

TRIPLE T PERMIT/CWD RULES
EMERGENCY ADOPTION EXTENSION 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 §65.95, concerning Chronic Wasting Disease - Triple T Permit Provisions, adopted on October 5, 2015 and published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7307). 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.

The extension of the emergency rule is necessary to enable it to continue in effect until the end of the current permit year (March 31, 2016) for permits authorizing the trapping, transporting, and transplanting of deer, including permits authorizing the trapping, transporting, and processing of deer.

Under Parks and Wildlife Code, Chapter 43, Subchapter E, the department may issue permits authorizing the trapping, transporting, and transplanting of game animals and game birds for better wildlife management (popularly referred to as “Triple T” permits). In addition, the department may issue permits authorizing the trapping, transporting and processing of surplus white-tailed deer (popularly referred to as TTP permits). White-tailed and mule deer are game animals. The department has promulgated regulations to address the Triple T and TTP for deer at 31 TAC, Chapter 65, Subchapter C.

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 the rule 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). (A DMP is a permit issued by the department under rules adopted pursuant to Parks and Wildlife Code, Chapter 43, Subchapters R and R-1, that allows the temporary possession of free-ranging white-tailed or mule deer for breeding purposes.) 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 emergency rule extended herein sets forth provisions governing the requirements and obligations of persons who move white-tailed and mule deer under Triple T permits. The new rule is 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 suggest 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 the disease is contained and controlled.

The department has engaged in several rulemakings over the years to address the threat posed by CWD in addition to the emergency and proposed rules referenced previously. 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 has 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 Texas Parks and Wildlife Commission (the Commission) at its November 5, 2015 meeting, and will be effective February 2, 2016, and published in the January 29, 2016, issue of of the *Texas Register* (41 TexReg xxxx). Similarly, the department adopted emergency rules governing Deer Management Permits (DMP, a permit that authorizes the temporary detention of free-ranging white-tailed deer for breeding purposes) on October 5, 2015 (40 TexReg 7305), which are being extended for an additional 60 days elsewhere in this issue of the *Texas Register*, to remain in effect until the interim DMP rules take effect. (The department published an interim proposed DMP 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 Commission in a duly noticed meeting on January 21, 2016, and will be published in a future 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 rule 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 new emergency rule sets forth specific provisions that tie the movement of deer under Triple T permits to the testing requirements imposed by §§65.90-65.93 of this title for release sites. The emergency rule obligates landowners of trap sites to CWD testing requirements in certain situations. The emergency rule replaces the current

disease-testing rules located at 31 TAC §65.102 and will be in effect statewide for all Triple T permits. In contrast to the current rule, the emergency rule does not allow CWD test samples collected or tested prior to the Saturday closest to September 30 of the permit year to be used to satisfy the CWD testing requirements associated with TTT and TTP permit activities . The emergency rule also does not allow CWD test samples to be used in following years, nor does it continue the “preferred status” provisions of current §65.102(b) and (c), which allow trap sites with a demonstrated test history of “not detected” test results to test at a reduced rate once 60 “not detected” test results have been accumulated.

The department notes for purposes of clarification that the provisions of the CWD breeder rules apply to the emergency TTT 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.

Because deer trapped, transported, and released under a Triple T permit are liberated to the wild (2,565 in 2014), the potential for disease transmission to free-ranging deer poses a threat to free-ranging populations, given that any given trap site, in light of the release of breeder deer from the index facility to multiple locations around the state, could be a pathway for CWD to be transmitted to free-ranging populations.

The emergency action is necessary to protect the state’s white-tailed and mule 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, Subchapter E, authorizes the department to regulate the trapping, transporting, and transplanting of white-tailed and mule deer for scientific, management, and propagation purposes.

§65.95. Chronic Wasting Disease - Triple T Permit Provisions.

(1) This section applies to a permit issued under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter E, and Subchapter C of this chapter (relating to Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds), including:

(A) a permit to trap, transport, and transplant game animals or game birds (Triple T permit);

(B) a permit to trap, transport, and process surplus white-tailed deer (TTP permit); and

(C) an urban white-tailed deer removal permit.

(2) General.

(A) The provisions of §65.102 of this title (relating to Disease Detection Requirements) cease effect upon the effective date of this section.

(B) The department will not issue a Triple T permit that authorizes deer to be trapped at a

(i) Class III release site; or

(ii) any site on a property where a deer has been confirmed positive for CWD.

(C) In addition to the reasons for denying a Triple T permit listed in §65.103(c) of this title (relating to Trap, Transport, and Transplant Permit), the department will not issue Triple T permit if the department believes that to do so would create an unacceptable risk for the spread of CWD.

(D) Notwithstanding the provisions of §65.93(a)(6) of this title (relating to Release Sites - Qualifications and Testing Requirements), the department may issue a Triple T permit unless otherwise prohibited by this section.

(E) All deer released under the provisions of this section shall be legibly tattooed in one ear with a department-assigned identification number prior to release.

(F) Nothing in this section authorizes the take of deer except as authorized by applicable laws and regulations, including but not limited to laws and

regulations regarding seasons, bag limits, and means and methods.

(G) The disease testing required by this section shall be performed on deer of at least 16 months of age.

(H) A test result is not valid if the sample was collected or tested prior to the Saturday closest to September 30 of the year for which activities of the permit are authorized.

(I) Notwithstanding, the provisions of paragraphs (3) and (4) of this section, a sample size shall be not more than 40 nor less than 10 deer.

(3) Disease Testing Requirements for Triple T Permit.

(A) The department will not issue a Triple T permit unless a sample of deer from the trap site equivalent to 10% of the number of deer to be transported has been tested and confirmed "not detected" for CWD by an accredited test facility.

(B) CWD testing is not required for deer trapped on any property if the deer are being moved to adjacent, contiguous tracts owned by the same person who owns the trap site property.

(4) Disease Testing Requirements for TTP Permit.

(A) The landowner of a Class III release site must obtain valid CWD test results for 100% of the deer harvested pursuant to a TTP permit.

(B) A sample of deer from the trap site (other than a Class III release site) equivalent to 10% of the number of deer authorized to be trapped pursuant to TTP permit must be tested for CWD by an accredited test facility.

(C) Test results related to a TTP permit must be submitted to the department via TWIMS, or other approved process, by May 1.

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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