutes, articles, or codes are affected by this proposal.

<rule>

§51.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Accredited veterinarian--A licensed veterinarian who is approved to perform specified functions required by cooperative state-federal disease control and eradication programs pursuant to Title 9 of the Code of Federal Regulations, Parts 160 and 161.

(2) Animal--Includes livestock, exotic livestock, domestic fowl, and exotic fowl.

(3) Assembly--Boarding stables, boarding pastures, breeding farms, parades, rodeos, roping events, trail rides, and training stables.

(4) Certificate of veterinary inspection--A document signed by an accredited veterinarian that shows the livestock, poultry, exotic livestock, or exotic fowl listed were inspected and subjected to tests, immunizations, and treatment as required by the commission. Certificates are valid for 30 days for all species.

(5) Cervidae--Deer, elk, moose, caribou and related species in the cervidae family, raised under confinement or agricultural conditions for the production of meat or other agricultural products or for sport or exhibition, and free-ranging cervidae when they are captured for any purpose.

(6) Commission--The Texas Animal Health Commission.

(7) Commuter Flock--A National Poultry Improvement Plan (pullorum-typhoid clean or equivalent) flock in good standing with operations in participating states that are under single ownership or management control whose normal operations require interstate movement of hatching eggs and/or baby poultry without change of ownership for purposes of hatching, feeding, rearing or breeding. The owner or representative of the company owning the flock and chief animal health officials of participating states of origin and destination must have entered into a signed "Commuter Poultry Flock Agreement."

(8) Commuter Cattle Herd--A herd of cattle located in two or more states that is documented as a valid ranching operation by those states in which the herd is located and which requires movement of cattle interstate from a farm of origin or returned interstate to a farm of origin in the course of normal ranching operations, without change of ownership, directly to or from another premise owned, leased, or rented by the same individual. An application for "commuter herd" status must be signed by the owner and approved by the states in which the herd is located. This status will continue until canceled by the owner or one of the signatory states.

(9) Commuter Swine Herd--A swine herd located in two or more states that is documented as a valid ranching operation by those states in which the herd is located and which requires movement of swine interstate from a farm of origin or returned interstate to a farm of origin in the course of normal ranching operations, without change of ownership, directly to or from another premise owned, leased, or rented by the same individual. An application for "commuter herd" status must be signed by the owner and approved by the states in which the herd is located. This status will continue until canceled by the owner or one of the signatory states.

(10) Dairy cattle--All cattle, regardless of age or sex or current use, that are of a breed(s) or offspring of a breed used to produce milk or other dairy products for human consumption, including, but not limited to, Ayrshire, Brown Swiss, Holstein, Jersey, Guernsey, Milking Shorthorn, and Red and Whites.

~~(11)~~ Directly--Moved in a means of conveyance, without stopping to unload while en route, except for stops of less than 24 hours to feed, water or rest the animals being moved, and with no commingling of animals at such stops.

~~(12)~~ Equine interstate passport--A document signed by an accredited veterinarian that shows the equine listed were inspected, subjected to tests, immunizations and treatment as required by the issuing state animal health agency, and contains a description of the equine listed. The passport is valid for six months when accompanied by proof of an official negative EIA test within the previous six months. Permanent individual animal identification in the form of a lip tattoo, brand or electronic implant is required for all equine approved for the equine interstate passport. This document is valid for equine entering from any state that has entered into a written agreement to reciprocate with Texas.

(13)~~(12)~~ Equine identification card--A document signed by the owner and a brand inspector or authorized state animal regulatory agency representative that lists the animal's name and description and indicates the location of all identifying marks or brands. This document is valid for equine entering from any state which has entered into a written agreement to reciprocate with Texas.

(14)~~(13)~~ Exotic livestock--Grass-eating or plant-eating, single-hooved or cloven-hooved mammals that are not indigenous to this state and are known as ungulates, including animals from the swine, horse, tapir, rhinoceros, elephant, deer, and antelope families.

(15)~~(14)~~ Exotic fowl--Any avian species that is not indigenous to this state. The term includes ratites.

(16)~~(15)~~ Federally Approved Livestock Market--A livestock market under State or Federal veterinary supervision where livestock are assembled and has been approved under Title 9 of the Code of Federal Regulation, Part 71, Section 71.20.

(17)~~(16)~~ Livestock--Cattle, horses, mules, asses, sheep, goats, and hogs.

(18)~~(17)~~ Official Identification--The identification of livestock and fowl by means of an official identification device, official eartag, registration tattoo, or registration brand, or any other method approved by the Commission and/or Administrator of the United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) that provides unique identification for each animal.

(19)~~(18)~~ Owner-shipper statement--A statement signed by the owner or shipper of the livestock being moved stating the location from which the animals are moved interstate; the destination of the animals; the number of the animals covered by the statement; the species of the animal covered; the name and address of the shipper; and the identification of each animal as required by the commission or the United States Department of Agriculture (USDA).

(20)~~(19)~~ Permit--A document recognized by the commission with specified conditions relative to movement, testing and vaccinating of animals which is required to accompany the animals entering, leaving or moving within the State of Texas.

(A) "E" permit--Premovement authorization for entry of animals into the state by the commission. The "E" permit states the conditions under which movement may be made, and will provide any appropriate restrictions and test requirements after arrival. The permit is valid for 15 days.

(B) VS 1-27 (VS Form 1-27)--A premovement authorization for movement of animals to restricted designations.

~~(21)~~~~(20)~~ Purebred registry association--A swine breed association formed and perpetuated for the maintenance of records of purebreeding of swine species for a specific breed whose characteristics are set forth in constitutions, by-laws, and other rules of the association.

~~(22)~~~~(21)~~ Radio Frequency Identification Device (RFID)--Official individual animal identification with an identification device that utilizes radio frequency technology. The RFID devices include ear tags, boluses, implants (injected), and tag attachments (transponders that work in concert with ear tags).

~~(23)~~~~(22)~~ Sponsor--An owner or person in charge of an exhibition, show or fair.

~~(24)~~~~(23)~~ Trichomoniasis--A venereal disease of cattle caused by the organism *Tritrichomonas foetus* [~~Tritrichomonas foetus~~].