

The Texas Animal Health Commission (commission) proposes amendments to §54.9, concerning Live Bird Marketing System, in Chapter 54, which is entitled “Domestic and Exotic Fowl Registration”. The purpose of the amendments is to address concerns regarding potential disease exposure associated with unconfined fowl.

The Fowl Registration Program was created to register domestic and exotic fowl sellers, distributors, or transporters who do not participate in disease surveillance programs recognized by the Commission. The primary purpose of the program is to ensure that the various types of fowl being sold or transported throughout this state do not pose a disease risk which could devastate the various Texas fowl industries. Over the years Texas has experienced problems with several diseases which can be carried by the various types of fowl, some of which are not clinically affected by the disease.

The rule is being amended to put in place a requirement focused on an area of concern for disease exposure within the live bird marketing system. These fowl may share a communal water supply with wild bird populations which may be a potential disease source. As such, the rule is being amended to improve and clarify existing biosecurity protocols. Section 54.9(c)(4), as proposed, will require fowl to be confined in a cage, pen or other structure in order to provide a physical barrier at all times so as to keep the fowl separate and apart from all other fowl of infected, exposed or unknown health status and to limit exposure to wild bird populations. It is important that all participating facilities understand that biosecurity protocols include this important element for preventing the spread of disease and for protecting animal health in this state.

In addition to the biosecurity change, §54.9(g) is being amended to correctly identify the section that addresses violations of the live bird marketing system rules as §54.8.

#### **FISCAL NOTE**

Ms. Larissa Schmidt, Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rule is in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the rule. An Economic Impact Statement (EIS) is required if the proposed rule has an adverse economic effect on small businesses. The agency has evaluated the requirements and determined that there is not an adverse economic impact and, therefore, there is no need to do an EIS. Implementation of this rule poses no significant fiscal impact on small or micro-businesses. There are no anticipated costs to persons who are required to comply with the rule as proposed.

#### **PUBLIC BENEFIT NOTE**

Ms. Schmidt 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 to protect the public and fowl industries from potential disease exposure associated with unconfined fowl and wild bird populations.

#### **LOCAL EMPLOYMENT IMPACT STATEMENT**

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rule will not impact 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. The proposed amendments are an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

## **REQUEST FOR COMMENT**

Comments regarding the proposal may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by email at “comments@tahc.state.tx.us”.

## **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, 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.

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. That is found in §161.054. 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. 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.

Section 161.007 provides that if a veterinarian employed by the commission determines that a communicable disease exists among livestock, domestic animals, or domestic fowl or on certain premises or that livestock, domestic animals, or domestic fowl have been exposed to the agency of transmission of a communicable disease, the exposure or infection is considered to continue until the commission determines that the exposure or infection has been eradicated through methods prescribed by rule of the commission. Section 161.005 provides that the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice, signed under that authority has the same force and effect as if signed by the entire commission.

No other statutes, articles or codes are affected by the amendments.

#### **54.9. Live Bird Marketing System.**

(a) Registration/Licensing. Live Bird Markets, Live Bird Production Units, and Live Bird Market Distributors shall submit:

(1) An application including:

(A) Business name and Owner name, address, and telephone number;

(B) Hours of operation;

(C) Bird capacity, which is based on the maximum number of fowl during the previous 12 ~~twelve~~ (12) months, being owned or managed by the registrant at any one time;

(D) Other businesses under the same ownership in the LBM system, including other dealerships, bird transportation businesses, and commercial poultry operations;

(E) A list of all avian and non-avian species distributed; and

(F) NAIS unique premises identification number.

(2) An annual registration fee as provided in §54.4 of this title (relating to Registration Fee).

(b) Record Keeping. Requirements for Live Bird Markets, Live Bird Production Units, and Live Bird Market Distributors:

(1) Are responsible for verifying bird identification, using PIN or Lot identification and maintaining identification and obtaining and maintaining documentation of test-negative status of all birds at the time of their receipt. If records do not accompany the shipment the management is prohibited from allowing those fowl to enter the premises.

(2) Records for avian species shall include the date of entry into a LBM, the premises-of-origin identification number, with lot identifier; the number and species of birds in the lot; the distributor license number; the date of sale and a copy of the negative test results for the source flock.

(3) These records must be maintained for a minimum of two (~~2~~) years. Such records must be made available to State or Federal animal health officials, upon request, during normal business hours.

(c) Biosecurity. Live Bird Markets, Live Bird Production Units, and Live Bird Market Distributors shall:

(1) Develop and follow a biosecurity protocol approved by the Commission. This protocol shall include standards for cleaning & disinfecting (C&D) of facilities, conveyances, and equipment. This protocol shall also call for management practices and

physical barriers that prevent migratory water fowl from accessing any water supply being used by or shared with the fowl at the facility.

(2) Train all personnel that work for the company in biosecurity by State or Federal personnel or by a trained company representative. Certification of employee training must be maintained in the personnel files for a minimum of two (2) years. Such records must be made available to State or Federal animal health officials, upon request, during normal business hours.

(3) Once delivered to a market, birds must be slaughtered and processed before leaving the facility, unless otherwise provided for in the biosecurity protocol.

(4) Confine domestic and exotic fowl in a cage, pen or other structure in order to provide a physical barrier at all times so as to keep the fowl separate and apart from all other fowl of infected, exposed or unknown health status and to limit exposure to wild bird populations.

(d) Inspections.

(1) The Commission may make inspections of any facilities, conveyances, and equipment and the domestic or exotic fowl therein and review records to ensure compliance with the requirements of the fowl registration program.

(2) Live Bird Markets, Live Bird Production Units, and Live Bird Market Distributors shall allow State and/or Federal animal health officials to have access to records upon request and to permit official inspections and testing of birds, premises, vehicles, and equipment as deemed appropriate by the Commission.

(3) Indication or evidence that paperwork received has been altered or that it misrepresents the sources or test status of birds coming into the LBM, the LBMS, or distributor must be reported to a Federal or State animal health official.

(e) Avian Influenza Test Requirements. All domestic fowl in a Live Bird Marketing System shall participate in testing for avian influenza virus which shall include but is not limited to using AGID on serum or egg yolk samples from gallinaceous birds, RRT-PCR on tracheal swabs from gallinaceous birds, or virus isolation on cloacal swabs from waterfowl and other birds:

(1) Live Bird Markets and Live Bird Marketing System distributors shall be tested:

(A) at least quarterly; and

(B) may include live birds, environment, conveyances, and crates.

(2) All birds provided to a distributor or directly to the LBM must originate from an avian influenza negative flock and must bear or be accompanied by identification to a premises of origin. The categories of production units and the testing requirements for each category are as follows:

(A) AI-monitored flock: This is a flock that is tested monthly for AI for at least 3 months using AGID on serum or egg yolk samples from gallinaceous birds, RRT-PCR on tracheal swabs from gallinaceous birds, or virus isolation on cloacal swabs from waterfowl and other birds. At least 30 birds per flock are tested monthly by an approved laboratory.

(B) Established flock: This is a flock that has been maintained together for at least 21 days prior to sample collection with no additions to the flock. For an established flock to qualify for the first shipment into the LBM system or to requalify after any breaks in the monthly sample-testing regimen, 30 birds must be tested by AGID or other approved procedure within 10 days prior to movement.

(C) Commingled flock: This is a group of poultry from multiple sources that has been assembled for one or more shipments. When untested birds are added to the flock, previous test reports are void and the flock must requalify as an established flock by waiting 21 days before resampling, and then following the protocol as for a nonmonitored flock.

(D) Nonmonitored flock: This is a flock that has not been on a program of monthly testing for at least 3 months. To qualify for sale in the LBM system, 30 birds in a nonmonitored flock must have been tested within 10 days of movement.

(f) Infected flock. Any Live Bird Marketing System flock where fowl are positive on virus isolation or RRT-PCR for a disease reportable to the Commission under Chapter 45 of this title (relating to Reportable Diseases):

(1) Any specimens positive for virus will be submitted to the NVSL for virus isolation and characterization. The premises will be movement restricted by a hold order until results are obtained from the NVSL.

(2) Infected flocks will be placed under quarantine, the fowl depopulated, and the facility cleaned and disinfected unless an alternate approach to disease elimination is approved by the Commission. No new fowl may be added to the quarantined flock unless approved by the Commission. A flock plan shall be developed between the flock owner and the Commission addressing the length of time the facility is to remain vacant of fowl, the testing schedule following repopulation, and other details germane to the management of the flock and elimination of disease.

(3) RRT-PCR or VI positives at LBMs and distribution facilities will result in trace-backs to a supplier of origin by State or Federal personnel in the State of origin.

(g) Violations of these requirements will be handled as provided in §54.8 ~~§54.4~~ of this title (relating to Enforcement).