

The Texas Animal Health Commission ("Commission") proposes a new §40.3, concerning CWD Herd Certification Program to add to Title 4, Texas Administrative Code, Chapter 40 "Chronic Wasting Disease." The new section is proposed in conjunction with the repeal of existing §40.3 concerning Herd Certification Program for Cervidae.

BACKGROUND AND PURPOSE

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

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 is a voluntary, cooperative surveillance and certification program between the Commission, United States Department of Agriculture, herd owners, and other affected parties. The purpose of the program is to promote a consistent, national approach in controlling CWD in farmed and captive cervids and preventing the interstate spread of CWD. Participating herds that meet program requirements and have no evidence of CWD advance in status each year for five years, then are certified as low risk for CWD. Certified herd status permits interstate animal movement.

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. The Commission's CWD Herd Certification Program is currently an approved program under the federal standards; to maintain its

approved status, the Commission is required to follow the legal requirements of the federal regulations and continue to align the program with federal standards.

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

SECTION-BY-SECTION SUMMARY

Structurally, the new rule is divided into several subsections to provide clear guidance to participants. These new subsections include clear topics, including: definitions, program enrollment requirements, program requirements, herd status advancement and herd certification, effect of new animals on a herd, detection of CWD in an enrolled herd, and actions affecting enrollment.

Section 40.3(a) defines terms that are used within this section. Definitions for the terms "animal," "annual inspection window," "application and agreement," "eligible mortality," "enrolled herd," "enrollment date," "local TAHC region office," "program," "status," and "TWIMS" have been added to provide clarity to the program requirements.

Section 40.3(b) specifies the program enrollment process. This subsection lists all the prerequisites for enrollment into the program and includes all the steps a herd owner must take to have a herd enrolled in the program.

Section 40.3(c) specifies the program requirements. With the goal of clarity in mind, this section explicitly lists the requirements for participation in the program under a single subsection. While these program requirements existed in the previous rule, they were contained under multiple sections and required participants to navigate throughout the rule to determine requirements. In the new form, the requirements are enumerated with additional descriptions of the requirements for each component of the program.

This section also includes some substantive changes to eliminate ambiguity, improve the administration of the program, and align program requirements with federal standards.

Section 40.3(c)(3) modifies the former rule by specifying what reporting is required and the methods by which information is reported. This includes the requirement that immediate reporting be done by phone or email and that herds that have white-tailed deer or mule deer use the Texas Parks and Wildlife Department TWIMS system.

Section 40.3(c)(4) is amended to clarify that testing samples include postmortem tissue samples, as defined by §40.1(24) to mean the obex, both medial retropharyngeal lymph nodes, and an official animal identification device attached to ear or skin tissue collected and prepared under federal guidelines for CWD postmortem sample collection. The rule also specifies that the postmortem tissue samples must be prepared and collected by a state or federal health official, an accredited veterinarian or a CWD postmortem sample collector. The rule does not change the requirement that it be submitted within seven days or the requirement to report test results. The rule is amended to provide additional information regarding what will be considered missed or poor-quality samples and to provide guidelines for replacement testing.

Section 40.3(c)(5), regarding recordkeeping, maintains the same requirements as the previous rule but adds the requirement that herd owners with white-tailed deer and mule deer utilize TWIMS.

Section 40.3(c)(6) is amended to specify that annual inspections will take place during the annual inspection window, which is: "The period of time each year for an enrolled herd to complete an annual inspection. Unless a specific period is set by a commission representative in writing, the annual inspection window begins 30 days before the month and day of the enrollment date and ends 30 days after the month and day of the enrollment date." Previously, the inspection was to occur 11-13 months from the last inspection. That rule created confusion for participants and was difficult to administer. This proposed change would mandate that the annual inspection occur during the annual inspection window which will simplify this requirement for participants and for the Commission. This modification also allows for some flexibility for participants to request an adjustment to their inspection window to meet the needs of their herd. This should help eliminate and reduce missed or late annual inspections to keep participating herds in compliance with the regulations. This subsection also amends the visual verification requirement to require that every animal in the herd have one required identification visually verified. The prior rule required visual verification on 50 percent of the animals. This change is made to align with federal standards and ensure inventories are annually reconciled.

Section 40.3(c)(7), regarding a complete physical herd inventory, is amended to add additional flexibility for participants to complete physical herd inventory in accordance with federal standards. In order to visually verify both forms of identification, animals may need to be temporarily gathered in pens or by other means. During previous rule proposals, public comments indicated that it is safer to gather animals at certain times of the year, or complete a physical inventory on groups of animals while the animals are already penned. Participants indicated that performing a physical inventory at the three-year mark did not suit herd management. Based on public comments, observations of Commission staff, and consultation with the United States Department of Agriculture, this rule is modified to allow owners flexibility to complete the inventory at a time that best suits their herd.

Section 40.3(d) restructures the herd status advancement and herd certification standards. This portion of the rule is amended to mirror the federal regulations regarding herd status advancement and herd certification and follow the year-for-year advancement in the federal standards.

Section 40.3(e) relates to the effect of new animals on herd status. This amendment follows the previous rule in that, if new animals are acquired from a herd from a lower status, the herd will be lowered to match the status of the new animals. Where the amendment differs from the previous version, is that it specifies that the herd must be held in the lower status for at least 12 months, and can only advance status at the next anniversary of the enrollment date. This change is made to improve administration of the program. Because many of the requirements of the program follow a yearly cycle, it was administratively unwieldy to track and ensure all requirements for status advancement are met when the status date shifted due to the introduction of a new animal. This new rule will streamline that process and reduce confusion for participants regarding when their herds are eligible for status advancement.

Section 40.3(f) is a newly added section that explicitly addresses situations where CWD is detected or is suspected in an enrolled herd to comply with federal standards. This amendment is made to clarify the steps that the Commission will take once there is a CWD-positive animal or CWD-suspect animal and to align with federal standards.

The last subsection, §40.3(h) makes minor changes to clarify the actions affecting enrollment and the administrative appeal process. Because the program is voluntary

and requires compliance with the program requirements and the rules contained in Chapter 40, the Commission is authorized to lower a herd status, suspend enrollment, or revoke program enrollment entirely. This rule specifies the process that a participant may challenge an action that affects herd enrollment.

FISCAL NOTE

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

PUBLIC BENEFIT

Ms. Sines determined that for each year of the first five years the proposed rules are in effect, the anticipated public benefits are to provide clarity and guidance for participants in the CWD Herd Certification Program and improve program administration. Ultimately, the program provides protection for herds with CWD susceptible species through biosecurity practices and surveillance measures.

LOCAL EMPLOYMENT IMPACT STATEMENT

The Commission determined that the proposed rules will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

MAJOR ENVIRONMENTAL RULE

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

TAKINGS ASSESSMENT

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

ECONOMIC IMPACT STATEMENT

The Commission determined that the proposed amendments to §40.3 do not impose any additional requirements that would impact a small business or microbusiness pursuant to Texas Government Code, Chapter 2006.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, the Commission prepared the following Government Growth Impact Statement (GGIS). For each year of the first five years the proposed rules would be in effect, the Commission determined the following:

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

8. The proposed rules will not adversely affect this state's economy.

COST TO REGULATED PERSONS

The proposed amendments to §40.3 do not impose additional costs on regulated persons and are designed to provide flexibility to reduce the administrative burden of participants under the program. 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. Section 2001.0045 of the Texas Government Code does not apply to rules adopted under Section 161.041.

REQUEST FOR COMMENT

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. Comments must be received no later than thirty (30) days from the date of publication of this proposal in the *Texas Register*. When faxing or emailing comments, please indicate "Comments on Chapter 40-CWD Rules" in the subject line.

STATUTORY AUTHORITY

The new proposed §40.3 within Chapter 40 of the Texas Administrative Code is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code.

The Commission is vested by statute, §161.041(a), titled "Disease Control," to protect all livestock, exotic livestock, domestic fowl, and exotic fowl from disease. The Commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl, even if the agent of transmission is an animal species that is not subject to the jurisdiction of the Commission.

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

Pursuant to §161.0417, titled "Authorized Personnel for Disease Control," the Commission must authorize a person, including a veterinarian, to engage in an

activity that is part of a state or federal disease control or eradication program for animals.

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

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

Pursuant to §161.048, titled "Inspection of Shipment of Animals or Animal 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 §161.060, titled "Authority to Set and Collect Fees," the Commission may charge a fee for an inspection made by the Commission as provided by Commission rule.

Pursuant to §161.061, titled "Establishment," if the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or any agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. The Commission may, through §161.061(c), establish a quarantine to prohibit or regulate the movement of any article or animal the Commission

designates to be a carrier of a disease listed in Section 161.041 or a potential carrier of one of those diseases, if movement is not otherwise regulated or prohibited for an animal into an affected area, including a county district, pasture, lot, ranch, field, range, thoroughfare, building, stable, or stockyard pen.

Pursuant to §161.101, titled "Duty to Report," a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the disease, if required by the Commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the Commission within 24 hours after diagnosis of the disease.

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

<rule>

RULE §40.3. CWD Herd Certification Program

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

(1) Animal--An animal in the Cervidae family.

(2) Annual inspection window--The period of time each year for an enrolled herd to complete an annual inspection. Unless a specific period is set by a commission representative in writing, the annual inspection window begins 30 days before the month and day of the enrollment date and ends 30 days after the month and day of the enrollment date.

(3) Application and Agreement--The *CWD Herd Certification Application and Agreement*, a form published by the commission that is available on the commission website and available at TAHC region offices.

(4) Eligible Mortality--The death from any cause of an animal 12 months of age or older, including hunter harvests and animals slaughtered at a slaughter facility or processing facility.

(5) Enrolled herd--A herd that has been approved for enrollment in the program.

(6) Enrollment Date--The day, month, and year in which an owner's herd is officially enrolled in the Program.

(7) Local TAHC Region Office--The TAHC Region Office that covers the county in which the herd's premises is located.

(8) Program--The CWD Herd Certification Program administered by the commission.

(9) Status--The status of a herd assigned under the program that follows the requirements in 9 CFR Part 55. Herd status is based on the number of years of compliance with the requirements of the program without evidence of the disease and without any specific determinations that the herd has contained or has been exposed to CWD.

(10) TWIMS--Texas Wildlife Information Management Services database operated by the Texas Parks and Wildlife Department's wildlife division

(b) Program Enrollment Process.

(1) Application and Agreement. For each herd, an owner shall submit a signed application and agreement to the local TAHC region office. An owner may enroll multiple herds but is required to submit an application and agreement for each herd and maintain each herd separately in accordance with this section.

(2) Enrollment Inspection. After application submission, a commission representative will schedule and conduct an enrollment inspection. For each herd, a commission representative will:

(A) visually observe each animal in the herd and the herd as a whole, for clinical signs of CWD;

(B) verify and record the two unique animal identification numbers for each individual animal, one of which is a nationally unique official animal identification, all required identification devices will be visually verified and reconciled with the herd owner's records;

(C) perform a herd inventory not more than 60 days prior to the herd's date of enrollment, unless an alternative timeframe is suggested by a commission representative and approved by the executive director; and

(D) identify the premises with a premise-based number system using a Premises Identification Number (PIN) or Location Identification Number (LID) and confirm perimeter fencing is adequate to prevent ingress and egress of cervids, structurally sound, in good repair, and meets any applicable height requirements.

(3) Fees. The commission will assess a fee of \$100 per hour for the enrollment inspection performed by a commission representative. The herd owner is responsible for the fees assessed.

(4) Enrollment approval by a commission representative. After the enrollment inspection is complete, a commission representative will approve or deny the application. The date the application is approved is the enrollment date.

(c) Program Requirements. Herd owners who enroll in the program must comply with the following requirements:

(1) Premises.

(A) Maintain the enrolled herd on the identified premises.

(B) Premises must have perimeter fencing adequate to prevent ingress and or egress of cervids. For herds established after October 15, 2021, the fence must be a minimum of eight feet high.

(C) To maintain separate herds, a herd owner shall maintain herds on separate identified premises that have:

(i) separate herd inventories and records;

(ii) separate working facilities;

(iii) separate water sources;

(iv) separate equipment; and

(v) at least 30 feet between the perimeter fencing around separate herds, and no commingling of animals may occur.

(D) Movement of animals between separate herds by the same owner must be recorded as if they were separately owned herds.

(2) Animal Identification.

(A) Each animal is required to be identified by two forms of animal identification attached to the animal.

(i) One of the identifications must be a nationally unique official animal identification number linked to that animal in the CWD National Database or a commission approved database.

(ii) The second identification must be unique for the individual animal within the herd and linked to the CWD National Database or a commission approved database.

(B) Identify all animals born in the herd.

(i) Each animal born must be identified no later than March 31 of the year following the year the animal is born with the required identification.

(ii) Each animal born that changes ownership or is moved from the premises of origin before 12 months of age shall be identified with required identification prior to change of ownership or movement from the premises of origin.

(3) Reporting requirements.

(A) Required reporting. The herd owner shall:

(i) immediately report upon discovery all herd animals that escape or disappear;

(ii) immediately report upon discovery all free-ranging cervids that enter the facility;

(iii) immediately report a CWD-suspect animal;

(iv) report test results and provide laboratory reports within 14 days of receiving the results of an official CWD test;

(v) report all animals added to the herd within five business days of the acquisition, the report should include the official identification, species, age, and sex of the animal, date of acquisition, and name and identification of the herd

of origin;

(vi) report all incidences of commingled animals within five business days, the report should include the official identification, species, age, and sex of the animal, when the commingling occurred, the length of time the commingling occurred, and name and identification of the herd of origin of the commingled animal; and

(vii) report all results from annual inspections and complete physical herd inventories performed by a TAHC authorized veterinarian within 14 days.

(B) Methods of reporting.

(i) Immediate reporting must be by phone or email to a local TAHC region office.

(ii) Enrolled herds with white-tailed deer and mule deer must use TWIMS to track births, deaths, CWD test results, and animal movement.

(iii) All other reporting must be made to the local TAHC region office in writing. Reporting may be submitted by email, fax, mail, or hand delivery during business hours. Reporting must be transmitted or postmarked by the reporting deadline.

(4) Testing.

(A) The herd owner must test all eligible mortalities for CWD via immunohistochemistry (IHC) testing with an official CWD test.

(B) 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 and submitted to an approved laboratory within seven days.

(C) Test results must be reported in accordance this section.

(D) If samples are missed or poor-quality samples are submitted, a commission representative will review the circumstances and determine if replacement testing is needed and set the replacement testing requirements. Missing samples occur when any animal 12 months of age or older dies, is

harvested, slaughtered, escapes, or is otherwise lost and samples are not submitted for an official CWD test. Poor quality samples include samples that are severely autolyzed, from the wrong portion of the brain, the wrong tissue, or not testable for other reasons.

(E) If the number of eligible mortalities is less than five percent of the herd when averaged over a three-year period, a commission representative will review the circumstances and determine if replacement testing is needed and set the replacement testing requirements.

(F) Approval for replacement testing must be obtained prior to performing the replacement testing. Animals eligible to be tested as replacements will be determined by a commission representative. If approved, replacement testing using postmortem samples will use a one to one replacement rate. If approved and antemortem testing is available for the species at an approved laboratory, replacement testing using antemortem testing will use a five to one replacement rate.

(5) Recordkeeping.

(A) The herd owner shall maintain herd records that include a complete inventory of animals with documents showing all births, deaths, acquisitions, dispositions, and escaped or disappeared animals.

(B) Herd owner inventory records, maintained outside of TWIMS, should indicate natural additions with "NA," purchased additions with "PA," and retagged animals with "RT."

(C) The herd owner shall maintain all test result records for those animals that died and be able to produce the full laboratory results upon request.

(D) For white-tailed deer and mule deer, all required animal information must be entered into TWIMS, including uploading full laboratory results.

(E) For animals that have left the herd or have died, the owner must maintain the following information for five years:

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

(ii) Birth date;

(iii) Species;

(iv) Sex;

(v) Date of acquisition and source of each animal that was not born into the herd, including name and address;

(vi) Date of removal and destination of any animal removed from the herd, including name and address;

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

(viii) Date of CWD sample submission, submitter, owner, premises, animal information, and official CWD test results; and

(ix) Age.

(F) Records will be verified for completeness and accuracy at each annual inspection and complete physical inventory.

(G) Records must be made available to a commission or USDA representative upon request.

(6) Annual Inspection.

(A) Each year an annual inspection must be conducted by a commission representative or a TAHC Authorized Veterinarian.

(B) Unless authorized in writing by a commission representative, the annual inspection must occur during the herd's annual inspection window.

(C) At each annual inspection, a commission representative or TAHC Authorized Veterinarian will:

(i) inventory the herd by visually verifying one required identification on every animal;

(ii) reconcile the previous inventory and verify all dispositions and acquisitions are documented;

(iii) visually observe the herd for clinical signs of CWD;

(iv) verify records are complete and accurate;

(v) verify that CWD sampling requirements are met, test records are complete, and verify that all deficient, missed, or poor-quality samples were documented; and

(vi) inspect perimeter fencing for minimum standards and document needed repairs.

(D) A commission representative or TAHC Authorized Veterinarian will certify by signature that all annual inspection requirements are met and that the herd complies with the program.

(E) Results from the complete physical herd inventory must be reported to the commission within 14 days, unless the complete physical herd inventory is performed by a commission representative.

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

(G) If the herd owner requests the annual inspection be conducted by a commission employee, the commission will assess a fee of \$100 per hour for the annual inspection performed by a commission representative. The herd owner is responsible for the fees assessed.

(H) If the annual inspection will be conducted by a TAHC Authorized Veterinarian, the herd owner must notify the local TAHC region office by phone or email at least 72 hours prior to any inspection performed by a TAHC Authorized Veterinarian.

(7) Complete Physical Herd Inventory.

(A) Every three years, a complete physical herd inventory must be conducted by a commission representative or a TAHC Authorized Veterinarian.

(B) Each complete physical herd inventory may occur any time before 36 months from the enrollment date or last complete physical herd inventory. Discrete groups of animals (e.g. does, bucks) may be physically inventoried at separate times

as long as all animals are inventoried during the same status year. A complete physical herd inventory may be combined with an annual inspection or may occur at a separate time.

(C) During the complete physical herd inventory a commission representative or TAHC Authorized Veterinarian will:

(i) conduct a physical inventory of the herd by visually verifying both forms of required identification on every animal and match the identifications to the herd's written or electronic records;

(ii) reconcile the previous inventory and verify all dispositions and acquisitions are documented;

(iii) visually observe the herd for clinical signs of CWD;

(iv) verify records are complete and accurate;

(v) verify that CWD sampling requirements are met, test records are complete, and verify that all deficient, missed, or poor-quality samples were documented; and

(vi) inspect perimeter fencing for minimum standards and document needed repairs.

(D) A commission representative or TAHC Authorized Veterinarian will certify by signature that all complete physical herd inventory requirements are met and the herd complies with the program.

(E) Results from the complete physical herd inventory must be reported to the commission within 14 days, unless the complete physical herd inventory is performed by a commission representative.

(F) The herd owner is responsible for assembling, handling, and restraining the animals and for all costs incurred to present the animals for the complete physical herd inventory.

(G) If the herd owner requests the complete physical herd inventory be conducted by a commission employee, the commission will assess a fee of \$100 per hour for the complete physical herd inventory performed by a commission representative. The herd owner is responsible for the fees assessed.

(H) If the complete physical herd inventory will be conducted by a TAHC Authorized Veterinarian, the herd owner must notify the local TAHC region office by phone or email at least 72 hours prior to any complete physical herd inventory performed by a TAHC Authorized Veterinarian.

(8) Compliance Inspections. A herd owner must allow a commission representative to inspect premises where a herd is located or any animal at any time to determine compliance with the program and the requirements of this chapter. The herd owner is responsible for assembling, handling, and restraining the animals and for all costs incurred to present the animals for inspection.

(d) Herd Status Advancement and Herd Certification

(1) Initial status.

(A) When a herd is first enrolled in the program, it will be placed in first year status.

(B) When a herd is first enrolled in the program and the herd is composed solely of animals obtained from herds already enrolled in the program, the newly enrolled herd may be assigned the same status as the lowest status of any herd that provided animals for the new herd.

(C) When a herd is first enrolled in the program and the herd is composed of animals obtained solely from other certified herds, the newly enrolled herd may be assigned the status of a certified herd.

(2) Status Advancement. If the herd continues to meet the requirements of the CWD Herd Certification Program, each year, no sooner than the anniversary of the enrollment date, the herd status will be upgraded by one year; i.e., second year status, third year status, fourth year status, and fifth year status.

(3) Certified herd status. If the herd continues to meet the requirements of the CWD Herd Certification Program, no sooner than one year from the date a herd is placed in fifth year status, the herd status will be changed to certified, and the herd will remain in certified status as long as it is enrolled in the program, continues to meet the requirements under the program, and its status is not suspended or revoked.

(e) Effect of new animals on herd status.

(1) A herd may add animals from herds with the same or a higher herd status in the program with no negative impact on the certification status of the receiving herd.

(2) If animals are acquired from a herd with a lower herd status, the receiving herd reverts to the program status of the source herd. Following the addition, the herd will be held at that lower status for at least 12 months. After 12 months have elapsed since the addition, the herd may advance status at the next anniversary of the enrollment date.

(3) If an enrolled herd adds animals from a nonparticipating herd, the receiving herd reverts to first year status. Following the addition, the herd will be held at first year status for at least 12 months. After 12 months have elapsed since the addition, the herd may advance status at the next anniversary of the enrollment date.

(4) If any animals in the herd are commingled with animals from native ingress or from a nonparticipating herd, the herd will revert to first year status. If any animals in the herd are commingled with an animal from a herd with a lower program status, the herd with the higher program status will be reduced to the status of the herd with which its animals commingled. After 12 months have elapsed since the addition, the herd may advance status at the next anniversary of the enrollment date.

(g) Detection of CWD in an enrolled herd.

(1) If a herd is designated as a CWD-positive herd or a CWD-exposed herd, its program enrollment will be revoked and the herd may only reenroll after entering into a herd plan and meeting the requirements of the herd plan.

(2) If a herd is designated a CWD-suspect herd or a CWD-trace herd, it will immediately be placed in suspended status pending an epidemiologic investigation by the commission.

(A) If the epidemiologic investigation determines that the herd was not commingled with a CWD-positive animal, the herd will be reinstated to its former program status, and the time spent in suspended status will count toward its promotion to the next herd status level.

(B) If the epidemiologic investigation determines that the herd was commingled with a CWD-positive animal, its program enrollment will be revoked and it will be designated a CWD-exposed herd.

(h) Actions affecting enrollment.

(1) If a herd owner does not comply with the requirements of this chapter, after notice is given, a commission representative may lower herd status, suspend enrollment, or revoke program enrollment.

(2) Protest of an action affecting enrollment.

(A) The herd owner may protest an action affecting enrollment by writing to the executive director within 15 days after receipt of notice of the action. The owner must include all of the facts and supportive evidence which the herd owner relies upon to show that the reasons for the action were incorrect.

(B) The herd owner may request a meeting with the executive director. The request for meeting must be in writing and accompany the protest. If needed, the meeting will be set by a commission representative no later than 21 days from the receipt of the request. The meeting will be held in Austin.

(C) The executive director shall render a written decision regarding the action within 30 days after receipt of the protest of the action or 30 days after the meeting with the herd owner, whichever is later. The executive director may affirm, rescind, or modify the action.

(3) Appeal of the executive director's decision.

(A) To appeal the decision of the executive director, the herd owner must file a notice of appeal within 15 days of the decision in writing with the executive director at the commission's office in Austin. The notice of appeal must specifically state the issues for consideration on appeal.

(B) A subsequent hearing on the specific issues appealed will be held in Austin, pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, the rules for the State Office of Administrative Hearings, and Chapter 32 of this title (relating to Hearing and Appeal Procedures).