

The Texas Animal Health Commission (commission) proposes amendments to §40.4, concerning Entry Requirements, and a new §40.6, concerning CWD Movement Restriction Zones, in Chapter 40, which is entitled “Chronic Wasting Disease”.

The commission is also proposing the repeal of the existing §40.6, concerning CWD Movement Restriction Zone, with the new §40.6 replacing it in its entirety.

The purpose of the amendments to §40.4 is to prohibit the entry of the carcasses or parts of susceptible species outside of Texas where Chronic Wasting Disease (CWD) has been detected in free-ranging or captive herds, unless certain conditions have been met. The purpose of a new §40.6 is to create additional CWD movement restriction zones in areas where animals have been disclosed as CWD positive.

CWD is a transmissible spongiform encephalopathy (TSE). CWD is a progressive, fatal, degenerative neurological disease of farmed and free-ranging deer, elk, and moose. TSEs include a number of different diseases affecting animals or humans including bovine spongiform encephalopathy (BSE) in cattle, scrapie in sheep and goats, and Creutzfeldt-Jacob disease (CJD) in humans. Although CWD shares certain features with other TSEs, it is a distinct disease affecting only deer, elk, and moose. The species known to be susceptible to CWD are North American elk or wapiti (*Cervus Canadensis*), red deer (*Cervus elaphus*), mule deer (*Odocoileus hemionus*), black-tailed deer (*Odocoileus hemionus*), white-tailed deer (*Odocoileus virginianus*), Sika deer (*Cervus Nippon*), and moose (*Alces alces*). The species that are found in Texas are white-tailed deer, mule deer, elk, red deer, and Sika deer.

The agent that causes CWD and other TSEs has not been completely characterized; however, the theory supported by most scientists is that TSE diseases are caused by proteins called prions. The most recent research suggests that CWD is directly transmitted from one animal to another through saliva, feces, urine, and/or antler velvet which contain abnormal prions shed in those body fluids and tissues. Direct transmission can also occur between cervids and infected carcasses. The disease has a long incubation period, and animals infected with CWD may not produce any visible signs of the disease for a number of months to years after they become infected. An animal may shed prions without obvious clinical symptoms for an unknown amount of time. The disease can also be indirectly transmitted through contaminated environments and since prions are very resistant to degradation persistence may be in some environments for years.

Clinical signs of CWD may include weight loss, salivation, incoordination, behavior changes, and pneumonia. CWD primarily affects the nervous system in cervids but accumulation of the prion also occurs in other body systems including the lymphatic system. Therefore, the official tests (i.e. Elisa and IHC) designated by USDA target the identification of prions in the nervous and lymphatic systems. Presently, the only confirmatory diagnostic test for CWD is the Immunohistochemistry (IHC) test performed on the obex tissue of the brain and specific lymphoid tissues. This is a post-mortem test in which the animal must be dead to be tested. There is no known treatment or vaccine for CWD.

The commission works in coordination and collaboration with the Texas Parks and Wildlife Department (TPWD) to address CWD issues and concerns. All mule deer, white-tailed deer, and native species are under the jurisdiction of TPWD. They are classified as property of the state of Texas and TPWD manages them as a valuable and important resource of the state. TPWD through specific statutory authorization does allow for individuals to breed, trade, sell, and move white-tailed or mule deer that meet certain legal requirements.

Elk, Sika deer, and red deer are also classified as CWD susceptible species, but are not indigenous to the state and therefore, not subject to the jurisdiction of TPWD. They are classified as exotic livestock that are privately owned and are subject to the disease requirements of the commission. Texas has an unknown number of exotic cervid species that are maintained on private property behind high fences. Many of these facilities are hunting ranches, which are not subject to the seasonal and regulatory hunting restrictions of TPWD.

Surveillance testing is a key, critical component to early detection of the disease and also the monitoring of the disease prevalence in all areas of the state where any CWD susceptible species inhabit. Risk based surveillance is directing surveillance activities in a particular geographic area where CWD is most likely to be found based on host factors and potential exposure. An inadequate surveillance program promotes the spread of disease unnoticed and ultimately makes the task of disease freedom exponentially more difficult. In today's current environment, the mobility and transportation of agricultural animals throughout the state and country has greatly increased the spread of diseases and makes risk mitigation more difficult and complex. A good surveillance system supports our animal industries by having confidence in the health and marketability of their animals.

Though the white-tailed deer population in Texas has had significant historical surveillance, very few elk, red deer or Sika deer herds have participated in a CWD monitoring program providing very little CWD testing surveillance for these cervid species. The purpose of this proposal is to have surveillance where CWD has been detected and poses a risk.

CWD was first recognized in 1967 in captive mule deer in Colorado. The disease has since been documented in captive and/or free-ranging deer and elk in 23 states and 2 Canadian provinces, including Texas. In 2012, CWD was first discovered in Texas in a free-ranging mule deer in the Hueco Mountains along the New Mexico border in far West Texas.

On June 30, 2015, a two year old white-tailed deer at a breeding facility (Index facility) located in Medina County was confirmed positive for CWD. Through testing requirements associated with tracing of deer either from or moved to this facility, CWD has also been confirmed in 24 other captive white-tailed deer as of July 30, 2016 which includes three facilities other than the Index facility. Two of the three additional facilities are in Medina and Uvalde counties and one facility is in Lavaca County. To date, CWD detected in white-tailed deer have all originated in the deer breeder population rather than

a native origin. Also, a free-ranging mule deer buck, harvested in Hartley County, was confirmed positive for CWD on March 3, 2016. Hartley County is located in the Texas Panhandle immediately to the south of Dalhart and borders New Mexico.

A task force comprised of members of deer and exotic livestock associations, private veterinary practitioners, and wildlife biologists assisted the TPWD and commission staff in developing a CWD response plan for restriction zones. They provided support for both agencies on a strategy to address the risk of exposure of CWD to susceptible species in Texas. In 2012, both TPWD and the commission created a restricted zone in the area of far West Texas that requires testing of susceptible species and restricts movement of live animals and carcasses from the zone. The commission and TPWD are proposing additional restricted zones which will require testing of susceptible species in those areas and restricted movement of live animals. TPWD has proposed its movement restriction zones in the July 22, 2016, issue of the *Texas Register* (41 TexReg 5391).

Deer populations in other states where CWD exists have experienced significant population declines. As the prevalence rates increase and geographic distribution expands, hunters may alter hunting behaviors which may include avoiding areas with high CWD prevalence. This could have an adverse economic impact on local communities dependent on hunting revenue and could negatively affect cervid populations. Considering that CWD has been found within these identified zones, it may be established in the population and in the environment at this time.

CWD has been proven to be transmissible by direct contact between susceptible species and through environmental contamination. Those realities can create adverse economic impacts through the reluctance to purchase or to hunt a susceptible species from a facility in an area where CWD has been confirmed. CWD contaminates the environments which creates a serious obstacle for controlling and eradicating the disease. This can negatively impact ranching, hunting, real estate, tourism, and wildlife management-related economies, unless it is contained and controlled. The purpose of the restriction zones is to both reduce the risk of CWD being spread from areas where it might exist and to increase detection of CWD by increased surveillance.

This rule is for the purpose of protecting the susceptible species and their associated economic value from being exposed to CWD as well as to provide the necessary surveillance in these areas to epidemiologically determine the presence and potentially identify a source of the exposure for animals in an area. Ultimately, the goal is to be able to make a determination with a high confidence rate regarding the presence of the disease. The data collected from the testing in these areas can help to either classify the area as free of exposure or hopefully pinpoint a source or specific area for focusing disease eradication. Thus, the proposed rules, by providing a mechanism to minimize the spread of CWD, could also protect the economic interests of those involved in this industry.

Section 40.6(a) creates definitions that are specifically applied to this section and include “Check Station”, “CWD Containment Zone”, “CWD Surveillance Zone”, “CWD Non-Native Susceptible Species”, “CWD Native Susceptible Species”, “Department”, “High Fence Premise” and “Unnatural Movement”.

Section 40.6(b) provides for a declaration of area(s) being restricted for CWD in order to protect other areas of the state from the risk of exposure to and the spread of CWD and to have the necessary surveillance to epidemiologically assess the risk.

Section 40.6(b)(1) defines the boundaries for the Containment Zone 1 and 2 and indicates that the Containment Zone 3 in Medina and Uvalde counties is limited to facilities already restricted by herd plans of the commission.

Section 40.6(b)(2) defines the boundaries for the Surveillance Zone 1, 2 and 3.

Section 40.6(c) provides requirements for animals within the Containment Zone. It provides that for movement from a CZ, no non-native CWD susceptible species may be transported outside the CZ unless from a herd with a certified status as established through §40.3(c)(6) (relating to Herd Status Plans for Cervidae) of this chapter. This is to prevent unmonitored animals from being transported outside the zone and potentially posing a risk of exposing or spreading CWD to another part of the state. It also addresses that non-native CWD susceptible species may be released within the CZ. It provides test requirements for these species, as well as carcass movement restrictions. Any escaped non-native CWD susceptible species which originated or resided in a CZ shall be captured and returned to the high fence premise of origin. Herd plans will have primacy for facilities within the zone and all non-native CWD susceptible species released in a CZ shall be officially identified.

Section 40.6(d) provides requirements for animals within the Surveillance Zone. It provides that prior to movement of a non-native CWD susceptible species, the premise of origin shall have an epidemiological risk assessment conducted by the commission. This will allow the agency to individually evaluate the risk of movement from a facility based on that facility's testing history, current status, and other epidemiological factors. It provides test requirements for these species, as well as carcass movement restrictions. Any escaped non-native CWD susceptible species which originated or resided in an SZ shall be captured and returned to the high fence premise of origin. Herd plans will have primacy for facilities within the zone and all non-native CWD susceptible species released in an SZ shall be officially identified.

Section 40.6(e) provides for Carcass Movement Restrictions, which states that no person shall transport or cause the transport of any part of a susceptible species from a property within a CZ or SZ unless it meets certain requirements.

Section 40.6(f) provides for the Executive Director to authorize movement if necessary or desirable to promote the objectives of this chapter and/or to minimize the economic impact of the restricted susceptible species without endangering those objectives or the health and safety of other susceptible species within the state.

Section 40.6(g) provides for the commission staff to annually review the movement restrictions zones and make recommendations to the commission on whether the zones should be modified or rescinded.

FISCAL NOTE

Ms. Larissa Schmidt, Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the rules. The commission will administer and enforce the rules as part of their current functions and handle it within current budgetary resources.

Chapter 2006 of the Texas Government Code, provides that a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. Government Code, §2006.001(1), defines a small or micro-business as a legal entity “formed for the purpose of making a profit” and “independently owned and operated.” A micro-business is a business with 20 or fewer employees. A small business is defined as a business with fewer than 100 employees, or less than \$6 million in annual gross receipts. The commission does not have any requirement that someone who has these susceptible species must provide financial information to the commission, but believes that there are facilities which would qualify as a small or micro-business. Since the rules as proposed would impact the ability of someone to engage in certain activities undertaken to generate a profit, the proposed rules may have an adverse impact on persons having susceptible exotic species. The extent of such adverse economic impact could consist of loss of revenue as a result of being unable to move susceptible species from a Containment Zone. However, based on the risk of disease exposure the need for the requirement is merited.

Surveillance testing is a key, critical competent to determine whether a disease exists as well as helping to establish a prevalence number for how many animals may be affected. Surveillance also helps to support Texas’ animal industries because it allows individuals to have confidence in the health of these animals, which makes them more marketable. Failure to perform adequate surveillance allows a disease to circulate unnoticed among animal hosts that spread the disease creating a greater disease problem and a far more difficult response task. In today’s current environment the mobility and transportation of animals throughout the state and country has greatly increased exposure to diseases. The presence of CWD could greatly affect how the deer population is perceived by in-state and out-of-state hunters and could have serious negative consequences on the vital heritage and economic industry of hunting these animals in Texas.

The commission has a voluntary CWD Certified Status Program which requires 100% testing of all mortalities in order to maintain and advance in status. The cost of testing is assumed by the herd owner. The requirements for this program are located in 4 Tex. Admin. Code §40.3. The movement requirements for CWD susceptible species which are classified as exotic livestock is that herd owners are required to test 20% of disclosed mortalities in order to move these animals intrastate. The cost of testing is assumed by the herd owner. These movement requirements are found in 4 Texas. Admin. Code §40.5. Though the white-tailed deer population in Texas has had significant historical surveillance, very few elk, red deer or Sika deer herds historically participated in a CWD monitoring program providing very little CWD testing surveillance for these susceptible exotic cervid species.

These rules are for the purpose of obtaining risk based surveillance by directing surveillance activities in a particular geographic area where CWD has been disclosed. An inadequate surveillance program promotes the spread of disease unnoticed and ultimately makes the task of disease freedom exponentially more difficult. In today's current environment, the mobility and transportation of agricultural animals throughout the state and country has greatly increased the spread of diseases and makes risk mitigation more difficult and complex. A good surveillance system supports our animal industries by having confidence in the health and marketability of their animals. The presence of this disease could greatly affect how the deer population is perceived by Texans and could have serious negative consequences on the vital heritage and economic industry of hunting these animals in Texas. The purpose of these rules is not to adversely affect small business, but rather to protect valuable statewide resources through surveillance.

It is also impossible to properly estimate the number of small businesses subject to the proposed rule. The rule proposal applies to limited areas within the state. Elk, Sika deer, and red deer are classified as exotic livestock and there is no registration requirement, which makes it almost impossible for the commission to properly estimate who owns or maintains them. In addition, Texas has an unknown number of exotic cervid species that are maintained on private property behind high fences.

It should be noted that the commission has had a restriction zone in far West Texas since 2012 and identified as CZ and SZ 1 in this proposal. There have never been any businesses identified, other than hunting of these exotic susceptible species, in that zone that were negatively impacted. The commission will hold public meetings in these areas to identify all those locations or facilities that could be negatively impacted. The commission believes that only the zone for Medina and Uvalde counties would have a limited number of facilities that would be affected. For that area, the Containment Zone is focused on locations where positive animals were disclosed and those are already handled through individual herd plans developed by the commission, with the animals being restricted. Regarding the Surveillance Zone for this area, TPWD has engaged its white-tailed deer stakeholders and developed a voluntary strategy based on an identified testing target for their biological census for the area and are pursuing that as a viable option other than presently putting regulatory restrictions in place. The commission believes this approach is viable and preferable with adequate surveillance testing; however, the commission has been hampered by not having a method to adequately estimate the exotic cervid population for this area to obtain a target testing number similar to TPWD. The commission believes it is necessary to propose such requirements in order to promote the testing profile for this area with the upcoming fall hunting season. The commission will also use this time, prior to any adoption, to fully develop a voluntary strategy that will allow the agency to refrain from adopting certain mandatory requirements within that zone.

As indicated throughout the preamble the economic impact on these businesses is hard to quantify, particularly when countered with the fact that full participation in the testing requirements coupled with no further positives being disclosed provides some disease assurances for those who economically benefit from the value of these animals within these zones. The rule will only have impact on a facility that is located in a restricted zone

and has these susceptible exotic CWD species for the purpose of either being hunted or moved. If the animal is being hunted, it will be necessary to have the animal tested and this is to provide adequate surveillance as well as to give disease status assurance that any exotic susceptible species taken is not positive for the disease. If the animal is located in a Containment Zone, then it would be restricted from movement. That said, there are no known locations or facilities located in the Trans-Pecos area that have any such animals for that purpose. Currently, the same would apply to the Hartley County Restriction Zone.

There are no identified alternative methods available to achieve the purpose of this rule and the disease surveillance needs of the state. This model for disease surveillance in disease eradication and control efforts is proven. The agency has historically identified cattle herds and fowl flocks that have been classified as potentially exposed to a disease of concern. In the vast majority of disease efforts the testing is performed on a live animal with results disclosed in a relatively short period of time that allows the agency to classify the disease exposure with the herd or flock and then accordingly take appropriate veterinary response. Because the official test for CWD is post mortem based, the solution waiting for animals to be test eligible which creates the greatest adverse impact and one over which the commission has no control or alternative.

The approach of creating these restriction zones is consistent with the duty of the commission to protect all livestock, exotic livestock, domestic fowl, and exotic fowl from diseases recognized as communicable by the veterinary profession and a serious threat to the susceptible cervid species industries and their associated economic security. This approach does minimize adverse impacts on small businesses that operate with the animals outside the zones by protecting them from exposure. Further, the commission provides that for those facilities located within a Surveillance Zone, the commission will work with each facility wanting to move an animal to determine the epidemiological risk for those animals.

No other small or micro-businesses or persons required to comply would incur any immediate direct adverse economic impact.

PUBLIC BENEFIT NOTE

Ms. Schmidt has also determined that the public benefit anticipated as a result of enforcing or administering the rules will be the protection of CWD susceptible species from a serious disease risk, thus ensuring a quality assurance for those locations or facilities participating as well as provide the public confidence in their enjoyment of the resource. The commission believes that there is also a collateral benefit of protecting captive herds, and maintaining their economic viability.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rules will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. The proposed amendments are an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007. This rule does not authorize physical seizure or occupation of private real property. The regulation could affect activities occurring on private real property, if and only if, the owner/caretaker of such property is located in the restriction zones, possesses CWD susceptible species, and requests to move the animals. Further, if someone wanted to take any susceptible species into the zones to be released, then similar limitations or restrictions would apply to those animals, but that is based on the animal and not the property. This rule does not diminish or destroy the right to exclude others or affect their ability to possess or dispose of their property. Any impacts resulting from the discovery of CWD in or near private real property would be the result of the discovery of disease and the rule has no negative effect on real property as it is focused on disease response and mitigation of risk.

REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by email at “comments@tahc.texas.gov”.

STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.005, entitled “Commission Written Instruments”, the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission.

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

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

Pursuant to §161.0417, entitled “Authorized Personnel for Disease Control”, a person, including a veterinarian, must be authorized by the commission in order to engage in an activity that is part of a state or federal disease control or eradication program for animals. Section 161.0417 requires the commission to adopt necessary rules for the authorization of such persons and, after reasonable notice, to suspend or revoke a person's authorization if the commission determines that the person has substantially failed to comply with Chapter 161 or rules adopted under that chapter. Section 161.0417 does not affect the requirement for a license or an exemption under Chapter 801, Occupations Code, to practice veterinary medicine.

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

Pursuant to §161.048, entitled “Inspection of Shipment of Animals or Animal Products”, the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

Pursuant to §161.049, entitled “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.

Pursuant to §161.054, entitled “Regulation of Movement of Animals”, the commission, by rule, may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce.

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

Pursuant to §161.0545, entitled “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 §161.055, entitled “Slaughter Plant Collection”, the commission may require slaughter plants to collect and submit blood samples and other diagnostic specimens for testing for disease.

Pursuant to §161.056(a), entitled “Animal Identification Program”, the commission, in order to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease, 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. Section 161.056(d) authorizes the commission to by a two-thirds vote 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, entitled “Classification of Areas”, the commission by rule may prescribe criteria for classifying areas in the state for disease control. The criteria must be based on sound epidemiological principles. The commission may prescribe different control measures and procedures for areas with different classifications.

Pursuant to §161.061, entitled “Establishment”, if the commission determines that a disease listed in §161.041 of this code or an agency 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 that a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases.

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

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

40.4. Entry Requirements.

(a) The entry requirements are located in Chapter 51, §51.10 of this title (relating to Cervidae).

(b) CWD Susceptible Species Carcass Movement Restrictions for Entering the State. No person may:

(1) Transport into this state or possess any part of a susceptible species from a state, Canadian province, or other place outside of Texas where CWD has been detected in free-ranging or captive herds, except as provided in this section.

(2) Subsection (b)(1) of this section does not apply to susceptible species processed in accordance with this section as follows:

(A) meat that has been cut up and packaged (boned or filleted);

(B) a carcass that has been reduced to quarters with no brain or spinal tissue present;

(C) a cleaned hide (skull and soft tissue must not be attached or present);

(D) a whole skull (or skull plate) with antlers attached, provided the skull plate has been completely cleaned of all soft tissue;

(E) finished taxidermy products;

(F) cleaned teeth; or

(G) tissue prepared and packaged for delivery to and use by a diagnostic or research laboratory.

(c) The skinned or unskinned head of a susceptible species from a state, Canadian province, or other place outside of Texas may be transported to a taxidermist for

taxidermy purposes, provided all brain material, soft tissue, spinal column and any unused portions of the head are disposed of in a landfill in Texas permitted by the Texas Commission on Environmental Quality.

40.6. CWD Movement Restriction Zones.

(a) Definitions:

(1) Check Station--Department established mandatory check stations in any CZ or SZ or any portion of a CZ or SZ for the purpose of collecting biological information on Chronic Wasting Disease (CWD) susceptible species taken within a CZ or SZ.

(2) CWD Containment Zone (CZ)--A geographic area which would include a known affected area or a (quarantined) premise under a herd plan because a positive result was obtained in a CWD susceptible species or an area within Texas where CWD has been detected or where there is a high risk of CWD existing or where the commission has determined may exist.

(3) CWD Surveillance Zone (SZ)--A geographic area in the state which the commission has determined there is a risk of CWD existing and surveillance is necessary.

(4) CWD Non-Native Susceptible Species--A non-native cervid species which includes North American elk or wapiti (*Cervus Canadensis*), red deer (*Cervus elaphus*), Sika deer (*Cervus Nippon*), moose (*Alces alces*), and any associated subspecies and hybrids.

(5) CWD Native Susceptible Species--All mule deer, white-tailed deer, and native species under the jurisdiction of the Texas Parks and Wildlife Department are excluded from the application of this section.

(6) Department--Texas Parks and Wildlife Department.

(7) High fence premise--A premise enclosed on all sides by a fence adequate to prevent the ingress or egress of all non-native CWD susceptible species.

(8) Unnatural Movement--Any artificially induced movement of a live susceptible species or the carcass of a susceptible species.

(b) Declaration of Area Restricted for CWD. CWD has been detected in susceptible species in different locations in Texas, which creates a high risk for CWD exposure or infection in susceptible species in certain geographic areas. In order to protect other areas of the state from the risk of exposure and spread of CWD, restricted areas are being created to protect against the spread of and exposure to CWD and have the necessary surveillance to epidemiologically assess the risk. The high risk areas are delineated as follows:

(1) Containment Zone Boundaries:

(A) Containment Zone 1. That portion of the state within the boundaries of a line beginning in Culberson County where U.S. Highway (U.S.) 62-180 enters from the State of New Mexico; thence southwest along U.S. 62-180 to Farm-to-Market Road (F.M.) 1111 in Hudspeth County; thence south on F.M. 1111 to I.H. 10 thence west along I.H. 10 to S.H. 20; thence northwest along S.H. 20 to F.M. 1088; thence south along F.M. 1088 to the Rio Grande River; thence northwest along the Rio Grande River to the Texas-New Mexico border.

(B) Containment Zone 2. That portion of the state within the boundaries of a line beginning where I.H. 40 enters from the State of New Mexico in Deaf Smith County; thence east along I.H. 40 to U.S. 385 in Oldham County; thence north along U.S. 385 to the Oklahoma state line.

(C) Containment Zone 3. Boundaries consist of properties under the same ownership or management for facilities operating under a herd plan due to a positive result in a CWD susceptible species in Medina and Uvalde counties.

(2) Surveillance Zone Boundaries:

(A) Surveillance Zone 1. That portion of the state within the boundaries of a line beginning where U.S. 285 enters from the State of New Mexico in Reeves County; thence southeast along U.S. 285 to R.M. 652; thence west along R.M. 652 to Rustler Springs Rd./FM 3541 in Culberson County; thence south along Rustler Springs Rd./F.M. 3541 to F.M. 2185; thence south along F.M. 2185 to Nevel Road; thence west along Nevel Road to County Road 501; thence south along County Road 501 to Weatherby Road; thence south along Weatherby Road to F.M. 2185; thence southwest along F.M. 2185 to S.H. 54; thence south on S.H. 54 to U.S. 90; thence south along U.S. 90 to the Culberson County line; thence southwest along the Culberson County line to the Rio Grande River in Hudspeth County; thence north along the Rio Grande River to F.M. 1088; thence northeast along F.M. 1088 to S.H. 20; thence southeast along S.H. 20 to I.H. 10; thence southeast along I.H. 10 to F.M. 1111; thence north on F.M. 1111 to U.S. 62/180; thence east and north along U.S. 62/180 to the New Mexico state line in Culberson County.

(B) Surveillance Zone 2. That portion of the state within the boundaries of a line beginning at the New Mexico state line where U.S. 60 enters Texas; thence northeast along U.S. 60 to U.S. 87 in Randall County; thence north along U.S. 87 to I.H. 27; thence north along U.S. 87/I.H. 27 to U.S. 287 in Moore County; thence north along U.S. 287 to the Oklahoma state line.

(C) Surveillance Zone 3. That portion of the state within the boundaries of a line beginning at U.S. 90 in Hondo in Medina County; thence west along U.S. 90 to F.M. 187 in Uvalde County; thence north along F.M. 187 to F.M. 470 in Bandera County; thence east along F.M. 470 to Tarpley in Bandera County; thence south along F.M. 462 to U.S. 90 in Hondo.

(c) Containment Zone Requirements:

(1) Movement. No non-native CWD susceptible species may be transported outside the CZ unless from a herd with a certified status as established through §40.3(c)(6) (relating to Herd Status Plans for Cervidae) of this chapter.

(2) Released Animals. No non-native CWD susceptible species may be released within the CZ outside a high fence premise.

(3) Testing. All non-native CWD susceptible species, 16 months of age or older, that are hunter harvested shall be tested for CWD. No part of a carcass of a susceptible species, either killed or found dead may be removed from the CZ unless a testable CWD sample from the carcass is collected and tested. The results shall be provided to the commission or the Department within 30 days of receiving the test results.

(4) Carcass Movement Restrictions. No part of a carcass of a susceptible species, either killed or found dead, within the CZ may be removed from the CZ unless it is in accordance with the requirements of §40.6(e) of this section.

(5) Escaped Animals. Any escaped non-native CWD susceptible species which originated or resided in a CZ shall be captured and returned to the high fence premise of origin.

(6) Herd Plans. Facilities and associated properties in the CZ that have been issued a herd plan shall operate in accordance with the herd plan requirements as determined by the commission.

(7) Identification. All non-native CWD susceptible species released in a CZ shall be identified with a visible official identification device, which may include an eartag that conforms to the USDA alphanumeric national uniform ear tagging system and/or an animal identification number (AIN) and may include an RFID device. If a susceptible species is liberated into a high fence premise, the animal shall retain the acceptable official identification.

(d) Surveillance Zone Requirements:

(1) Movement. Prior to movement of a non-native CWD susceptible species outside an SZ or from one premise in the SZ to another premise within the SZ, the premise of origin shall have an epidemiological risk assessment conducted by the commission.

(2) Released Animals. No non-native CWD susceptible species may be released within the SZ outside a high fence premise.

(3) Testing. All non-native CWD susceptible species, 16 months of age or older, that are hunter harvested shall be tested for CWD. No part of a carcass of a susceptible species, either killed or found dead may be removed from the SZ unless a testable CWD sample from the carcass is collected and tested. The results shall be provided to the commission or the Department within 30 days of receiving the test results.

(4) Carcass Movement Restrictions. No part of a carcass of a susceptible species, either killed or found dead, within the SZ may be removed from the SZ unless it is in accordance with the requirements of §40.6(e) of this section.

(5) Escaped Animals. Any escaped non-native CWD susceptible species which originated or resided in an SZ shall be captured and returned to the high fence premise of origin.

(6) Herd Plans. Facilities and associated properties in the SZ that have been issued a herd plan shall operate in accordance with the herd plan requirements as determined by the commission.

(7) Identification. All non-native CWD susceptible species released in an SZ shall be identified with a visible official identification device, which may include an eartag that conforms to the USDA alphanumeric national uniform ear tagging system and/or an animal identification number (AIN), which may include an RFID device. If a susceptible species is liberated into a high fence premise, the animal shall retain the acceptable official identification.

(e) Carcass Movement Restrictions:

(1) No person shall transport or cause the transport of any part of a susceptible species from a property within a CZ or SZ unless:

(A) meat has been cut up and packaged (boned or filleted);

(B) a carcass has been reduced to quarters with no brain or spinal tissue present;

(C) a cleaned hide (skull and soft tissue must not be attached or present);

(D) a whole skull (or skull plate) with antlers attached, provided the skull plate has been completely cleaned of all soft tissue;

(E) finished taxidermy products;

(F) cleaned teeth; or

(G) tissue has been prepared and packaged for delivery to and use by a diagnostic or research laboratory with results accessible to the commission.

(2) A susceptible species harvested in a CZ or SZ may be transported from the CZ or SZ, provided it is accompanied by a Department-issued check-station receipt, which shall remain with the susceptible species until it reaches the possessor's permanent residence. The skinned or unskinned head of a susceptible species from a CZ or SZ, may be

transported to a taxidermist for taxidermy purposes, provided all brain material, soft tissue, spinal column, and any unused portions of the head are disposed of in a landfill in Texas permitted by the Texas Commission on Environmental Quality.

(f) The Executive Director may authorize movement. If movement is necessary or desirable to promote the objectives of this chapter and/or to minimize the economic impact of the restricted susceptible species without endangering those objectives or the health and safety of other susceptible species within the state, the Executive Director may authorize movement in a manner that creates minimal risk to the other susceptible animals in the state.

(g) Commission staff shall annually review the movement restriction zones and make recommendations to the commission on whether the zones should be modified or rescinded.