

The Texas Animal Health Commission (commission) proposes amendments to §41.8, concerning Dipping, Treatment, and Vaccination of Animals, in Chapter 41, which is entitled “Fever Ticks.”

The purpose of the amendments to §41.8 is to provide the Designated Fever Tick Epidemiologist (DFTE), with the approval of the Executive Director, the discretion to approve inspections, dipping, treatments and/or vaccination requirements that are less stringent than those currently prescribed, taking into consideration the circumstances of the affected producer, and the commission’s overarching goal to encourage producers to maintain cattle on affected premises. With routine inspections and treatment, cattle maintained on or near premises have significant value to the Cattle Fever Tick Eradication Program (CFTEP) by serving as sentinel animals, and if found, control agents of the fever tick.

The purpose of the CFTEP is to eradicate fever ticks through the management of a permanent quarantine zone, as well as through temporary quarantine areas, created to address the presence of ticks outside the permanent zone.

#### **FISCAL NOTE**

Ms. Larissa Schmidt, Chief of Staff, 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 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.

#### **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 provide value added customer service by the DFTE having the ability to assess and consider the specific needs and circumstances of affected producers.

#### **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 amendment is 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) 719-0719 or by email at “comments@tahc.texas.gov”.

## **STATUTORY AUTHORITY**

The amendment is proposed under the following statutory authority as found in Chapters 161 and 167 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 §161.005, entitled “Commission Written Instruments”, 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.

Pursuant to §161.007, entitled “Exposure or Infection Considered Continuing”, 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.

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, entitled “Regulation of Movement of Animals”, 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.

Pursuant to §161.057, entitled “Classification of Areas”, the commission by rule may prescribe criteria for classifying areas in the state for disease control. The criteria must be based on sound epidemiological principles. The commission may prescribe different control measures and procedures for areas with different classifications.

Pursuant to §161.061, entitled “Establishment”, if the commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or

exotic fowl, or that a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

Pursuant to §161.081, entitled “Importation of Animals”, the commission by rule may regulate the movement, including movement by a railroad company or other common carrier, of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country.

Pursuant to §167.003, entitled “General Powers and Duties of the Commission”, the commission shall eradicate all ticks capable of carrying Babesia in this state and shall protect all land, premises, and livestock in this state from those ticks and exposure to those ticks. In carrying out this chapter, the commission may adopt necessary rule.

Pursuant to §167.004, entitled “Classification of Animals or Premises as Infested, Exposed or Free from Exposure”, the commission by rule shall define what animals and premises are to be classified as exposed to ticks. The commission shall classify as exposed to ticks livestock that have been on land or in an enclosure that the commission determines to be tick infested or exposed to ticks or to have been tick infested or exposed to ticks before or after the removal of the livestock, unless the commission determines that the infestation or exposure occurred after the livestock were removed and that the livestock did not become infested or exposed before removal.

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

#### **41.8. Dipping, Treatment, and Vaccination of Animals.**

Unless otherwise determined by the DFTE and approved by the Executive Director, the following requirements shall apply:

(1) ~~(a)~~ General Requirements:

(A) ~~(1)~~ All scratch inspections, dipping, treatment, and vaccination prescribed in this section must be done under the supervision of a representative authorized by the commission.

(B) ~~(2)~~ All scratch inspections, dipping, treatment, or vaccination must be done under instructions issued by the commission. All requirements will be in written form directed to the owner or caretaker. An inspector for the commission will deliver the instructions in person along with a copy of these regulations. All premises ~~premise~~ boundaries will be listed in the instructions.

(C) ~~(3)~~ The owner or caretaker of livestock on infested and exposed premises must comply with the TAHC approved Quarantine Schedule as follows:

(i) ~~(A)~~ The starting date for infested premises for Table I (Pasture Treatment or Vacation Schedule, South of Highway 90) and Table II (Pasture Treatment or Vacation Schedule, North of Highway 90), is the date of the first clean dipping of 100% of the livestock.

(ii) ~~(B)~~ The starting date for exposed premises for Table I and Table II is when 100% of the livestock on the premises ~~premise~~ have been dipped.

(iii) ~~(C)~~ Copies of Table I (Pasture Treatment or Vacation Schedule, South of Highway 90) and Table II (Pasture Treatment or Vacation Schedule, North of Highway 90) may be obtained from the Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711-2966.

Figure: 4 TAC §41.8(1)(C)(iii)

Figure: 4 TAC §41.8(a)(3)(C)

(D) ~~(4)~~ The owner or caretakers must gather and present all livestock for scratch inspection, dipping, treatment or vaccination required by the commission. The owner or caretaker is responsible for all costs associated with and labor necessary for presenting the owner or caretaker's cattle for scratch inspection, dipping, treatment, or vaccination at the location prescribed by the commission.

(2) ~~(b)~~ Requirements for Dipping, Treatment, or Vaccination:

(A) ~~(1)~~ Dipping Requirements:

(i) ~~(A)~~ The owner or caretaker of livestock on infested or exposed premises must present the livestock to be scratch inspected and dipped with subsequent dipping every seven to 14 days until the livestock are moved from the premises ~~premise~~ in accordance with these regulations, except as provided in subsection (a)(3) of this section.

(ii) ~~(B)~~ The 14-day interval may be extended due to circumstances beyond the control of the owner upon approval by an authorized representative of the commission. In no event will the extension be more than three days. If the extension is granted, no certificate for movement will be issued after the 14th day, and the next dip must be on the original 14-day schedule.

(iii) ~~(C)~~ The scratch inspection and first dip must be within 14 days from the date infestation or exposure is discovered unless otherwise approved by the commission.

(iv) ~~(D)~~ A dip is not official unless 100% of the livestock within the premises ~~premise~~ affected are dipped on schedule.

(v) ~~(E)~~ The commission will authorize for use in dipping only those dips that have been approved by the Animal and Plant Health Inspection Service of the United States Department of Agriculture and the Texas Animal Health Commission for use in official dipping to rid animals of the tick.

(vi) ~~(F)~~ The concentration of the dipping chemical used must be maintained in the percentage specified for official use by means of the approved vat management techniques established for the use of the agent; or, if applicable, by an officially approved vat side test or field test of the commission.

(vii) ~~(G)~~ If the commission requires livestock to be dipped, the livestock shall be submerged in a vat. A spray-dip machine may be used in areas where a vat is not reasonably available.

(viii) ~~(H)~~ Careful hand spraying may be used for easily restrained horses and show cattle, and when specifically authorized by a commission representative, certain zoo or domestic animals.

(ix) ~~(I)~~ Livestock unable to go through a dipping vat because of size or physical condition, as determined by a commission representative, may be hand sprayed.

(x) ~~(J)~~ The dip treatment must be paint marked on the animals so that it can be identified for as treated for at least 17 days after the treatment.

(B) ~~(2)~~ Authorized Treatment Requirements:

(i) ~~(A)~~ Following the first clean dipping of 100% of the livestock, the cattle may be treated with injectable doramectin in lieu of systematic dipping. The owner or caretaker of cattle on an infested or exposed premises ~~premise~~ must present the livestock to be scratch inspected and treated with injectable doramectin every 25-28 days until the livestock are moved from the

premises in accordance with these regulations, except as provided in subsection (a)(3) of this section.

(ii) ~~(B)~~ Treatment of doramectin shall be administered by subcutaneous injection by a representative of the commission.

(iii) ~~(C)~~ The owner or caretaker must comply with the slaughter withholding period (35 days) of doramectin by holding cattle at the premises ~~premise~~ of origin until the withdrawal period has been completed.

(iv) ~~(D)~~ A treatment is not official unless 100% of the livestock within the premises ~~premise~~ affected are treated on schedule.

(v) ~~(E)~~ Free-ranging wildlife or exotic livestock that are found on infested or exposed premises, and which are capable of hosting fever ticks will be treated by methods approved by the commission and for the length of time specified by the commission.

(I) ~~(4)~~ Ivermectin medicated corn may be administered to free-ranging wildlife or exotic livestock by a representative of the commission following the close of the hunting season, provided that treatment is terminated at least 60 days prior to the beginning of the next hunting season to comply with the required withdrawal period.

(II) ~~(ii)~~ Permethrin impregnated roller devices may be used for topical treatment of free-ranging wildlife or exotic livestock during periods when ivermectin medicated corn is not administered. The commission may specify the use of other pesticides for treatment of wildlife or exotic livestock when deemed necessary to control and eradicate fever ticks.

(C) ~~(3)~~ Vaccination Requirements:

(i) ~~(A)~~ The fever tick vaccine shall be administered by employees or authorized agents of the USDA/APHIS/Veterinary Services or the commission.

(ii) ~~(B)~~ The owner or caretaker must comply with the 60 day slaughter withholding period, or other slaughter withholding timeframe as specified by the label. The owner or caretaker must hold vaccinated cattle at the premises ~~premise~~ of origin until the withdrawal period is has been completed.

(iii) ~~(C)~~ In addition to any dipping or treatment required by this section, beef cattle two months of age or older located within the tick eradication quarantine area shall be vaccinated with the fever tick vaccine at intervals prescribed by the commission. The vaccine must be administered when cattle are gathered and presented for annual inspection as required by §41.9 of this chapter (relating to Vacation and Inspection of a Premise) and at other times specified by the commission.

(iv) ~~(D)~~ In addition to any dipping or treatment required by this section, the commission may require fever tick vaccination of beef cattle two months of age and older located within the temporary preventative quarantine area, control purpose quarantine area or other beef cattle or premises epidemiologically determined by the commission to be at an increased risk for fever ticks. The cattle shall be vaccinated at intervals prescribed by the commission.

(3) ~~(e)~~ Herd Plan and Protest. Each premises ~~premise~~ within a tick eradication quarantine area, temporary preventative quarantine area, or control purpose quarantine area will be classified by the commission as an infested, exposed, adjacent, or check premises ~~premise~~ and is required to execute a herd management plan and remain under restrictions until no evidence of fever ticks is disclosed or a complete epidemiologic investigation fails to disclose evidence of exposure to fever ticks, with the concurrence of the DFTE. A person may protest an initial test or a herd plan for each premises ~~premise~~ classified as increased risk for fever ticks.

(A) ~~(1)~~ To protest, the responsible person must request a meeting, in writing, with the Executive Director of the commission within 15 days of receipt of the herd plan or notice of an initial test and set forth a short, plain statement of the issues that shall be the subject of the protest, after which:

(i) ~~(A)~~ the meeting will be set by the Executive Director no later than 21 days from receipt of the request for a meeting;

(ii) ~~(B)~~ the meeting or meetings shall be held in Austin; and

(iii) ~~(C)~~ the Executive Director shall render his decision in writing within 14 days from date of the meeting.

(B) ~~(2)~~ Upon receipt of a decision or order by the executive director which the herd owner wishes to appeal, the herd owner may file an appeal within 15 days in writing with the Chairman of the commission and set forth a short, plain statement of the issues that shall be the subject of the appeal.

(C) ~~(3)~~ The subsequent hearing will be conducted pursuant to the provisions of the Administrative Procedure and Texas Register Act, and Chapter 32 of this title (relating to Hearing and Appeal Procedures).

(D) ~~(4)~~ If the Executive Director determines, based on epidemiological principles, that immediate action is necessary, the Executive Director may shorten the time limits to not less than five days. The herd owner must be provided with written notice of any time limits so shortened.