

The Texas Animal Health Commission (commission) proposes a new §49.7, concerning Persons or Laboratories Performing Equine Infectious Anemia Tests, in Chapter 49, which is entitled “Equine”.

The purpose of the new section is to add a requirement that a person or laboratory who performs an official Equine Infectious Anemia (EIA) test in the State of Texas must meet and be in compliance with the requirements found in Title 9 Code of Federal Regulations §75.4(c), which is entitled “*Approval of Laboratories, and Diagnostic or Research Facilities*”.

House Bill 3738 was passed during the 84th Regular Texas Legislative Session amending the Texas Agriculture Code to require the commission to adopt rules that require a person or laboratory to be approved by the commission if the person or laboratory performs an official EIA test. The bill requires the rules to include approval requirements; provisions governing the issuance, renewal, and revocation of an approval; inspection requirements; recordkeeping requirements; equine infectious anemia testing methods approved by the commission; and proficiency standards.

The commission has certain EIA testing requirements for equine. The United States Department of Agriculture has a process for the approval of diagnostic laboratories which conduct EIA tests. This amendment proposes to adopt these same requirements for intrastate testing by reference to 9 CFR §75.4(c). There is discussion at the federal level that may alter the current federal role in regulating diagnostic laboratories which test for EIA and potentially leave the responsibility of approving such laboratories to the states. If the federal program is abandoned, the commission will propose and enact state standards.

#### **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 significant additional fiscal implications for state or local government as a result of enforcing or administering the rule. The regulation of EIA laboratories will be carried out under the commission’s current budget. 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, or to individuals.

#### **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 ensure that EIA laboratories are effectively regulated and EIA tests are performed in accordance with official requirements and therefore ensure that Texas equine owners obtain an officially recognized test.

#### **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 is, 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 new section is 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 §161.0602, entitled “Persons or Laboratories Performing Equine Infectious Anemia Tests”, the commission shall adopt rules that require a person or laboratory to be approved by the commission if the person or laboratory performs an official equine infectious anemia test.

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 §161.006, 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 §161.054, 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 §161.113, 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. And if the commission requires the dipping of livestock under this subchapter, the livestock shall be submerged in a vat, sprayed, or treated in another sanitary manner prescribed by rule of the commission.

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 the proposal.

#### **49.7. Persons or Laboratories Performing Equine Infectious Anemia Tests.**

A person or laboratory who performs an official equine infectious anemia test in the State of Texas must meet and be in compliance with the requirements found in Title 9 Code of Federal Regulations §75.4(c), which is entitled “Approval of Laboratories, and Diagnostic or Research Facilities”.