

TITLE 4 AGRICULTURE
PART 2 TEXAS ANIMAL HEALTH COMMISSION
CHAPTER 40 CHRONIC WASTING DISEASE

The Texas Animal Health Commission proposes changes to Chapter 40 of the Texas Administrative Code, including amendments to §§40.1, 40.2, 40.5, and 40.7; and the repeal of §§40.3 and 40.6.

BACKGROUND AND PURPOSE

Chronic Wasting Disease (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 CWD Herd Certification Program (HCP) is a voluntary, cooperative surveillance and certification program between the Commission, United States Department of Agriculture, herd owners, and other affected parties. Participating herds that meet program requirements and have no evidence of CWD advance in status each year for five years, to receive a certified status. Certified herd status permits interstate animal movement to some states. Participating in HCP is not required to keep CWD susceptible species captive in Texas or to buy, sell, or transfer animals within Texas.

The United States Department of Agriculture publishes Chronic Wasting Disease Program Standards (“federal standards”) to clarify and update acceptable methods for complying with the legal requirements in Title 9 of the Code of Federal Regulations Parts 55 and 81.

Federal standards not only specify the minimum requirements for participants to achieve certified status but require participating states to maintain state-wide standards for CWD diagnostic testing, epidemiological traces, and herd plans that must be enforced against all CWD susceptible animals. To be an approved state, Texas is required to follow the requirements of the federal standards.

Because of Texas's participation in HCP, Commission regulations were adopted to meet the requirements of federal standards. Current rules require Commission staff to perform five-year epidemiological traces for every confirmed case of CWD in a captive herd. Under current rules, movement is restricted by a hold order or quarantine order during the epidemiological investigations of the trace until TAHC can determine the extent of the herd's exposure to CWD and how to limit additional spread. To remove the quarantine from a positive facility or clear an epidemiological trace, a herd must enter a herd plan that meets the requirements of federal standards and commonly involves depopulation followed by a five-year quarantine.

Participation in this program has decreased significantly. In 2021, approximately 375 herds were enrolled in the program. Presently, there are 79 enrolled herds in good standing.

The Commission received feedback from herd managers and owners that the requirements for CWD quarantines and herd plans are overly restrictive, negatively impact land values, and cause unrecoverable losses to business operations.

The Commission finds that the repeal of the program would allow the Commission to amend current rules to eliminate the burdens caused by HCP.

Along with the repeal of the HCP program, the Commission proposes amendments that will eliminate the requirement that the Commission herd plans and epidemiological traces be set at a minimum of 5 years. The proposed rule amendments are designed to allow epidemiological staff to assess a herd on a case-by-case basis.

SECTION-BY-SECTION SUMMARY

The proposed amendments to §40.1 eliminate the definitions for APHIS, Certified Herd, Farmed or Captive Cervids, High-risk Area or County, and TAHC Authorized Veterinarian; modify the definitions for Commingled, Commingling, CWD-Exposed Animal, CWD-Suspect Herd, CWD-Trace Herd, Herd Plan, and Official CWD Test; adjusts numbering; and make minor grammatical changes.

The proposed amendments to §40.2, concerning General Requirements, change the procedures for issuing hold orders and quarantine, making hold orders and quarantines optional rather than mandatory. The amendments also remove

references to USDA and eliminate the federal standards for dispositions of CWD positive and trace herds.

The proposed repeal of §40.3 will eliminate the rules regulating HCP.

The proposed amendments to §40.5, concerning Surveillance and Movement Requirements for Exotic CWD Susceptible Species, reduces the surveillance testing requirement from 100% of mortalities to three valid tests each year.

The proposed repeal of §40.6 will eliminate the established containment and surveillance zones and remove the regulations regarding movement restriction zones.

The proposed amendments to §40.7, concerning Executive Director Declaration of CWD Movement Restriction Zone, update language for consistency within the rule.

FISCAL NOTE

Ms. Jeanine Coggeshall, General Counsel of the Texas Animal Health Commission, determined for each year of the first five years the proposed repeal and amended 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 repeal and proposed amendments rules. Ms. Coggeshall also determined for the same period that there will be an approximate loss of \$10,000 annually in fee revenue because the Commission will no longer conduct veterinary inspections as part of the program. The Commission collects a fee of \$100 per hour for agency staff to perform inspections at the request of a participant to recover costs of personnel time to conduct the inspections. The loss of fee revenue will not impact the operations of the Commission.

PUBLIC BENEFIT

Ms. Coggeshall determined that for each year of the first five years the proposed repeal and amended rules are in effect, the anticipated public benefits will provide Texas agencies with more flexibility in addressing CWD without the restrictions imposed by federal program standards.

TAKINGS IMPACT 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.

LOCAL EMPLOYMENT IMPACT STATEMENT

The Commission determined that the proposed rules 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 proposal is not a "major environmental rule" as defined by Government Code §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, the Commission prepared the following Government Growth Impact Statement. The Commission determined for each year of the first five years the proposed repeal and amendments would be in effect, the proposed rules:

- Will eliminate a government program;
- Will not require the creation or elimination of employee positions;
- Will result in no assumed change in future legislative appropriations;
- Will affect fees paid to the Commission;
- Will not create new regulation;
- Will not expand existing regulations;
- Will reduce the number of individuals subject to the rule; and
- Will not affect the state's economy.

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

The Commission determined that the proposed repeal and amendments to Chapter 40 will not pose an adverse economic impact on animal agricultural industries, which meet the definition of a small business or microbusiness pursuant to Texas Government Code, Chapter 2006, and may affect rural communities. Specifically, the Commission determined that participants enrolled are not able to exercise the intended benefits of the program and the federal guidelines that must be followed as part of Texas' participation in the program are far more restrictive than originally thought. As a result, the proposed repeal and amendments may help to alleviate adverse economic impacts associated with the strict federal standards.

COST TO REGULATED PERSONS

The proposed repeal and amendments do not impose additional costs on regulated persons and are designed to alleviate restrictions from federal guidelines and allow more flexibility in how Texas agencies respond to CWD. 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.

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 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 and amendments 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 Commission hereby certifies that this proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

<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.]~~

(1) ~~[(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) ~~[(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 the CWD Herd Certification Program 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.]~~

(3) [(5)] Chronic Wasting Disease (CWD)--A transmissible spongiform encephalopathy 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.

(4) [(6)] Commingled, Commingling--Cervids of any age are commingled when they have direct physical contact with each other, have less than 10 feet of physical separation, or share equipment, pens or stalls, pasture, or water sources/watershed, including contact with bodily fluids or excrement from other [farmed or captive] cervids (i.e., indirect contact).~~[Animals are considered to have commingled if they have had such direct or indirect contact with a CWD-positive animal or CWD-contaminated premises within the last five years.]~~

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

(6) [(8)] CWD-Exposed Animal--A CWD susceptible species that is part of a CWD-positive herd[, or [that has been] was determined through an epidemiological investigation to have been exposed to or commingled with [or been exposed to] a CWD-positive animal [or resided on a CWD-contaminated premises within five years of the discovery of CWD].

(7) [(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.

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

(9) [(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. 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 deer (*Cervus nippon*), moose (*Alces alces*), reindeer and caribou (*Rangifer tarandus*), muntjac (*Muntiacus*), and any associated subspecies and hybrids.

(10) [(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.

(11) [(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.]~~ A CWD susceptible species herd with a CWD-suspect animal.

(12) [(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.]~~ A CWD susceptible species herd that has been epidemiologically determined to have been exposed to a CWD-positive animal.

(13) [(15)] Executive Director--The executive director [Executive Director] of the Texas Animal Health Commission.

~~[(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.]~~

(14) [(17)] Herd--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.

(15) ~~[(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].~~

~~[(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.]~~

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

(17) ~~[(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.

(18) ~~[(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) National Uniform Eartagging System (NUES);

(B) Animal Identification Number (AIN);

(C) Premises-based number system using a Premises Identification Number (PIN) or Location Identification Number (LID) in conjunction with a livestock production numbering system; or

(D) Any other numbering system approved by the commission for the identification of animals in commerce.

(19) ~~[(23)]~~ Official CWD Test--A USDA-validated immunohistochemistry (IHC) test or Enzyme-Linked Immunosorbent Assay (ELISA) test of appropriate tissue samples for the diagnosis of CWD conducted in an approved laboratory.

(20) ~~[(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.

(21) ~~[(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.

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

~~[(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.]~~

(23) ~~[(28)]~~ USDA--The United States Department of Agriculture.

§40.2. General Requirements

(a) Procedures for issuing hold orders and quarantines.

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

(2) A CWD-positive herd may be restricted by quarantine or hold order until the requirements of subsection (b)(2) of this section are complete. ~~[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-trace herd may be restricted by quarantine or hold order until the requirements of subsection (b)(3) of this section are complete. [A CWD-positive herd shall be restricted by quarantine until the herd meets all herd plan requirements.]~~

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

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

~~(1) Upon request of the commission, animals in a CWD-suspect herd [animals] shall be presented to a commission representative for the purpose of inspection or to collect and submit [collection and submission of] appropriate samples to an approved laboratory for diagnosis.~~

~~(2) Disposition of a CWD-positive herd [as determined by a commission or USDA epidemiologist following completion of the investigation]. If a CWD-positive herd is subject to a quarantine or hold order, the commission will develop a herd plan [A herd plan will be developed by a commission or USDA epidemiologist] in consultation with the herd owner, and, if requested, their veterinarian. The herd plan will specify the measures to be implemented to minimize the transmission of CWD and the steps required to complete the herd plan. Unless otherwise determined by a commission epidemiologist and approved by the executive director, a CWD-positive herd shall be maintained under the terms of the herd plan until all the requirements of the herd plan are met. [~~shall include the following requirements for a period of five years:~~~~

~~(A) Routine visual inspection of all animals in the herd by a commission or USDA veterinarian for the purpose of early detection of CWD-suspect animals.~~

~~(B) Annual verification of herd inventory by a commission or USDA veterinarian.~~

~~(C) All CWD-suspect animals and all 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:~~

~~(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.~~

~~(E) The herd shall remain under quarantine for 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. If a CWD-trace herd is subject to a quarantine or hold order, the commission will develop a herd plan A herd plan will be developed by a commission or USDA epidemiologist in consultation with the owner, and, if requested, their veterinarian. The herd plan will specify the measures to be implemented to minimize the transmission of CWD and the steps required to complete the herd plan. Unless otherwise determined by a commission epidemiologist and approved by the executive director, a CWD-trace herd shall be maintained under the terms of the herd plan until all requirements of the herd plan are met. [the herd plan shall include the following requirements for a period of five years:~~

~~(A) Routine visual inspection of all animals in the herd by a commission or USDA veterinarian for the purpose of early detection of CWD-suspect animals.~~

~~(B) Annual verification of herd inventory by a commission or USDA veterinarian.~~

~~(C) All CWD-suspect animals and all 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:~~

~~(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.]~~

(c) Disposal of CWD-suspect animal and CWD-exposed animal 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 commission ~~[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 indemnity payments made in accordance with 9 CFR §55.2.

§40.3. CWD Herd Certification Program

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

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

(1) Captive – designation of a group of exotic CWD Susceptible Species that are held in confinement on a premises by fencing or natural barriers that are intended to prevent the ingress and egress of cervids.

(2) [(4)] Eligible Mortality--The death from any cause of an exotic CWD susceptible species that is 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.

(3) [(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 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.

(4) [(3)] Premises--A physical location(s) which is contiguous, under common ownership or management, and represents a unique and describable geographic location.

(5) [(4)] Transport--Movement of an exotic CWD susceptible species from one non-contiguous property or premises to another.

(b) Annual Surveillance Requirements. Each calendar year, the [The] owner of a premises with captive exotic CWD susceptible species must test [shall have] all eligible mortalities [tested for CWD within seven days] using an official CWD test until three valid test results are obtained and reported to the commission. To be valid, testing samples must be submitted within seven days in accordance with subsection (d) of this section and [shall report] all results must be reported in accordance with subsection (e) of this section. No more than three valid tests results are required for each premise each calendar year to meet this annual surveillance requirement. 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.

(2) To move live exotic CWD susceptible species to or from a premises, the owner must obtain a PIN or LID from the commission or USDA.

(3) An owner of a premises where captive 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 five years following submission to the commission.

(4) A complete movement record for all live exotic CWD susceptible species moved onto or off of a premises shall be submitted to the commission, either in hard or electronic copy on forms provided or authorized by the commission. The person moving the exotic CWD susceptible species must have documentation with the exotic CWD susceptible species being moved to show compliance with the requirements of this subsection. A copy of this documentation must be provided to any market selling these species. Such record shall be submitted within 48 hours of the movement. Movement reporting shall be directed to the commission by writing 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.

(d) Testing Requirements. Exotic CWD susceptible species [~~All eligible mortalities~~] shall be tested for CWD using an official CWD test unless alternative testing is authorized in writing by the commission. 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.

(e) Test Result Reporting. The owner shall submit all test results and laboratory reports to the commission within 14 days of receiving the test results 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.

(f) Mortality Recordkeeping.

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

(A) the date the exotic CWD susceptible species died or was harvested;

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

(C) all official animal identification; and

(D) any other identification number, official or unofficial, on the animal.

(2) The mortality records shall be made available upon request to any commission representative.

(3) The mortality records shall be submitted to the commission on or before April 1 of each year by writing 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.

(4) The mortality record shall be on a form provided or approved by the commission and shall be retained for one year following submission to the commission.

(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) Dealer Requirements. A dealer is a person engaged in the business of buying or selling exotic CWD susceptible species in commerce on the person's own account, as an employee or agent of a vendor, purchaser, or both, or on a commission basis. To maintain separate herd status for the animals a dealer sells, a dealer shall maintain separate herd facilities and separate water sources; there shall be at least 30 feet between the perimeter fencing around separate herds; and no commingling of animals may occur. Movement of animals between herds must be recorded as if they were separately owned herds. A dealer shall maintain records for all exotic CWD

susceptible species transported within the state or where there is a transfer of ownership, and provide these to a commission representative upon request. Records required to be kept under the provisions of this section shall be maintained for not less than five years and shall include the following information:

- (1) Owner's name;
- (2) Location where the animal was sold or purchased;
- (3) Official identification and, if applicable, Ranch tag; note any retags;
- (4) Sex and age of animal;
- (5) Source of animal (if purchased addition);
- (6) Movement to other premises; and
- (7) Disposition of the animal.

§40.6. CWD Movement Restriction Zones

§40.7. Executive Director Declaration of a CWD Movement Restriction Zone

(a) Order Declaring a CWD Movement Restriction Zone [~~High-Risk Area or County (Order)~~]. The executive director [~~Executive Director~~] may issue an Order to declare a CWD Movement Restriction Zone [~~high-risk area or county~~] based on sound epidemiological principles for disease detection, control, and eradication. The epidemiological criteria used for designating an area or county as high risk may include the presence of disease, multiple CWD-positive animals in the area, and common husbandry and animal use practices that could lead to disease exposure.

(b) The Order shall contain the following elements:

- (1) The epidemiological criteria for which the order is being issued.
- (2) A description of the area or county determined to be high risk that enables a person to identify the area and determine if a premises is included in the area.
- (3) A statement that movement of CWD susceptible species is prohibited, if the executive director [~~Executive Director~~] determines the threat of disease spread warrants such action.

(4) Any exceptions, terms, conditions, or provisions prescribed under this chapter.

(5) The class of persons authorized by the commission or the executive director [~~Executive Director~~] to issue certificates or permits permitting movement.

(6) Any authorized movement certificate or permit must be issued in conformity with the requirements stated in the high-risk Order:

(A) The executive director [~~Executive Director~~] may provide a written certificate or written permit authorizing the movement of CWD susceptible species from locations where the CWD susceptible species have been restricted.

(B) The certificate or permit must be issued by a commission representative.

(7) If the Order prohibits the movement of any CWD susceptible species until tested negative for the disease, the executive director [~~Executive Director~~] may prescribe:

(A) any exceptions;

(B) terms;

(C) conditions; or

(D) provisions the executive director [~~Executive Director~~] considers necessary or desirable to promote the objectives of this chapter or to minimize the economic impact of the quarantine without endangering those objectives or the health and safety of other CWD susceptible species.

(c) Publication of Notice. The executive director [~~Executive Director~~] shall give notice of the Order:

(1) By publishing notice in a newspaper published in the county where the high-risk area is established; or

(2) By delivering a written notice to the owner or caretaker of the animals or places to be restricted.