

The Texas Animal Health Commission (Commission) proposes amendments to §40.3, concerning Herd Status Plans for Cervidae.

This proposal will assess a fee when Commission personnel provide the service of verifying the annual herd inventory as required by the CWD Monitoring Program.

The Commission currently provides a voluntary herd monitored status program for species that are susceptible to CWD. Currently, all breeders of white tail deer, through the direction of the Texas Parks and Wildlife Department (TPWD), participate in a CWD Monitoring program through either TPWD or the Commission. Elk are encouraged to participate as part of the movement authorization requirements. Those that participate in the Commission's Monitored program are required to verify annually their herd inventory. That requirement is provided for in §40.3(3) and the requirement states that "[a]n annual inventory in participating herds shall be verified by a TAHC, USDA or Accredited veterinarian."

There are currently more than 300 herds enrolled in the Commission's monitoring program. For a large majority of those herds, the Commission currently provides the service of herd inventory verification. For those that choose to use the services of their Accredited Veterinarian, the herd owner pays the cost for those services. When the Commission performs the services without assessing a fee, we not only undercut the competitiveness of those private accredited veterinarians, we perform a task that costs the agency an uncompensated expense which is difficult to provide in these dire economic times.

FISCAL NOTE

Dr. Matt Cochran D.V.M, Assistant Executive Director for 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 state or local government as a result of enforcing or administering the rule. This rule serves to fund previously unfunded programmatic activity, but it will increase the administrative workload on the Commission's Financial Services department and other administrative personnel involved in fee collection and processing. The Commission estimates a possible decrease in program participation due to a change from free services to fee-for-services. That said, annual revenue of \$47,875 is estimated based on 192 inspections at \$250/inspection. An Economic Impact Statement (EIS) is required if the proposed rule has an adverse economic effect on micro businesses. The agency has evaluated the requirements and determined that there is not an adverse economic impact because the program establishes a fee at a level close to that charged for the same services provided by a private veterinary practitioner. To date, the agency had been providing a free service that cannot be sustained and this allows the agency to cover those expenses.

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 that voluntary Commission CWD program enrollees will not contribute to or maintain CWD in their

herds. The level of surveillance built into the CWD program serves to protect all susceptible species in Texas, and related industries and ecological systems. Though there will be a reasonable annual inventory service fee levied on all participants who choose Commission personnel for their inventory, the resulting ability to engage in interstate trade and perform verified surveillance outweigh the cost.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed 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 Commission 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 amendment may be submitted to Dolores 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 amendment is 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 last Texas Legislative Session, H.B. 3300 passed and was enacted into law to become effective on September 1, 2009. The legislation amended Chapter 161 of the Texas Agriculture Code by adding §161.0541, entitled Elk Disease Surveillance Program. The section provides that the Commission by rule may establish a disease surveillance program for elk. Rules adopted under this section must: (1) require each person who moves elk in this state to have elk tested for CWD or other diseases as determined by the Commission; (2) be designed to protect the health of the elk population in this state; and (3) include provisions for testing, identification, transportation, and inspection under the disease surveillance program. The section also provides that a person commits an offense if the person knowingly violates a rule adopted by the Commission under this section. Also, an offense under Subsection(c) is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has previously been convicted of an offense under that subsection, in which event the offense is a Class B misdemeanor.

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, by §161.054, may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. 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, which is under §161.002.

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

40.3. Herd Status Plans for Cervidae.

Complete Monitored Herd.

- (1) Participating herds must have adequate perimeter fencing to prevent ingress and egress of cervids.
- (2) Surveillance in participating herds is accomplished by collection and submission of appropriate samples from all cases of mortality in animals over 16 months of age. Exemptions are provided for animals consigned to commercial slaughter operations with state or federal meat inspection.
- (3) An annual inventory in participating herds shall be verified by a TAHC, USDA or Accredited veterinarian. If requested by a producer to verify the inventory, the Commission hereby assesses a fee of \$100.00 per hour. All animals over one year of age shall be identified with an official eartag or other approved identification device. All animals less than one year of age shall be officially identified on a change of ownership.
- (4) Herd status designation shall be assigned on the basis of the number of years of participation provided that CWD is not confirmed in the herd:
 - (A) Level A - One full year of participation.
 - (B) Level B - Two to three years of participation.
 - (C) Level C - Four to five years of participation.
 - (D) Level D - Six years or more of participation.
- (5) Additions to Complete Monitored Herd.
 - (A) Additions may originate from herds of equal or higher status with no change in the status of the receiving herd.
 - (B) Additions may originate from herds of lower status with the receiving herd acquiring the lower status of the herd(s) involved.