

The Texas Animal Health Commission (TAHC) proposes new §44.1 and §44.2 within Chapter 44. The purpose of new Chapter 44 is to establish a Bovine Viral Diarrhea Virus (BVDV) program.

#### BACKGROUND:

Bovine viral diarrhea (BVD) is an economically impactful disease of cattle with a worldwide prevalence that is endemic in most states. BVD is caused by the Bovine viral diarrhea virus, a Pestivirus. The major reservoir responsible for disease spread geographically is the persistent infection syndrome (BVDV-PI) seen in calves. BVDV can result in impacts to the stocker and feedlot operations by causing immunosuppression and contributing to Bovine Respiratory Disease Complex, or “Shipping Fever.” This can lead to reduced feed conversion and weight gain, and increases in days on feed, morbidity, treatment cost, and mortality. In regards to cow/calf operations, all of these impacts may occur plus decreased conception rates, abortions, weak calves, and congenital defects.

The dam can be transiently infected during pregnancy and her calf become infected during development in the womb. If this infection occurs between days 40 and 120 of the pregnancy, the calf’s immune system may not recognize the BVD Virus as foreign, and no natural immunity is produced in the calf. The calf becomes persistently infected (PI), and produces large numbers of the virus. The calf may display a normal appearance with immunosuppression or may experience acute death, poor performance, or mucosal disease.

Texas stakeholders have indicated interest in addressing the disposition of known BVDV-PI animals. The TAHC convened a group of stakeholders to discuss the negative implications of the disease on the Texas cattle industry. Stakeholder groups represented at the meeting included Texas Southwest Cattle Raisers Association (TSCRA), Texas Cattle Feeder Association (TCFA), Livestock Marketing Association (LMA), Independent Cattlemen’s Association (ICA), Texas Farm Bureau (TFB), Texas Association of Dairymen (TAD), Texas A&M AgriLife, USDA, and Texas A&M Veterinary Medical Diagnostic Laboratory (TVMDL).

The Commission may develop rules necessary to control significant disease risks. BVDV adversely affects both health and productivity. The losses due to transient infection are diarrhea, decreased milk production, reproductive disorders, increased occurrence of other diseases, and death. The losses from fetal infection include abortions; congenital defects; weak and abnormally small calves; unthrifty, persistently infected (PI) animals; and death among PI animals. To provide Texas cattle some mitigation from the risk of exposure to PI cattle, Chapter 44, entitled “Bovine Viral Diarrhea Program” is being added.

#### HOW THE SECTIONS WILL FUNCTION:

Section 44.1 is for definitions used in this chapter and contains the following definitions: (1) Bovine Viral Diarrhea (BVD); (2) Bovine Viral Diarrhea Virus Persistently Infected (BVDV-PI) cattle; (3) BVDV Retest; (4) Cattle; (5) Commission.

Section 44.2 contains the primary element of a BVDV Program. Subsection (a) provides that BVDV-PI cattle are restricted from sale unless a potential buyer is notified on or before the time of sale that the cattle are persistently infected.

Subsection (b) provides that cattle that originally test positive but later are determined by confirmatory test to be transiently infected, only, are not subject to the disclosure requirements of this rule.

Subsection (c) provides that the Commission will establish a BVDV program review working group with the interested stakeholders that will meet on an annual basis to determine the need for enhanced rules or continuation of current rules.

## FISCAL NOTE

Mrs. Larissa Schmidt, Chief of Staff, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for state or local government because of enforcing or administering the rules.

## REGULATORY ANALYSIS

**Public Benefit:** Ms. Schmidt has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated because of enforcing the rules will allow the agency to more effectively address the risk from cattle that have tested positive for BVDV and reduce the risk of exposure to other cattle in the state.

**Local Employment Impact Statement:** In accordance with Texas Government Code §2001.022, the Commission has determined that the proposed rules will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

**Major Environmental Rule:** The Commission has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule because the specific intent of these rules is not primarily to protect the environment or reduce risks to human health from environmental exposure, and therefore, is not a major environmental rule.

**Takings Assessment:** The Commission 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 Title 4 TAC, §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

**Economic Impact Statement:** The Commission has determined that the animal agricultural industries meet the statutory definition of a small or microbusiness (Government Code, Chapter 2006), and that the proposed rule would affect rural communities (as defined by

Government Code, Chapter 2006); however, the Commission also has determined that the rule as proposed will not result in adverse economic impacts to small and microbusinesses or rural communities because the rule applies to all cattle that test positive for the disease, and the reporting requirements are intended to prevent exposure to other cattle in the state. As a result, application of the rule will help prevent adverse economic impacts.

Regulatory Flexibility Analysis: The proposed rule does not have an adverse impact on affected small businesses and/or rural communities located in Texas because the rule allows the Commission to identify animals that have been disclosed as being positive for a disease that negatively impacts the Texas cattle industry and to quickly and efficiently retest and possibly track positive animals thereby protecting other similarly situated cattle from consequential disease exposure. Because no adverse impact will occur, a regulatory flexibility analysis is not required.

Government Growth Impact Statement: In compliance with the requirements of Government Code, §2001.0221, the Commission has prepared the following Government Growth Impact Statement (GGIS). Except as provided below, the rule:

- (1) will create a government program;
- (2) will not create new employee positions or eliminate existing employee positions;
- (3) will not require an increase or decrease in future legislative appropriations to the agency;
- (4) will not require an increase or decrease in fees paid to the agency;
- (5) will create a new regulation in that it adds a disclosure requirement for sellers of certain infected cattle.
- (6) will not expand, limit, or repeal an existing regulation;
- (7) may increase the number of individuals subject to regulation; and
- (8) will not adversely affect this state's economy.

Cost to Regulated Persons (Cost-in/Cost-out): The commission has determined that the rule as proposed follows the legislative requirement that the commission shall protect all cattle within the state from diseases that pose a negative disease risk to the Texas cattle industry. It does not impose a direct cost on regulated persons, including a state agency, a special district, or a local government, within the state. Therefore, it is not necessary to repeal or amend any other existing rule.

## REQUEST FOR COMMENT

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 at [comments@tahc.texas.gov](mailto:comments@tahc.texas.gov). Comments must be received no later than thirty (30) days from the date of publication of this proposal.

## 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, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.046, entitled “Rules” “[t]he commission may adopt rules as necessary for the administration and enforcement of this chapter.”

Pursuant to §161.112, entitled “Rules” the commission shall adopt rules relating to the movement of livestock, exotic livestock, and exotic fowl from livestock markets and shall require tests, immunization, and dipping of those livestock as necessary to protect against the spread of communicable diseases.

The proposed rules do not affect other sections or codes.

<rule>

## CHAPTER 44 BOVINE VIRAL DIARRHEA

### §44.1. Definitions.

The following words and terms, when used in this chapter, shall have the defined meanings, unless the context clearly indicates otherwise:

- (1) Bovine Viral Diarrhea (BVD) – Bovine viral diarrhea is a viral disease of cattle that is caused by the bovine viral diarrhea virus (BVDV).
- (2) BVDV Persistently Infected (BVDV-PI) Cattle--Any cattle with positive results on a BVDV antigen detection test (e.g., ELISA [enzyme-linked immunosorbent assay], PCR [polymerase chain reaction], or BVDV immunohistochemistry (IHC) that either are not retested, or that have a positive result on a BVDV retest.
- (3) BVDV Retest--A subsequent test for BVDV using an antigen detection test (e.g., ELISA [enzyme-linked immunosorbent assay], PCR [polymerase chain reaction], or BVDV immunohistochemistry (IHC).
- (4) Cattle--All dairy and beef animals (genus Bos).
- (5) Commission--The Texas Animal Health Commission.

### §44.2. General Requirements.

- (a) The seller of BVDV Persistently Infected Cattle must disclose this status in writing to the buyer prior to or at the time of sale.
- (b) Cattle that initially test positive to a BVDV antigen detection test may be administered a BVDV retest. If the retest results are negative, the cattle are considered to have been transiently infected (not persistently infected) and are not covered under this rule.

(c) The Commission shall establish a BVDV Program Review Working Group consisting of members from the cattle industry, veterinary profession, veterinary diagnostic laboratory, veterinary college, extension service and agency representatives. The working group shall annually review the BVDV control program and make recommendations to the Commission on amendments to program components or operation, and on whether or not the program should be continued.