

The Texas Animal Health Commission (commission) proposes amendments to Title 4, Texas Administrative Code, Chapter 49 titled "Equine." Specifically, amendments are proposed to §49.5 regarding Piroplasmiasis: Testing, Identification of Infected Equine, and §49.7 regarding Persons or Laboratories Performing Equine Infectious Anemia Tests.

## BACKGROUND AND PURPOSE

The commission proposes amendments to §49.5 which establishes testing and identification requirements of equine piroplasmiasis. Equine piroplasmiasis is a tick-borne protozoal infection of horses. At least one species of tick, *Amblyomma cajennense*, has proven capable of transmitting the blood parasite. This species of tick is endemic to South Texas and several other southern states. Also, the disease may be spread between horses by unsafe animal husbandry practices such as sharing needles or equipment that is contaminated with blood. This has brought about the disclosure that there is a distinct group of positive animals which are for the purpose of racing, either through sanctioned events or otherwise.

In 2011, the commission took action to safeguard Texas equine population by requiring all equine participating in racing events at a sanctioned racetrack facility to have a negative piroplasmiasis test. The requirement was put in place to ensure that the positive animals are disclosed as well as to protect other animals participating in such events. Since 2010, there has not been a disclosed piroplasmiasis positive thoroughbred horse participating in sanctioned racing. As such, the commission approved a temporary waiver of the requirement that thoroughbred horses be tested for piroplasmiasis prior to entering a racetrack facility licensed by the Texas Racing Commission on July 26, 2022.

The proposed amendments to §49.5 incorporate the thoroughbred testing requirement waiver. The proposed amendments also streamline the existing testing and identification requirements for ease of use and readability.

Additionally, the commission proposes amendments to §49.7 regarding Persons or Laboratories Performing Equine Infectious Anemia Tests. The section currently refers readers to an outdated section in the Code of Federal Regulations. The proposed amendment updates the citation.

## SECTION-BY-SECTION DISCUSSION

Section 49.5 details the testing and identification requirements for equine piroplasmiasis. The proposed amendments streamline the rule for readability. The proposed amendments also formally codify the waiver of testing requirements for thoroughbreds as approved by the commission in the 413<sup>th</sup> Meeting on July 26, 2022. The proposed amendments do not change any other testing or identification requirements.

Section 49.7 sets requirements for individuals or laboratories performing EIA tests. The proposed amendments update the citation to the relevant section in the Code of Federal Regulations. The proposed amendments do not change the existing requirement.

#### FISCAL NOTE

Ms. Jeanine Coggeshall, General Counsel for the Texas Animal Health Commission, determined that for each year of the first five years that the rule is in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state or local governments. Commission employees will administer and enforce these rules as part of their current job duties and resources. Ms. Coggeshall also determined for the same period that there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed amendments.

#### PUBLIC BENEFIT NOTE

Ms. Coggeshall determined that for each year of the first five years the rule is in effect, the anticipated public benefits are to provide clarity and guidance on the testing requirements of infectious equine diseases.

#### TAKINGS IMPACT ASSESSMENT

The commission determined that the proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. Therefore, the proposed rules are compliant with the Private Real Property Preservation Act in Texas Government Code §2007.043 and do not constitute a taking.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The commission determined that the proposed rules would not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission pursuant to Texas Government Code §2001.022.

#### REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

The commission determined that this proposal is not a “major environmental rule” as defined by Government Code §2001.0225. “Major environmental rule” is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, the Commission prepared the following Government Growth Impact Statement. For each year of the first five years the proposed rules would be in effect, the commission determined the following:

- (1) The amendments will not create or eliminate a government program;
- (2) Implementation of the amendments will not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the amendments will not increase future legislative appropriations to the commission;
- (4) The amendments will not increase or decrease the fees paid to the commission;
- (5) The amendments will not create a new rule;
- (6) The amendments do not expand, limit, or repeal existing rules;
- (7) The amendments do not change the number of individuals subject to the rules;  
and
- (8) The amendments will not affect the state’s economy.

## SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Ms. Coggeshall also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities pursuant to Texas Government Code, Chapter 2006. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

## COSTS TO REGULATED PERSONS

The proposed amendments to Chapter 49 do not impose additional costs on regulated persons and are designed to provide clarity and accurate guidance on infectious equine diseases. The proposed rules do not otherwise impose a direct cost on a regulated person, state agency, a special district, or a local government within the state.

## PUBLIC COMMENT

Written 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 to [comments@tahc.texas.gov](mailto:comments@tahc.texas.gov). To be considered, comments must be received no later than 30 days from the date of publication of this proposal in the *Texas Register*. When faxing or emailing comments, please indicate "Comments on Proposed Rule-Chapter 49, Equine" in the subject line.

## 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.

The amendments are proposed under the Texas Agriculture Code, Chapter 161, §161.046 which authorizes the commission to promulgate rules in accordance with the Texas Agriculture Code.

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.

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 §161.113, 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.

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

The commission certifies legal counsel has reviewed this proposal and found it to be a valid exercise of the commission's legal authority.

<rule>

#### §49.5. Piroplasmosis: Testing, Identification of Infected Equine

(a) Official ~~[Equine Piroplasmosis] Test.~~ [:] A complement fixation test (CFT) or competitive enzyme linked immunosorbent assay (cELISA) are the official tests for equine piroplasmosis. ~~[A test for Equine Piroplasmosis applied and reported by a laboratory approved by the Commission. The sample must be collected by or under the direct supervision of an authorized veterinarian. A completed Equine Piroplasmosis Laboratory Test chart (Form 10-07) must be submitted with the sample, listing the description of the equine to include the following: age, breed, color, sex, animal's name, and all distinctive markings (i.e., color patterns, brands, tattoos, scars, or blemishes), and any RFID numbers applied to the equine. In the absence of any distinctive color markings or any form of visible permanent identification (brands, tattoos or scars), the equine must be identified by indicating the location of all hair whorls, vortices or cowlicks with an "X" on the illustration provided on the chart. In lieu of the manual illustration, digital photographs clearly showing the equine from the left side, right side, and full face may be incorporated in the chart. All charts must list owner's name, address, the equine's home premises and county, the name and address of the authorized individual collecting the test~~

sample, and laboratory and individual conducting the test. The Piroplasmosis test document shall list one equine only.]

(b) Authorization to conduct test. Only a test applied and reported by a laboratory approved by the commission will be considered an official test. Only samples collected by or under the direct supervision of an authorized veterinarian accompanied by a completed Equine Piroplasmosis Laboratory Test chart (form 10-07) will be accepted for official testing.

(c) [(b)] Reactor. A reactor is any equine which discloses a positive reaction to the official test [for Piroplasmosis on a Complement Fixation (CF) or competitive Enzyme Linked Immunosorbent Assay (cELISA) applied at a laboratory approved by the Commission]. The individual collecting the test sample must notify the equine's owner of the quarantine within 48 hours after receiving the results. Movement of all piroplasmosis [Piroplasmosis] positive equine and all equine epidemiologically determined to have been exposed to a piroplasmosis [Piroplasmosis] positive equine will be restricted. Retests of a reactor may only be performed by a representative of the commission [Commission].

(d) [(c)] Official identification of reactors [Identification of Reactors].

(1) A reactor must be identified with an implanted radio frequency microchip identification device that provides unique identification for each individual equine and complies with ISO 11784/11785 and one of the following methods as determined by the commission [Commission]:

(A) The reactor [equine] may be identified with a [permanent mark as described herein or as approved by the Commission. If] branded [the] letter "P" [will be] applied as a hot-iron brand, freeze-marking brand, [or a] hoof brand, or as approved by the commission. For a freeze [Freeze] or hot-iron [Hot-Iron] brand, the "P" brand must be not less than two inches high and shall be applied to the left shoulder or left side of the neck of the reactor. For a hoof brand, the "P" brand must be applied to the front left hoof and reapplied as necessary to maintain visibility;

(B) Using an identification device or a unique tattoo, approved by the commission [Commission], that provides unique identification for each individual equine; or

(C) Using digital photographs sufficient to identify the individual equine.

(2) Reactors must be identified by an authorized veterinarian or representative of the commission [~~Commission~~] within 10 [~~ten~~] days of the date the laboratory completes the test unless the equine is destroyed [~~equine being classified as a reactor by the Commission~~]. Any equine destroyed prior to identification must be described in a written statement by the authorized veterinarian or other authorized personnel certifying to the destruction. [~~The description must be sufficient to identify the individual equine including, but not limited to, name, age, breed, color, gender, distinctive markings, and unique and permanent forms of identification when present (e.g., brands, tattoos, scars, cowlicks, blemishes or biometric measurements).~~] This certification must be submitted to the commission [~~Commission~~] within 10 [~~ten~~] days of the date the equine is destroyed.

(d) Any equine [~~Equine~~] entering a racetrack facility, with the exception of thoroughbreds, must have a negative piroplasmosis [~~Piroplasmosis~~] test [~~(Theileria equi)~~] within the past 12 months. A racetrack facility is grounds used to conduct live horse racing events and is not limited to facilities licensed by the Texas Racing Commission.

#### §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 comply [~~be in compliance~~] with the requirements found in Title 9 Code of Federal Regulations §71.22 [~~§75.4(c)~~], which is entitled "Approval of laboratories to conduct official testing." [~~Laboratories, and Diagnostic or Research Facilities~~"].