

The Texas Animal Health Commission (Commission) proposes amendments to §40.1, concerning Definitions, §40.2 concerning General Requirements, §40.3, concerning Herd Status Plans for Cervidae, §40.5, concerning Testing Requirements for Elk, and new §40.7, Executive Director Declaration of a CWD Movement Restriction Zone. The proposed amendments are for the purpose of revising a number of the current requirements to address a variety of recent actions involving CWD.

The Commission currently provides a voluntary herd monitored status program for species that are susceptible to CWD. Currently, all breeders of white-tailed deer, through the direction of the Texas Parks and Wildlife Department (TPWD), participate in a CWD monitoring program through either TPWD or the Commission. The Commission is proposing to require additional cervid species to participate in surveillance for CWD. There have recently been two different CWD actions which greatly affected Texas. The TPWD recently harvested mule deer for CWD surveillance testing with the disclosure of two positive animals in Texas. The Commission acted on recommendations on a strategy to address the risk of exposure of CWD to susceptible species in Texas. The recommendations led to the creation of CWD Movement Restriction Zone(s) with restrictions put in place to protect against the exposure and spread of CWD into additional regions of Texas. These actions are being taken in a coordinated effort by both TPWD and the Commission.

Also, the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) recently announced an interim final rule to establish a national CWD Herd Certification Program and minimum requirements for interstate movement of deer, elk and moose, or cervids, in the United States. Participation in the program will be voluntary. The interim final rule amends the USDA's 2006 final rule which was never put into effect. The amendments to their CWD rule are intended to help control the spread of this disease by establishing acceptable program standards for interstate movement. The federal CWD Herd Certification Program is found in 9 CFR Subchapter B, Part 55.

Also, the Commission announced in June that red deer (*Cervus elaphus*) and Sika deer (*Cervus Nippon*) must meet the same entry requirements as other cervid species regulated by the agency such as elk and moose because they were "susceptible species" for CWD. The new entry rules for red deer and Sika deer require they originate from herds with at least five years of participation in an approved CWD monitoring program.

The agency decision was based in part on the disclosure that a farmed red deer herd in Minnesota was confirmed positive for CWD in May of this year. Furthermore, the USDA released an interim final CWD rule on June 8, 2012, which designates Sika deer and red deer as susceptible species. The USDA rule is intended to establish minimum requirements for interstate movement of deer, elk, moose, and other susceptible cervids, and to also establish a national CWD certification program. Based on the inclusion of red deer and Sika deer as susceptible species, the Commission is also changing §40.5 entitled "Testing Requirements for Elk". This section is being renamed "Requirements for CWD Susceptible Species" in order to be applicable to all cervid species known to be susceptible to CWD.

In §40.1 entitled “Definitions” the Commission is amending or adding definitions that will be used in the various other CWD sections. The Commission is adding definitions for Approved Laboratory, Certified CWD Sample Collector, CWD Susceptible Species, CWD Test Eligible, Commingled/Commingling, Farmed or Captive, Limited Contact, Official Animal Identification, and Physical Herd Inventory. The Commission is amending the definitions for Chronic Wasting Disease (CWD), CWD Profile, Herd, Official Eartag, Positive Herd, and Trace Herd.

In §40.2 entitled “General Requirements” the standard for restricting animals that are classified as trace-backs in response to the new federal standards is being amended. This is changing it from the current standard of 48 months to 60 months.

In §40.3 entitled “Herd Status Plans for Cervidae” subsection (a) provides the enrollment requirements and stipulates that herd owners who enroll must agree to maintain their herds in accordance with these requirements. Subsection (b) provides the testing requirements. Subsection (c) establishes the various levels within the herd status program. Subsection (d) provides identification requirements and that each animal required to be identified by this section must have at least two forms of animal identification attached to the animal. Subsection (e) provides the record keeping requirements that the herd owner shall maintain records for animals including any movements and for a transfer of ownership, and provide those to Commission personnel upon request. Records required to be kept under the provisions of this section shall be maintained for not less than five years. The records shall include the following information: all identifications (tags, tattoos electronic implants, etc.), birth date, species, sex, date of acquisition, and source of each animal that was not born into the herd (owner name, city, state), date of removal and destination of any animal removed from herd (owner name, city, state), date and cause of death for animals dying within the herd (if cause is known), date of CWD sample submission, submitter, owner, premises, and animal information, and official CWD test results from approved laboratory. Subsection (f) provides that a premise where a herd is located may be inspected by the Commission to determine compliance with the requirements. Subsection (g) requires that a fee be paid for participation in a Commission CWD Herd Status Program for Cervidae as provided for in §33.5 entitled “Herd Status/Certification Fees”. An annual inventory verified by Commission personnel is assessed a fee of \$100.00 per hour. Subsection (i) provides for cancellation or suspension of enrollment by the Executive Director.

In §40.5, subsection (a) is being changed to add definitions which are specific for this section. The rule is then amended throughout the section to indicate that the requirements are applicable to include North American elk or wapiti (*Cervus Canadensis*), red deer (*Cervus elaphus*), Sika deer (*Cervus Nippon*), moose (*Alces alces*), and any associated subspecies and hybrids. All mule deer, white-tailed deer, and native species under the jurisdiction of TPWD are excluded from this definition.

Section 40.7 is a new section which will delegate authority to the Executive Director to issue an order to declare a CWD high risk area or county based on sound epidemiological principles for disease detection, control, and eradication. Subsection (a) is definitions and subsection (b) provides that the Executive Director may issue an order to declare a CWD

high risk area or county. The epidemiological criteria used for designating an area or county as high risk may include the presence of disease, multiple positive animals in the area, and common husbandry and animal use practices that could lead to disease exposure. Subsection (c) indicates the necessary elements for an order and subsection (d) provides for the publication of notice.

### **FISCAL NOTE**

Mr. Sami Chadli, Director for Administration and Finance, 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 because the Commission will use already appropriated resources to service these programs and the fees that will be assessed for participation in the herd certification program or for inspection of a herd inventory. An Economic Impact Statement (EIS) is required if the proposed rule has an adverse economic effect on micro businesses. The agency has evaluated the requirements and determined that there is an economic impact because the program's certification and participation standards do create a cost to comply, but it also provides a benefit to program participants. The purpose of the program is to provide standards and quality assurance that animals moving interstate, as well as intrastate, have been monitored and can be deemed low risk for having CWD. Movement of animals creates a higher risk of exposure and transmission of a disease and therefore merits required participation in a surveillance program because of the serious negative impact to the affected industries in the state, as well as to any area where CWD is disclosed. The participation of CWD susceptible species is to provide surveillance for the disease and trace ability of exposed cervids should infection be disclosed. This program also equitably mirrors a surveillance program for white-tailed deer, as all white-tailed deer breeder facilities within the state, at the direction of TPWD, participate in a CWD monitoring program through either TPWD or the Commission. The purpose of the rules is to protect a very valuable resource in the wildlife cervids, as well as those under private ownership. The impact of CWD infection in herds in the state will greatly reduce the value of the animals causing a much greater adverse economic impact to these industries and resources than the cost of program participation.

### **PUBLIC BENEFIT NOTE**

Mr. Chadli, 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 that the Commission has a herd monitored program that can meet the new federal interstate movement requirements. Exotic livestock that are included as susceptible species are required to participate in a stronger surveillance system in order to create a surveillance safety net to prevent the spread of CWD to another part of the state or to other cervids. The delegation to the Executive Director to designate high risk areas will improve the Commission's ability to quickly respond and control disease issues related to cervids.

### **LOCAL EMPLOYMENT IMPACT STATEMENT**

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed amendments will not impact local economies.

## **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 Carol Pivonka, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at “comments@tahc.state.tx.us”.

## **STATUTORY AUTHORITY**

The amendments are proposed under the following statutory authority as found in Texas Agriculture Code §161.0541 entitled Elk Disease Surveillance Program. The section provides that the Commission by rule may establish a disease surveillance program for elk. Rules adopted under this section must: (1) require each person who moves elk in this state to have elk tested for chronic wasting disease or other diseases as determined by the Commission; (2) be designed to protect the health of the elk population in this state; and (3) include provisions for testing, identification, transportation, and inspection under the disease surveillance program. The section also provides that a person commits an offense if the person knowingly violates a rule adopted by the Commission under this section. Also, an offense under Subsection (c) is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has previously been convicted of an offense under that subsection, in which event the offense is a Class B misdemeanor.

The Commission is also vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. 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 among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That is found in §161.061.

As a control measure, 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. That is found in §161.054. 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. That authority is found in §161.048. A person is presumed to control the animal if the person is the owner or lessee of the pen, pasture, or other place in which the animal is located and has control of that place; or exercises care or control over the animal. That is under §161.002.

Section 161.007 provides that if a veterinarian employed by the Commission determines that a communicable disease exists among livestock, domestic animals, or domestic fowl or on certain premises or that livestock, domestic animals, or domestic fowl have been exposed to the agency of transmission of a communicable disease, the exposure or infection is considered to continue until the Commission determines that the exposure or infection has been eradicated through methods prescribed by rule of the Commission. Section 161.005 provides that 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.

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

#### **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) Approved Laboratory--A diagnostic laboratory approved by the APHIS Administrator to conduct official tests for CWD in accordance with 9 CFR 55.8.

(2) Certified CWD Sample Collector--An individual who has completed appropriate training recognized by his or her State on the collection and preservation of samples for CWD testing and on proper recordkeeping, and who has been certified to perform these activities by the Commission.

(3) ~~(4)~~ Chronic Wasting Disease (CWD)--A transmissible spongiform encephalopathy (TSE) of susceptible species ~~deer and elk.~~

(4) Commingled/Commingling--Farmed cervids are commingled if they are housed or penned together having direct physical contact with each other, have less than 10 feet of physical separation (except in cases of "limited contact"; see definition) or any activity where uninhibited contact occurs such as sharing an enclosure, a section of a transport vehicle, or sharing equipment, pens or stalls, pasture, or water sources/watershed (i.e., housed in a pen that receives runoff or shares a natural or manmade body of water with another pen). Commingling includes contact with bodily fluids or excrement from other

farmed animals. Farmed cervids commingled with other farmed cervids assume the status of the lowest program status animal in the group.

(5) ~~(3)~~ Commission--The Texas Animal Health Commission.

~~(5) High Risk Animal--A deer or elk which has had direct contact with an animal which has been confirmed to be affected with CWD. In herds with evidence of transmission, as determined by an epidemiological investigation, high risk animals include all animals that have had contact with the affected animal(s) at any time during a 12 month period preceding the initial observation of clinical signs. In herds without evidence of transmission, as determined by an epidemiological investigation, high risk animals include all animals that have had contact with the affected animal at any time during a 12 month period preceding death of the affected animal.~~

(6) CWD Exposed Animal--An animal that is part of a CWD-positive herd, or that has been commingled with a CWD-positive animal or resided on contaminated premises within the five years before diagnosis.

~~(6) Official Eartag--An identification eartag that provides unique identification for each individual animal by conforming to the alphanumeric National Uniform Eartagging System.~~

(7) ~~(2)~~ CWD Profile--A cervid deer or elk 12-16 months of age or older that is emaciated and exhibits some combination of clinical signs including abnormal behavior, increased salivation, tremors, stumbling, incoordination, difficulty in swallowing, excessive thirst, and excessive urination.

~~(7) Official Laboratory--The National Veterinary Services Laboratory, United States Department of Agriculture, Ames, Iowa, is the reference laboratory for CWD diagnostic procedures.~~

(8) 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.

(9) CWD Test Eligible--Unless otherwise specifically provided in these rules, all cervidae 12 months of age and over.

(10) Farmed or Captive--Privately or publicly maintained or held for economic or other purposes within a perimeter fence or confined area, or temporarily captured from a wild population for interstate movement and release.

(11) ~~(4)~~ Herd--An animal or group of animals that are: A group of deer or elk maintained on common ground, or two or more groups of deer or elk under common ownership or supervision that are geographically separated but can have an interchange or movement without regard to health status.

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

(b) A single herd also is considered to be all animals under common ownership, control, or supervision on two or more premises which are geographically separated but on which animals have been commingled or had direct contact with one another. If an owner wishes to maintain separate herds, he or she must maintain separate herd inventories, records, working facilities, water sources, equipment, and land use. Herds must be separated by a distance of 30 feet or more. No commingling of animals may occur. If movement of animals does occur between herds, this movement must be recorded as it would if they were separately owned herds.

(12) Limited Contact--Any brief contact with a farmed animal 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, sharing 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.

(13) Official Animal Identification--A device or means of animal identification approved by APHIS for use in the Certification Program 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;

(B) Animal Identification Number (AIN);

(C) Premises-based number system using a Premises Identification Number (PIN) 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.

(14) Physical Herd Inventory--One in which all animals in the herd must be restrained and individual identification recorded must be validated by the person officially performing the inventory verification.

(15) (8) Positive Herd--A herd in which a CWD-positive animal resided at the time it was diagnosed ~~diagnosis of CWD has been confirmed by the National Veterinary Services Laboratory.~~

(16) (9) Suspicious Animal—A cervid ~~deer or elk~~ which has clinical signs ~~that~~ ~~which~~ resemble the CWD profile.

(17) (10) Suspicious Herd--A herd in which one or more animals are observed with clinical signs ~~that~~ ~~which~~ resemble the CWD profile.

(18) ~~(11)~~ Trace Herd--The term includes both trace-back ~~traceback~~ and trace-forward ~~traceforward~~ herds. A trace-back ~~traceback~~ herd is any herd where an affected animal has resided during a 60 ~~36~~ month period prior to death. A trace-forward herd is any herd which has received animals from a positive herd during a 60 ~~30~~ month period prior to death of the affected animal.

#### **40.2. General Requirements.**

(a) Procedures for issuing hold orders and quarantines.

(1) All herds suspicious of CWD, in which one or more animals are observed with signs which resemble the CWD profile, shall be reported to a representative of the Commission. The herd shall be restricted by hold order until the investigation and diagnosis have been completed.

(2) Trace herds shall be restricted by hold order until an epidemiologic investigation has been completed and the herd has met all requirements specified in a herd plan.

(3) CWD positive herds shall be restricted by quarantine until the herd has met all requirements specified in a herd plan.

(4) All suspicious, trace, and positive herds not complying with the requirements of an investigation or herd plan shall be restricted by quarantine.

(b) Procedures in suspicious, trace, and positive herds.

(1) CWD suspicious animals shall be presented to a representative of the Commission for the purpose of collection and submission of appropriate samples to an official laboratory for diagnosis.

(2) Disposition of a positive herd without evidence of transmission within the herd as determined by a TAHC or USDA epidemiologist following completion of the investigation. A herd plan will be developed by a TAHC or USDA epidemiologist in consultation with the herd owner, and their veterinarian (if requested by the owner). 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 TAHC or USDA veterinarian for the purpose of early detection of CWD suspicious animals.

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

(C) Mandatory reporting of all CWD suspicious animals and all death losses. Mortality in animals 12 ~~16~~ months of age or older shall be immediately reported to a TAHC or USDA veterinarian for the purpose of collection of appropriate samples for submission to an official laboratory for CWD surveillance.

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

(i) Humanely destroyed, tested for CWD, and disposed of as specified in subsection (c) of this section, or

(ii) Maintained under hold order for 60 ~~48~~ months from the last case of CWD.

(3) Disposition of a positive herd with evidence of transmission within the herd as determined by a TAHC or USDA epidemiologist following completion of the investigation. A herd plan will be developed by a TAHC or USDA epidemiologist in consultation with the owner, and their veterinarian (if requested by the owner). 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 TAHC or USDA veterinarian for the purpose of early detection of CWD suspicious animals.

- (B) Annual verification of herd inventory by a TAHC or USDA veterinarian.
- (C) Mandatory reporting of all CWD suspicious animals and all death losses. Mortality in animals 12 ~~16~~ months of age or older shall be immediately reported to a TAHC or USDA veterinarian for the purpose of collection of appropriate samples for submission to an official laboratory for CWD surveillance.
- (D) CWD exposed ~~High risk~~ animals must be removed from the herd and:
- (i) Humanely destroyed, tested for CWD, and disposed of as specified in subsection (c) of this section, or
  - (ii) Maintained under hold order for 60 ~~48~~ months from the last case of CWD.
- (E) The herd shall remain under quarantine for 60 ~~36~~ months from the last case of CWD.
- (4) Disposition of trace herds. A herd plan will be developed by a TAHC or USDA epidemiologist in consultation with the owner, and their veterinarian (if requested by the owner). The herd plan shall include the following requirements for a period of three years:
- (A) Routine visual inspection of all animals in the herd by a TAHC or USDA veterinarian for the purpose of early detection of CWD suspicious animals.
  - (B) Annual verification of herd inventory by a TAHC or USDA veterinarian.
  - (C) Mandatory reporting of all CWD suspicious animals and all death losses. Mortality in animals 12 ~~16~~ months of age or older shall be immediately reported to a TAHC or USDA veterinarian for the purpose of collection of appropriate samples for submission to an official laboratory for CWD surveillance.
  - (D) CWD exposed ~~High risk~~ animals must be removed from the herd and:
    - (i) Humanely destroyed, tested for CWD, and disposed of as specified in subsection (c) of this section, or
    - (ii) Maintained under hold order for 60 ~~48~~ months from the last potential exposure.
- (c) Destruction of suspicious and CWD exposed ~~high risk~~ animals. Animals destroyed due to a presumptive diagnosis of CWD, including CWD exposed ~~high risk~~ animals in positive and trace herds, shall be humanely euthanized, 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 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 destroy 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[(5)] percent of the appraised value established in accordance with 9 CFR § ~~Part 55, Section~~ 55.3. This payment is in participation with any Federal payments made in accordance with 9 CFR ~~, Part 55,~~ §55.2.

### **40.3. Herd Status Plans for Cervidae.**

(a) Enrollment Requirements. Herd owners who enroll must agree to maintain their herds in accordance with the following conditions:

(1) Each animal must be identified before reaching 12 months of age. All animals less than one year of age shall be officially identified on a change of ownership or when moved from the premise of origin.

(2) Herd premises must have perimeter fencing of a minimum of eight feet in height and adequate to prevent ingress or egress of cervids.

(3) The herd owner shall:

(A) Report, within five business days, all animals that *escape* or *disappear*, and all wild cervids that enter the facility; and

(B) Test all *deaths* (including animals killed on premises maintained for hunting and animals sent to slaughter) aged 12 months or older, in accordance with subsection (b).

(4) An annual inventory:

(A) An annual inventory shall be verified by TAHC personnel, USDA personnel or an accredited veterinarian. If requested by a producer to verify the inventory, the Commission will assess a fee of \$100.00 per hour.

(B) The herd owner shall maintain herd records that include a complete inventory of animals with documents showing all escaped or disappeared animals and all test results for those animals that died.

(C) For animals seeking to qualify for movement in interstate commerce a complete physical herd inventory must be performed on at the time a herd is enrolled and a complete physical herd inventory must be performed for all herds enrolled in the CWD Herd Certification Program no more than three years after the last complete physical herd inventory for the herd.

(D) The herd owner is responsible for assembling, handling, and restraining the animals and for all costs incurred to present the animals for inspection.

(5) To maintain separate herds, a herd owner shall:

(A) Maintain separate herd inventories and records;

(B) Separate working facilities;

(C) Separate water sources;

(D) Separate equipment or clean and maintain in accordance with Appendix V of the CWD Program Standards; and

(E) 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.

(6) New animals may be introduced into the herd only from other herds enrolled in the CWD Herd Certification Program. Addition of animals from a lesser status herd will result in the receiving herd's status being lowered to that of the contributing herd.

(b) Testing Requirements. CWD test samples shall be collected and submitted to an official laboratory for CWD diagnosis using a United States Department of Agriculture (USDA) validated test. Test reporting shall be directed to the appropriate TAHC Regional Office. The samples may be collected by a state or federal animal health official, an accredited veterinarian, or a Certified CWD Sample Collector. Tissue samples submitted must include the obex and at least one retropharyngeal lymph node from each animal being tested. If samples are missed, or poor quality samples are submitted, the state epidemiologist or his designee will review the circumstances and determine if the herd status will be advanced, held, reduced, or removed.

(c) Herd Status. Herd status designation shall be assigned on the basis of the number of years of participation provided that CWD is not confirmed in the herd:

(1) First Year - starts on enrollment when the herd is in compliance with the requirements of the CWD Herd Certification Program.

(2) Second Year - starts on the anniversary date of the first year after full completion of the requirements for first year status.

(3) Third Year - starts on the anniversary date of the second year after full completion of the requirements for second year status.

(4) Fourth Year - starts on the anniversary date of the third year after full completion of the requirements for third year status.

(5) Fifth Year - starts on the anniversary date of the fourth year after full completion of the requirements for fourth year status.

(6) Certified Status – achieved after five years participation in the program and in compliance with all the program requirements.

(7) Additions to enrolled herds.

(A) Additions may originate from herds of equal or higher status with no change in the status of the receiving herd.

(B) Additions may originate from herds of lower status with the receiving herd acquiring the lower status of the herd(s) involved.

(d) Identification Requirements. Each animal required to be identified by this section must have at least two forms of animal identification attached to the animal.

(1) One of the animal identifications must be a nationally unique animal identification number that is linked to that animal in the CWD National Database.

(2) Second identification must be unique for the individual animal within the herd and linked to the CWD National Database.

(e) Record Keeping. The herd owner shall maintain records for animals including any movements and for a transfer of ownership, and provide those to Commission personnel upon request. Records required to be kept under the provisions of this section shall be maintained for not less than five years. The records shall include the following information:

(1) All identifications (tags, tattoos electronic implants, etc.);

(2) Birth date;

(3) Species;

(4) Sex;

(5) Date of acquisition and source of each animal that was not born into the herd (owner name, city, state);

(6) Date of removal and destination of any animal removed from herd (owner name, city, state);

(7) Date and cause of death for animals dying within the herd (if cause is known); and

(8) Date of CWD sample submission, submitter, owner, premises, animal information, and official CWD test results from approved laboratory.

(f) Inspection. A premise where a herd is located may be inspected by the Commission to determine compliance with the requirements.

(g) Fees. Participation in a Commission CWD Herd Status Program for Cervidae requires that a fee be paid as provided for in §33.5 of this title (relating to Herd Status/Certification Fees). An annual inventory verified by Commission personnel is assessed a fee of \$100.00 per hour.

(h) Cancellation or suspension of enrollment by the Executive Director. The Executive Director may cancel or suspend enrollment after determining that the herd owner failed to comply with any requirements of this Chapter. Before enrollment is canceled or suspended, notification will be provided which will inform the herd owner of the reasons for the action.

(1) The herd owner may appeal the cancellation of enrollment of a herd, or loss or suspension of herd status, by writing to the Executive Director within 15 days after receipt of the action. The appeal must include all of the facts and reasons upon which the herd owner relies to show that the reasons for the action are incorrect or do not support the action.

(2) The herd owner may request a meeting, in writing, with the Executive Director of the Commission within 15 days of receipt of the action and set forth a short, plain statement of the issues that shall be the subject of the meeting, after which:

(A) the meeting will be set by the Executive Director no later than 21 days from receipt of the request for a meeting;

(B) the meeting or meetings shall be held in Austin; and

(C) the Executive Director shall render his decision in writing within 14 days from date of the meeting.

(3) Upon receipt of a decision or order by the Executive Director which the herd owner wishes to appeal, the herd owner may file an appeal within 15 days in writing with the Chairman of the Commission and set forth a short, plain statement of the issues that shall be the subject of the appeal.

(4) The subsequent hearing will be conducted pursuant to the provisions of the Administrative Procedure and Texas Register Act, and chapter 32 of this title (relating to Hearing and Appeal Procedures).

(5) If the Executive Director determines, based on epidemiological principles, that other action is necessary, the Executive Director shall provide the herd owner with written notice of the action.

#### Complete Monitored Herd.

~~(1) Participating herds must have adequate perimeter fencing to prevent ingress and egress of cervids.~~

~~(2) Surveillance in participating herds is accomplished by collection and submission of appropriate samples from all cases of mortality in animals over 16 months of age. Exemptions are provided for animals consigned to commercial slaughter operations with state or federal meat inspection.~~

~~(3) An annual inventory in participating herds shall be verified by a TAHIC, USDA or Accredited veterinarian. If requested by a producer to verify the inventory, the Commission hereby assesses a fee of \$100.00 per hour. All animals over one year of age shall be identified with an official eartag or other approved identification device. All animals less than one year of age shall be officially identified on a change of ownership.~~

- (4) Herd status designation shall be assigned on the basis of the number of years of participation provided that CWD is not confirmed in the herd:
- (A) Level A—One full year of participation.
  - (B) Level B—Two to three years of participation.
  - (C) Level C—Four to five years of participation.
  - (D) Level D—Six years or more of participation.
- (5) Additions to Complete Monitored Herd.
- (A) Additions may originate from herds of equal or higher status with no change in the status of the receiving herd.
  - (B) Additions may originate from herds of lower status with the receiving herd acquiring the lower status of the herd(s) involved.

#### **40.5. Movement Testing Requirements for CWD Susceptible Species Elk.**

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

(1) Captive CWD Susceptible Species elk--Any CWD susceptible species elk captured or privately or publicly maintained or held within a perimeter fence or confined area that is designed to retain the CWD susceptible species elk under normal conditions at all times with a height of eight seven(7') feet or greater.

(2) CWD Susceptible Species--All cervid species determined to be susceptible to CWD, which means a 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 North American elk or wapiti (*Cervus Canadensis*), red deer (*Cervus elaphus*), and Sika deer (*Cervus nippon*), moose (*Alces alces*), and any associated subspecies and hybrids. All mule deer and white-tailed deer and native species under the jurisdiction from the Texas Parks and Wildlife Department are excluded from this definition.

(3) (2) Free ranging CWD Susceptible Species elk--Any CWD susceptible species elk that is not captured or contained within a fence intended to retain CWD susceptible species elk under normal conditions at all times with a height of eight seven (7') feet or greater.

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

(5) (4) Transport--Movement of an animal from one non-contiguous property or premises to another.

(b) Surveillance Requirements.

(1) Free ranging CWD susceptible species elk: In order to transport or move free ranging live CWD susceptible species elk within the state the person controlling the CWD susceptible species elk shall have tested a CWD susceptible species elk, that is 12 sixteen (16) months of age or older and from the same population as the CWD

susceptible species elk being moved, in accordance with the schedule in subparagraphs (A) - (D) of this paragraph. Tests are valid for one (~~4~~) year from date of issuance of the test results. Any CWD test results indicating "detected" means the positive CWD susceptible species elk shall be restricted by quarantine and handled in accordance with §40.2 of this chapter (relating to General Requirements), nor may any CWD susceptible species elk associated with this CWD susceptible species elk be moved or transported. All CWD susceptible species elk being transported or moved from a premise shall be individually identified in accordance with subsection (e) of this section.

(A) To authorize movement of between ~~one~~(1) to ~~ten~~(10) CWD susceptible species elk, prior to movement, there shall be ~~one~~(1) valid not-detected CWD test result filed prior to movement.

(B) To authorize movement of between ~~eleven~~(11) to ~~twenty~~(20) CWD susceptible species elk, prior to movement, there shall be ~~two~~(2) valid not-detected CWD test results filed prior to movement.

(C) To authorize movement of between ~~twenty-one~~(21) to ~~thirty~~(30) CWD susceptible species elk, prior to movement, there shall be ~~three~~(3) valid not-detected CWD test results filed prior to movement.

(D) To authorize movement of more than ~~thirty~~(30) CWD susceptible species elk, prior to movement, there shall be one valid not-detected CWD test result for every ten CWD susceptible species elk filed prior to movement.

(2) Captive CWD susceptible species elk: In order to transport or move live captive CWD susceptible species elk within the state the person controlling the CWD susceptible species elk shall have tested a ~~an~~ CWD susceptible species elk that is ~~12~~ sixteen(16) months of age or older, within his control, in accordance with the schedule in subparagraphs (A) - (D) of this paragraph. Test results are valid for one (~~4~~) year from date of issuance of the test result. Any CWD test results of "detected" means all CWD susceptible species elk associated, and including, the positive CWD susceptible species elk shall be restricted by quarantine and handled in accordance with §40.2 of this chapter. All CWD susceptible species elk being transported or moved from a premise shall be individually identified in accordance with subsection (e) of this section.

(A) To authorize movement of between ~~one~~(1) to ~~five~~(5) CWD susceptible species elk, prior to movement, there shall be one (~~4~~) valid not-detected CWD test result filed prior to movement.

(B) To authorize movement of between ~~six~~(6) to ~~ten~~(10) CWD susceptible species elk, prior to movement, there shall be ~~two~~(2) valid not-detected CWD test results, filed prior to movement.

(C) To authorize movement of between ~~eleven~~(11) to ~~fifteen~~(15) CWD susceptible species elk, prior to movement, there shall be ~~three~~(3) valid not-detected CWD test results ~~result~~, filed prior to movement.

(D) To authorize movement of more than ~~fifteen~~(15) CWD susceptible species elk, prior to movement, there shall be ~~one~~(1) valid not-detected CWD test result for every ~~five~~(5) CWD susceptible species elk, filed prior to movement.

(E) Exemptions:

(i) Captive CWD susceptible species elk enrolled with the Commission in a ~~monitored~~ herd certification program in accordance with the requirements of §40.3 of this chapter (relating to Herd Status Plans for Cervidae). After the date of January 1, 2011, a herd with Level "A" status or higher as established through §40.3 of this chapter, is exempted from the testing schedule provided for in subparagraphs (A) - (D) of this paragraph, but CWD susceptible species elk movement must be reported in accordance with subsection (d) of this section; or

(ii) CWD susceptible species Elk that are moved directly from the premises where they were trapped or held to a recognized slaughter facility. A recognized slaughter facility is a slaughter facility operated under the state or federal meat inspection laws and regulations.

(c) Testing Requirements. CWD test samples shall be collected and submitted to an official laboratory for CWD diagnosis using a United States Department of Agriculture (USDA) validated test. Test reporting shall be directed to the Commission by either writing to Texas Animal Health Commission, c/o CWD Susceptible Species Elk Movement Reporting, P.O. Box 12966, Austin, Texas 78711-2966; or by fax to (512) 719-0777 or by e-mail at comments@tahc.state.tx.us.

(d) Movement Reporting Requirements. A report of all CWD susceptible species elk that are moved onto or off of premises shall be submitted to the Commission, either in hard copy on forms provided or authorized by the Commission, or an electronic copy. The person moving the CWD susceptible species elk must have documentation with the CWD susceptible species elk being moved to show compliance with the requirements of this subsection. Such report shall be submitted within ~~forty-eight (48)~~ hours of the movement. Movement reporting shall be directed to the Commission by either writing to Texas Animal Health Commission, c/o CWD Susceptible Species Elk Movement Reporting, P.O. Box 12966, Austin, Texas 78711-2966; or by fax to (512) 719-0777; or by e-mail at comments@tahc.state.tx.us. The movement report shall include the following information:

- (1) Premises of origin;
- (2) Premises of the destination;
- (3) Number of CWD susceptible species elk being moved;
- (4) Official individual identification device number;
- (5) Other official or unofficial identification numbers;
- (6) Age/Gender; and
- (7) Test results from the testing laboratory.

(e) Identification Requirements: CWD susceptible species Elk moved or transported within this state shall be identified with an official identification device, which may include an eartag that conforms to the USDA alphanumeric national uniform ear tagging system, which is a visible and legible animal identification number (AIN) such as a Radio Frequency Identification Device (RFID) ear tag, or other identification methods approved by the Commission.

(f) Record Keeping: The buyer and seller must maintain records for all CWD susceptible species elk transported within the state or where there is a transfer of ownership, and provide those to Commission personnel upon request. Records required to be kept under

the provisions of this section shall be maintained for not less than five (5) years. The records shall include the following information:

- (1) Owner's name;
- (2) Location where the animal was sold or purchased;
- (3) Official ID and/or Ranch tag (additional field for retag);
- (4) Gender/age of animal;
- (5) Source of animal (if purchased addition);
- (6) Movement to other premises; and
- (7) Disposition.

(g) Inspection: In order to authorize movement, a premise where CWD susceptible species ~~elk~~ are located may be inspected by the Commission.

(h) Violations: A person commits an offense if the person knowingly violates a rule adopted by the Commission under this section.

(1) A violation of this Section is a Class C misdemeanor, under §161.0541 of the Texas Agriculture Code. If the violation is shown on the trial of the offense that the defendant has previously been convicted of an offense under that subsection, in which event the offense is a Class B misdemeanor.

(2) Under §161.148 of the Texas Agriculture Code the Commission may impose an administrative penalty against a person who violates this section. The penalty for a violation may be in an amount not to exceed \$1,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The amount of the penalty shall not be based on a per head basis.

#### **40.7. Executive Director Declaration of a CWD Movement Restriction Zone.**

(a) Definitions:

(1) High risk area or county--An area or county that is epidemiologically judged to have a high probability for species susceptible for having, developing or being exposed to Chronic Wasting Disease (CWD).

(2) Hold Order--A document restricting movement of a herd, unit, or individual animal pending the determination of its disease status.

(b) Order Declaring a CWD High Risk County or Area. The Executive Director of the Texas Animal Health Commission may issue an order to declare a CWD 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 positive animals in the area, and common husbandry and animal use practices that could lead to disease exposure.

(c) 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 premise is included in the area.

- (3) A statement that movement of CWD susceptible species is prohibited, if the Executive Director determines the threat of disease spread warrants such action.
- (4) Any exceptions, terms, conditions, or provisions prescribed under this chapter must be stated in the order.
- (5) State the class of persons authorized by the commission or the 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 notice:
- (A) The Executive Director may provide for 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 personnel or other person authorized by the Commission to issue a certificate or permit.
- (7) If the order prohibits the movement of any CWD susceptible species until tested negative for the disease, the Executive Director may prescribe:
- (A) any exceptions,
- (B) terms,
- (C) conditions, or
- (D) provisions that the Executive Director considers necessary or desirable to promote the objectives of this chapter or to minimize the economic impact of the equine without endangering those objectives or the health and safety of other CWD susceptible species.
- (d) Publication of Notice. The Executive Director shall give notice of the Order:
- (1) By publishing notice in a newspaper published in the county in which 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.