

The Texas Animal Health Commission (Commission) proposes amendments to Title 4, Texas Administrative Code, Chapter 40 titled "Chronic Wasting Disease." Specifically, amendments are proposed to §40.1, concerning Definitions, §40.2 concerning General Requirements, and §40.5 concerning Surveillance and Movement Requirements for Exotic CWD Susceptible Species.

## BACKGROUND AND SUMMARY OF PROPOSED AMENDMENTS

The purpose of this chapter is to prevent and control the incidence of chronic wasting disease (CWD) in Texas by seeking to reduce the risk of interstate and intrastate transmission of CWD in susceptible cervid species. The Commission proposes amendments to §§40.1, 40.2, and 40.5 to clarify, correct, and update information regarding CWD management.

CWD is a degenerative and fatal neurological communicable disease recognized by the veterinary profession that affects susceptible cervid species. CWD can spread through natural movements of infected animals and transportation of live infected animals or carcass parts. Specifically, prions are shed from infected animals in saliva, urine, blood, soft-antler material, feces, or from animal decomposition, which ultimately contaminates the environment in which CWD susceptible species live. CWD has a long incubation period, so animals infected with CWD may not exhibit clinical signs of the disease for months or years after infection. The disease can be passed through contaminated environmental conditions, and may persist for a long period of time. Currently, no vaccine or treatment for CWD exists.

The purpose of the changes to §40.1 is to add, amend, and remove defined terms to provide clarity and align these rules with the federal standards regarding the management of CWD. The purpose of the changes to §40.2 is to provide clarity in the procedures for issuing hold orders and quarantines and reduce confusion for disease tracing and carcass disposal. The purpose of the changes to §§40.5 and 40.6 is to change the testing requirements for exotic CWD susceptible species to align with federal standards and match state standards for testing native CWD susceptible species in order to increase surveillance of CWD in the state. Additionally, grammatical and editorial changes are proposed for each section for consistency and improved readability.

## SECTION-BY-SECTION DISCUSSION

## Section 40.1 Definitions

The proposed amendments to §40.1, regarding definitions, add "APHIS," "Certified Herd," "CWD-Trace Herd," and "Postmortem tissue samples," to the list of definitions, amend the definitions of "Chronic Wasting Disease (CWD)," "Commingled, Commingling," "CWD-Exposed Animal," "CWD Susceptible Species," "Executive Director," "Farmed or Captive Cervids," "Herd," "Herd Plan," "Location Identification Number (LID)," "Official CWD Test," and remove the definitions for "Breeding Facility," "Farmed cervids," "Complete Physical Herd Inventory," "CWD Test Eligible," "Enrollment Date," "Enrolled Herd," "Herd Certification Program," "Herd Status," "Limited Contact," "Minimum Mortality Rate," "Release Facility," "Status Date," and "Trace Herd."

## Section 40.2 General Requirements

The proposed amendments to §40.2(a)(1) improve readability and clarify that movement restriction shall remain in place until the Commission performs the epidemiologic investigation and approved laboratory testing is complete. The proposed amendments to §§40.2(a)(2), 40.2(a)(4), and 40.2(b) use the new definitions for CWD-trace herd and CWD-suspect herd found in §40.1.

In addition, the proposed amendments to §40.2(b)(1) through (3) clarify the agency or individual to whom CWD-suspect animals shall be presented and reported. The amendments to §40.2(b)(2)(C) clarify that all mortalities of all CWD susceptible species shall be immediately reported to a TAHC or USDA veterinarian to collect appropriate test samples. The amendments to §40.2(b)(2)(D) clarify what shall happen to CWD-exposed animals, how they shall be postmortem tested, or how long the CWD-exposed animals should be maintained. The amendments to §40.2(b)(3) clarify what happens to CWD-trace herds and mirror the amendments to §40.2(b)(2) for CWD-suspect animals and mortality reporting. The amendments to §40.2(c) clarify the disposal of CWD-suspect animal and CWD-exposed animal carcasses. The amendments to §40.2(d) improve readability.

## Section 40.5 Surveillance and Movement Requirements for Exotic CWD Susceptible Species

The amendment to §40.5(a)(1) changes the definition of Eligible Mortality to lower the age of death that would qualify as an eligible mortality from 16 months to 12

months of age. The amendment to §40.5(a)(2) adds muntjac (*Muntiacus*) to the definition of Exotic CWD Susceptible Species.

The amendments to §40.5(b) specify that all eligible mortalities be tested for CWD within seven days using an official CWD test in accordance with the requirements in §40.5. The amendments also remove the limit to test only three animals a year. The amendments to §40.5(c) remove unnecessary additional language to explain the defined term “official animal identification” and to add information on where to report annual inventories. The amendments to §§40.5(d) and (e) clarify testing requirements and reporting and change the time to submit test results and reports from 30 days to 14 days. The amendments to §40.5(f) improve readability.

#### FISCAL NOTE

Ms. Myra Sines, Chief of Staff for the Texas Animal Health Commission, determined for each year of the first five years the rules are in effect, there are no estimated additional costs or reductions in costs to state or local governments as a result of enforcing or administering the proposed rules. Commission employees will administer and enforce these rules as part of their regular job duties and resources. Ms. Sines also determined for the same period that there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules, and the proposed rules do not have foreseeable implications relating to costs or revenues of state governments.

#### PUBLIC BENEFIT

Ms. Sines determined that for each year of the first five years the proposed rules are in effect, the anticipated public benefits will be the protection of CWD susceptible species by increasing the surveillance of CWD susceptible species which will reduce the inadvertent spread of the disease from CWD susceptible species.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The Commission 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.

## MAJOR ENVIRONMENTAL RULE

The Commission determined that Texas Government Code §2001.0225 does not apply to the proposed rules because the specific intent of these rules is not primarily to protect the environment or reduce risks to human health from environmental exposure, and therefore, is not a major environmental rule.

## TAKINGS ASSESSMENT

The Commission determined that the proposal 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.

## ECONOMIC IMPACT STATEMENT

The Commission determined that the proposed amendments to §§40.1, 40.2, 40.5, and 40.6 may impact animal agricultural industries, which may meet the definition of a small business or microbusiness pursuant to Texas Government Code, Chapter 2006. Specifically, the Commission determined that the proposed rules may affect herd owners of CWD susceptible species or exotic CWD susceptible species.

The Commission determined that the proposed amendments would not adversely affect herd owners of CWD susceptible species because the amendments do not substantially change the movement, testing, and reporting requirements. The removal of the limit to test only three animal mortalities a year and the lowering of mortality test age for CWD may increase the cost to some herd owners, but the tradeoff in disease surveillance outweighs the potential cost to the herd owner. As such, these amendments to the movement, testing, and reporting requirements will allow the Commission to better monitor CWD in Texas. As a result, the application of the rule will help prevent adverse economic impacts associated with CWD.

Although the Commission does not predict adverse economic impacts to those directly regulated by the Commission, the Commission considered the businesses that may be impacted and regulatory alternatives as part of its rule proposal process. Texas has an unknown number of exotic cervid species that are free-ranging and also maintained on high-fenced premises. Many of those premises are hunting ranches, which are not subject to the seasonal and regulatory hunting restrictions of TPWD.

The clarity provided by these amendments should reduce or eliminate any confusion those directly regulated by the Commission may have in reading and interpreting the rules.

#### REGULATORY FLEXIBILITY ANALYSIS

The Commission considered several alternative methods for achieving the proposed rules' purpose while minimizing adverse economic impacts on small businesses, microbusinesses, and rural communities, as applicable, pursuant to Texas Government Code, Chapter 2006. The following sections analyze the substantive proposed changes that may have direct, adverse economic impacts on regulated parties in the order they are presented in Chapter 40.

The Commission considered an alternative method for achieving the proposed rules' purpose—by not changing the mortality testing requirements—but rejected the alternative because it would frustrate the Commission's ability to carry out Texas Agriculture Code §161.041 and eradicate or control any disease or agent of transmission, even if the agent of transmission is an animal species that is not subject to the jurisdiction of the Commission. This change also aligns the Commission's regulations with other federal and state regulations over CWD susceptible species. The Commission determined these proposals are necessary to follow the legislative requirement that the Commission protect exotic livestock from certain diseases, specifically CWD.

## GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, for each year of the first five years the proposed rules would be in effect, the Commission determined the following:

1. The proposed rules will not create or eliminate a government program;
2. Implementation of the proposed rules will not require the creation of new employee positions or the elimination of existing employee positions;
3. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the Commission;
4. The proposed rules will not require an increase or decrease in fees paid to the Commission;
5. The proposed rules will not create a new regulation;
6. The proposed rules will expand existing rules, but will not otherwise limit or repeal an existing regulation;
7. The proposed rules may increase the number of individuals subject to the regulation; and
8. The proposed rules will not adversely affect this state's economy.

## COST TO REGULATED PERSONS

The proposed amendments to §§40.1 and 40.2 do not impose an additional cost to a regulated person. The proposed amendments to §§40.5 and 40.6 may impose a cost on a regulated person by increasing the number of animals that may be required to be tested. The Commission determined these proposals are necessary to follow the legislative requirement that the Commission protect exotic livestock from certain diseases, specifically chronic wasting disease. 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 161.041 of the Texas Agriculture Code, Section 2001.0045 of the Texas Government Code does not apply to rules adopted under Section 161.041; 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. 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 amendments to §§40.1, 40.2, 40.5, and 40.6 within Chapter 40 of the Texas Administrative Code 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), 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 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 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 §161.058, titled "Compensation of Livestock or Fowl Owner," the Commission may pay indemnity to the owner of livestock or fowl, if necessary, to eradicate the disease.

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 §161.0615, titled "Statewide or Widespread Quarantine," the Commission may quarantine livestock, exotic livestock, domestic fowl, or exotic fowl in all or any part of this state as a means of immediately restricting the movement of animals potentially infected with disease and shall clearly describe the territory included in a quarantine area.

Pursuant to §161.065, titled "Movement from Quarantined Area; Movement of Quarantined Animals," the Commission may provide a written certificate or written permit authorizing the movement of animals from quarantined places. If the Commission finds animals have been moved in violation of an established quarantine or in violation of any other livestock sanitary law, the Commission shall quarantine the animals until they have been properly treated, vaccinated, tested, dipped, or disposed of in accordance with the rules of the Commission.

Pursuant to §161.081, titled "Importation of Animals," the Commission may regulate the movement of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country. The Commission, by rule, may provide the method for inspecting and testing animals before and after entry into this state, and for the issuance and form of health certificates and entry permits.

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.

Pursuant to §161.148, titled "Administrative Penalty," the Commission may impose an administrative penalty on a person who violates Chapter 161 or a rule or order adopted under Chapter 161. The penalty for a violation may be in an amount not to exceed \$5,000.

The proposed rules in this chapter for adoption do not affect other statutes, sections, or codes.

<rule>

#### **RULE §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) APHIS--The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

(2) Approved Laboratory--A diagnostic laboratory approved by the United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) Administrator to conduct official tests for CWD in accordance with 9 CFR §55.8.

~~[(2) Breeding Facility--Privately owned, high-fenced pens where a cervid herd is managed for breeding purposes. The breeding facility must be registered with and assigned a facility identification number (FID) by the Texas Parks and Wildlife Department for white-tailed deer and mule deer.]~~

(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 Herd--A herd that has reached certified status in §40.3 of this chapter (relating to CWD Herd Certification Program) or an equivalent state or federal program authorized under 9 CFR Part 55.

~~[(4)]~~ (5) Chronic Wasting Disease (CWD)--A transmissible spongiform encephalopathy ~~[(TSE)]~~ of susceptible species. Clinical signs include, but are not limited to, loss of body condition, loss of appetite, incoordination, blank stares, tremors, listlessness, excessive salivation, difficulty swallowing, increased drinking and urination, depression, and other behavioral changes and eventual death.

~~[(5)]~~ (6) Commingled, Commingling--~~[Farmed cervids]~~ Cervids of any age are commingled when [if] they ~~[are housed or penned together having]~~ have direct physical contact with each other, have less than 10 feet of physical separation ~~[except in cases of limited contact, or any activity where uninhibited contact occurs such as sharing an enclosure, a section of a transport vehicle, or sharing]~~ or share equipment, pens or stalls, pasture, or water sources/watershed, including contact with bodily fluids or excrement from other farmed or captive cervids ~~[such as cervids housed in a pen that receives runoff or shares a natural or man-made body of water with another pen. Commingling includes contact with bodily fluids or excrement from other farmed or captive animals.]~~ (i.e., indirect contact). Animals are ~~[also]~~ considered to have commingled if they have had such direct or indirect contact with a CWD-positive ~~[herd]~~ animal or CWD contaminated premises within the last ~~[5]~~ five years. ~~[Farmed cervids commingled with other farmed cervids assume the status of the lowest program status animal in the group.]~~

~~[(6)]~~ (7) Commission--The Texas Animal Health Commission (TAHC).

~~(7) Complete Physical Herd Inventory--A visual verification of all animals and identifications to reconcile records maintained by the owner.~~

(8) CWD-Exposed Animal--A CWD susceptible species that is part of a CWD-positive herd, or that has been commingled with or been exposed to a CWD-positive animal or resided on a CWD contaminated premises within ~~[the]~~ five years of the discovery of CWD. ~~[before diagnosis.]~~

~~[(9) CWD-Exposed Herd--A herd in which a CWD-positive animal has resided within 5 years prior to that animal's diagnosis as CWD-positive, as determined by a commission or USDA representative.]~~

~~[(10)]~~ (9) CWD-Positive Animal--An animal that has had a diagnosis of CWD established through official confirmatory testing conducted by the National Veterinary Services Laboratories.

~~[(11)]~~ (10) CWD-Positive Herd--A herd in which a CWD-positive animal resided at the time of CWD diagnosis.

~~[(12)]~~ (11) CWD Susceptible Species--All species in the Cervidae family that have had a CWD diagnosis confirmed by an official test conducted by an approved laboratory. ~~[This includes]~~ Including but not limited to 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]~~ sika deer (*Cervus nippon*), moose (*Alces alces*), reindeer and caribou (*Rangifer tarandus*), muntjac (*Muntiacus*) and any associated subspecies and hybrids.

~~[(13)]~~ (12) CWD-Suspect Animal--A CWD susceptible species with unofficial CWD test results, laboratory evidence or clinical signs that suggest a diagnosis of CWD, as determined by a commission representative, but for which official laboratory results are inconclusive or not yet conducted.

~~[(14)]~~ (13) CWD-Suspect Herd--A herd with unofficial CWD test results, laboratory evidence, or clinical signs that suggest a diagnosis of CWD, as determined by a commission representative, but for which official laboratory results are inconclusive or not yet conducted.

(14) CWD-Trace Herd--The term includes trace-back, trace-forward, and otherwise epidemiologically linked herds. A trace-back herd is any herd that contributed an animal to a CWD-positive herd within the five years prior to the diagnosis of CWD in the positive herd or is otherwise epidemiologically linked to a CWD-positive herd. A trace-forward herd is any herd which has received animals from a CWD-positive herd during a five-year period prior to the diagnosis of CWD in the positive herd or from the identified date of entry of CWD into the positive herd or is otherwise epidemiologically linked to a CWD-positive herd.

~~[(15) CWD Test Eligible--Unless otherwise specifically provided in these rules, all Cervidae 12 months of age and over.~~

~~(16) Enrollment Date--The day, month, and year when a herd that joins the CWD Herd Certification Program receives a satisfactory initial inspection.~~

~~(17) Enrolled Herd--A herd that has enrolled in the commission's Herd Certification Program and has met the minimum requirements defined in 9 CFR Part 55. Upon initial enrollment, all herds will be placed in First Year status unless the herd is assembled from other herds already participating in the program, and in such case will assume the status of the lowest herd.]~~

~~[(18)] (15) Executive Director--The Executive Director of the Texas Animal Health Commission[, or any individual authorized to act for the Executive Director].~~

~~[(19)] (16) Farmed or Captive Cervids--Privately or publicly maintained or held cervids for economic or other purposes within a perimeter fence or confined area, or captured from a free-ranging population for interstate or intrastate movement and release.~~

~~[(20)] (17) Herd--[An animal or group of animals that is:~~

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

~~(B) All animals under common ownership, control, or supervision on two or more geographically-separated premises where animals are commingled or had direct contact with one another.] A group of cervids that is under common ownership, control, or supervision and is grouped on one or more parts of any single~~

premises or on two or more geographically separated premises where cervids are commingled or have direct or indirect contact with one another.

~~[(21) Herd Certification Program--The program operated by the commission for the certification of CWD status cervid herds that meets the requirements of 9 CFR Part 55, subpart B.]~~

~~[(22)] (18) Herd Plan--A written herd or premises management agreement developed by the commission, the herd owner, and other affected parties. A herd plan sets forth the steps to take to control the spread of CWD from a CWD-positive herd, to control the risk of CWD in a CWD-exposed herd or CWD-suspect herd, or to prevent introduction of CWD into that herd or any other herd. [Requirements to prevent or control the possible spread of CWD, depending on the particular circumstances of the herd and its premises, including but not limited to depopulation of the herd, specifying the time when a premises must not contain cervids after CWD-positive, CWD-exposed, or CWD-suspect animals are removed from the premises, fencing requirements, selective culling of animals, restrictions on sharing and movement of possibly contaminated livestock equipment, premises cleaning and disinfection requirements, and other requirements may also be included in a herd plan. A herd plan requires the following: specified means of identification for each animal in the herd, regular examination of animals in the herd by a veterinarian for clinical signs of CWD, reporting to a commission representative any clinical signs of CWD, and recordkeeping.]~~

~~[(23) Herd Status--The status of a herd assigned under the commission CWD Herd Certification Program in compliance with Section 40.3 indicating a herd's relative risk for CWD. Herd status is the number of years of monitoring without evidence of the disease and any specific determinations that the herd has contained or has been exposed to a CWD-positive, CWD-exposed, or CWD-suspect animal. When a herd is first enrolled in the CWD Herd Certification Program, it will be placed in First Year status; except that, if the herd is composed solely of animals obtained from herds already enrolled in the program, the newly enrolled herd will have the same status as the lowest status of any herd that provided animals for the new herd. If the herd continues to meet the requirements of the program, each year, on the anniversary of the enrollment date the herd status will be upgraded by one year. One year from the date a herd is placed in Fifth Year status, the herd status will be changed to Certified, and the herd will remain in Certified Status as long as it is enrolled in the program, provided its status is not lowered, suspended, or revoked.]~~

~~[(24)]~~ (19) High-risk area or county--An area or county that is epidemiologically determined to have a high probability for species susceptible for having, developing or being exposed to CWD.

~~[(25)]~~ (20) Hold Order--A written commission order and action restricting movement of a herd, animal, or animal product pending the determination of CWD status.

~~[(26)] Limited Contact--Any brief, incidental contact between cervids from different herds 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, 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.]~~

~~[(27)]~~ (21) Location Identification Number (LID)--A nationally unique number assigned by the commission to a premises starting with the state postal abbreviation (TX) followed by six random alphanumeric characters. Each LID is a geographically distinct location associated with a verifiable physical address, geospatial coordinates, or other location descriptors. ~~[All herds in the CWD Herd Certification Program will be assigned a LID or PIN.]~~

~~[(28)] Minimum Mortality Rate--Death loss from natural causes is expected to be five percent for white-tailed deer 12 months of age and older averaged over a three-year period, unless epidemiologically determined otherwise.]~~

~~[(29)]~~ (22) Official Animal Identification--A device or means of animal identification approved by USDA 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) - (D) (No change.)

~~[(30)]~~ (23) Official CWD Test--A USDA-validated immunohistochemistry (IHC) test of appropriate tissue samples for the diagnosis of CWD conducted in an approved laboratory.

(24) Postmortem tissue samples--Means the obex, both medial retropharyngeal lymph nodes, and an official animal identification device attached to ear or skin tissue collected and prepared under USDA APHIS guidelines for CWD postmortem sample collection.

~~[(31)]~~ (25) Premises Identification Number (PIN)--A nationally unique number assigned by the commission or USDA to a premises. Each PIN is a geographically distinct location associated with a verifiable physical address, geospatial coordinate, or other location descriptors.

~~[(32)]~~ (26) Quarantine--A written commission order and ~~[the]~~ action of restricting animal or animal product movement from or onto a premises because of the existence of or exposure to CWD.

~~[(33)]~~ Release Facility--A privately owned, high-fenced premises where white-tailed deer or mule deer from a breeding facility are released for management as free-ranging animals. A release facility must be registered with and assigned a facility identification number (FID) by the Texas Parks and Wildlife Department.

~~(34) Status Date--The day, month, and year the commission approves a change in herd status.]~~

~~[(35)]~~ (27) TAHC Authorized Veterinarian--A veterinarian who is licensed to practice medicine in Texas, Category II accredited by USDA APHIS VS, and has satisfactorily completed TAHC disease control or eradication program training pursuant to 4 TAC Chapter 47, concerning Authorized Personnel.

~~[(36)]~~ Trace Herd--The term includes both trace-back and trace-forward herds. A trace-back herd is any herd that contributed an animal to a CWD-positive herd within the 5 years prior to the diagnosis of CWD in the positive herd. A trace-forward herd is any herd which has received animals from a CWD-positive herd during a 5-year period prior to the diagnosis of CWD in the positive herd or from the identified date of entry of CWD into the positive herd.]

(28) USDA--The United States Department of Agriculture.

## **RULE §40.2. General Requirements**

(a) Procedures for issuing hold orders and quarantines.



(1) Any CWD-suspect herd shall be immediately reported to a ~~[representative of the]~~ commission representative. The herd shall be restricted by hold order until the commission's epidemiologic investigation and approved laboratory testing ~~[diagnosis]~~ are complete.

(2) A CWD-trace herd shall be restricted by hold order until an epidemiologic investigation by the commission is complete and the herd meets all herd plan requirements.

(3) A CWD-positive herd shall be restricted by quarantine until the herd meets all herd plan requirements.

(4) Any CWD-suspect herd, CWD-trace, and CWD-positive herd ~~[CWD-positive herds]~~ not complying with the epidemiologic investigation or herd plan requirements shall be restricted by quarantine.

(b) Requirements for CWD-suspect herds, CWD-trace herds, or CWD-positive herds.

(1) CWD-suspect animals shall be presented to a ~~[representative of the]~~ commission representative for the purpose of collection and submission of appropriate samples to an approved laboratory for diagnosis.

(2) Disposition of a CWD-positive herd as determined by a ~~[TAHC]~~ commission or USDA epidemiologist following completion of the investigation. A herd plan will be developed by a commission or USDA epidemiologist in consultation with the herd owner, and, if requested, their veterinarian. Unless otherwise determined by a commission epidemiologist and approved by the ~~[Executive Director]~~ executive director, the herd plan shall include the following requirements for a period of five years:

(A) – (B) (No change.)

(C) ~~[Mandatory reporting of all]~~ All CWD-suspect animals and all ~~[death losses. Mortality in animals of any age]~~ mortalities of all CWD susceptible species shall be immediately reported to a commission or USDA veterinarian for the purpose of collection of appropriate samples for submission to an approved laboratory for CWD surveillance.

(D) CWD-exposed animals must be ~~[removed from the herd and]:~~

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

(ii) Maintained under the terms of the herd plan until all requirements of the herd plan are met. [~~hold order for 5 years from the last exposure to a CWD-positive animal.~~]

(E) The herd shall remain under quarantine for ~~[5]~~ five years from the last exposure to a CWD-positive animal or a CWD-exposed animal and until such time that all herd plan requirements are met.

(3) Disposition of CWD-trace herds. A herd plan will be developed by a commission or USDA epidemiologist in consultation with the owner, and, if requested, their veterinarian. Unless otherwise determined by a commission epidemiologist and approved by the ~~[Executive Director]~~ executive director, [~~the herd plan shall require the following for 5 years~~] the herd plan shall include the following requirements for a period of five years:

(A) – (B) (No change.)

(C) [~~Mandatory reporting of all~~] All CWD-suspect animals and all [~~death losses. Mortality in animals of any age~~] mortalities of all CWD susceptible species shall be immediately reported to a commission or USDA veterinarian for the purpose of collection of appropriate samples for submission to an approved laboratory for CWD surveillance.

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

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

(ii) Maintained under the terms of the herd plan until all requirements of the herd plan are met. [~~hold order for 5 years from the last potential exposure.~~]

(c) Disposal of CWD-suspect animal and CWD exposed animal [~~CWD-exposed animals~~] carcasses. After all required postmortem tissue samples are collected, carcasses or remaining parts of CWD-suspect animals and CWD-exposed animals, including all animal products, by-products, and contaminated materials, shall be disposed of by deep burial or incineration on the premises where the animal was

~~located or at a facility approved by the executive director. [Animals euthanized due to a presumptive positive of CWD, including CWD-exposed animals in CWD-positive and trace herds, shall be humanely euthanized and 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 a CWD diagnosis was 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 dispose of 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~~] federal indemnity payments made in accordance with 9 CFR §55.2.

#### **RULE §40.5. Surveillance and Movement Requirements for Exotic CWD Susceptible Species**

(a) Definitions. In addition to §40.1 of this chapter (relating to Definitions), the following words and terms, when used in this section, shall have the following meanings:

(1) Eligible Mortality--The death from any cause of an exotic CWD susceptible species that is [~~16~~] 12 months of age or older on any and all premises which raise and/or contain any exotic CWD susceptible species, whether a premises engages in live transport of these animals or not. This includes hunter harvest or herd culling on the premises, natural mortalities on the premises, and animals moved directly to slaughter.

(2) Exotic CWD Susceptible Species--A non-native cervid species determined to be susceptible to CWD, which means a species that has had a diagnosis of CWD confirmed by an official test conducted by an approved laboratory. This includes but is not limited to North American elk or wapiti (*Cervus canadensis*), red deer (*Cervus elaphus*), [~~Sika~~] sika deer (*Cervus nippon*), moose (*Alces alces*), reindeer and caribou (*Rangifer tarandus*), muntjac (*Muntiacus*), and any associated subspecies and hybrids. All mule deer, white-tailed deer, and other native species under the jurisdiction of the Texas Parks and Wildlife Department are excluded from this definition and application of this section.

(3) (No change.)

(4) (No change.)

(b) Surveillance Requirements. ~~[Each calendar year, the]~~The owner of a premises shall have all eligible mortalities tested for CWD within seven days using an official CWD test in accordance with subsection (d) of this section and shall report all results in accordance with subsection (e) of this section. ~~[until such time that three animals are tested and valid test results are obtained. The owner of the premises shall ensure that the CWD samples are properly collected and submitted in compliance with the requirements for collection. The owner must report the test results to the commission within 30 days of receiving the test results.]~~ This requirement applies to any premises where exotic CWD susceptible species are located and is not dependent on the live movement of any of these species or fence height.

(c) Movement Reporting and Identification Requirements.

(1) Live exotic CWD susceptible species moved or transported within the state shall be identified with an official animal identification ~~[device, which may include an eartag that conforms to the USDA alphanumeric National Uniform Eartagging System (NUES), a visible and legible animal identification number (AIN) or other identification methods approved by the commission, including a RFID device].~~

(2) (No change.)

(3) An owner of a premises where exotic CWD susceptible species are located within a high fence shall keep herd records that include an annual inventory and mortality records for all exotic CWD susceptible species. The inventory shall be reconciled and submitted to the commission on or before April 1 of each year by mail to Texas Animal Health Commission, CWD Susceptible Species Reporting, P.O. Box 12966, Austin, Texas 78711-2966; by fax to (512) 719-0729; or by email to CWD\_reports@tahc.texas.gov. Annual inventory records shall be retained for ~~[one year]~~ five years following submission to the commission.

(4) (No change.)

(d) Testing Requirements. All eligible mortalities shall be tested for CWD using an official CWD test. Unless the whole head is submitted for testing, postmortem tissue samples must be collected and prepared by a state or federal animal health official,

~~an accredited veterinarian, or a certified CWD postmortem sample collector. [CWD test samples shall be collected and submitted to an approved laboratory for CWD diagnosis using an official CWD test for all eligible mortalities. Test reporting shall be directed to the appropriate TAHC Region Office. The samples may be collected by a state or federal animal health official, an accredited veterinarian, or a Certified CWD Postmortem Sample Collector. Tissue samples shall be the obex and one retropharyngeal lymph node from each test-eligible animal mortality.]~~

(e) Test Result Reporting. The owner shall ~~[report]~~ submit all test results and laboratory reports to the commission within ~~[30]~~ 14 days of receiving the test results by ~~[writing]~~ mail to Texas Animal Health Commission, CWD Susceptible Species Reporting, P.O. Box 12966, Austin, Texas 78711-2966; by fax to (512) 719-0729; or by email to CWD\_reports@tahc.texas.gov.

(f) Mortality Recordkeeping.

(1) The owner of a premises where an exotic CWD susceptible species eligible mortality occurs shall maintain the following mortality records:

(A) (No change.)

(B) (No change.)

(C) ~~[any RFID or NUES tag number affixed to the animal]~~ all official animal identification; and

(D) (No change.)

(2) The mortality records shall be made available upon request to any commission representative ~~[acting in the performance of official duties]~~.

(3) (No change.)

(4) (No change.)

(g) Inspection. To ensure compliance with these rules, a premises where exotic CWD susceptible species are located may be inspected by the commission or authorized agents of the commission.

(h) (No change.)