

EXPLANATION OF PROPOSED RULE

The Texas Animal Health Commission (Commission) proposes the creation of a new Chapter 33, which is entitled "Fees". The proposed Chapter 33 is for the purpose of assessing and collecting fees authorized by the Commission. The current envisioned format for the Chapter is for each fee to be a stand alone section.

The Commission has been protecting Texas' livestock and poultry since 1893. The Commission has legislative authority to make and enforce regulations and assess fees to prevent, control, and eradicate specific infectious animal diseases or pests which endanger livestock, exotic livestock, and poultry. The Commission is also the lead agency in Texas for animal disaster issues, including disease, natural, or manmade situations.

There were several legislative bills introduced during this last legislative session which all contained specific fee authorization language for the Commission. House Bill 1992 was passed and enacted into law. The intent of this legislation is to provide the Commission with the full and necessary authority to assess any appropriate and equitable fee for the different types of services or actions provided to the various agricultural animal industries. This legislation was necessary as a result of the current Legislative Budget Board recommendation to fundamentally change the agency funding structure from primarily General Revenue sourced funding to a partial fee-for-services funding model. The change will require the Commission to generate new revenue streams through fees for up to approximately 50% of future budgets to maintain all essential services.

The Commission's activities are focused not only on protecting the animal industries of Texas from disease threats, but also supporting consumer confidence that Texas' animals and products are safe, wholesome, and disease free. A disease free Texas livestock population also allows for enhanced marketability and less restrictive movement requirements, from both an interstate and international perspective. The Commission's previous authority to assess fees was primarily with inspection processes. The bill does expressly grant additional rulemaking authority to the agency for assessing fees.

The intent of the foreign cattle inspection fee program is to ensure that these animals entering Texas meet our entry requirements and do not pose a disease risk to Texas cattle. These animals may be inspected by Commission personnel for disease risk to ensure compliance with our entry requirements and any associated record keeping requirements. As that is a service provided by the Commission and in support of the protecting the state's cattle industry, the Commission is proposing to promulgate a fee to support the services provided by the Commission.

FISCAL NOTE

The Foreign Cattle Inspection Fee stands to generate an estimated \$400,000 at \$1.00/head, based on historical annual volumes of cattle entering Texas from Mexico.

Dr. Matt Cochran, Assistant Executive Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rule is in effect, there will be no significant additional fiscal implications for local government as a result of enforcing or administering the rule.

The Commission has evaluated the requirements and determined that there is not an adverse economic impact associated with levying these fees, relative to the disease mitigation and risk management provided by consistent inspection and monitoring of the livestock populations in question. The direct impact is specified on a per head basis in the first paragraph of this section. The rules stand to provide revenue for surveillance of an at-risk animal population, and for accomplishment of the Commission's mission.

PUBLIC BENEFIT NOTE

Dr. Cochran has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be sustained disease surveillance, control, enhanced marketability, quality assurance, and the related relative freedoms of commerce both intra and interstate. Animal agriculture accounts for 64% of Texas' annual agricultural receipts, with cattle counting for 42% alone. Cash receipts for all livestock in 2009 were \$10.6 billion, and the Texas Animal Health Commission is the agency responsible for state-level maintenance of livestock and poultry health. Mexican cattle fulfill a need for young cattle that will on feed, and require surveillance beyond that required of domestic cattle. A disease-free state herd composed of domestic and Mexican cattle is of benefit to the public at large.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rules will not have a deleterious impact on local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. This proposed rule is an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with Title 4 TAC §59.7, and is, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposed new chapter may be submitted to Carol Pivonka, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us."

STATUTORY AUTHORITY

The amendment is proposed under the Texas Agriculture Code, Chapter 161, §161.060 "[t]he commission may charge a fee, as provided by commission rule, for an inspection made by the commission". During the 82nd Texas Legislative Session, HB 1992 was passed which provides the Commission with broader based fee assessment authority. HB 1992 will allow the Commission to set and collect a fee for most services provided, including: 1) inspecting animals or facilities; 2) obtaining samples from animals for disease diagnostic test; 3) testing animals for disease; 4) disease prevention, control/eradication and treatment efforts; 5) services related to the transport of livestock; 6) control and eradication of ticks and other pests; and 7) any other service for which the Commission may incur a cost.

The Commission is also vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That is found in §161.061. Section 161.112 provides that the Commission may establish rules regarding the tests, immunization, and dipping of animals at livestock markets. As a control measure, 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 under §161.054. That authority is found in §161.048. A person is presumed to control the animal if the person is the owner or lessee of the pen, pasture, or other place in which the animal is located and has control of that place; or exercises care or control over the animal. That is under §161.002.

Texas Administrative Code

TITLE 4 AGRICULTURE

PART 2 TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 33 FEES

Rules

- §33.1 Definitions
- §33.3 Inspection of Foreign Cattle
Fee

Texas Administrative Code

<u>TITLE 4</u>	AGRICULTURE
<u>PART 2</u>	TEXAS ANIMAL HEALTH COMMISSION
CHAPTER 33	FEES
RULE §33.1	Definitions

- 1.) "Fee" means a charge for services, activity or a program provided by the Commission. The Commission's mission is to protect the health of Texas animal agriculture. Services to promote the Commission's mission are known as Commission services. All fees due the Commission shall be sent to TAHC, P.O. Box 12966, Austin, Texas 78711-2966 within 30 days or paid through other means as identified by the Commission.
- 2.) "Inspection" means ensuring all requirements are met related to testing, official identification, bio-security standards, recordkeeping, and other applicable regulations for all animals.
- 3.) "Livestock market" means a stockyard, sales pavilion, or sales ring where livestock, exotic livestock, or exotic fowl are assembled or concentrated at regular or irregular intervals for sale, trade, barter, or exchange and where the Commission has an inspector present.

Texas Administrative Code

TITLE 4 AGRICULTURE
PART 2 TEXAS ANIMAL HEALTH COMMISSION
CHAPTER 33 FEES
RULE §33.3 **Inspection of Foreign Cattle Fee**

- a.) All cattle originating from foreign countries may be inspected at the first point of destination or any mutually agreed upon location in Texas within 7 days of entry. The owner or caretaker will submit a fee to the Commission, within 30 days of arrival, in accordance with the schedule provided in subsection (b). An inspection can include, but is not limited to, compliance with test requirements, verification of animal identification, and evaluation of bio-security standards or other standards as prescribed by the Commission.

- b.) \$1.00 for every animal.