

DEER BREEDER RULES
EMERGENCY ADOPTION PREAMBLE

1. Introduction.

The Texas Parks and Wildlife Commission adopts, on an emergency basis, new §65.100, concerning Emergency Provisions. The emergency action is necessary because of the recent discovery of chronic wasting disease (CWD) in six deer breeding facilities (“positive facilities”), five of which have extensive direct or indirect epidemiological connectivity with each other and/or other deer breeding facilities and locations where breeder deer have been released, introducing a significant possibility that free-ranging deer populations in the state have been exposed to CWD. CWD is a fatal neurodegenerative disorder that affects cervid species such as white-tailed deer, mule deer, elk, red deer, sika, and others (susceptible species). The department, along with the Texas Animal Health Commission (TAHC), has been engaged in an ongoing battle with CWD in Texas since 2002. White-tailed deer and mule deer are species authorized to be regulated by the department under the Parks and Wildlife Code. TAHC is the state agency charged with disease management in livestock and exotic livestock, including exotic livestock known to be susceptible to CWD. The recent detections of CWD in breeding facilities create an unprecedented situation because they are at a scale that is orders of magnitude greater than earlier instances of detection encountered by the department.

When CWD is detected in a facility, that facility and any directly connected facility are immediately prohibited by current rule from receiving or transferring deer and the department and TAHC staff immediately begin epidemiological investigations to determine the extent and significance of possible disease transmission. In this case, department records indicate that within the last five years, the positive facilities referenced earlier transferred a total of 1,709 deer to 138 deer breeding facilities and 103 release sites located in a total of 56 counties. These breeding facilities and release sites are therefore directly connected to at least one of the positive facilities and by current

rule were designated as having not movement qualified status (prohibited from receiving or transferring deer). As a result of the ongoing epidemiological investigation and pursuant to existing regulations, 66 of the 138 directly connected breeding facilities have regained movement qualified status if otherwise eligible, leaving 72 facilities of epidemiological concern. An additional 214 deer breeding facilities received deer from one or more of those 72 directly connected breeding facilities; these facilities are indirectly connected to the positive facilities and are of epidemiological concern because it is possible that within the last five years any or all of them could have received CWD-infected deer. The five-year window is important because (based on the literature) it encompasses the time period from possible exposure to CWD, through the incubation period, to the time at which the disease can be transmitted to another animal or the environment. Current rules do not address disease response with respect to indirectly connected facilities. The emergency rules will address that situation by imposing requirements for disease testing and movement of breeder deer to and from indirectly connected facilities. In addition, the rules will require ante-mortem testing of all age eligible deer prior to being transferred to a release site. The department and TAHC will continue to conduct epidemiological investigations and the department will undertake rulemaking through the normal administrative process.

CWD is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep) and bovine spongiform encephalopathy (BSE, found in cattle and commonly known as Mad Cow Disease). CWD is transmitted both directly (through deer-to-deer contact) and indirectly (through environmental contamination). 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; however, a high prevalence of the disease in free-ranging populations is correlated with significant deer population declines as well as expected negative impacts and influences on landowners, hunting, and hunters. The implications

of CWD for Texas and its multi-billion-dollar ranching, hunting, and wildlife management economies are significant.

The department has engaged in several rulemakings over the years to address the threat posed by CWD. In 2013, based on recommendations from the CWD Task Force, the department adopted rules (37 TexReg 10231) to implement a CWD containment strategy in response to the first detection of CWD in Texas. In 2015, the department discovered CWD in a deer breeding facility in Medina County and adopted emergency rules (40 TexReg 5566) to respond immediately to the threat, followed by interim rules (41 TexReg 815) intended to function through the 2015-2016 hunting season. Working closely with TAHC and with the assistance of the Center for Public Policy Dispute Resolution of the University of Texas School of Law, the department developed and adopted comprehensive CWD management rules in 2016 (41 TexReg 5726). The department has since engaged in periodic rulemaking (both emergency and via the normal rulemaking process) to create containment and surveillance zones in response to CWD detections in both free-ranging and captive deer in various parts of the state.

The emergency rule sets forth specific testing requirements for certain deer breeders that would have to be satisfied in order for the department to restore movement qualified status (authorization to resume transfers of deer into and out of a breeding facility). The emergency action is necessary because the risk to the multi-billion-dollar deer hunting and deer breeding industries represented by even one infected animal among a wild population is considerable. The department strongly believes that vigilance is crucial to minimizing the severity of biological and economic impacts that could result from the current situation, and that a more rigorous testing protocol at certain deer breeder facilities, pending resolution of the epidemiological uncertainty surrounding the spread of CWD from directly connected facilities, is a wise and responsible course of action.

The rules are adopted on an emergency basis under Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the Parks and Wildlife Commission to establish regulations governing the possession of white-tailed and mule deer under a

deer breeders permit; Parks and Wildlife Code, §12.027, which authorizes the Texas Parks and Wildlife Commission and 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.

2. Rule Text.

§65.100. Emergency Provisions.

(a) Effectiveness. To the extent that any provision of this section conflicts with any provision of this division, the provisions of this section prevail.

(b) Definitions. The following words and terms shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms used in this section shall have the meanings assigned by the Parks and Wildlife Code and §65.90 of this title (relating to Definitions).

(1) Exposed deer—A deer that meets any of the following criteria:

(A) the deer is or has been in a breeding facility where a CWD-positive deer has been kept following the date the facility was first exposed to CWD (if known);

(B) the deer is or has been in a breeding facility within the five-year period preceding the death date of any CWD-positive deer that was in the facility (or the date of a positive ante-mortem test result);

(C) the deer is in a breeding facility on or after the date that the facility received a deer under the circumstances described in subparagraph (A) or (B) of this paragraph; or

(D) the deer entered a Tier 1 facility from a trace-out breeding facility.

(2) Exposure--The period of time that has elapsed following the introduction of an exposed deer to a breeding facility.

(3) "Insufficient follicles"--A test result indicating that a tonsil or rectal biopsy sample contained an insufficient number of lymphoid follicles to produce a valid test result.

(4) Last known exposure—

(A) The later of:

(i) the last date a deer in a breeding facility was exposed to trace deer because of the death or transfer of that trace deer; or

(ii) the last date a deer entered a trace-out breeding facility after that facility received a trace deer; or

(B) the last date that a deer entered a Tier 1 facility after an exposed deer entered a Tier 1 facility.

(5) Test-eligible deer--A deer at least nine months of age.

(6) Tier 1 facility -- A breeding facility that has received an exposed deer from a trace-out breeding facility.

(7) Trace deer--A deer that the department has determined had been in a CWD-positive deer breeding facility on or after the date the facility was first exposed to CWD, if known; otherwise, within the previous five years from the reported mortality date of the CWD-positive deer, or the date of the ante-mortem test result.

(8) Trace-out breeding facility--A breeding facility that has received trace deer from a CWD-positive deer breeding facility.

(c) General provisions.

(1) Deer required to be reported to the department under §65.605 of this title (relating to Holding Facility Standards and Care of Deer) are considered to be mortalities for the purposes of this subchapter until lawfully recaptured. A deer that is not recaptured will be treated as a mortality that occurred within the facility from which the escape is required to be reported.

(2) Deer that according to department records should be present in a breeding facility but cannot be accounted for to the satisfaction of the department are considered to be mortalities for the purposes of this subchapter.

(3) For facilities required to test ten or more deer, the department will not accept inconclusive ante-mortem test results, including but not limited to "insufficient follicles," for more than 10 percent of the total number of deer tested. For facilities required to test less than ten deer, inconclusive ante-mortem test results, including but not limited to "insufficient follicles," will not be accepted.

(d) Category A trace-out breeding facility.

(1) A Category A facility is a trace-out breeding facility:

(A) in which all trace deer are alive in the facility; or

(B) for which post-mortem test results of "not detected" have been returned for trace deer that have died and all other trace deer are alive and present in the facility.

(2) Upon notification by the department of Category A status, a permittee shall:

(A) within seven days euthanize all trace deer in the breeding facility and submit test samples for each of those deer for post-mortem testing within one business day, unless ante-mortem testing has been authorized under a herd plan approved by the department and TAHC, for a facility that:

(i) contains no deer that had been in a CWD-positive facility within the five-year period preceding notification of Category A status; or

(ii) had not transferred any deer to any location since receiving any deer from a CWD-positive facility; and

(B) inspect the facility daily for mortalities;

(C) immediately report all test-eligible mortalities that occur within the facility; and

(D) immediately collect test samples from all test-eligible mortalities that occur within the facility and submit the samples for post-mortem testing within one business day of collection.

(5) The department will not restore MQ status unless CWD “not detected” test results are obtained for all required sample submissions and the permittee has complied with all applicable requirements of this subsection and this division.

(e) Category B trace-out breeding facility.

(1) A Category B facility is a trace-out breeding facility in which less than 100% of the trace deer that department records indicate were received by the facility are for whatever reason (including but not limited to transfer, release, or escape) available for testing.

(2) Upon notification by the department of Category B status, a permittee shall:

(A) within seven days euthanize all trace deer in the breeding facility and submit test samples for each of those deer for post-mortem testing within one business day;

(B) inspect the facility daily for mortalities;

(C) immediately report all test-eligible mortalities that occur within the facility;

(D) immediately collect test samples from all test-eligible mortalities that occur within the facility and submit the samples for post-mortem testing within one business day of collection; and

(E) conduct ante-mortem testing of all test-eligible deer in the facility as specified in the following:

(i) for a facility for which the date of last known exposure is within the immediately preceding 18 months:

(I) submit rectal or tonsil biopsy samples collected on or after April 1, 2021; and

(II) submit tonsil biopsy samples collected no earlier than 24 months from the date of last known exposure;

(ii) for a facility for which the date of last known exposure is not within the immediately preceding 18 months and not at a time prior to the immediately preceding 36 months: collect and submit tonsil biopsy samples no earlier than 24 months from the date of last known exposure; and

(iii) for a facility for which the date of last known exposure occurred at a time after the immediately preceding 36 months: collect and submit rectal or tonsil biopsy samples collected no earlier than 36 months from the date of last known exposure.

(F) Samples required by subsection (e)(2)(E) of this section shall be submitted no later than 45 days after the applicable last known exposure period as determined by the department.

(3) The department will not restore MQ status unless CWD “not detected” test results are obtained for all required sample submissions and the permittee has complied with all applicable requirements of this subsection and this division.

(f) Tier 1 facility.

(1) Upon notification by the department of Tier 1 status, a facility is automatically NMQ and the permittee shall:

(A) inspect the facility daily for mortalities;

(B) immediately report all test-eligible deer mortalities that occur within the facility; and

(C) immediately collect test samples from all test-eligible deer mortalities that occur within the facility and submit for post-mortem testing within one business day of collection.

(2) The department will not restore MQ status unless the permittee has complied with all applicable requirements of this subsection and this division, and:

(A) post-mortem results of "not detected" have been submitted for every exposed deer received from a trace facility;

(B) the department has restored MO status to all trace facilities from which deer were received; or

(C) the permittee has conducted ante-mortem testing as specified in subsection (e)(2)(E) of this section.

(g) Release of breeder deer.

(1) No person may transfer a breeder deer to a release facility or cause or allow a breeder deer to be transferred to a release facility unless an ante-mortem test on rectal or tonsil tissue collected from the deer within the six months immediately preceding the release has been returned with test results of "not detected."

(2) A facility from which deer are transferred in violation of paragraph (1) of this subsection becomes automatically NMQ and any further transfers are prohibited until the permittee has conducted ante-mortem testing as specified in writing by the department.

(h) Violations and Penalties. In addition to any other conduct punishable as a violation of this subchapter or the Parks and Wildlife Code, it is an offense for any person to fail to abide by any provision of this section, a permit provision, or a herd plan.