

The Texas Animal Health Commission (commission) proposes new §40.5, concerning Movement Requirements for CWD Susceptible Species, in Chapter 40, which is entitled “Chronic Wasting Disease”. The commission is also proposing the repeal of the existing §40.5, concerning Testing Requirements for Elk. The new section is for the purpose of revising the current surveillance requirements for the state’s intrastate movement of elk to include exotic livestock, which are susceptible to Chronic Wasting Disease (CWD).

The commission has recently been addressing a number of different CWD regulations and agency actions in response to a number of recent developments involving CWD. The commission has adopted changes to the commission’s CWD voluntary program in response to the federal program as discussed below. The commission has also recently authorized the Executive Director to designate areas of the state as being at a high risk for CWD based on disclosure of any positive animals. This measure is in order to try and protect these animal resources within the state.

The commission proposes to modify the current CWD program to include red deer and Sika deer, and their hybrids, because of recent actions which have classified them as being a susceptible species for CWD. The purpose of the program was to establish testing surveillance for elk and now includes these added species. Based on the inclusion of red deer and Sika deer and other members of the cervid family as susceptible species, the commission is proposing this new section to be applicable to all cervid species known to be susceptible to CWD, excluding all mule deer, white-tailed deer, and native species under the jurisdiction of Texas Parks and Wildlife Department (TPWD).

As background, all breeders of white-tailed deer, through the direction of TPWD, participate in a CWD Monitoring program through either TPWD or the Commission. Because of this participation the state of Texas has done a significant amount of CWD surveillance testing of white-tailed deer without disclosing any positive deer. Surveillance testing is a key, critical competent to determine that if there is any disease present as well as helping to establish a prevalence number for how many animal maybe affected. This also helps to support our animal industries in having confidence in the health of their animals and makes them more marketable. Failure to perform adequate surveillance allows any disease to circulate unnoticed among animal host and spread the disease creating a greater disease problem and a far more difficult response task. In today’s current environment the mobility and transportation of agricultural animals throughout the state and country has greatly increased exposure to diseases and for the commission to not perform adequate disease surveillance for a disease that has national concerns would be inappropriate.

Though the white-tailed deer population in Texas has had significant surveillance, very few elk herds participated in a CWD monitoring program providing very little elk CWD testing surveillance. This had been a noted concern for a number of exotic livestock and deer associations because of the inequity of this situation. In implementing the first elk identification requirement in 2006 this was an issue of concern at that time but the commission believed, that for now the most appropriate initial approach to CWD surveillance in elk was through voluntary participation by owners of elk. The

commission then required elk to participate in surveillance for CWD and was in put in place in 2010.

However, the U.S. Department of Agriculture's (USDA) interim final rule which modified the national CWD Herd Certification Program (HCP) to include red deer and Sika has caused the agency to revisit this program. The USDA action came after the first diagnosis of CWD in red deer. The commission announced in June that red deer and Sika deer must meet the same entry requirements as other cervid species such as elk and moose because they are considered "susceptible species" for CWD. The new entry rules for red deer and Sika deer require they originate from herds with at least five years of participation.

The commission has historically used a CWD task force of individuals that have provided guidance, counsel and recommendations to the commission regarding our CWD program. These members include members of Texas Deer Association (TDA), Exotic Wildlife Association (EWA), Texas Wildlife Association (TWA), members of the Texas Veterinary Medical Diagnostic Laboratory (TVMDL), USDA and TPWD along with noted private veterinary practitioners and wildlife biologists. Both groups have jointly convened three times in 2012 to discuss the various issues of concern for the CWD with the positive animals disclosed in West Texas, the changes to the CWD federal program and the need to modify the intrastate program for the exotic susceptible species to make it a more successful and involved surveillance program. Clearly all the changes denoted above have invoked serious concern on protecting our cervid industries and all those that could be affected. However, based on some of the concern raised by industries members, the commission felt that there was a need to modify the testing requirements to better encompass the various susceptible species but also to make sure that it is more equitable in application. A criticism of the present version is the belief that an animal must be sacrificed to comply. Unfortunately, with this test being mortality based there is a hardship for producers particularly for those who ranch a species that does not have a lot of test eligible mortalities, such as red deer or Sika deer. As such, the commission is proposing this program based on a percentage of mortalities. This mirrors what is being used as a surveillance scale similar to what is being used by white-tailed breeders who follow a CWD program through TPWD.

However, the critical part of such a program is some type of verifiable inventory in which to base mortalities. This also means that we need to establish some type of .verification system for establishing mortalities and the commission would like to get the industry's comments on how to make such a system work. It is understood that the nature of some of the ranches is to release these animals to large enclosed pastures and they are not handled in the typical manner of livestock, but in order for the commission to develop an effective surveillance program to protect this state and their industry, it is necessary that these producers help partner with the agency to develop a verifiable inventory.

Subsection (a) is made up of definitions specifically for this section only. They include Captive CWD Susceptible Species, CWD Susceptible Species (FYI - all mule deer, white-tailed deer, and native species under the jurisdiction of the TPWD are excluded

from this definition and application of this section), Free Ranging CWD Susceptible Species, Premises, and Transport.

Subsection (b) provides the surveillance requirements. In order to transport or move a CWD susceptible species live within the state the person controlling the CWD susceptible species shall meet one of the following requirements: they can test 20% percent of mortalities of all CWD susceptible species, maintained on a premise or have status with the commission in a herd certification program in accordance with the requirements of §40.3 of this chapter (relating to Herd Status Plans for Cervidae) or be moved directly from the premises where they were trapped or held to a recognized slaughter facility. A recognized slaughter facility is a slaughter facility operated under the state or federal meat inspection laws and regulations.

Subsection (c) describes premise identification and states that in order to move a CWD Susceptible Species from or to a premise the location must obtain a premises identification number (PIN).

Subsection (d) concerns inventory and provides that some type of annual inventory shall be verified/accounted/certified by commission personnel along with herd records that include a complete inventory of animals with documents showing all test results for those animals that died and were tested. This is a particular point of difficulty for the exotic species to manage because they do not inventory and manage these animals in that manner. Generally, they are released in a pasture situation but in order to have any type of successful surveillance program based of mortalities there needs to be some way to account or verify numbers which then authorizes movements. This is a particular area where the commission is requesting comments from affected groups or individuals that will help to create an adequate surveillance program based on how they maintain their inventory.

Subsection (e) outlines identification requirements and provides that these susceptible species moved or transported within the state shall be identified with an official identification device.

Subsection (f) concerns testing requirements and provides an alternative to the federal standard by being for animals that are 16 months of age or older. This also would allow the samples to be collected by a state or federal animal health official, an accredited veterinarian, or a Certified CWD Sample Collector. Tissue samples maybe either the obex or a retropharyngeal lymph node from each animal being tested.

Subsection (g) describes test reporting and subsection (h) describes movement reporting requirements. A movement request for all CWD susceptible species that are moved onto or off of premises shall be submitted to the commission, either in hard copy on forms provided or authorized by the commission, or an electronic copy.

Subsection (i) concerns record keeping which requires the buyer and seller to maintain records for all CWD susceptible species transported within the state or where there is a transfer of ownership, and provide those when requested by the commission.

Subsection (j), inspection, states that in order to authorize movement, a premise where CWD susceptible species are located may be inspected by the commission or authorized agents of the commission.

Subsection (k) provides dealer requirements to address issues related to brokers of the animals throughout the state and may maintain them at their premise before relocating them to a designation premise.

FISCAL NOTE

Mr. Sami Chadli, Director for Administration and Finance, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the rules as we will use already appropriated resources to service these programs and with the fees that we assess for participation in our herd certification program or for inspection of their inventory verification. 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 an economic impact because the program establishes participation standards that do create a cost to comply, but also provide a benefit to those that participate. The purpose of the program is to provide standards and quality assurance that animals moving intrastate have been monitored and can be deemed low risk for having and potentially transporting a disease. Movement of animals creates a higher risk of exposure and transmission of a disease and therefore, merits required participation in a surveillance program because of the serious negative impact to the affected industries in the state as well as to any area where CWD is disclosed. The participation of CWD susceptible species, under the commission, is to provide surveillance and reduce the risk of animals being positive and exposing other animals. This program also equitably mirrors a surveillance program for white-tailed deer as all white-tailed breeder facilities within the state, at the direction of the TPWD, participate in a CWD monitoring program through either TPWD or the Commission. The purpose of the rules is to protect a very valuable resource in the wildlife cervids as well as those that are under private ownership. The impact of CWD exposure in herds in the state can greatly reduce the value of the animals causing a much greater adverse economic impact to these industries and resources.

PUBLIC BENEFIT NOTE

Mr. Chadli, has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be that exotic livestock are included as susceptible species are required to participate in a stronger surveillance system in order to create a surveillance safety net with safeguards to prevent spread of CWD to another part of the state or to a variety of herds.

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 agency has determined that the proposed governmental action will not affect private real property. The 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 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 proposal 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 new section is proposed under the following statutory authority as found in Texas Agriculture Code §161.0541. 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 chronic wasting disease 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 may require testing, vaccination, or another epidemiologically sound

procedure before or after animals are moved. That is found in §161.054. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048. A person is presumed to control the animal if the person is the owner or lessee of the pen, pasture, or other place in which the animal is located and has control of that place; or exercises care or control over the animal. That is under §161.002.

Section 161.007 provides that if a veterinarian employed by the commission determines that a communicable disease exists among livestock, domestic animals, or domestic fowl or on certain premises or that livestock, domestic animals, or domestic fowl have been exposed to the agency of transmission of a communicable disease, the exposure or infection is considered to continue until the commission determines that the exposure or infection has been eradicated through methods prescribed by rule of the commission. Section 161.005 provides that the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice, signed under that authority has the same force and effect as if signed by the entire commission.

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

40.5. Movement Requirements for CWD Susceptible Species.

(a) Definitions:

(1) Captive CWD Susceptible Species--A CWD susceptible species captured or privately or publicly maintained or held within a perimeter fence or confined area that is designed to retain the CWD susceptible species under normal conditions at all times with a height of eight feet or greater.

(2) CWD Susceptible Species--A cervid species determined to be susceptible to CWD, which means a species that has had a diagnosis of CWD confirmed by means of an official test conducted by a laboratory approved by USDA/APHIS). This includes North American elk or wapiti (*Cervus Canadensis*), red deer (*Cervus elaphus*), Sika deer (*Cervus Nippon*), moose (*Alces alces*), and any associated subspecies and hybrids. All mule deer and white-tailed deer and native species under the jurisdiction of the Texas Parks and Wildlife Department are excluded from this definition and application of this section.

(3) Free Ranging CWD Susceptible Species--Any CWD susceptible species that is not captured or contained within a fence intended to retain CWD susceptible species under normal conditions at all times with a height of eight feet or greater.

(4) Premises--A physical location(s) which is contiguous, that is under common ownership or management, and represent a unique and describable geographic location.

(5) Transport--Movement of an animal from one non-contiguous property or premises to another.

(b) Surveillance Requirements. In order to transport or move a CWD susceptible species live within the state the person controlling the CWD susceptible species shall meet one of the following:

(1) test 20% percent of mortalities of all CWD susceptible species, maintained on a premise; or

(2) have status with the Commission in a herd certification program in accordance with the requirements of §40.3 of this chapter (relating to Herd Status Plans for Cervidae); or

(3) be moved directly from the premises where they were trapped or held to a recognized slaughter facility. A recognized slaughter facility is a slaughter facility operated under the state or federal meat inspection laws and regulations.

(c) Premise Identification. In order to move a CWD Susceptible Species from or to a premise which has surveillance, as required under subsection (b) of this section, the location must obtain a “Premises identification number (PIN)”. A PIN means a unique official seven character alpha numeric identification code issued under this chapter to identify a specific and unique premises. Separate geographic physical locations that are under common ownership and management and on which co-mingling of animals occurs may be registered as one premises.

(d) Inventory. An annual inventory shall be verified/accounted/certified by TAHC personnel. The herd owner shall maintain herd records that include a complete inventory of animals with documents showing all test results for those animals that died and were tested.

(e) Identification Requirements. CWD susceptible species moved or transported within the state shall be identified with an official identification device, which may include an eartag that conforms to the USDA alphanumeric national uniform ear tagging system, which is a visible and legible animal identification number (AIN) or other identification methods approved by the Commission, including a RFID Device.

(f) Testing Requirements. CWD test samples shall be collected and submitted to an official laboratory for CWD diagnosis using a United States Department of Agriculture (USDA) validated test for animals that are 16 months of age or older and from the same population as the CWD susceptible species being moved. Test reporting shall be directed to the appropriate TAHC Regional Office. The samples may be collected by a state or federal animal health official, an accredited veterinarian, or a Certified CWD Sample Collector. Tissue samples maybe either the obex or a retropharyngeal lymph node from each animal being tested.

(g) Test reporting. Test results shall be directed to the Commission by either writing to Texas Animal Health Commission, c/o CWD Susceptible Species Reporting, P.O. Box 12966, Austin, Texas 78711-2966; or by fax to (512) 719-0729; or by e-mail to CWD_movement@tahc.texas.gov.

(h) Movement Reporting Requirements. A movement request for all CWD susceptible species that are moved onto or off of premises shall be submitted to the Commission, either in hard copy on forms provided or authorized by the Commission, or an electronic copy. The person moving the CWD susceptible species must have documentation with the CWD susceptible species being moved to show compliance with the requirements of this subsection. A copy of this documentation must be provided to any market selling these species. Such report shall be submitted

within 48 hours of the movement. Movement reporting shall be directed to the Commission by either writing to Texas Animal Health Commission, c/o CWD Susceptible Species Reporting, P.O. Box 12966, Austin, Texas 78711-2966; or by fax to (512) 719-0729; or by e-mail to CWD_movement@tahc.texas.gov. The movement report shall include the following information:

- (1) PIN for premises of origin;**
- (2) PIN for premises of the destination;**
- (3) Number of CWD susceptible species being moved;**
- (4) Official individual identification device number;**
- (5) Other official or unofficial identification numbers;**
- (6) Age/Gender; and**
- (7) Test results from the testing laboratory.**

(i) Record Keeping. The buyer and seller must maintain records for all CWD susceptible species transported within the state or where there is a transfer of ownership, and provide those to Commission personnel upon request. Records required to be kept under the provisions of this section shall be maintained for not less than five years. The records shall include the following information:

- (1) Owner's name;**
- (2) Location where the animal was sold or purchased;**
- (3) Official ID and/or Ranch tag (additional field for retag);**
- (4) Gender/age of animal;**
- (5) Source of animal (if purchased addition);**
- (6) Movement to other premises; and**
- (7) Disposition.**

(j) Inspection. In order to authorize movement, a premise where CWD susceptible species are located may be inspected by the Commission or authorized agents of the Commission.

(k) Dealer Requirements. A dealer is a person engaged in the business of buying or selling CWD susceptible species in commerce on the person's own account, as an employee or agent of a vendor, purchaser, or both, or on a commission basis. To maintain separate herd status for the animals a dealer sells, a dealer shall maintain separate herd facilities; separate water sources; there shall be at least 30 feet between the perimeter fencing around separate herds; and no commingling of animals may occur. Movement of animals between herds must be recorded as if they were separately owned herds. A dealer shall maintain records in accordance with this section.