



## TEXAS ANIMAL HEALTH COMMISSION

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The Texas Animal Health Commission (Commission) adopts amendments to Chapter 55, entitled "Swine" and specifically to Section 55.9, entitled "Feral Swine". Section 55.9 provides requirements for handling and moving feral swine. The proposal to amend the regulations was published for comment in the June 6, 2008 issue of the Texas Register (Vol. 33, No. 23, pages 4393 - 4576). There were forty-two (42) comments received and the proposal will be republished for those portions that change with three non substantive changes being made. Those changes are denoted in the text of the rule, provided below, and identified by being bolded. The rules will become effective on October 1, 2008.

### **Response to Comments**

The Commission received forty two (42) written comments regarding the proposed amendments to Chapter 55.9, for feral swine. The comments were quite varied in the issues raised, the tone of the comment, and the different positions and attitudes expressed about the proposed amendments. There were a number of commenters who felt these rules would negatively affect them. Another group of commenters felt the rules should be stronger in dealing with live feral swine and prohibit movement. Then there were those commenters who appreciate the effort to develop a manageable regulation for dealing with movement of feral swine for disease control. The Commission appreciates receiving the comments, and particularly appreciates those who raised very good questions relative to the impact of regulations on their operations. The Commission is providing a response to all the comments received.

The Commission received comments from the Texas Pork Producers, Texas and Southwestern Cattle Raisers Association, Texas Farm Bureau, and the Texas Sheep and Goat Raisers Association. These associations expressed support for the rules and the agency's attempt to address disease concerns and reduce that risk from feral swine. The remaining comments were wide ranging in the issues raised and the perspectives on the effectiveness or appropriateness of the regulations.

In responding to the comments, it is important to note the history of the feral swine holding facility program in Texas. This program was created in 1992 in response to concerns from the United States Department of Agriculture (USDA) regarding the potential risk for exposure of domestic swine to Brucellosis and pseudorabies from infected feral swine. The basic tenet of the program was focused on preventing feral swine that were trapped and moved from spreading disease to domestic swine or other livestock. The program included registration of feral swine holding facilities and controls

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on movements of captured feral swine. The movement of live feral swine was limited to specific destinations, i.e. slaughter, approved livestock markets, feral swine holding facilities and game preserves. Under the 1992 requirements, there was not a definition of a game preserve nor did that regulation include facility standards. However, the regulation did include testing requirements for Brucellosis and pseudorabies (negative test within thirty days) prior to releasing feral swine to a game preserve or to any other location.

During the last Texas Legislative Session, the Sunset Advisory Commission recommended that specific authority be added to our statutory authority to more effectively regulate the program and provide criminal penalties necessary to effectively sanction violators of the requirements. Under this new statutory authority, which became effective September 1, 2007, these new proposed rules were developed with input from the stakeholder group.

These proposed rules are an expansion of the 1992 rules, with modifications made to realistically address identified problems in a more effective manner. The most significant modification was regarded the standards for a game preserve and what will be needed to legally release feral swine to such a premises. However, not one commenter mentioned that they had tested feral swine prior to release under the current regulations.

The 1992 rules authorized the release of feral swine to a game preserve, but there were no game preserve fencing requirements, and no definition for a game preserve. Since the implementation of the 1992 rules, the landscape regarding feral swine has changed drastically. In 1992 feral swine were limited to more specific regions of the state. A number of commenters noted that there had been no feral swine in their area until recently. A number of commenters specifically blamed the transportation and release of feral swine for hunting as the primary reason for the spread of feral swine to other parts of the state. Several commenters wanted the agency to outright prohibit any movement of live feral swine. There is a firmly established population of feral swine throughout a large part of this state, and the trapping and release of feral swine for hunting purposes have played a significant role in the distribution of feral swine. As these animals spread throughout the state, there are more contacts between feral swine and domestic swine. This creates greater need to ensure that those trapped, transported and released feral swine are not able to range onto land owned by others.

### **Disease Risk:**

Disease risk from feral swine is a serious concern for the Commission and for anyone who raises livestock in this state. Their impact on the landscape is equally devastating to farmers and property owners. Some of the commenters seem to minimize that risk and the degree to which feral swine can be a problem in Texas. One commenter stated that “[t]here are millions of hogs in this state and they have moved as far northward as Michigan. What very little disease that exists in the wild will stay in the wild regardless of your rules and regulations.”

The Commission strongly disagrees that there is little disease and that it will stay in the wild. Disease transmission from feral swine to domestic swine and other livestock is a

real concern, not only for swine owners, but also for cattle producers. Feral swine are a serious disease risk and they must be treated as such.

The Texas Cooperative Extension - Wildlife Services issued a report on Feral Swine in Texas which stated that “[f]eral hogs are susceptible to a variety of infectious and parasitic diseases. The more hog populations increase and expand, the greater the chances that they may transmit disease to other wildlife, to livestock and to humans. External parasites that infest feral hogs include fleas, hog lice and ticks. Internal parasites include roundworms, liver flukes, kidneyworms, lungworms, stomach worms and whipworms. Hog diseases that could have severe repercussions for agribusiness include swine brucellosis, pseudorabies, leptospirosis, tuberculosis, tularemia, trichinosis, plague and anthrax. Exotic or foreign diseases of concern include foot and mouth disease, African swine fever, hog cholera and swine vesicular disease.”

The Commission does have serious concerns about the risk of disease exposure posed by feral swine. Surveys of feral swine for disease indicate that from 2003 to 2008 approximately 20 % of feral swine tested were positive to tests for pseudorabies and approximately 10% were positive to tests for swine brucellosis. Additionally, since January 2006, 26 cattle in 19 herds have been found to be infected with swine brucellosis.

The uncontrolled movement of feral swine from one location to another for release exacerbates the disease risk. Based on that concern, the stakeholder group focused on developing regulatory standards for releasing feral swine to a hunting preserve.

### **Hunting Preserve:**

First of all, the Commission reiterates that the proposed regulations do not apply to the simple act of hunting or trapping free-ranging feral swine. The regulations would be implicated ONLY when the feral swine are moved alive from one location to another, or are relocated to a hunting preserve.

A number of commenters were against the proposed rules because of perceived negative impacts on premises or ranches where feral swine are hunted. There is a perception that the rule will put feral swine hunting ranches out of business. This is based on a general misperception that all ranches where feral swine are hunted will come under the requirements for game preserves. That is incorrect.

One commenter noted he does not bring feral swine onto to his hunting preserve and the only feral swine that leave his premises are dead. If this is the case, his operation would not fall under these proposed regulations. The rule applies only to a ranch or hunting preserve that receives live feral swine from another location. Free-ranging feral swine already on the property--or those that enter the property on their own, where they are shot, trapped, or killed--do not fall under these requirements.

A number of commenters asked the Commission to prohibit the movement of live feral swine. One commenter stated that “I do not agree with hauling in wild hogs and turning them out.” Another stated that “I would like to suggest that no ‘wild hogs’ be allowed to be transported live and sold to hunting preserves.” Another commenter stated that “[a]llowing feral swine to be placed in a ‘hunting’ preserve reveals questionable

judgment by the TAHC. There is no perceivable justification for a government agency to sanction or endorse this repugnant conduct.” The Commission notes that this activity is on-going and would not cease simply based on regulatory prohibition. The Commission believes that reasonable restrictions will minimize the disease risk.

While the Commission concurs that the movement of feral swine can be a problem for adjacent landowners, the goal is to make trapping and transport occur in a manageable, legal, method that reduces the risk to adjacent landowners. Regarding hunting preserves, the issue that drew some of the greatest indignation was “sufficient fences.”

### **Sufficient Fences**

In regards to game proof fences or hog proof fences, a number of comments were received about the sufficiency and the five-foot standard in the definition. A number of commenters noted that there is no such thing as a hog proof fence.

One commenter stated that, “There is no 5-foot fencing. We used 1047 high tinsel wire, which is recommended for hog fencing. We put a string of barbed wire on the bottom (four-point predator wire.). Every fifth T-Post, we put up a 2 3/8 inch piece of iron pipe. Does this sound like a second rate fence???”

A commenter stated that “[t]he definition of a “swine-proof fence” is nothing but a social construct.” Another commenter stated that “[t]he fencing industry, as confirmed with Tractor Supply, only offers 330-foot rolls of 4-foot tall ‘sheep and goat’ wire with 4 inch x 4 inch holes, which is commonly used as hog wire and commonly called “Hog Wire”. This hog wire is a lot stronger than taller horse fence which may be available, however, horse fence is a much smaller gage and not strong enough to hold hogs. Actual Hog Panels are only 3 feet tall. 3 foot tall Hog Panels are commonly used for holding hogs, so the 4 foot tall “hog wire” fence is even better. Hog Wire is what is being used across the State. There is not a 5 foot hog wire fence, as specified in this rule, manufactured or available.”

Clearly based on the destructive ability of feral swine, different ranches or facilities might provide different types of fences to keep feral swine from breaching the area. Several commenters stated that, if they were paying to have trapped swine released on their property, they wanted those animals to stay on their property.

In proposing these rules, the Commission knew that it would be an impossible regulatory task to define specific fence requirements. Ingenious Texas ranchers can ensure that their fences are sufficient, but they may not meet the five-foot standard. The five-foot standard was taken from state statute.

The Texas Agriculture Code, Chapter 143, Fences; Range Restrictions, provides in Section 143.001 that a sufficient fence around cleared land in cultivation is at least five feet high and will prevent hogs from passing through. That is the standard we initially identified in these rules, but the bottom line is, the Commission does not want to dictate the type of fence. However, the Commission does want to be sure that any location authorized for releasing feral swine has fences sufficient to prevent feral swine from escaping. The Commission’s goal is to establish a realistic standard for the hunting

preserve owner or operator and therefore removes the five foot standard contained in the proposed definition for sufficient fences.

During the initial application for an authorized hunting preserve, TAHC field inspectors will make a general determination as to the sufficiency of the fence. A simple barbed wire fence would not be sufficient. The fence must keep feral swine from escaping and contain the entire area where the feral swine are to be released. There can be no gaps or holes in the fence perimeter. Applicants who cannot show that their locations will prevent feral swine from escaping will not have their facilities approved. In receiving authorization the hunting preserve owner will be responsible for warranting the sufficiency of the fence and will be responsible for maintaining the fence. If the fence is destroyed in certain areas the preserve owner or operator will be responsible for immediately making repairs. If feral swine have been allowed to escape the preserve owner or operator will be subject to the various compliance tools available to the Commission to remedy this problem.

The Commission understands that fences will require some work to ensure they can meet the standard. However, the Commission also believes that there are a variety of ways a facility can achieve that goal. One way is to establish a smaller area (not the entire property) as a hunting preserve for feral swine. As such, one commenter noted that it would be hard to create a fence for a large piece of property. Another Commenter noted that he had a large ranch, but within the ranch, he fenced 200 acres for hunting feral swine.

It was noted that some facilities have swine-proof fences that allow feral swine to enter property but prevent them from escaping. This is an effective tool for keeping feral swine from tearing at a fence and allows feral swine from outside the preserve to enter the property and be subject to hunting. This is an effective way to bring free-ranging feral swine in, without transporting live feral swine from another location.

One issue in the comments was the ability of hunting to reduce the feral swine population in this state. One commenter stated that “[t]he fenced hog hunting ranches in Texas handle and harvest only a miniscule number of the state’s total population of feral swine.” Another comment stated that “I don’t believe that putting regulations on trapping and hunting hogs is going to benefit anyone, from the farmers, hunters and trappers. At this time hunters, trapper and farmers have a good thing going as far as hogs are concerned.” A number of other comments all felt that hunting was the most effective tool for reducing the numbers of feral swine.

In response, the Commission disagrees that hunting, in and of itself, effectively controls the feral swine population. Texas is home to the largest feral hog population in the U.S., and the population is increasing exponentially. These animals are prolific breeders, and hunting, as currently employed, is not a sufficient tool for reducing the population. Effectively reducing the population of feral swine is a far larger task requiring focused efforts by both the private and public sector.

Managing or trying to maintain a limited population of feral swine on property is very difficult. Feral swine are incredibly dynamic in their ability to proliferate. The Texas Cooperative Extension - Wildlife Services, in their report on “*Feral Swine in Texas*” states that “[f]eral hogs are the most prolific large, wild mammal in North America. With

adequate nutrition, a feral hog population can double in 4 months. Breeding occurs throughout the year when conditions are favorable, and seasonally when food supply and nutrient quality vary. Females begin breeding at about 8 to 10 months old, or as young as 6 months if food is abundant. Under favorable conditions, sows can produce two litters every 12 to 15 months, with an average of four to eight piglets per litter and a sex ratio of 1:1.” This certainly supports the need to prohibit the release of sows.

In discussing this issue with the stakeholder group, it was decided that the greatest disease risk was from the females, sows. They pose not only a disease risk for Brucellosis and pseudorabies but also are the primary source for the propagation problems from breeding feral swine. Under the 1992 rules, any feral swine can be released to a hunting preserve with a negative Brucellosis and pseudorabies test, within thirty days prior to release. It is not easy to get a veterinarian to perform these tests, and compliance with this requirement was not being fully achieved. Some commenters felt that prohibiting the release of sows is discriminatory, but the Commission disagrees. Reducing the propagation rates and the availability of free-ranging sows can be an effective way to address this disease risk.

Several commenters said that we should require the animals to be castrated prior to release or in some way chemically treated to reduce propagation. To the Commission’s knowledge, chemical sterilants are not available for use in swine and according to task force members neutering would be difficult to accomplish on large swine. The Commission notes that the Texas Department of Agriculture (TDA) was appropriated \$1 million for a two-year grant program to fund a long-term statewide feral hog abatement strategy. This was recently awarded to the Texas Cooperative Extension's Wildlife and Fisheries Unit, and Wildlife Services for assessing strategies to achieve this goal.

Members of the stakeholder group felt that by allowing trophy boars to be bought and released, it would create less disease risk and create a legal outlet for an activity that has been taking place all over this state. As part of the authorized release of “only boars and barrows,” the proposal would require “identification” of these animals prior to release on a hunting preserve.

### **Identification**

The Commission received a number of comments regarding identification for the boars and barrows released on hunting preserves. Most commenters felt it was not appropriate. Several noted that hunters did not want to shot animals with tags in their ears, with one commenter comparing this to a canned hunt.

There are several reasons for requiring identification prior to release. First and foremost, this is for feral swine that have been trapped, moved elsewhere and released. This is the type of activity for which the spread of diseases to unaffected animals becomes a real problem. If an animal is being moved for release, then identification will allow the TAHC to epidemiologically determine if the source of disease originated in the area or may have been transported there by the release of feral swine.

Secondly, if a hunting preserve owner states in the application for a hunting preserve that fences are sufficient and releases animals on a premises, then the animals should not be allowed on the neighbor’s property.

The identification will help to ensure that the animal importer can be held accountable for tagged swine found outside his or her hunting preserve. Lastly, this also provides a standard for evaluating if someone is moving animals illegally for release. Identification of the boars is the only means for holding people accountable for these actions. The movement and release of feral swine creates increased disease risk and also potentially exposes neighbors to the negative impacts of feral swine unless conducted in accordance with regulations designed to reduce or remove that risk.

The proposed rule is structured so that official identification is in a form recognized by the Commission. The Commission traditionally recognizes the various forms of official identification used in livestock programs. The Commission also realizes there may be some non-traditional forms of identification more appropriate for feral swine.

Several commenters were not happy with the identification requirements, but there were no comments regarding alternative options to identification or forms of identification. Another commenter stated that attaching identification to a feral swine released for hunting is not a popular requirement. The Commission believes strongly that this requirement should not be relaxed. Identification is a key component in the credibility of this program.

## **TPWD**

Commenters expressed concern with the requirement that a hunting preserve be enrolled with Texas Parks and Wildlife Department (TPWD) and have a current and valid hunting lease permit. TPWD has existing statutory authority, in Chapter 43, Parks and Wildlife Code, to require the registration of a hunting lease if owners or managers have a guest for pay or provide other consideration in order to engage in hunting. This requirement includes lease arrangements for hunting feral swine.

A number of commenters seemed to find that requirement to be abhorrent, and others complained about fees. The hunting preserve is not a TAHC requirement but is a statutory TPWD requirement, and it is incumbent on the Commission to ensure compliance with those requirements.

Also some commenters challenged the requirement for a general Texas hunting license from TPWD. One person stated that a license is not needed. The Texas Parks and Wildlife Code, Chapter 42, Section 42.002, in subsection (c), states that “a resident landowner or the landowner's agent or lessee may take feral hogs causing depredation on the resident landowner's land without having acquired a hunting license.” However, if the hunter is sport hunting, a hunting license is required. If a hunter is paying to hunt feral hogs, a hunting license is required.

## **A Question of Fees**

A number of commenters complained of fees. The proposed rule does not impose any TAHC fees associated with having a feral swine holding facility, or having a site designated as a hunting preserve. There is a permit fee under TPWD's existing hunting

lease program and those fees are established by statute in Chapter 43 of the Parks and Wildlife Code. These fees are not associated in any way with the Commission.

### **Slaughter Plants:**

A number of the commenters felt the slaughter plants have an unfair advantage. One Commenter stated “this is an attempt to protect slaughter houses then it should be done without placing undue burdens on ranches or hunters’ ranches will not be able to sell the hunts, thus resulting in tremendous damage to property.”

The Commission is not quite sure what advantage slaughter plants have over a game preserve. Slaughter plants buy feral swine for slaughter and sell the meat. This is an effective outlet for removing and handling feral swine that have been trapped alive. All of the Commission’s permitted feral swine holding facilities are selling to slaughter plants in Texas.

Another comment stated that “[t]hese rules are suggesting trappers can only sell conveniently to slaughter plant operators who are shipping the product over seas. Who are they paying off?” The Commission is not sure why this Commenter feels that slaughter plants, and their business of buying this abundant animal, becomes an issue of someone being paid off. Slaughter plants do not operate under the Commission’s authority. The processing and inspection of these animals comes under the regulatory oversight of the Department of State Health Services or USDA FSIS.

### **Changing Classification:**

The Commission received a couple comments on the standards for changing feral swine to "domestic" swine. He stated, “I don't think this is a good idea and should be scrapped from the new rules. There are too many bad food scares now. This would only invite one down the road.” Another Commenter stated that there is no indication of any requirements for "swine-proof fences" for free-ranging swine that become “domestic swine.” Without any attempt to mandate fencing, the commenter wrote, escapes are even more likely. This is a difficult process to achieve and the Commission believes that those that chose to pursue this option will take all the necessary efforts to keep those swine under their control.

A commenter stated that the “TAHC has done away with the market for sows under 100 pounds. Game ranches can no longer buy them as a meat hog for the MILLIONS of hunters who love eating a nice young sow, and buying stations are not paying squat for a sow under 100 pounds. So what has tahc really accomplished by these new regs? Tahc has made it HARDER to put a dent in the hog population.” The intent of the regulations is to reduce disease risk. In part this is accomplished by prohibiting the movement for release of female feral swine, which will reduce the potential for spread of disease and reduce the propagation of feral swine. The regulations do not prevent the harvest of female swine on the hundreds of millions of acres that they occupy throughout Texas.

There was also a collateral point raised: if someone can not release the smaller animals, and they are not sought out by the slaughter plants, there is no longer a market for them. Trappers can further create a problem by releasing these smaller animals. In

discussions with the stakeholder groups, some of the slaughter plant representatives stated that even though they would not buy the smaller animals for slaughter, they would haul them to their facility for proper handling.

### **Garbage Feeding**

The Commission received a couple comments regarding the restriction to feeding garbage to feral swine. One commenter asked "Feral swine shall not be fed any garbage.garbage? What is garbage? What is not garbage?"

This relates to the regulations for feeding garbage to swine, also in Chapter 55.3. Current Commission rules prohibit the feeding of "restricted waste" to any swine. There also is a registration requirement for domestic swine which feed on "unrestricted garbage." The Commission amends the proposal to clarify those feeding restrictions. "Restricted waste--includes the animal refuse matter and the putrescible animal waste resulting from handling, preparing, cooking, or consuming food containing all or part of an animal carcass, the animal waste material by-products or commingled animal and vegetable waste material by-products of a restaurant, kitchen, cookery, or slaughterhouse, and refuse accumulations of animal matter, commingled animal and vegetable matter, liquid or otherwise. Unrestricted waste --includes the vegetable, fruit, dairy, or baked goods refuse matter and vegetable waste and refuse accumulations resulting from handling, preparing, cooking, or consuming food containing only vegetable matter, liquid or otherwise."

### **Humane Issues**

There were a number of humane concerns raised by commenters. One commenter noted that *"[a]llowing holding in a trailer for up to 7 days seems excessive and could come under fire by animal rights groups. Treatment standards need to be written for holding facilities that include adequate food, clean water and shelter from sun and cold."* Another comment felt strongly that seven days in a crate is too long, particularly given there are no rules regarding food, water, and sanitation. It was also noted in the comment that there are no size requirements for the crates or limits on the number of hogs that can be held in one crate. The commenter suggested the crate size should be specific and allow room for movement.

The proposed requirement allowing feral swine to overstay on a trapper's premises for seven days was created in response to stakeholder discussions that feral swine trappers haul trapped swine to their premises prior to movement to a feral swine holding facility. For reasons related to effective transportation costs, a trapper may hold feral swine in a pen on his premises until there are enough to transport.

Based on the current cost of gasoline and driving distances to an authorized holding facility, these are realistic factors that will affect how quickly the feral swine get into authorized movement channels. The statutory authority under which these rules are proposed is focused on registering holding facilities and not the trappers.

There are more trappers than holding facilities. Persons trapping full time should pursue having an authorized holding facility. However, there will be trappers who will, on a temporary basis hold feral swine while assembling a sufficient load for transport.

The stakeholder group grappled with how we handle this reality with an objective regulatory standard. The Commission does not have any express statutory authority over humane issues, but through the Texas Penal Code and Texas Health and Safety Code, there are statutory standards for the humane treatment of animals. These would be applicable to anyone holding feral swine in confinement.

### **Other Questions:**

These were a number of very specific comments to which the Commission is providing response.

**One commenter felt there should be a provision for a bond or any associated preventative measures for those people or entities, who for whatever reason; decide to end the keeping of feral swine in any holding facility or the like.** The Commission appreciates the comment but statutory authority for this program does not authorize us to put in place any type bond requirements.

**The commenter also stated that, regardless of the marking method used on hunting preserves, there is no mention of individually identifying feral hogs at holding facilities.** Identification is not needed for feral swine in a holding facility and designated for slaughter because these animals have a 'dead end' destination. There was some concern about animals escaping from a holding facility. Escape from current holding facilities has not been an issue. Physical requirements for holding facilities under the proposal are the same as under the current rules. The holding facilities are inspected by Commission personnel to ensure they can hold the animals.

**The commenter said he could find no mention of how marked escapees should be handled if they are captured or harvested. How will trappers and hunters know what to do with these animals?** If a hunter or land owner captures or kills a tagged hog and can not identify the owner of the animal, they should call the Commission for follow up.

**The proposed regulations state that hunting preserves and holding facilities are required to keep and maintain records that are to be provided to "an authorized agent of the Commission upon request." A commenter wrote that these records should be supplied, by mandate, to the Commission (and made available to researchers and the public) no less than annually so that numbers and sex ratio can be used as an index of the free-ranging feral pig population. Using such data, it may show that these new regulations are doing nothing to control the population and need to be revised.** These rules are not for the primary purpose of regulating the population growth of feral swine, but rather are focused on disease reduction. This recordkeeping requirement is intended to ensure compliance and provide records that can be used to trace an animal if necessary.

As for obtaining and maintaining records for research purposes, available records are

subject to the Texas Public Information Act. However, it should be noted we do not collect and copy this information.

**One commenter stated that “[h]og/dog interaction should NOT be part of the hunting of feral hogs.”** As stated previously, the Commission has no regulatory authority over hunting.

**Why are they not testing at slaughter plant?** The Commission does not regulate the slaughter plants. This is accomplished through other state and federal agencies.

**Most folks are meat hunting, not trophy hunting. More sows are mounted with long tusks than boars.** Based on the high propagation rates of feral swine, the exclusion of sows will not effectively reduce a hunter’s ability to hunt and harvest feral swine for meat.

**The record keeping is absurd and impossible and worse than exotic game.** The record keeping is necessary and important in order to ensure compliance with the requirements. Without record-keeping, the program would not have enforceable standards for ensuring compliance with the requirements. Other animal industries maintain records without impeding business.

**When did TAHC start making hunting regulations and authorizing hunting preserves instead of TPWD?** This is not a hunting regulation nor is the TAHC trading on the TPWD’s jurisdiction. This rule is focused only on those facilities that release trapped swine.

**Who is the slaughter plant operator that is padding whose pockets?** This is a rhetorical allegation, without support from the Commenter.

**Another comment was rhetorical and stated “Who wants to shoot and ear tag?”** This is another rhetorical allegation from the commenter.

**There should be an exception to the trap-transport-deliver rule which would allow unregulated transport of at least boars and barrows from owned/lease property and delivery to another property owned/leased by the same owner, especially if the purpose is for commercial hunting at the destination property. This would result in no net increase in hog numbers and it would probably result in more hogs being eliminated by hunting.** This does not offer a reduced risk method of feral swine movement and would make the rest of the rule impractical to enforce. Furthermore, it would make an artificial distinction for letting some persons move feral swine with no requirements, while others are subject to the restrictions.

**I see nothing in the rules about the sale of feral hogs to individuals for slaughter. If I trap a sounder of 20-pound pigs and sell them individually for the BBQ pit--is that legal? What if it takes longer than seven days to sell them all?** The rules become applicable when feral swine are trapped and moved to another location. The commenter noted that the rule provides for holding seven days prior to movement to an authorized destination. However under the proposed rules, the destination of live feral swine is limited to approved holding facilities, slaughter plants or game preserves.

**I trap on leased property. My leases are verbal and extend only to trapping hogs and/or hunting hogs. Some properties are without livestock, others are leased by someone else for grazing. So I don't really have "control" of the property. The last hog I trapped was too small for the official buying station and I hauled him straight into town, sold him to an individual for his personal consumption, but I can not swear to what actually became of the pig, as I did not witness its slaughter. I transferred the live pig to the buyer's trailer, was paid and left. Legal or not?** As noted previously, once feral swine are trapped, then transported, the proposed rules would apply. Releasing the animal alive without knowing it was slaughtered would technically violate these requirements. However there is some confusion about the pig you have identified as going to a buyer's trailer, which we would assume is an authorized holding facility. And selling any live feral swine to an authorized buying station is in accordance with these requirements and legal.

**Why are there no avenues for the disposition of small hogs less than 60 lbs? I live a great distance from any hunting ranch, therefore, I have no option for small hogs of either sex. The official buying stations will not take anything under 60 lbs. Given the high fuel prices and the ridiculous increase in the price of corn, I feel certain that many small hogs that are trapped will simply be released from the trap to become a larger, smarter problem. The Commission realizes that there is a gap in our regulatory authority to handle along with what some slaughter plants will purchase.**

**Will the identification requirements apply when wild hogs are trapped and transported directly to a slaughter facility?** No. Identification requirements do not apply if they are being transported directly to slaughter.

**Section 161.0412 includes confining for slaughter and hunting. How is 'confine' defined? Would the traps be considered 'holding facilities' subject to inspection, or does this rule solely apply to holding and transport of animals intended for live release?** The rules do not apply to the traps per se, as they are for capturing the animals, but not necessarily for confinement. When the animal is trapped and moved off the property alive, the rules become applicable.

**Will feral swine intended for slaughter be required to be tested for pseudorabies and brucellosis?** No, they are not tested at slaughter as this is a dead-end destination for those animals.

**All premises that lease hunts are required to have a premises license from TPWD. I understand and support extending these requirements to preserves that house released live swine for trophy hunting. The wording of the proposed amendment is unclear if regulations will extend to private lands that are already home to feral animals where owners do not bring in and release swine for hunting. Is this the intent?** No the rules do not apply to a hunting preserve where the feral swine were not released onto the property but are free ranging. As we have noted earlier in the response these rules do not apply to that situation.

**Who will issue authorizing permits, perform periodic inspections of facilities and monitor premises fencing (Commission staff or third-party)?** These are done by Commission staff.

**What portion of the TAHC budget is allotted to this?**

We have no special funds for this program, nor does this program generate funds through fees.

**Will the holding facilities be scrutinized to a standard for humane treatment?**

We do not have regulatory authority over humane or cruelty issues. These are handled through local law enforcement.

**Will the requirements for tagging for transport apply to persons that trap wild hogs on their land and transport them to a slaughter facility?** No the identification requirements do not apply if they are being transported directly to slaughter.

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The rules do not apply to the traps per se as they are for the purpose of capturing the animals but not necessarily for confinement. It is when the animal is trapped and moved alive off the property that the rules become applicable.

**The Commission received a comment regarding the definition of “temporary” as contained within the definition for “Approved Holding Facility.” The commenter states that “[t]emporary has no common meaning and should be defined.” They request that a short definitive limit should be placed on how long these hogs may remain in “holding.”** The purpose of the facilities is to hold trapped feral swine from one or more locations prior to moving them to an approved destination, most often to a slaughter plant.

These movements happen in a fairly routine pattern, but are dependent upon the pick-up patterns from the slaughter plants and the number of feral swine needed to comprise a load. Because the animals are destined for slaughter as free-ranging swine, confinement is fairly minimal. The use of the term “temporary” is to denote that these facilities are not authorized to maintain the feral swine permanently. Creating a timeframe for departure is difficult. This is dependent on transportation schedules and is affected by the time of year and location in the state. Historically, this has not been a problem but, as this program is implemented, this is an issue that can be re-evaluated through future rulemaking.

**The commenter noted that the definitions for feral swine and domestic swine are contradictory because the requirements in Section (e) regarding the change of classification of feral swine are contradictory. They note that reclassification does not fit either definition?**

**The Commenter also noted that in reference to (b) (6) that “Authorized location is not defined, nor is it found in our other rules.”** In regards to this comment, the intent

of that terminology is to reflect the fact that under subsection (b), only certain destinations are authorized. This was intended to reference that requirement. As a point of clarity the Commission clearly denotes that movement from that location must be in accordance with subsection (b).

**There also were several comments related to the responsibility for a holding facility or a hunting preserve. The proposed regulations made them applicable to either the owner or operator. The commenter felt that the owner should be responsible. There also is no requirement for an operator to notify the owner if the facility is violating the regulations. The commenter went on to say that the owner should sign the application. The regulation adds a manager, which may be different from an operator or owner. The likelihood of confusion and lack of communication increases with three people. Owners should sign these records.** In the Commission's experience, it is not always easy or practical to have the owner directly involved in all operations, as many owners are absentee landowners who have entrusted the property to the care of an operator or manager. This is the person who manages the day to day operations and is the person the Commission deals with, relative to these proposed rules.

The intent of the requirement is to ensure that the person we deal with can be held accountable. For documented violations, our goal is to establish regulatory compliance. The focus is on the person who signed the application. We want to make them responsible, whether they are the operator or owner. If we can not remedy a problem because an owner is not involved or is unaware, we will bring the problem to their attention and make them accountable.

**A commenter asked “[w]hat happens in the case of injured and dying hogs? Rules should be established where they are euthanized quickly by a veterinarian and not allowed to suffer.”** The animal owner or caretaker is responsible for the well-being of the animals, in accordance with any applicable animal care or cruelty standards in state statute. Requiring them to be quickly euthanized by a veterinarian is beyond the Commission's regulatory authority. The issue also is subjective and depends on facts, and the availability of a large-animal veterinarian.

**How can the proper disposal of dead animals be assured? Owners or employees may not know the laws and rules that apply, or they may not follow them.** The regulatory requirements for disposal of non-diseased animals is not vested in this agency, but is handled through the Texas Commission for Environmental Quality (TCEQ). If, during their facility inspection, Commission personnel see improper disposal, they will notify TCEQ, so the situation can be remedied. If deaths are related to disease events, the Commission will enforce existing regulations to assure proper disposal of carcasses of diseased animals.

**A commenter suggested that reports be submitted regularly, rather than on request only.** The Commission believes that requiring submission of the records would place a burden on the facility owner/operator and the agency. The records are intended to ensure that the responsible party is keeping track of the feral swine entering and leaving the facility. This is an appropriate regulatory tool for ensuring accountability.

Records are most effectively reviewed on site, where they can be correlated to the current inventory of swine.

Throughout the various livestock and fowl industries, dealers of agricultural animals are required to maintain records. This is a very important tool when the Commission must trace animals that have had exposure to disease. This responsibility is placed on the appropriate individuals, and the Commission does not require them to submit their records. Otherwise, this would become an overwhelming paperwork task for the agency to manage.

**There was also a comment that, in the event of a violation, the owner's authorization (not the operator's) should be suspended or revoked.** For the greatest regulatory latitude to remedy violations of these requirements, the owner, operator or both should be subject to having authorization revoked.

**A commenter stated that a definitive number of inspections should be conducted year, and that they should be unannounced**

The Commission utilized the "periodic" standard for several reasons. First, depending on the time of year, there may not be any on-going feral swine trapping or movement that would require consistent inspections. Also, feral swine holding facilities will be inspected more frequently than hunting preserves, because of the type of activity. Inspections also are based on the other job duties of our field inspectors.

**A commenter requested that inspections include a veterinarian, or other specialist or experts.** The Commission has field veterinarians who can conduct disease investigations, should such be needed. However the Commission does not believe it necessary to specifically include inspection by veterinarians or other specialists or experts. The Commission's livestock inspectors are well trained to conduct the type of inspections required by the proposed regulations. Similar processes are utilized for other Commission programs.



# Texas Administrative Code

Next Rule>>

<u>TITLE 4</u>	AGRICULTURE
<u>PART 2</u>	TEXAS ANIMAL HEALTH COMMISSION
<u>CHAPTER 55</u>	SWINE
<u>RULE §55.9</u>	<b>Feral Swine</b>

## (a) Definitions

- (1) "Approved holding facility" — A pen or pens approved by the commission to temporarily hold feral swine pending movement to a recognized slaughter facility or an authorized hunting preserve.
- (2) "Authorization" – is the written and signed documents required of this chapter to show compliance with the requirements of the chapter.
- (3) "Authorized Hunting Preserve" means land where feral swine are authorized to be released for the purpose of hunting.
- (4) "Domestic Swine" — Swine (*Sus scrofa*) other than feral swine.
- (5) "Feral swine" --Swine that have lived all (wild) or any part (feral) of their lives free-roaming.
- (6) "Free-Roaming" means not confined by man to pens, houses or other facilities designed to hold swine and prevent their escape.
- (7) "Recognized slaughter facility" – a slaughter facility operated under the state or federal meat inspection laws and regulations.
- (8) "Swine-Proof Fence" means a fence constructed to sufficient construction standards; with materials of hog-proof net, woven or welded wire and wood, metal or other approved posts; **be at least five feet in height from the ground to the top of the top wire**; and, be maintained to prevent egress of feral swine over, through or under the fence.

(b) Required Authorization for Movement of Feral Swine: These requirements apply to anyone who traps feral swine and moves them from the premises or location where they were trapped or otherwise captured and moved alive. Movement is only authorized in accordance with the requirements provided below.

- (1) The feral swine are moved directly from the premises where they were trapped to recognized slaughter facility;
- (2) The feral swine are moved directly from the premises where they were trapped to an approved holding facility;
- (3) The feral swine are moved directly from the premises where they were trapped to an authorized hunting preserve;
- (4) The feral swine are moved from an approved holding facility to a recognized slaughter facility;
- (5) The feral swine are moved from an approved holding facility to an authorized hunting preserve; or

- (6) Feral swine that have been trapped and are being held for transportation to an authorized location, as provided by through this subsection, may be held in an escape-proof cage on the vehicle or trailer that transported them from their original premise, or held within the transport trailer itself for up to seven (7) days.

(c) Approved Holding Facility:

- (1) Written approval for a feral swine holding facility may be given after an initial inspection by commission personnel determines that the facility meets the following criteria:
- (A) The facility is double fenced with swine-proof fence to prevent any feral swine from escaping and continually maintained by the owner and/or operator to prevent escape of the feral swine. The two fences shall be at least four feet apart with no animals allowed in the space between the fences. Variance from this construction standard may be requested by the owner or the operator and may be approved by the agency Executive Director upon the recommendation of the Area Director, where facility is located, if a different construction standard supports that there is no risk of feral swine escaping;
  - (B) The facility shall not be located within two hundred yards of any domestic swine pens;
  - (C) Only feral swine may be placed in the facility;
  - (D) Records shall be maintained by the registrant as provided in sub-section (c) (3) of this chapter and the facility must provide them when requested or inspected;
  - (E) Feral swine shall not be intentionally commingled with domestic or exotic swine;
  - (F) Feral swine shall not be fed any garbage or waste as it is defined in Chapter 165 of the Texas Agriculture Code;
  - (G) Dead animals shall be removed from the registered location premises promptly and disposed of in accordance with any applicable requirement or applicable ordinances or at the direction of Commission personnel,
  - (H) Feral swine shall only be moved from the facility directly to an approved slaughter facility or to an authorized hunting preserve.
- (2) Application for Approved Holding Facility: Authorization for an approved holding facility shall be on a form prescribed by the Commission and include at least the following information:
- (A) Name, address and telephone number of applicant;
  - (B) Facility name, physical location, county, directions to facility and telephone number;
  - (C) Diagram of the surrounding areas and the pens;
  - (D) Pictures of the pens;
  - (E) Signature of the owner/manager;
  - (F) The authorization is valid for two years from the date of issuance and shall expire on the two year anniversary date of the date of issuance unless re-authorized, and,

- (G) Re-authorization of the approved holding facility shall be completed within 30 to 60 days prior to the expiration date.

(3) Record Keeping:

- (A) Records to be generated and maintained by owners and/or operators of approved holding facilities and authorized hunting preserves shall include the following:
- i The number of swine placed in and removed from the facility and/or preserve;
  - ii The approximate weight, size, color, sex and any applied identification for each feral swine;
  - iii Dates they were placed and/or removed from the facility;
  - iv The physical location where they were trapped,
  - v The physical location that they were moved to, including any unique identification number; and,
- (B) The records shall be provided to an authorized agent of the commission upon request. Records shall be kept and maintained for not less than five years from the date the record was generated.

(4) Suspension/Revocation: The agency may suspend the authorization for an approved holding facility if the owner or operator fails to generate, maintain or provide records on feral swine as provided in sub-section (c) (3) of this chapter, fails to maintain swine-proof fences to prevent egress or ingress of feral swine, or violates any of the provisions of this chapter or the provisions of Chapter 161 of the Agriculture Code. The suspension will remain in effect until the deficiencies that were the cause of the suspension are corrected and any penalties assessed as result of the suspension are satisfied and a written suspension release is provided by the agency. The authorization for a holding facility may be revoked for blatant or repetitive violation(s) of the feral swine law or rules or for repeated failure to meet the requirements contained in this chapter.

(d) Authorized Hunting Preserve:

- (1) If feral swine are to be trapped and moved for release to a hunting preserve, the hunting preserve shall meet the following requirements:
- (A) Only male feral swine (i.e. boars and/or barrows) may be trapped, moved and released to a hunting preserve;
  - (B) Any swine released must be individually identified with a commission approved form of identification prior to release;
  - (C) Records shall be generated and maintained as provided in sub-section (c)(3) of this chapter;
  - (D) Shall have a "Hunting Lease License" with the Texas Parks and Wildlife Department and the license must be current and in good standing with that agency, as provided for in Chapter 43 of the Texas Parks and Wildlife Code;

- (E) Shall be enclosed by a swine-proof fence and the fence shall be maintained continually to prevent the egress of feral swine under, over or through the fence;
- (F) Feral swine shall not be fed any garbage as “garbage” or waste as defined in Chapter 165 of the Texas Agriculture Code; and,
- (G) The authorization for a hunting preserve may be suspended or rescinded if owner and/or the operator fails to generate, maintain or provide records on feral swine as provided in sub-section (c)(3) of this chapter, sufficient fences are not maintained, or violates any of the provisions of this chapter or the provisions of Chapter 161 of the Agriculture Code. The suspension will remain in effect until the deficiencies that were the cause of the suspension were corrected and any penalties assessed as result of the suspension are satisfied. The preserve will be notified in writing when the suspension has been lifted. The authorization for a hunting preserve may be rescinded for blatant or repetitive violation(s) of the feral swine law or rules or for repeated failure to meet the requirements contained in this chapter.

(2) Application for Authorized Hunting Preserve:

- (A) Applications shall be completed on a form prescribed by the Commission, providing at least the following information:
  - i Name, address and telephone number of applicant;
  - ii Physical location and county, directions to facility and telephone number;
  - iii A current copy of the Hunting Lease License issued by Texas Parks and Wildlife Department; and,
  - iv Signature of the owner/manager that states that facility fences meet the requirements for swine-proof fences as contained in subsection (a) of this chapter.
- (B) The authorization is valid for two years from the date of issuance. The authorization shall expire on the two year anniversary date of the date of issuance unless re-authorized. Re-authorization of the hunting preserve shall be completed within 30 to 60 days prior to the expiration date.
- (C) The facility is inspected periodically by agency personnel and continually meets the requirements of this chapter.

(e) Change in Classification of Feral Swine: Free-roaming swine may be qualified for reclassification as domestic swine upon completion of the following test protocol:

- (1) Three consecutive tests for brucellosis and pseudorabies, with negative results, shall be conducted on all swine in the herd unit in order to qualify for reclassification. The first test must be at least 30 days after any reactors have been removed and slaughtered and the second test must be 60 to 90 days after the first test. A third test is required 60 to 90 days following the second negative results; and,

(2) In addition to the requirements in (1), any sexually intact female swine must also undergo a brucellosis and pseudorabies test, with negative results, a not less than 30 days after their initial farrowing.

(f) Testing: Feral swine which are positive for brucellosis and/or pseudorabies shall be handled in accordance with the requirements for brucellosis, as contained in Chapter 35, Subchapter B and for pseudorabies as contained in Chapter 55 of this Title.

(g) Inspection Authority:

(1) A person employed by the commission may enter public or private property for the exercise of an authority or performance of a duty under this chapter.

(2) A commission representative shall perform periodic inspections of authorized facilities and locations, and records related thereto, to ensure compliance with the requirements of the act or this chapter.

(h) Violations and Penalties: In addition to any other violations that may arise under the act or this chapter:

(1) It is a violation for any person to falsify an application.

(2) Any violation of these rules is subject to the appropriate administrative, civil or criminal penalties. In addition, the agency may revoke or deny renewal of a permit and/or assess administrative penalties against any person for a violation of these rules.