

The Texas Animal Health Commission (commission) proposes amendments to §55.9, concerning Feral Swine, in Chapter 55, which is entitled “Swine”. The purpose of the amendments is to change the fence and movement requirements for feral swine authorized holding facilities.

An authorized feral swine holding facility has historically required two fences with four feet of separation. The primary purpose was to prevent contact with other livestock and wildlife species. With the overall prevalence of feral swine and limited contact opportunities for domestic swine in this situation, the requirement is no longer pragmatic. A proper holding facility for feral swine capable of preventing any feral swine from escaping can be constructed using one fence. This standard allows for facilities to be authorized with the purpose of trying to control the feral swine population in the state. Also, the commission is adding an additional authorized movement of feral swine as being from an approved holding facility to another approved holding facility. This is to recognize movements that may commonly take place between authorized holding facilities before feral swine are shipped to slaughter.

#### **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 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 this rule 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 to allow more individuals to set up and maintain an authorized feral swine holding facility, as well as to authorize that feral swine can be moved from an approved holding facility to another approved holding facility.

#### **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 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 §161.054, 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 §161.048, 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 §161.005, 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 §161.0412, entitled “Regulation and Registration of Feral Swine Holding Facility”, the commission may, for disease control purposes, require the registration of feral swine holding facilities.

Pursuant to §161.049, entitled “Dealer Records”, the commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer.

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

## 55.9. Feral Swine.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(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, or another approved holding facility.

(2) "Authorization"--~~is the~~ The written and signed commission documents required of this chapter to show compliance with the requirements of the chapter.

(3) "Authorized Hunting Preserve"--~~means land~~ 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~~ Not confined by man to pens, houses or other facilities designed to hold swine and prevent their escape.

(7) "Recognized slaughter facility"--a A slaughter facility operated under the state or federal meat inspection laws and regulations.

(8) "Swine-Proof Fence"--~~means a~~ A fence constructed to sufficient construction standards; with materials of hog-proof net, woven or welded wire and wood, metal or other approved posts and; ~~be~~ maintained to prevent the ingress or egress of feral swine ~~over, through or under the fence.~~

(b) Required Authorization for Movement of Feral Swine. These requirements apply to any person ~~anyone~~ who traps feral swine and moves live feral swine ~~them~~ from the premises or location where the feral swine ~~they~~ were trapped or otherwise captured ~~and moved alive.~~ Movement of live feral swine is prohibited unless is only authorized by in accordance with the requirements provided in paragraphs (1) – (7) (6) of this subsection:-

(1) The feral swine are moved directly from the premises where the feral swine ~~they~~ were trapped to a recognized slaughter facility;

(2) The feral swine are moved directly from the premises where the feral swine ~~they~~ were trapped to an approved holding facility;

(3) The feral swine are moved directly from the premises where the feral swine ~~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;

(6) The feral swine are moved from an approved holding facility to another approved holding facility;

~~(7)~~(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) To hold live feral swine at a location other than the premises where the feral swine were trapped or otherwise captured, a person must apply and receive commission authorization for an approved holding facility. Authorization is required for each holding facility.

(2) ~~(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 ~~has a~~ ~~is double fenced with~~ swine-proof fence constructed to prevent any feral swine from escaping and continually maintained by the owner and/or operator to prevent the ingress or egress ~~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 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 paragraph (4) ~~(3)~~ of this subsection and the facility must provide records ~~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 approved holding facility ~~registered location~~ premises promptly and disposed of in accordance with any applicable requirement or applicable ordinances or at the direction of commission ~~Commission~~ personnel; and
- (H) Feral swine shall only be moved from the facility directly to an approved slaughter facility, [or to] an authorized hunting preserve, or another approved holding facility.

(3) ~~(2)~~ Application for Approved Holding Facility. Application and renewal ~~Authorization~~ for an approved holding facility shall be on a form prescribed by the commission ~~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.

(4) ~~(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 feral swine ~~they~~ were placed and/or removed from the facility;
  - (iv) The physical location where feral swine ~~they~~ were trapped;
  - (v) The physical location that feral swine ~~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 commission 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 paragraph (4) (3) of this subsection, fails to maintain swine-proof fences to prevent the ingress or 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) To trap, move, and release live feral swine, a person must apply and receive commission authorization for a hunting preserve. Authorization is required for each hunting preserve.

(2) ~~(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 feral 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 subsection (c)(4) ~~(e)(3)~~ of this section;

(D) ~~Have~~ 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) ~~Be~~ Shall be enclosed by a swine-proof fence and the fence shall be maintained continually to prevent the ingress or 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 subsection (c)(4) ~~(e)(3)~~ of this section, 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 are ~~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.

(3) ~~(2)~~ Application for Authorized Hunting Preserve.:

(A) Applications shall be completed on a form prescribed by the commission ~~Commission~~, which includes ~~including 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 section.

(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 may be ~~is~~ inspected periodically by agency personnel and must continually meet ~~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 paragraph (1) of this subsection, 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 of this title (relating to Eradication of Brucellosis in Swine) and for pseudorabies as contained in Chapter 55 of this title (relating to Swine).

(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.