

The Texas Animal Health Commission (Commission) proposes the repeal of existing §40.3, concerning Herd Certification Program for Cervidae in the Texas Administrative Code, Title 4, Part 2, Chapter 40. This repeal is proposed in conjunction with the proposal of a new §40.3, concerning CWD Herd Certification Program, which is also published simultaneously in this issue of the *Texas Register*.

#### BACKGROUND AND PURPOSE

The Commission has determined that due to the extensive reorganization of the new §40.3, concerning CWD Herd Certification Program, repeal of the entire section and replacement with a new section is more efficient than proposing multiple amendments to make the required changes.

The Commission's goals in proposing the new section are to align the Commission's CWD Herd Certification Program with federal standards, provide clear guidance to participants in the program, and improve the administration of the program.

#### SECTION-BY-SECTION SUMMARY

The proposed repeal will repeal the existing §40.3 in order to replace it with a new proposed §40.3.

#### FISCAL NOTE

Ms. Myra Sines, Chief of Staff for the Texas Animal Health Commission, has determined that for each of the first five years the proposed repeal is in effect, enforcing or administering the repeal will have no foreseeable implications relating to costs or revenues of state or local governments.

#### PUBLIC BENEFIT NOTE

Ms. Sines determined that for each year of the first five years the proposed repeal is in effect, the anticipated public benefit will be the adoption of new rules which improve administration and provide clarity and guidance for participants in the CWD Herd Certification Program.

#### TAKINGS IMPACT ASSESSMENT

The Commission determined that the proposed repeal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. Therefore, the proposed rules are compliant with the Private Real Property Preservation Act in Texas Government Code §2007.043 and do not constitute a taking.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The Commission determined that the proposed repeal would not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission pursuant to Texas Government Code §2001.022.

#### REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

The Commission determined that this proposed repeal is not a "major environmental rule" as defined by Government Code §2001.0225.

#### GOVERNMENT GROWTH IMPACT STATEMENT

The Commission has determined that during the first five years the repeal will be in effect:

1. the proposed repeal will not create or eliminate a government program;
2. implementation of the proposed repeal will not require the creation of new employee positions or the elimination of existing employee positions;
3. implementation of the proposed repeal will not require an increase or decrease in future legislative appropriations to the Commission;
4. the proposed repeal will not increase or decrease fees paid to the Commission;
5. the proposed repeal will not create a new regulation;
6. the proposed repeal will repeal an existing regulation, but the repealed regulations will be replaced with revised regulations;
7. the proposed repeal does not increase or decrease the number of individuals subject to the rule's applicability; and

8. the proposed repeal will not positively or adversely affect the state's economy.

#### SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

The Commission determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed repeal. As such, the Commission is not required to prepare a regulatory flexibility analysis.

#### COSTS TO REGULATED PERSONS

The Commission determined there are no increase of costs to a regulated person by this proposed repeal. The proposed rules do not otherwise impose a direct cost on a regulated person, state agency, a special district, or a local government within the state. Pursuant to Section 2001.0045 of the Texas Government Code, therefore, it is unnecessary to amend or repeal any other existing rule.

#### REQUEST FOR COMMENT

Written comments regarding the proposed amendments may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by e-mail to [comments@tahc.texas.gov](mailto:comments@tahc.texas.gov). To be considered, comments must be received no later than thirty (30) days from the date of publication of this proposal in the *Texas Register*. When faxing or emailing comments, please indicate "Comments on Chapter 40-CWD Rules" in the subject line.

#### STATUTORY AUTHORITY

The repeal is 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), titled "Disease Control," to protect all livestock, exotic livestock, domestic fowl, and exotic 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, exotic livestock, domestic fowl, or exotic fowl, even if the agent of transmission is an animal species that is not subject to the jurisdiction of the Commission.

Pursuant to §161.0415, titled "Disposal of Diseased or Exposed Livestock or Fowl," the Commission may require by order the slaughter of livestock, domestic fowl, or exotic fowl exposed to or infected with certain diseases.

Pursuant to §161.0417, titled "Authorized Personnel for Disease Control," the Commission must authorize a person, including a veterinarian, to engage in an activity that is part of a state or federal disease control or eradication program for animals.

Pursuant to §161.046, titled "Rules," the Commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.047, titled "Entry Power," Commission personnel are permitted to enter public or private property for the performance of an authorized duty.

Pursuant to §161.048, titled "Inspection of Shipment of Animals or Animal Product," 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 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 non-communicable disease.

Pursuant to §161.049, titled "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. The Commission may also inspect and copy the records of a livestock, exotic livestock, domestic fowl, or exotic fowl dealer that relate to the buying and selling of those animals. The Commission, by rule, shall adopt the form and content of the records maintained by a dealer.

Pursuant to §161.054, titled "Regulation of Movement of Animals; Exception," 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. The Commission is authorized, through §161.054(b), to prohibit or regulate the movement of animals into a quarantined herd, premises, or area. The Executive Director of the Commission is authorized, through §161.054(d), to modify a restriction on animal movement, and may consider economic hardship.

Pursuant to §161.0541, titled “Elk Disease Surveillance Program,” the Commission, by rule, may establish a disease surveillance program for elk. Such rules include the requirement for persons moving elk in interstate commerce to test the elk for chronic wasting disease. Additionally, provisions must include testing, identification, transportation, and inspection under the disease surveillance program.

Pursuant to §161.0545, titled “Movement of Animal Products,” the Commission may adopt rules that require the certification of persons who transport or dispose of inedible animal products, including carcasses, body parts, and waste material. The Commission, by rule, may provide terms and conditions for the issuance, renewal, and revocation of a certification under this section.

Pursuant to §161.056(a), titled “Animal Identification Program,” the Commission may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease. Section 161.056(d) authorizes the Commission to adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.057, titled “Classification of Areas,” the Commission may prescribe criteria for classifying areas in the state for disease control based on sound epidemiological principals and may prescribe control measures for classification areas.

Pursuant to §161.060, titled “Authority to Set and Collect Fees,” the Commission may charge a fee for an inspection made by the Commission as provided by Commission rule.

Pursuant to §161.061, titled “Establishment,” 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 or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or any agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county,

district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. The Commission may, through §161.061(c), establish a quarantine to prohibit or regulate the movement of any article or animal the Commission designates to be a carrier of a disease listed in Section 161.041 or a potential carrier of one of those diseases, if movement is not otherwise regulated or prohibited for an animal into an affected area, including a county district, pasture, lot, ranch, field, range, thoroughfare, building, stable, or stockyard pen.

Pursuant to §161.101, titled "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 the disease, if required by the Commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the Commission within 24 hours after diagnosis of the disease.

The proposed repeal of the rules does not affect other statutes, sections, or codes.

<rule>

§40.3. Herd Certification Program for Cervidae.