

The Texas Animal Health Commission (commission) proposes amendments to §40.1, concerning Definitions, §40.2, concerning General Requirements, and §40.3, concerning Herd Status Plans for Cervidae, in Chapter 40, which is entitled “Chronic Wasting Disease” (CWD). The proposed amendments are for the purpose of revising some of the recently adopted requirements to address some changes in interpretation to the federal CWD program.

The commission provides a voluntary herd monitored status program for species that are susceptible to CWD. The U.S. Department of Agriculture’s (USDA) Animal and Plant Health Inspection Service (APHIS) recently adopted an interim final rule to establish a national CWD Herd Certification Program with minimum requirements for interstate movement of deer, elk, and moose, or cervids in the United States. Participation in the program will be voluntary. The federal CWD Herd Certification Program is found in 9 CFR subchapter B, part 55. The commission recently adopted changes to the state’s CWD Herd Certification Program to meet the federal program standards. However, based on modifications in interpretation of the federal requirements, the commission is making some amendments. The first change is to the definition of “Physical Herd Inventory” to remove the requirement that all animals in the herd must be restrained in order to have the identification validated by the person performing the inventory verification. The second modification is the fencing requirement found in §40.3(a) which provides that a herd premises must have perimeter fencing of a minimum of eight feet in height and adequate to prevent ingress or egress of cervids. That standard is found in the Uniform Method and Rules for CWD, but under the federal regulations the standard provides merely that the fencing must be adequate to prevent ingress or egress of cervids and the commission is modifying agency requirements to meet that standard by removing the eight foot requirement.

#### **FISCAL NOTE**

Ms. Larissa Schmidt, Director of Administration, 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. An Economic Impact Statement (EIS) is required if the proposed rules have an adverse economic effect on small businesses. The agency has evaluated the requirements and determined that there is not an adverse impact and, therefore, there is no need to do an EIS. Implementation of these rules poses no significant impact on small or micro-businesses.

#### **PUBLIC BENEFIT NOTE**

Ms. Schmidt 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 the commission has a herd monitored program that can meet the new federal interstate movement requirements, but with flexibility to represent some modifications in federal interpretation.

#### **LOCAL EMPLOYMENT IMPACT STATEMENT**

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rules 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 amendments are 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 are, 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 amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. Section 161.0541, entitled Elk Disease Surveillance Program, 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 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 authority 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 her; 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.

#### **40.1. Definitions.**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Approved Laboratory--A diagnostic laboratory approved by the APHIS Administrator to conduct official tests for CWD in accordance with 9 CFR §55.8.

(2) Certified CWD Sample Collector--An individual who has completed appropriate training recognized by his or her State on the collection and preservation of samples for CWD testing and on proper recordkeeping, and who has been certified to perform these activities by the Commission.

(3) Chronic Wasting Disease (CWD)--A transmissible spongiform encephalopathy (TSE) of susceptible species.

(4) Commingled/Commingling--Farmed cervids are commingled if they are housed or penned together having direct physical contact with each other, have less than 10 feet of physical separation (except in cases of "limited contact"; see definition) or any activity where uninhibited contact occurs such as sharing an enclosure, a section of a transport vehicle, or sharing equipment, pens or stalls, pasture, or water sources/watershed (i.e., housed in a pen that receives runoff or shares a natural or manmade body of water with another pen). Commingling includes contact with bodily fluids or excrement from other farmed animals. Farmed cervids commingled with other farmed cervids assume the status of the lowest program status animal in the group.

(5) Commission--The Texas Animal Health Commission.

(6) CWD Exposed Animal--An animal that is part of a CWD-positive herd, or that has been commingled with a CWD-positive animal or resided on contaminated premises within the five years before diagnosis.

(7) CWD Profile--A cervid 12 months of age or older that is emaciated and exhibits some combination of clinical signs including abnormal behavior, increased salivation, tremors, stumbling, incoordination, difficulty in swallowing, excessive thirst, and excessive urination.

(8) CWD Susceptible Species--All species in the cervidae family determined to be susceptible to CWD, which means any 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 white-tailed deer (*Odocoileus virginianus*), mule deer (*Odocoileus hemionus*), black-tailed deer (*Odocoileus hemionus columbianus*), North American elk or wapiti (*Cervus Canadensis*), red deer (*Cervus elaphus*), Sika deer (*Cervus Nippon*), moose (*Alces alces*), and any associated subspecies and hybrids.

(9) CWD Test Eligible--Unless otherwise specifically provided in these rules, all cervidae 12 months of age and over.

(10) Farmed or Captive--Privately or publicly maintained or held for economic or other purposes within a perimeter fence or confined area, or temporarily captured from a wild population for interstate movement and release.

(11) Herd--An animal or group of animals that are:

(A) Under common ownership, control, or supervision and are grouped on one or more parts of any single premises (lot, farm, or ranch) where commingling of animals occurs; or

(B) A single herd also is considered to be all animals under common ownership, control, or supervision on two or more premises which are geographically separated but on which animals have been commingled or had direct contact with one another. If an owner wishes to maintain separate herds, he or she must maintain separate herd inventories, records, working facilities, water sources, equipment, and land use. Herds must be separated by a distance of 30 feet or more. No commingling of animals may occur. If movement of animals does occur between herds, this movement must be recorded as it would if they were separately owned herds.

(12) Limited Contact--Any brief contact with a farmed animal such as in sale or show rings and alleyways at fairs, livestock auctions, sales, shows, and exhibitions. Limited contact does not include penned animals having less than ten feet of physical separation or contact through a fence, or any activity where uninhibited contact occurs such as sharing an enclosure, a section of a transport vehicle, sharing equipment, food, or water sources, or contact with bodily fluids or excrement. Pens at fairs, livestock auctions, sales, shows, and exhibitions must be thoroughly cleaned and all organic material removed after use and before holding another animal.

(13) Official Animal Identification--A device or means of animal identification approved by APHIS for use in the Certification Program to uniquely identify individual animals. The official animal identification must include a nationally unique animal identification number that adheres to one of the following numbering systems:

(A) National Uniform Eartagging System;

(B) Animal Identification Number (AIN);

(C) Premises-based number system using a Premises Identification Number (PIN) in conjunction with a livestock production numbering system; or

(D) Any other numbering system approved by the Commission for the identification of animals in commerce.

(14) ~~Complete Physical Herd Inventory~~ Complete Physical Herd Inventory--One in which all animals in the herd must be ~~restrained and individual identification recorded~~ must be validated by the person officially performing the inventory verification.

(15) Positive Herd--A herd in which a CWD-positive animal resided at the time it was diagnosed.

(16) Suspicious Animal--A cervid which has clinical signs that resemble the CWD profile.

(17) Suspicious Herd--A herd in which one or more animals are observed with clinical signs that resemble the CWD profile.

(18) Trace Herd--The term includes both trace-back and trace-forward herds. A trace-back herd is any herd where an affected animal has resided during a 60 month period prior to death. A trace-forward herd is any herd which has received animals from a positive herd during a 60 month period prior to death of the affected animal.

#### **40.2. General Requirements.**

(a) Procedures for issuing hold orders and quarantines.

(1) All herds suspicious of CWD, in which one or more animals are observed with signs which resemble the CWD profile, shall be reported to a representative of the Commission. The herd shall be restricted by hold order until the investigation and diagnosis have been completed.

(2) Trace herds shall be restricted by hold order until an epidemiologic investigation has been completed and the herd has met all requirements specified in a herd plan.

(3) CWD positive herds shall be restricted by quarantine until the herd has met all requirements specified in a herd plan.

(4) All suspicious, trace, and positive herds not complying with the requirements of an investigation or herd plan shall be restricted by quarantine.

(b) Procedures in suspicious, trace, and positive herds.

(1) CWD suspicious animals shall be presented to a representative of the Commission for the purpose of collection and submission of appropriate samples to an official laboratory for diagnosis.

(2) Disposition of a positive herd without evidence of transmission within the herd as determined by a TAHC or USDA epidemiologist following completion of the investigation. A herd plan will be developed by a TAHC or USDA epidemiologist in consultation with the herd owner, and their veterinarian (if requested by the owner). The herd plan shall include the following requirements for a period of five years:

(A) Routine visual inspection of all animals in the herd by a TAHC or USDA veterinarian for the purpose of early detection of CWD suspicious animals.

(B) Annual verification of herd inventory by a TAHC or USDA veterinarian.

(C) Mandatory reporting of all CWD suspicious animals and all death losses. Mortality in animals ~~12 months~~ of any age ~~or older~~ shall be immediately reported to a TAHC or USDA veterinarian for the purpose of collection of appropriate samples for submission to an official laboratory for CWD surveillance.

(D) CWD exposed animals must be removed from the herd and:

(i) Humanely destroyed, tested for CWD, and disposed of as specified in subsection (c) of this section; or

(ii) Maintained under hold order for 60 months from the last case of CWD.

(3) Disposition of a positive herd with evidence of transmission within the herd as determined by a TAHC or USDA epidemiologist following completion of the investigation. A herd plan will be developed by a TAHC or USDA epidemiologist in consultation with the owner, and their veterinarian (if requested by the owner). The herd plan shall include the following requirements for a period of five years:

(A) Routine visual inspection of all animals in the herd by a TAHC or USDA veterinarian for the purpose of early detection of CWD suspicious animals.

(B) Annual verification of herd inventory by a TAHC or USDA veterinarian.

(C) Mandatory reporting of all CWD suspicious animals and all death losses. Mortality in animals ~~12 months~~ of any age ~~or older~~ shall be immediately reported to a TAHC or USDA veterinarian for the purpose of collection of appropriate samples for submission to an official laboratory for CWD surveillance.

(D) CWD exposed animals must be removed from the herd and:

(i) Humanely destroyed, tested for CWD, and disposed of as specified in subsection (c) of this section; or

(ii) Maintained under hold order for 60 months from the last case of CWD.

- (E) The herd shall remain under quarantine for 60 months from the last case of CWD.
- (4) Disposition of trace herds. A herd plan will be developed by a TAHC or USDA epidemiologist in consultation with the owner, and their veterinarian (if requested by the owner). The herd plan shall include the following requirements for a period of ~~five~~ ~~three~~ years:
- (A) Routine visual inspection of all animals in the herd by a TAHC or USDA veterinarian for the purpose of early detection of CWD suspicious animals.
- (B) Annual verification of herd inventory by a TAHC or USDA veterinarian.
- (C) Mandatory reporting of all CWD suspicious animals and all death losses. Mortality in animals ~~12 months~~ of any age ~~or older~~ shall be immediately reported to a TAHC or USDA veterinarian for the purpose of collection of appropriate samples for submission to an official laboratory for CWD surveillance.
- (D) CWD exposed animals must be removed from the herd and:
- (i) Humanely destroyed, tested for CWD, and disposed of as specified in subsection (c) of this section; or
- (ii) Maintained under hold order for 60 months from the last potential exposure.
- (c) Destruction of suspicious and CWD exposed animals. Animals destroyed due to a presumptive diagnosis of CWD, including CWD exposed animals in positive and trace herds, shall be humanely euthanized, appropriate samples collected to confirm the diagnosis, and disposed of by deep burial or incineration, including all animal products, by-products, and contaminated materials:
- (1) on the premises where disclosed; or
- (2) at a facility approved by the executive director.
- (d) Payment of indemnity. The Commission may participate in paying indemnity to purchase and destroy CWD positive animals, CWD exposed animals, and CWD suspect animals. Subject to available funding, the amount of the state payment for any such animals will be five percent of the appraised value established in accordance with 9 CFR §55.3. This payment is in participation with any Federal payments made in accordance with 9 CFR §55.2.

### **40.3. Herd Status Plans for Cervidae.**

- (a) Enrollment Requirements. Herd owners who enroll must agree to maintain their herds in accordance with the following conditions:
- (1) Each animal must be identified before reaching 12 months of age. All animals less than one year of age shall be officially identified on a change of ownership or when moved from the premise of origin.
- (2) Herd premises must have perimeter fencing ~~of a minimum of eight feet in height and~~ adequate to prevent ingress or egress of cervids.
- (3) The herd owner shall:
- (A) Report, within five business days, all animals that *escape* or *disappear*, and all wild cervids that enter the facility; and
- (B) Test all deaths (including animals killed on premises maintained for hunting and animals sent to slaughter) aged 12 months or older, in accordance with subsection (b) of this section.
- (4) An annual inventory:
- (A) An annual inventory shall be verified by TAHC personnel, USDA personnel or an accredited veterinarian. If requested by a producer to verify the inventory, the Commission will assess a fee of \$100.00 per hour.

(B) The herd owner shall maintain herd records that include a complete inventory of animals with documents showing all escaped or disappeared animals and all test results for those animals that died.

(C) For animals seeking to qualify for movement in interstate commerce, a complete ~~physical~~ herd inventory must be performed ~~on~~ at the time a herd is enrolled and a complete ~~physical~~ herd inventory must be performed for all herds enrolled in the CWD Herd Certification Program no more than three years after the last complete ~~physical~~ herd inventory for the herd.

(D) The herd owner is responsible for assembling, handling, and restraining the animals and for all costs incurred to present the animals for inspection.

(5) To maintain separate herds, a herd owner shall:

(A) Maintain separate herd inventories and records;

(B) Separate working facilities;

(C) Separate water sources;

(D) Separate equipment or cleaned and maintained in accordance with Appendix V of the CWD Program Standards; and

(E) 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.

(6) New animals may be introduced into the herd only from other herds enrolled in the CWD Herd Certification Program. Addition of animals from a lesser status herd will result in the receiving herd's status being lowered to that of the contributing herd.

(b) 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. 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 submitted must include the obex and at least one retropharyngeal lymph node from each animal being tested. If samples are missed, or poor quality samples are submitted, the state epidemiologist or his designee will review the circumstances and determine if the herd status will be advanced, held, reduced, or removed.

(c) Herd Status. 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:

(1) First Year - starts on enrollment when the herd is in compliance with the requirements of the CWD Herd Certification Program.

(2) Second Year - starts on the anniversary date of the first year after full completion of the requirements for first year status.

(3) Third Year - starts on the anniversary date of the second year after full completion of the requirements for second year status.

(4) Fourth Year - starts on the anniversary date of the third year after full completion of the requirements for third year status.

(5) Fifth Year - starts on the anniversary date of the fourth year after full completion of the requirements for fourth year status.

(6) Certified Status - achieved after five years participation in the program and in compliance with all the program requirements.

(7) Additions to enrolled herds.

(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.

(d) Identification Requirements. Each animal required to be identified by this section must have at least two forms of animal identification attached to the animal.

(1) One of the animal identifications must be a nationally unique animal identification number that is linked to that animal in the CWD National Database.

(2) Second identification must be unique for the individual animal within the herd and linked to the CWD National Database.

(e) Record Keeping. The herd owner shall maintain records for animals including any movements and for 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) All identifications (tags, tattoos electronic implants, etc.);
- (2) Birth date;
- (3) Species;
- (4) Sex;
- (5) Date of acquisition and source of each animal that was not born into the herd (owner name, city, state);
- (6) Date of removal and destination of any animal removed from herd (owner name, city, state);
- (7) Date and cause of death for animals dying within the herd (if cause is known); and
- (8) Date of CWD sample submission, submitter, owner, premises, animal information, and official CWD test results from approved laboratory.

(f) Inspection. A premise where a herd is located may be inspected by the Commission to determine compliance with the requirements.

(g) Fees. Participation in a Commission CWD Herd Status Program for Cervidae requires that a fee be paid as provided for in §33.5 of this title (relating to Herd Status/Certification Fees). An annual inventory verified by Commission personnel is assessed a fee of \$100.00 per hour.

(h) Cancellation or suspension of enrollment by the Executive Director. The Executive Director may cancel or suspend enrollment after determining that the herd owner failed to comply with any requirements of this chapter. Before enrollment is canceled or suspended, notification will be provided which will inform the herd owner of the reasons for the action.

(1) The herd owner may appeal the cancellation of enrollment of a herd, or loss or suspension of herd status, by writing to the Executive Director within 15 days after receipt of the action. The appeal must include all of the facts and reasons upon which the herd owner relies to show that the reasons for the action are incorrect or do not support the action.

(2) The herd owner may request a meeting, in writing, with the Executive Director of the Commission within 15 days of receipt of the action and set forth a short, plain statement of the issues that shall be the subject of the meeting, after which:

(A) the meeting will be set by the Executive Director no later than 21 days from receipt of the request for a meeting;

(B) the meeting or meetings shall be held in Austin; and

(C) the Executive Director shall render his decision in writing within 14 days from date of the meeting.

(3) Upon receipt of a decision or order by the Executive Director which the herd owner wishes to appeal, the herd owner may file an appeal within 15 days in writing with the Chairman of the Commission and set forth a short, plain statement of the issues that shall be the subject of the

appeal.

(4) The subsequent hearing will be conducted pursuant to the provisions of the Administrative Procedure and Texas Register Act and Chapter 32 of this title (relating to Hearing and Appeal Procedures).

(5) If the Executive Director determines, based on epidemiological principles, that other action is necessary, the Executive Director shall provide the herd owner with written notice of the action.