

CHAPTER 41. FEVER TICKS

4 TAC §41.1, §41.8

The Texas Animal Health Commission (Commission) proposes amendments to §41.1, concerning Definition of Terms and §41.8, concerning Dipping and Treatment of Livestock.

This proposal will add definitions for a "Designated Fever Tick Epidemiologist (DFTE)" as well as an "Individual Herd Plan." The amendment is also adding the procedure for implementing individual herd plans and provides a protest procedure.

The Texas Cattle Fever Tick Eradication Program (Program) is currently undergoing some re-evaluation in order to make it more effective in the efforts to eradicate the Texas Cattle Fever Tick. The Program is in the process of implementing the use of individual herd plans.

An individual herd plan is a written disease management plan that is developed with the herd or land owner(s) and/or their representative(s), and a State or Federal DFTE to eradicate fever ticks or potential exposure to fever ticks from an affected herd or property. The herd plan will include appropriate treatment frequencies, treatments to be employed, and any additional disease management or herd management practices deemed necessary to eradicate fever ticks from the herd in an efficient and effective manner. A DFTE is a State or Federal epidemiologist designated to make decisions concerning the use and interpretation of exposure to fever ticks.

Herd plans are disease management tools used in a variety of disease eradication programs such as Tuberculosis and Brucellosis. It is a very helpful tool for defining the appropriate treatment frequencies, treatments to be employed, and any additional disease management or herd management practices deemed necessary to eradicate fever ticks from the herd in an efficient and effective manner. Part of the execution and implementation of individual herd plans includes the participation of an epidemiologist.

Animal Epidemiology is the study of factors affecting the animal health and transmission of disease. It is considered a cornerstone methodology of animal health research, for identifying risk factors for disease transmission. The work of epidemiologists ranges from outbreak investigation to study design, data collection and analysis including the development of statistical models to test hypotheses and the documentation of results for study. Epidemiologists also study the interaction of diseases in a animal population.

For most national disease eradication programs the epidemiologist makes decisions concerning the use and interpretation of exposure of animals to specific diseases. With the Fever Tick Program, the DFTE will have responsibility to determine the scope of epidemiologic investigations, determine the status of herds, assist in development of individual herd plans, and coordinate response for eradicating the Texas Cattle Fever Tick.

Following the implementation and evaluation of the individual herd plans there will be a review and rewriting in order to make the requirements clearer to understand the process and requirements.

FISCAL NOTE

Dr. Matt Cochran D.V.M, Deputy Director for Administration and Finance, Texas Animal Health Commission, has determined that for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the rules. There will be no effect to individuals required to comply with the rules as proposed. 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. For that reason, the Commission has determined that there is not an adverse 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.

PUBLIC BENEFIT NOTE

Dr. Cochran has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to protect our livestock industry.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the 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. These rules 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 proposed amendments may be submitted to Delores Holubec, 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 amendments are proposed under the Texas Agriculture Code, Chapter 167, §167.003, which provides for general powers and duties of the Commission to eradicate fever ticks and provides authority for adopting the necessary rules to fulfill those duties. Section 167.004 authorizes the Commission by rule to define what animals can be classified as exposed to ticks. Section 167.006 authorizes the Commission to designate for tick eradication any county or part of a county that the Commission believes contains ticks. Section 167.007 authorizes the Commission

to conduct tick eradication in the free area. Section 167.021, entitled "General Quarantine Power" provides that "(t)he commission may establish quarantines on land, premises, and livestock as necessary for tick eradication." Section 167.022, entitled "Quarantine of Tick Eradication Area" provides the Commission authority designating a county or part of a county for tick eradication. Section 167.023, entitled "Quarantine of Free Area" provides the Commission authority to establish quarantine in the Free Area. Section 167.024, entitled "Movement In or From Quarantined Area" provides the requirement to get appropriate authorization and compliance with the requirements prior to movement. Section 167.032 provides the Commission may restrict movement of commodities that are carrying ticks.

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. 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 proposal.

§41.1. Definition of Terms.

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

(1) Adjacent premise--A premise that borders an exposed or infested premise, including premises separated by roads, double fences, or fordable streams. A premise that would normally be classified as adjacent may be exempted from adjacent premise requirements by a State or Federal

epidemiologist if the premise is separated from the exposed or infested premise by double fencing, sufficient to prevent the spread of ticks, with one of the fences being game-proof.

(2) Certificate--A document authorizing movement of livestock issued by an authorized representative of the commission after the livestock have been treated in a manner prescribed by the commission for the area and premise from which they originate.

(3) Check premise--A premise located in a tick eradication quarantine area, temporary preventative quarantine area, or control purpose quarantine area that is not classified as an infested, exposed, or adjacent premise.

(4) Control purpose quarantine area--A premise or property designated by the commission for a systematic inspection of livestock and premises and control of the movement of livestock in order to investigate and control a suspected exposure of animals to ticks outside the tick eradication quarantine area. The boundaries of the area will be determined by evaluation of the barriers to the potential spread of ticks.

(5) Designated Fever Tick Epidemiologist (DFTE)--A State or Federal epidemiologist designated to make decisions concerning the use and interpretation of exposure to fever ticks and to manage the Fever Tick program. The DFTE must be selected jointly by the Executive Director of the Commission, the AVIC for Texas. The DFTE has the responsibility to determine the scope of epidemiologic investigations, determine the status of herds, assist in development of individual herd plans, and coordinate fever tick surveillance and eradication programs within his or her geographic area of responsibility. The DFTE has authority to make independent decisions concerning the management of herds and use of property and limiting the impact of wildlife when those decisions are supported by sound fever tick eradication principles.

(6) [(5)] Dipping or treating--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. Careful hand spraying may be used for easily restrained horses and show cattle, and when specifically authorized, certain zoo or domestic animals. Livestock unable to go through a dipping vat because of size or physical condition may be hand sprayed. The treatment must be paint marked so that it can be identified for at least 17 days. If the Commission determines that free-ranging wildlife and exotic animals, which are capable of hosting fever ticks, require treatment, they shall be treated by methods and for the duration of time approved by the Commission.

(7) [(6)] Exposed livestock--Any of the following factors shall constitute livestock as being exposed:

(A) Livestock that have entered an infested or exposed premise and have not been dipped and removed from the infested or exposed premise within 14 days after entry.

(B) Livestock that have occupied an exposed premise and have not completed treatment required for movement from an exposed premise.

(C) Livestock that have entered Texas from Mexico without a certificate from the United States Department of Agriculture.

(8) [~~(7)~~] Exposed premise--A premise shall be considered exposed if systematic treatment has not been completed and if either of the following conditions apply:

(A) Ticks have been found on livestock that have been on the premise for less than 14 days.^[~~(7)~~]

(B) A premise that has received exposed livestock, or equipment or material capable of carrying ticks from an infested or exposed premise.

(9) [~~(8)~~] Free area--An area designated by the commission as being free of ticks or exposure to ticks. The extent of the area will be determined by the appropriate barriers to the potential spread of ticks.

(10) [~~(9)~~] Game proof fence--A fence that has a minimum height of eight feet, consisting of wire mesh of sufficiently small size to prevent or impede the movement of domestic or exotic wildlife over, under, or through the fenced area.

(11) Individual herd plan--A written disease management plan that is developed by the herd or land owner(s) and/or their representative(s), and a State or Federal DFTE to eradicate fever ticks or potential exposure to fever ticks from an affected herd or property. The herd plan will include appropriate treatment frequencies, treatments to be employed, and any additional fever tick management or herd management practices deemed necessary to eradicate fever ticks from the herd or on a infested or exposed premise in an efficient and effective manner. The plan must be approved by the Executive Director of the Commission and AVIC, and have the concurrence of the DFTE.

(12) [~~(10)~~] Infested livestock--Livestock shall be considered infested if eradication treatment for movement from an infested premise has not been completed and if either of the following conditions apply:

(A) Ticks have been found on livestock.

(B) Livestock which occupy a premise where ticks have been found on livestock that have been on the premise more than 14 days.

(13) [~~(11)~~] Infested premise--A premise where ticks have been found on livestock that have been on the premise for more than 14 days, and systematic treatment has not been completed.

(14) [~~(12)~~] Livestock--Any domestic animal or any free ranging animals found on a premise or captured wild animal that is capable of hosting or transporting ticks capable of carrying babesia (the causative agent of cattle tick fever), including, but not limited to, cattle, horses, mules, jacks, jennets, zebras, buffalo, giraffe, and deer.

(15) [~~(13)~~] Permit--A document issued by an authorized representative of the commission allowing specified movement of livestock.

(16) [~~(14)~~] Premise--An area which can be defined by boundaries of recognizable physical barriers that prevent livestock from crossing the boundaries under ordinary circumstances; or an area that livestock do not ordinarily inhabit that the commission defines by recognizable features.

(17) [~~(15)~~] Premise inspection--A routine inspection by an authorized representative of the commission of premise boundaries and the livestock within for the purpose of documenting exposure of the premise.

(18) [~~(16)~~] Premise under vacation--A premise from which all livestock have been removed as prescribed by the commission.

(19) [~~(17)~~] Range inspection of livestock--An inspection of livestock to see the animal close enough to detect ticks on the animal.

(20) [~~(18)~~] Scratch inspection of livestock--An inspection of livestock by an authorized representative of the commission in an approved facility that allows the inspector to touch and see all parts of the livestock.

(21) [~~(19)~~] Temporary preventative quarantine area--An area designated by the commission for systematic inspection and treatment of livestock and premises, and control of movement of livestock, in order to detect and eradicate infestation and exposure from infested or exposed premises outside the tick eradication quarantine area. The extent of the area will be determined by evaluating the barriers to the potential spread of ticks. This is also designated as a "Blanket Disease Quarantine."

(22) [~~(20)~~] The commission--The Texas Animal Health Commission.

(23) [~~(21)~~] Tick--Any tick capable of transmitting bovine Babesiosis (cattle tick fever or bovine piroplasmiasis).

(24) [~~(22)~~] Tick eradication quarantine area--An area designated by the commission for systematic inspection and treatment of livestock and premises, and control of movement of livestock, in order to detect and eradicate infestation from infested or exposed premises. The extent of the area will be determined by evaluating the barriers to the potential spread of ticks. This is the permanent quarantine area which is designated in §§41.14 - 41.22 of this chapter [~~Chapter~~] (relating to Quarantine Line; Defining and Establishing Tick Eradication Areas), and in the United States Department of Agriculture Code of Federal Regulations Part 72.5, parallel to the Rio Grande River, commonly known as the buffer zone or systematic area.

§41.8. Dipping and Treatment of Livestock.

(a) Dipping and treatment of livestock; general. All dipping prescribed in this section must be done under the supervision of a representative authorized by the commission. 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. 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. The owner or caretaker of the livestock is responsible for presenting the livestock to the dipping vat, dipping the livestock, and removing the livestock, and will provide such labor as is necessary to perform all required functions. 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. Careful hand spraying may be used for easily restrained horses and show cattle, and when specifically authorized, certain zoo or domestic animals. Livestock unable to go through a dipping vat because of size or physical condition may be hand sprayed. The treatment must be paint marked so that it can be identified for at least 17 days. The Commission may specifically authorize other treatment methods for free-ranging wildlife or exotic species.

(b) Required Dipping or treatment of Livestock.

(1) The owner or caretaker of livestock on infested or exposed premises in the tick eradication quarantine area, or infested or exposed premises in the temporary preventative quarantined area must present them to be scratch inspected and dipped with subsequent dipping every seven to 14 days until the livestock are moved from the premise in accordance with these regulations, except as provided in paragraph (5) of this subsection.

(2) 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.

(3) All scratch inspection and dipping 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 premise boundaries will be listed in the instructions.

(4) 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.

(5) The starting date for infested premises for Table I (Pasture Vacation Schedule, South of Highway 90) and Table II (Pasture Vacation Schedule, North of Highway 90), is the date of the first clean dipping of 100% of the livestock. The starting date for exposed premises for Table I and Table II is when 100% of the livestock on the premise have been dipped. Copies of Table I (Pasture Vacation Schedule, South of Highway 90) and Table II (Pasture Vacation Schedule, North of Highway 90) may be obtained from the Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

Figure: 4 TAC §41.8(b)(5) (No change.)

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

(7) Free-ranging wildlife or exotics that are found on infested, exposed or vacated 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.

(c) Each 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 premise and are required to execute a herd management plan and remain under restrictions until the 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 each premise classified as increased risk for Fever Ticks:

(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:

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

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

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

(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.

(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).

(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.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 23, 2010.

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Gene Snelson

General Counsel

Texas Animal Health Commission

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For further information, please call: (512) 719-0700