

The Texas Animal Health Commission (commission) proposes amendments to §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 amendments is to establish and clarify 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, which includes Chronic Wasting Disease.

Chapter 47, 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. At the time the existing Subchapter C regulations were adopted, the commission only recognized test results from postmortem CWD sample collection. Since this sampling was not performed on live animals, the commission established standards and authorized non-veterinarians to collect postmortem samples.

In early 2016, the commission implemented CWD antemortem testing in certain situations to assess the disease risk and prevalence in herds known to be infected or exposed to CWD. antemortem testing, because it involves the diagnosis of a disease in live animals, is considered the practice of veterinary medicine pursuant to Chapter 801 of the Occupations Code. As such, the commission proposes to modify the CWD authorized personnel requirements to specify that only Certified CWD Veterinarians may collect antemortem CWD samples.

A Certified CWD Veterinarian is defined as a veterinarian who has authorized personnel status for veterinarians as required by §47.1, has completed appropriate training recognized by the commission on the collection, preservation, laboratory submission, and proper recordkeeping of samples for antemortem CWD testing, and who has been certified by the commission to perform these activities. The proposed rules include requirements regarding the application for authorized personnel status, general standards, duration of status, training, recordkeeping, and suspension or revocation for Certified CWD Veterinarians.

The proposed rules also clarify that non-veterinarians may only collect CWD postmortem samples. As such, the commission proposes to change the title of such individuals from “Certified CWD Sample Collector” to “Certified CWD Postmortem Sample Collector”.

## **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 uniformity in the state's Chronic Wasting 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 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 does not affect the requirement for a license or an exemption under Chapter 801, Occupations Code, to practice veterinary medicine.

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 §161.006, entitled “Documents to Accompany Shipment”, if required that a certificate or permit accompany animals or commodities moved in this state, the document must be in the possession of the person in charge of the animals or commodities, if the movement is made by any other means.

Pursuant to §161.0415, entitled “Disposal of Diseased or Exposed Livestock”, the commission by order may require the slaughter of livestock, under the direction of the commission, or the sale of livestock for immediate slaughter.

Pursuant to §161.046, entitled “Rules”, the commission may adopt rules as necessary for the administration and enforcement of this chapter.

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 §161.0541, entitled “Elk Disease Surveillance Program”, the commission by rule may establish a disease surveillance program for elk.

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 the diseases, 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.

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 under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be

required to pay the cost of fees charged for the testing or vaccination. And if the commission requires the dipping of livestock under this subchapter, the livestock shall be submerged in a vat, sprayed, or treated in another sanitary manner prescribed by rule of the commission.

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

#### **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 Postmortem Sample Collector or, for veterinarians, a Certified CWD Veterinarian.

(3) Certified CWD Postmortem 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 postmortem CWD testing, and who has been certified by the commission to perform these activities.

(4) Certified CWD Veterinarian--A veterinarian who has authorized personnel status for veterinarians as defined by §47.1 of this title (relating to Definitions), has completed appropriate training recognized by the commission on the collection, preservation, laboratory submission, and proper recordkeeping of samples for antemortem CWD testing, and who has been certified by the commission to perform these activities.

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

(6)[(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.

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

(8)[(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 Authorized Personnel [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 Postmortem Sample Collector to collect and submit samples for official postmortem CWD testing.

(2) Effective October 15, 2016, an individual shall be a Certified CWD Veterinarian to collect and submit samples for antemortem CWD testing.

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

(4)[(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 Postmortem Sample Collector or Certified CWD Veterinarian 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) name of the Certified CWD Postmortem Sample Collector or Certified CWD Veterinarian [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 for the Certified CWD Postmortem Sample Collector or Certified CWD Veterinarian;

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

(c)[(b)] Certified CWD Postmortem Sample Collector status or Certified CWD Veterinarian 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.

(d)[(c)] In determining whether additional training shall be required of current Certified CWD Postmortem Sample Collectors or Certified CWD Veterinarians 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.

(e)[(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.

(f)[(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 Postmortem Sample Collector status or Certified CWD Veterinarian status may be made upon a determination that one or more of the following has 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).