

The Texas Animal Health Commission (commission) proposes new §47.21, concerning Definitions, §47.22, concerning General Requirements and Application Procedures, §47.23, concerning Duration and Additional Training Requirements, and §47.24, concerning Grounds for Suspension or Revocation, in Chapter 47, which is entitled “Authorized Personnel.” The purpose of the new rules is to create requirements for persons authorized to perform certain activities related to Chronic Wasting Disease (CWD).

Section 161.047 of the Texas Agriculture Code requires a person, including a veterinarian, to be authorized by the commission in order to engage in an activity that is part of a state or federal disease control or eradication program for animals. In addition to the brucellosis program, existing disease control or eradication programs include, but are not limited to, tuberculosis, trichomoniasis, piroplasmiasis, equine infectious anemia, chronic wasting disease, pseudorabies, and scrapie.

The new Subchapter C, which is entitled “Chronic Wasting Disease” includes standards and requirements for persons authorized by the commission to perform work as a Certified CWD Sample Collector. The provisions also establish application, training and recordkeeping requirements. A Certified CWD Sample Collector is an individual who has completed commission provided or approved training on the collection and preservation of samples for CWD testing and on proper recordkeeping, and who has been authorized to perform these activities by the commission.

The Code of Federal Regulations (CFR) title 9, part 55, established the national CWD herd certification program. The commission has met the requirements of 9 CFR 55.23(a) and operates an Approved State CWD Herd Certification Program. Pursuant to 9 CFR 55.21, deer, elk and moose owners are encouraged to certify their herds as low risk for CWD by being in continuous compliance with the CWD Herd Certification Program standards. Herd status is the status of a herd assigned under the CWD Herd Certification Program in accordance with 9 CFR 55.24, indicating a herd’s relative risk for CWD. Herd status is based on the number of years of monitoring without evidence of the disease.

The CWD Herd Certification Program standards dated May 2014, Appendix III, provides recommended standards for Certified CWD Sample Collectors to monitor for CWD. To assist producers in meeting these CWD Herd Certification Program standards, Subchapter C provides a certification program for and allows Certified CWD Sample Collectors to collect and submit CWD test samples for diagnostic testing at an approved laboratory if commission protocols are followed. The May 2014 standards also provide that samples may not be collected by herd owners unless they are approved by their State authority as a certified or designated CWD sample collector. The standards provide that samples may only be collected by State officials, APHIS employees, accredited veterinarians, or State-certified or State-designated CWD sample collectors.

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 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 rule has an adverse economic effect on small businesses. The agency has evaluated the requirements and determined that there is not an adverse economic impact and, therefore, there is no need to do an EIS. Implementation of these rules poses no significant fiscal impact on small or micro-businesses, or to individuals.

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 uniformity in the state's animal disease control activities.

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 Texas Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by email at "comments@tahc.texas.gov".

STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.0417, entitled "Authorized Personnel for Disease Control", a person, including a veterinarian, must be authorized by the commission in order to engage in an activity that is part of a state or federal disease control or eradication program for animals. Section 161.0417 requires the commission to adopt necessary rules for the authorization of such persons and, after reasonable notice, to suspend or revoke a person's authorization if the commission determines that the person has substantially failed to comply with Chapter 161 or rules adopted under that

chapter. Section 161.0417 entitles a person to a hearing before the commission or a hearing examiner appointed by the commission before the commission may revoke the person's authorization and provides the commission shall make all final decisions to suspend or revoke an authorization.

Pursuant to §161.005, entitled "Commission Written Instruments", 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.

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products", the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. 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.

Pursuant to §161.054, entitled "Regulation of Movement of Animals", 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.

Pursuant to §161.081, entitled "Importation of Animals", the commission by rule may regulate the movement of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country. Also, under that section the commission by rule may provide the method for inspecting and testing animals before and after entry into this state. The commission by rule may provide for the issuance and form of health certificates and entry permits. The rules may include standards for determining which veterinarians of this state, other states, and departments of the federal government are authorized to issue the certificates or permits.

Pursuant to §161.101, entitled "Duty to Report", a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of certain diseases among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis of the disease.

Pursuant to §161.112, entitled "Rules", the commission shall adopt rules relating to the movement of livestock, exotic livestock, and exotic fowl from livestock markets and shall require tests, immunization, and dipping of those livestock as necessary to protect against the spread of communicable diseases.

Pursuant to §161.113, entitled "Testing or Treatment of Livestock", if the commission requires testing or vaccination, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission.

Pursuant to §163.064, entitled “Testing and Vaccination”, only a person approved by the commission may perform testing and vaccinating for brucellosis, regardless of whether the person is a veterinarian.

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

SUBCHAPTER C. CHRONIC WASTING DISEASE.

47.21. Definitions.

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

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

(2) Authorized personnel--For the Chronic Wasting Disease (CWD) program, a person that is certified by the commission as a Certified CWD Sample Collector.

(3) Certified CWD Sample Collector--An individual who has completed appropriate training recognized by the commission on the collection, preservation, laboratory submission, and proper recordkeeping of samples for CWD testing, and who has been certified by the commission to perform these activities.

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

(5) 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.

(6) Sample Identification Number--The number assigned to a CWD sample on the specimen submission form.

(7) Specimen Submission Form--USDA-APHIS VS form 10-4, electronic VS form 10-4 or equivalent submission form.

47.22. General Requirements and Application Procedures.

(a) This regulation sets the standards for personnel who perform work in the Certified CWD Sample Collector program pursuant to the Texas Agriculture Code, §161.0417. Personnel may collect samples for official CWD testing in Texas as follows:

(1) Effective September 1, 2015, a person, other than an accredited veterinarian licensed to practice veterinary medicine in Texas, shall be a Certified CWD Sample Collector to collect and submit samples for official CWD testing.

(2) To become a Certified CWD Sample Collector, a person must meet the requirements and apply for Certified CWD Sample Collector as prescribed in §47.2 of this title (relating to Requirements and Application Procedures).

(3) A person desiring to perform official CWD testing shall participate in a certification program on CWD program requirements and procedures before performing any CWD program functions, including but not limited to review of the disease, proper sample collection techniques, sample preservation and laboratory submission, recordkeeping, and identification of animals.

(b) A Certified CWD Sample Collector shall meet the following requirements:

(1) Comply with §47.4 of this title (relating to Standards for Authorized Personnel);

(2) Comply with §47.5 of this title (relating to Recordkeeping);

(3) Submit CWD samples only to approved laboratories; and

(4) Follow all instructions as prescribed by the commission for collection of samples, including:

(A) collecting the proper samples necessary for CWD detection by an approved laboratory;

(B) labeling of specimen collection containers. The side label of a specimen collection container must include the following information:

(i) date of collection;

(ii) owner name;

(iii) Certified CWD Sample Collector name;

(iv) species, age and sex of animal;

(v) type of specimen(s);

(vi) herd ID (if applicable), official animal identification number;

(vii) sample identification number;

(C) packaging specimens to meet Federal transportation guidelines; and

(D) fully and accurately completing the specimen submission form, which includes listing the clinical signs of CWD observed in samples collected from CWD susceptible species:

(i) date of collection;

(ii) owner name, address and phone number;

(iii) Certified CWD Sample Collector name, address, phone number and email address;

(iv) species, age, and sex of the animal;

(v) type of specimen(s);

(vi) herd ID (if applicable), all animal identification devices with a quarter-sized piece of tissue (ear, hide, etc.) attached to each device; and

(vii) sample identification number.

47.23. Duration and Additional Training Requirements.

(a) Unless otherwise suspended or revoked, Certified CWD Sample Collector status shall be valid for the period of three years from the date of initial certification.

(b) Certified CWD Sample Collector status must be renewed by submitting a renewal application to the commission, paying any applicable fees, and meeting any additional requirements determined by commission rule, 30 days prior to the certificate expiration date.

(c) In determining whether additional training shall be required of current Certified CWD Sample Collectors before certificate renewal, the commission may consider changes in technology, treatments, procedures, programs, and the performance or competency of the individual in performing CWD program activities.

(d) If the commission requires general training or testing for all CWD authorized personnel, the commission will publish notice at least six months in advance of the certificate renewal date.

(e) If the commission requires individual training or testing as a result of the CWD authorized personnel's performance or inability to perform CWD program activities, the commission may give notification and set a time and place for training or testing.

47.24. Grounds for Suspension or Revocation.

Suspension or revocation of Certified CWD Sample Collector status may be made upon a determination that one or more of the following have occurred:

- (1) Violating one or more of the provisions prescribed in §47.6 of this title (relating to Grounds for Suspension or Revocation);
- (2) Failing to comply with one or more of the provisions prescribed in §47.4 of this title (relating to Standards for Authorized Personnel);
- (3) Observing clinical signs or lesions of CWD and failing to immediately report those findings to the commission; or
- (4) Failing to complete additional training or testing as prescribed in §47.23 of this title (relating to Duration and Additional Training Requirements).