

TITLE 4 AGRICULTURE
PART 2 TEXAS ANIMAL HEALTH COMMISSION
CHAPTER 51 ENTRY REQUIREMENTS

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 §51.9 regarding Exotic Livestock and Fowl, and §51.10 regarding Cervidae.

BACKGROUND AND PURPOSE

The Commission is tasked with creating and enforcing entry requirements for livestock, fowl, exotic livestock, and exotic fowl. The Commission proposes amendments to the entry requirements governing ratites and exotic fowl moving between Association of Zoos and Aquariums (AZA) facilities.

The proposed amendments to §51.9 seek to clarify that one of three forms of accepted identification is needed for ratites entering Texas. The amendments also provide simplified requirements for exotic fowl, excluding ratites, moving between AZA accredited facilities. The proposed amendments allow for movement to and from accredited facilities without testing for pullorum-typhoid and avian influenza and without entry permitting, provided there is no commingling. This amendment is made because the risk posed by these movements is low. The AZA has rigorous accreditation requirements, transfers between accredited facilities are closely tracked, accredited facilities operate in relatively closed environments, and animals in accredited facilities receive comprehensive care.

The proposed amendments also update the language found in §51.10 concerning movement of cervids from AZA accredited facilities. The language previously referenced the “American Zoo and Aquarium Association (AZAA).” However, the organization has since changed its name. The amendments reflect the name change.

SECTION-BY-SECTION DISCUSSION

Section 51.9 includes entry requirements for exotic livestock and fowl. The proposed amendments clarify the identification requirements for ratites entering Texas and create simplified requirements for exotic fowl (other than ratites) moving between AZA accredited facilities.

Section 51.10 includes entry requirements for Cervidae. The proposed amendments update language to reflect the name change of the American Zoo and Aquarium Association to Association of Zoos and Aquariums.

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 reduced administrative burden on Commission permitting and record staff.

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 expand existing regulations;
- Will not 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 exotic fowl, simplify entry requirements for exotic fowl and Cervidae moving from AZA accredited facilities, and to update language following an organizational name change. 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 Texas Agriculture Code, Chapter 161, §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code.

Pursuant to §161.041, titled "Disease Control," the Commission shall protect all livestock, exotic livestock, domestic fowl, and exotic fowl from diseases the commission determines require control or eradication. Pursuant to §161.041(b) the Commission may act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl. The Commission may adopt any rules necessary to carry out the purposes of this subsection, including rules concerning testing, movement, inspection, and treatment.

Pursuant to §161.043, titled "Regulation of Exhibitions," the Commission may regulate the entry of livestock and may require certification of those animals as reasonably necessary to protect against communicable diseases.

Pursuant to §161.048, titled "Inspection of Shipment of Animals or Animal Product," 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 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 non-communicable disease.

Pursuant to §161.054, titled "Regulation of Movement of Animals; Exception," the Commission may by rule regulate the movement of animals, and 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.

Pursuant to §161.056(a), titled "Animal Identification Program," the Commission, to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease, may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program. Section 161.056(d) authorizes the Commission to adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.081, titled "Importation of Animals," the Commission by rule may provide the method for inspecting and testing animals before and after entry into Texas. The Commission may create rules for the issuance and form of health certificates and entry permits.

Pursuant to §161.101, titled "Duty to Report," a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the disease, if required by the Commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the Commission within 24 hours after diagnosis of the disease.

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

The Commission hereby certifies that this proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

<rule>

§51.9. Exotic Livestock and Fowl

(a) (No change.)

(b) Exotic Fowl. [~~Ratites entering the State of Texas shall meet the specific requirements listed in paragraphs (1) – (4) of this subsection:~~]

(1) Ratites -- Ratites entering Texas shall meet the specific requirements listed in paragraphs (A) – (D) of this subsection:

(A) [(1)] Each bird will be individually identified with [~~either~~] an RFID device, a permanently attached tag, or an implanted electronic device (microchip). The identification will be shown on the certificate of veterinary inspection along with the location and name brand of the implanted electronic device. If an animal has more than one implanted microchip, then the location, microchip number, and name brand of each will be documented on the certificate of veterinary inspection. Birds or hatching eggs must originate from flocks that show no evidence of infectious disease and have had no history of Avian Influenza in the past six months. In addition, each bird must be tested and found to be serologically negative for Avian Influenza and Salmonella pullorum-typhoid from a sample collected within 30 days of shipment. A bird serologically positive for Avian Influenza may be admitted if a virus isolation test via cloacal swab conducted within 30 days of shipment is negative for Avian Influenza. The testing is to be performed in a state approved diagnostic laboratory in the state of origin. Serologically positive birds admitted under this section must be held under quarantine on the premise of destination in Texas for virus isolation retest.

(B) [(2)] Ratites destined for slaughter only may enter Texas accompanied by an entry permit and either an owner-shipper statement or health certificate without meeting the requirements of paragraph (A) [(1)] of this subsection.

(C) [(3)] All ratites originating within Texas and changing ownership or being offered for public sale or sold by private treaty within the state must be individually identified with an implanted electronic device, a tag, or a band.

(D) [(4)] All identification must be maintained in the sale records for consignments to a public sale or in the records of the buyer and seller when the animals are sold at private treaty. These records must be maintained for a period of three years.

(2) Association of Zoos and Aquariums (AZA) accredited facility. Exotic fowl, other than ratites, moving from an AZA accredited facility directly to another AZA accredited facility are exempt from the required pullorum-typhoid and avian influenza testing and from entry permitting provided those exotic fowl being moved are not commingled with exotic fowl or domestic poultry from other sources during the transfer. Exotic fowl sold or transferred from an AZA accredited facility located either in Texas or another state to an owner/agent in Texas that is not an AZA

accredited facility must comply with all testing and entry permit requirements. Ratites moving from an AZA accredited facility must follow entry requirements for ratites set forth in §51.10(b)(1).

<rule>

§51.10. Cervidae

(a) (No change.)

(b) (No change.)

(c) Tuberculosis. No animal with a response to any tuberculosis test is eligible for entry unless that animal is subsequently classified negative for tuberculosis based upon an official tuberculosis test, or is consigned directly to slaughter.

(1) Accredited-Free herds. Cervids that originate from Accredited-Free herds may enter without further tuberculosis testing provided they are accompanied by a certificate stating such cervids originated from an Accredited-Free herd.

(2) Qualified herds. Cervids not known to be affected with or exposed to tuberculosis that originate from Qualified herds may enter if they are accompanied by a certificate stating that such cervids originate from a qualified herd and have been classified negative to an official tuberculosis test, which was conducted within 90 days prior to the date of movement. If the qualifying herd test was administered within 90 days of movement, the animal(s) do not require an additional test.

(3) Monitored herds. These cervids not known to be affected with or exposed to tuberculosis that originate from Monitored herds may enter if they are accompanied by a certificate stating that such cervids originate from a monitored herd and have been classified negative to an official tuberculosis test, which was conducted within 90 days prior to the date of movement.

(4) All other herds. These cervids not known to be affected with or exposed to tuberculosis that originate from all other herds may enter if they are accompanied by a certificate stating that such cervids have been classified negative to two official tuberculosis tests, which were conducted no less than 90 days apart; that the second test was conducted within 90 days prior to the date of movement; and that the animals were isolated from all other members of the herd during the testing period.

(5) Cervids less than 12 months of age that originate from and were born in accredited, qualified, or monitored herds. These cervids may enter without further tuberculosis testing provided they are accompanied by a certificate stating that such

cervids originated from such herds and have not been exposed to cervids from a lower status.

(6) Association of Zoos and Aquariums (AZA) [~~American Zoo and Aquarium Association (AZAA)~~] accredited facility. Cervids moving from an AZA [~~American Zoo and Aquarium Association (AZAA)~~] accredited facility directly to another AZA accredited facility [~~accredited by the AZAA~~] are exempt from these entry requirements provided those cervids being moved are not commingled with cervids from other sources during the transfer. Cervids sold or transferred from an AZA [~~AZAA~~] accredited facility located either in Texas or another state to an owner/agent in Texas that is not an AZA accredited facility [~~other than another AZAA accredited facility,~~] must comply with these testing requirements.

(7) TB restricted area in Michigan. Cervids originating from the TB restricted zone(s) in Michigan shall be tested negative for tuberculosis in accordance with the appropriate status requirements as contained in Title 9 of the Code of Federal Regulations, Part 77, §§77.10 - 77.19, prior to entry with results recorded on the certificate of veterinary inspection.