

The Texas Animal Health Commission (Commission) proposes amendments to Chapter 33, which is entitled “Fees”. The proposed amendments are for the purpose of assessing fees related to testing performed by the State-Federal Laboratory System in Texas, which is operated by the Commission. It will be a new section identified as §33.4 and entitled “Laboratory Fees”.

The Commission operates a regional veterinary diagnostic reference laboratory for Brucellosis testing and various other regulatory diseases. There were four laboratories which operated in Lubbock, Palestine, Ft. Worth and Austin. The Commission recently announced that effective August 1, 2011, government subsidized Brucellosis testing at all Texas livestock markets will be discontinued due to a lack of funding available to pay for future testing. The Commission will no longer enforce the requirement that all test eligible (adult) cattle be Brucellosis tested for a change of ownership within Texas. Based on the cessation of the test requirement, the Commission has closed the laboratories in Lubbock and Palestine because of the anticipated reduction in the volume of testing.

Approximately half of the livestock markets in Texas however, have indicated that they intend to continue testing all or some of the adult cattle sold through their markets. Commission officials strongly encourage voluntary testing of Texas cattle to remain vigilant in keeping Texas Brucellosis free. It is imperative to remember that Brucellosis was found in two cattle herds in Texas earlier this year. Further, approximately 25 card positive (usually false positive) animals per month are detected throughout Texas markets.

There were several legislative bills introduced during the 82nd Texas Legislative Session which all contained specific fee authorization language for the Commission. House Bill 1992 was passed and enacted into law which provides the Commission with the full and necessary authority to assess any appropriate and equitable fee for the different types of services or actions provided to the various agricultural animal industries. This legislation was necessary as a result of the current Legislative Budget Board recommendation to fundamentally change the agency funding structure from primarily General Revenue sourced funding to a partial fee-for-services funding model. The change will require the Commission to generate new revenue streams through fees for up to approximately 50% of future budgets to maintain all essential services. The Commission will now assess a fee for the services being provided by the Laboratories in order cover the costs associated with the testing. Testing will be performed at one of the two Commission State-Federal Laboratories located in Ft. Worth and Austin.

The Commission labs seek to provide economical, convenient and timely laboratory services. The stated laboratory fees are inclusive of lab analysis, interpretation, consultation if needed, specimen maintenance, and record retention maintenance. Each diagnostic procedure provided by the Commission labs has been cost-accounted based on the total expense of labor required to perform the test and the cost of reagents, consumables, and overhead. Testing for APHIS slaughter surveillance regulatory program diseases and foreign animal disease investigations is not subject to charge.

Specimens are processed upon receipt and results reported to the client as soon as possible. The turnaround time for a test depends upon which test(s) were requested, and

which day of the week the test samples are received. The availability of test results will be impacted by marked increases in requests for an individual test, arrival time of the specimen, incompatibility of the sample with the testing protocol, and some tests may require a minimum number of samples to be run concurrently to complete a batch.

Submitting veterinarians must have a valid account established. Submissions must be accompanied by properly completed test documents. The Commission may withhold future results if an account is not paid in full in a timely manner. Expedited processing may be provided upon approval of the Director of Labs or State Epidemiologist for additional fee. Tests will be billed monthly to the veterinarian's clinic or office whose account number appears on the test request form accompanying the specimen(s) and full payment is due no later than 30 days from date of invoice for all lab services.

FISCAL NOTE

The Laboratory Fee stands to generate an estimated \$200,000 per year based on historical annual volumes of market-based brucellosis testing. Fluctuations in volume are anticipated due to the recent suspension of enforcement of change of ownership test requirements for cattle, and the monthly throughput going forward reflects what currently appears to be a conservative estimate.

Dr. Matt Cochran, Assistant Executive 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 local government as a result of enforcing or administering the rule.

The Commission has evaluated the requirements and determined that there is not an adverse economic impact associated with levying these fees, relative to the disease mitigation and risk management provided by consistent inspection and monitoring of the livestock populations in question. The change from mandatory testing of test-eligible animals to voluntary testing was a paradigm shift, and these laboratory fees are being proposed as a means to cover the cost associated with what is now voluntary surveillance. The Commission has made an effort to provide this laboratory service to Texas cattle ranchers/buyers in a cost-effective manner because maintenance of brucellosis surveillance is scientifically indicated.

PUBLIC BENEFIT NOTE

Dr. Cochran 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 sustained disease surveillance, control, enhanced marketability, quality assurance, and the related relative freedoms of commerce both intra and interstate. By standards put forth by the Code of Federal Regulations, based on a long history of brucellosis eradication across the U.S., Texas is still classified as a high-risk state for cattle brucellosis. Any voluntary testing will serve to bolster the market confidence in and out of Texas, and it will increase the Commission's chances of detecting and stopping a potential brucellosis problem before it becomes increasingly damaging.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rule will not have a deleterious impact on local economies.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. This proposed rule is 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 is, 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 Carol Pivonka, 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 following statutory authority as found in Chapter 161 of the Texas Agriculture Code. Under §161.060, “[t]he commission may charge a fee, as provided by commission rule, for an inspection made by the commission”. During the 82nd Texas Legislative Session, House Bill 1992 was passed which provides the Commission with broader based fee assessment authority. HB 1992 amends §161.060 which will allow the Commission to set and collect a fee for most services provided, including: 1) inspecting animals or facilities; 2) obtaining samples from animals for disease diagnostic test; 3) testing animals for disease; 4) disease prevention, control/eradication and treatment efforts; 5) services related to the transport of livestock; 6) control and eradication of ticks and other pests; and 7) any other service for which the Commission may incur a cost.

The Commission is also 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.

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

33.4. Laboratory Fees

- (a) Any test request must be submitted to the Commission on a form approved by the Commission with all the required fields completed. In order to run any test you must have a valid account.
- (b) When faxed reporting of test results is requested, an additional \$1.00 charge shall be added to the invoice.
- (c) An accession (processing) fee of \$5.00 for tests will be charged for each accession number assigned. This fee is for each accession/case number assigned, not each specimen submitted.
- (d) Expedited processing may be provided for an additional fee of \$25.00 upon approval of the Director of Labs or State Epidemiologist.
- (e) Full payment is due 30 days from the date of invoice for all lab services. Test results may be withheld if an account is not paid in full in a timely manner.
- (f) The Fee Schedule is as follows for Test Services:
 - (1) Brucellosis Testing:
 - (A) RAP Test - \$1.50
 - (B) CARD - \$2.00
 - (C) Rivanol - \$4.00
 - (D) BAPA - \$2.00
 - (E) Plate SPT - \$2.00
 - (F) Tube STT - \$3.00
 - (G) CF - \$4.00
 - (H) FPA - \$3.00
 - (I) Ring BRT - \$2.00
 - (J) HRIT - \$4.00
 - (K) Culture - \$15.00

- (2) Pseudorabies Testing:

(A) ALX - \$3.00

(B) G1 - \$3.00