

DEER MANGEMENT PERMIT/CWD RULES
EMERGENCY ADOPTION PREAMBLE

1. Introduction.

Pursuant to Parks and Wildlife Code, §12.027, and Government Code, §2001.034, the executive director of the Texas Parks and Wildlife Department (the department) adopts, on an emergency basis, a 60-day extension of new §65.94, concerning Chronic Wasting Disease - Deer Management Permit Provisions, originally adopted on October 5, 2015 and published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7305). The new emergency rule is part of Subchapter B, Division 2, Chronic Wasting Disease - Movement of Deer.

Pursuant to Government Code, §2001.034 (the Texas Administrative Procedure Act), emergency rules may initially be in effect for no longer than 120 days, but may be extended for an additional 60 days. In the notice of adoption of the emergency rule, the department stated its intent to also publish proposed rules pursuant to the Administrative Procedure Act's notice and comment rulemaking process. The department published interim proposed rule in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9086) and those rules were approved for adoption, with changes, by the Texas Parks and Wildlife Commission (Commission) in a duly noticed meeting on January 21, 2016, and will be published in a future issue of the *Texas Register*.

The extension of the emergency rule is necessary to enable its effectiveness to continue until the adoption of the interim rules can be filed and take effect, which will take place prior to the expiration of the 60-day extension. The interim rule will replace the emergency rule and the emergency rule will be withdrawn simultaneously upon the effectiveness of the interim rule. Therefore, the entirety of the 60-day extension will not be necessary.

Based on additional information from the ongoing epidemiological investigation, disease surveillance data collected from captive and free ranging deer herds, guidance from the Texas Animal Health Commission, and input from stakeholder groups, the

department intends to review the interim rule, along with interim rules governing deer breeder permits, and the emergency rule regarding permits to trap, transport and transplant deer (Triple T permits) or trap, transport and process deer (TTP permits), following the close of the deer season and present the results of that review to the Commission in the spring of 2016 for possible modifications.

Under Parks and Wildlife Code, Chapter 43, Subchapters R and R-1, and Deer Management Permit (DMP) regulations for white-tailed deer at 31 TAC Chapter 65, Subchapter D, the department may allow the temporary possession of free-ranging white-tailed or mule deer for breeding purposes. At the current time, there are no rules authorizing DMP activities for mule deer.

In addition to authorizing the temporary possession of free-ranging white-tailed deer for breeding purposes, department regulations authorize the introduction of deer from a deer breeding facility into a DMP facility for breeding purposes. (Deer breeders are permitted under Parks and Wildlife Code, Chapter 43, Subchapter L and 31 TAC Chapter 65, Subchapter T.) A buck deer that is introduced from a deer breeding facility to a DMP facility may be liberated from the DMP facility, returned to the breeding facility from which the buck deer was transferred, or transferred to another deer breeder. All doe deer introduced to a DMP facility, whether by trapping from a free-ranging herd or transfer from a deer breeding facility must be liberated upon release from the DMP facility.

For the reasons explained in this preamble, pursuant to Parks and Wildlife Code §12.027 and Government Code §2001.034, the department's executive director has determined that the presence of chronic wasting disease (CWD) poses an immediate danger to white-tailed and mule deer, which are species authorized to be regulated by the department, and that the adoption of these rules on an emergency basis with fewer than 30 days' notice is necessary to address this immediate danger.

On June 30, 2015, the department received confirmation that a two-year-old white-tailed deer held in a deer breeding facility in Medina County ("index facility") had tested positive for CWD. Subsequent testing confirmed the presence of CWD in

additional white-tailed deer at the index facility. The source of the CWD at the index facility is unknown at this time. Within the five years preceding the discovery of CWD in the index facility, the index facility accepted deer from 30 other Texas deer breeders and transferred 835 deer to 147 separate sites (including 96 deer breeding facilities, 46 release sites, and three Deer Management Permit (DMP) facilities in Texas, as well as two destinations in Mexico). The department estimates that in those five years, more than 728 locations in Texas (including 384 deer breeders) either received deer from the index facility or received deer from a deer breeder who had received deer from the index facility. The intent of the emergency rule extended herein is to reduce the probability of CWD being spread from areas where it might exist and to increase the probability of detecting CWD where it does exist. The emergency rule extended herein sets forth provisions governing the transfer of breeder deer to and from DMP facilities. The new rules are part of a broader cooperation between the department and the Texas Animal Health Commission (TAHC) to protect susceptible species of exotic and native wildlife from CWD. TAHC is the state agency authorized to manage “any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl, regardless of whether the disease is communicable, even if the agent of transmission is an animal species that is not subject to the jurisdiction” of TAHC. Tex. Agric. Code §161.041(b).

CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (susceptible species). It is classified as a transmissible spongiform encephalopathy (TSE), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE) in cattle, and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Much remains unknown about CWD. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. There is no scientific evidence to indicate that CWD is transmissible to

humans. What is known is that CWD is invariably fatal, and is transmitted both directly (through deer-to-deer contact) and indirectly (through environmental contamination). Moreover, a high prevalence of the disease in free-ranging populations correlates with deer population declines, and human dimensions research suggests that hunters will avoid areas of high CWD prevalence. The implications of CWD for Texas and its multi-billion dollar ranching, hunting, and wildlife management economies could be significant, unless contained and controlled.

The department has engaged in several rulemakings over the years to address the threat posed by CWD. In 2005, the department closed the Texas border to the entry of out-of-state captive white-tailed and mule deer and increased regulatory requirements regarding disease monitoring and record keeping. (The closing of the Texas border to entry of out-of-state captive white-tailed and mule deer was updated, effective in January 2010, to address other disease threats to white-tailed and mule deer (35 TexReg 252).)

On July 10, 2012, the department confirmed that two mule deer sampled in the Texas portion of the Hueco Mountains tested positive for CWD. In response, the department and the Texas Animal Health Commission (TAHC) convened the CWD Task Force, comprised of wildlife-health professionals and cervid producers, to advise the department on the appropriate measures to be taken to protect white-tailed and mule deer in Texas. Based on recommendations from the CWD Task Force, the department adopted new rules in 2013 (37 TexReg 10231) to implement a CWD containment strategy in far West Texas. The rules among other things require deer harvested in a specific geographical area to be presented at check stations to be tested for CWD.

The department adopted emergency rules on August 18, 2015 (40 TexReg 5566) to address deer breeding facilities and release sites for breeder deer, (“emergency CWD breeder rules”), which were extended for an additional 60 days on December 1, 2015 (41 TexReg 9). The department also adopted new rules to replace the emergency CWD breeder rules. Those rules were published for public comment in the October 2, 2015,

issue of the *Texas Register*, approved by the (the Commission) at its November 5, 2015, meeting, and will be effective February 2, 2016, and published in the January 29, 2016, issue of the *Texas Register*.

The department has been concerned for over a decade about the possible emergence of CWD in free-ranging and captive deer populations in Texas. Since 2002, more than 32,882 “not detected” CWD test results were obtained from free-ranging (i.e., not breeder) deer in Texas. Additionally, deer breeders have submitted 12,759 “not detected” test results to the department. The intent of the new emergency rules is to reduce the probability of CWD being spread to DMP facilities and subsequent DMP release sites and to increase the probability of detecting CWD if it does exist.

The department notes for purposes of clarification that the provisions of the CWD breeder rules apply to the emergency DMP rules adopted in this rulemaking, to the extent applicable. The applicable provisions would include, for example, the definitions in §65.90 and the categories and classes of breeding facilities and release sites.

The emergency rule extended herein therefore sets forth specific provisions that tie the movement of breeder deer for the purposes of DMP activities to the testing requirements imposed by §§65.90-65.93 of this title for release sites, which require CWD testing to be performed at the site where DMP deer are to be liberated, depending on the source of the deer detained in a DMP facility. The new emergency rule also imposes a status change for a deer breeding facility that receives a deer from a DMP facility of lower status. The new emergency rule also prohibits the transfer of breeder deer to a Level 3 DMP facility or a Class III release site unless the deer has been tagged with an approved RFID or NUES ear tag.

The emergency action is necessary to protect the state’s free-ranging and captive white-tailed deer populations.

The rule is adopted on an emergency basis under Parks and Wildlife Code, §12.027, which authorizes the department’s executive director to adopt emergency rules if there is an immediate danger to a species authorized to be regulated by the department, and under Government Code, §2001.034, which authorizes a state agency to adopt such

emergency rules without prior notice or hearing. In addition, Parks and Wildlife Code, Chapter 43, Subchapters R and R-1, authorize the department to regulate the possession of free-ranging white-tailed or mule deer for breeding purposes.

§65.94. Chronic Wasting Disease - Deer Management Permit Provisions.

(a) General Provisions.

(1) A DMP facility is a property (including the pen in which deer are temporarily detained for breeding purposes and the high-fenced acreage to which the deer are released) permitted under the provisions of Parks and Wildlife Code, Subchapter R or R-1 and Subchapter D of this chapter (relating to Deer Management Permit (DMP)).

(2) For the purposes of this section, "status" means the level of testing required by this division for any facility registered in TWIMS (deer breeding facility, trap site, release site, or DMP facility). For the levels of DMP facilities established in this section, the highest status is Level 1 and the lowest status is Level 3.

(b) Special Provisions.

(1) A DMP facility that receives deer from a Class II release site is a Level 2 DMP facility unless the DMP facility receives deer from a TC 3 breeding facility or Class III release site.

(2) A DMP facility that receives deer from a Class III release site is a Level 3 DMP facility.

(3) If a breeder deer is transferred from a TC 3 breeding facility to a Level 1 or 2 DMP facility, the DMP facility immediately becomes a Level 3 DMP facility and the release site to which the deer are liberated from the DMP facility becomes a Class III release site beginning on the Saturday nearest to September 30 of the following year.

(4) No person may introduce a breeder deer into a Level 3 DMP facility or allow the release of a breeder deer on a Class III release site unless the deer has been tagged, prior to leaving the originating facility, by attaching a button-type RFID or NUES tag approved by the department to one ear.

(5) If a breeder deer is transferred from a TC 2 breeding facility to a Level 1 DMP facility:

(A) the DMP facility immediately becomes a Level 2 DMP facility;

and

(B) the release site to which the deer are liberated from the DMP facility becomes a Class II release site beginning on the Saturday nearest to September 30 of the following year, unless the release site is or becomes a Class III release site pursuant to other provisions of this division.

(6) If a breeder deer is transferred to a breeding facility from a DMP facility of lower status, the breeding facility receiving the breeder deer automatically assumes the numeric status of the DMP facility. For example, if a breeder deer is transferred to a TC 2 breeding facility from a Level 3 DMP facility, the breeding facility becomes a TC 3 breeding facility.

(7) A DMP facility automatically becomes a Level 3 DMP facility if deer are introduced to the DMP facility from a Tier 1 facility.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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