

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS SUBCHAPTER U. CITRUS CANKER QUARANTINE

4 TAC §§19.400 - 19.408

The Texas Department of Agriculture (the Department) adopts on an emergency basis new Subchapter U, §§19.400 - 19.408, to establish an emergency quarantine to contain the recently discovered infestation of a strain of citrus canker in the Rancho Viejo area near Brownsville, Texas. The term "citrus canker" is historically referred to as a plant disease with a group of strains or pathotypes of the bacterium *Xanthomonas axonopodis* pv. *citri*. The most damaging is the Asiatic or A strain, which infects most citrus species and their hybrids, especially grapefruit, sour orange, Mexican or key lime, lemon, tangelo, tangerine, plus *Poncirus trifoliata* and some other non citrus rutaceous hosts. The best available scientific evidence indicates that the unique citrus canker strain was detected on October 16, 2015. Since then, it has been found on young leaves and twigs of Mexican lime in the Rancho Viejo area. It has a restricted host range of limes and lemons. As additional evidence becomes available and more hosts are added, the Department may expand the scope of the quarantine accordingly. The citrus canker strain was experimentally tested for host range by scientists at Texas A&M Kingsville Citrus Center (TAMUK-CC) and it was found to readily infect Mexican lime and Kaffir lime, while Ponderosa lemon, Persian lime and Meyer lemon were observed to show only a few lesions. Mexican lime, Kaffir lime and Ponderosa lemon were found infested on dooryard trees during the survey and sampling. The varieties of grapefruit, sweet orange and sour orange commonly grown in the Rio Grande Valley showed no infection. The studies by TAMUK-CC seem to suggest that this strain is probably not the Asiatic or A strain, but is likely the Wellington or A^w strain that has only previously been recorded in Florida and has a very restricted host range amongst limes and lemons. The current infestation is the first known incidence of citrus canker in Texas after its eradication in 1943.

Citrus canker is harmless to humans and animals. However, the newly detected infestation presents a serious risk to lime and lemon trees in the Lower Rio Grande Valley (LRGV). Texas does not have commercial production of lime or lemon fruit; however, homeowners and nurseries in the LRGV produce lime and lemon trees. The disease produces leaf-spotting, fruit rind-blemishing, defoliation, shoot dieback, fruit drop, and it can expose the interior of fruit to secondary infection by decay organisms. The dis-

ease does not travel through the tree to become systemic. The marketability of symptomatic fresh fruit is negatively impacted. Lesions on leaves are raised or "pustular" on both leaf surfaces, particularly on the lower surface. Leaf pustules develop a yellow halo with water-soaked margins, becoming corky and crateriform with a raised margin and sunken center. Leaf lesions may appear within 14 days following inoculation and can attain 2-10 mm diameter on a susceptible host. In the field, symptoms may take several months to appear, and lower temperatures may increase the latency of the disease. The rod shaped flagellate citrus canker bacteria can enter young leaves through stomata, wounds on leaves, young twigs or shoots. The damage caused by citrus leaf miner larvae (*Phyllocnistis citrella*) can provide access for infection and canker was found associated with leaf minor damage on Ponderosa lime. Citrus canker bacterium can stay viable in old lesions on leaves, branches and other plant surfaces for several months, including in those dropped on the ground. *X. axonopodis* pv. *citri* can spread by wind, splashing water, movement of infected plant material or mechanical contamination. The pathogen flourishes under warm moist conditions and requires a host to survive in a natural environment.

Lime and lemon nursery and dooryard trees in the area are in peril without the emergency quarantine, which provides necessary steps to prevent the spread of this devastating plant disease and to undertake actions to prevent further spread of the disease. From October 16 - December 1, 2015, 8 samples (5 Mexican lime, 1 kaffir lime and 1 Ponderosa lemon) were confirmed positive for citrus canker and 36 were found negative. Over 3,000 residential properties have been surveyed; commercial grapefruit and orange groves within and beyond the quarantined area showed no symptomatic trees.

The Department believes that establishment of an emergency quarantine is both necessary and appropriate in order to effectively combat and prevent the spread of citrus canker to non-infected areas, including to nurseries, groves and residential areas. A one-half mile radius area will be quarantined around each positive site. All quarantine areas overlap and coalesce into a total 55 square mile contiguous area. There is no commercial citrus in the quarantined area. For practical purposes borders of the quarantined area will be set using the closest property lines, roads, canals or river and posted on the Department's website: www.texasagriculture.gov. The movement, distribution or sale of citrus plants within or out of the quarantined area will be prohibited. Articles or equipment coming in direct contact with infected plant material must be decontaminated prior to moving out of the quarantined area using any approved decontaminant. The citrus fruits sold, distributed or moved to packing houses for processing must be moved under the conditions of a compliance agreement. Landscapers and mowers servicing the quarantined area must come under compliance agreement with TDA, and decontaminate equipment by steam cleaning or washing prior to moving out of the quarantined area. The Department has recom-

mended and encourages the removal of infected tree and plant material and disposal by burning or bagging and burying at least 2 feet deep at the municipal landfill to manage the disease. The Department urges residents in and visitors to the quarantined area to be aware of the disease and help combat it by contacting the Department, Texas A&M University AgriLife Extension, TAMUK-CC, United States Department of Agriculture, or Texas Citrus Pest and Disease Management Corporation for more information.

New §19.400 defines the quarantined pest. New §19.401 describes the areas subject to quarantine. New §19.402 provides quarantined articles. New §19.403 provides restrictions on the movement of regulated articles. New §19.404 provides ongoing pest management. New §19.405 contains restrictions and requirements related to fruit harvest. New §19.406 provides consequences for failure to comply with quarantine restrictions. New §19.407 provides an appeal process for certain agency actions taken against a person for failure to comply with quarantine restrictions or requirements. New §19.408 provides procedures for handling discrepancies or other inconsistencies in textual descriptions in this subchapter with graphic representations.

The new sections are adopted on an emergency basis under the Texas Agriculture Code, §71.004, which authorizes the Department to establish emergency quarantines; §71.007, which authorizes the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; §12.020, which authorizes the Department to assess administrative penalties for violations of Chapter 71 of the Texas Agriculture Code; and Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

The code affected by the emergency adoption is the Texas Agriculture Code, Chapters 12 and 71.

§19.400. Quarantined Pest.

The quarantined pest is citrus canker, a serious plant disease that is not widely distributed in this state. The disease is caused by the bacterial pathogen *Xanthomonas axonopodis* pv. *citri*.

§19.401. Quarantined Areas.

Quarantined areas described on the Texas Department of Agriculture's (Department) Citrus Canker Quarantine under this subchapter, and as found at the Department's webpage at www.TexasAgriculture.gov. A map of the quarantined area is also available on the Department's website.

(1) On the basis of new or revised information, the Department may declare, augment, diminish, fuse, eliminate, rename or otherwise modify quarantined areas.

(2) Designation or modification of a quarantined area is effective upon the posting of the notification of the quarantined area on the department's webpage on Citrus Canker Quarantine.

§19.402. Quarantined Articles.

Quarantined articles are the quarantined pest, and all plants and plant parts, including fruit and seeds listed in 7 CFR §301.75-3. All soil and potting media associated with, and tools, equipment, appliances, machinery, etc., used for handling infected or contaminated material are quarantined articles.

§19.403. Requirements and Restrictions for Movement of Regulated Articles.

(a) Movement of regulated plants within, into or from the quarantined area for sale, distribution or planting is prohibited.

(b) Regulated fruits must be free of leaves, stems and debris if offered for sale or distribution. Fruit can only move out of the quarantined area for sale, distribution or processing or packing at a packing house under a compliance agreement with the Department or the USDA.

(c) Quarantined articles intended for movement, distribution or sale through or out of the quarantined area or between noncontiguous quarantined areas for intrastate or interstate movement shall conform to the restrictions and requirements of 7 CFR §301.75 Subpart-Citrus Canker, including the corresponding restrictions and requirements that may be described in 7 CFR §301.75 as applying to intrastate or interstate movement, distribution or sale.

(d) Landscapers and mowers servicing the quarantined area must come under compliance agreement with the Department or USDA, and decontaminate tools, appliances and equipment by steam cleaning or washing with an approved disinfectant prior to moving out of the quarantined area.

(e) Infected plants, plant parts or quarantined articles that are completely covered can move out of the quarantined area for burning or burial in the landfill under a compliance agreement or permit issued by the Department.

§19.404. Ongoing Pest Management.

At all times, all the citrus plants for sale or distribution must be inspected regularly for symptoms of citrus canker. If any regulated article exhibits symptoms of citrus canker:

(1) the regulated article must be held at the location from sale or distribution, pending inspection, sampling and testing by the Department; immediately notify the regional Department office; and

(2) plants or plant parts that test positive for citrus canker shall be destroyed and disposed of under Department supervision.

§19.405. Citrus Fruit Harvest.

(a) Regulated fruit from a quarantined area intended for non-commercial or commercial movement, sale or distribution outside of the quarantined area, shall not be moved from the production site, except under a compliance agreement with the Department or USDA.

(b) Disinfecting of regulated fruit:

(1) Disinfecting of regulated fruit shall include chemical treatment of regulated fruit, according to D301.75-11(a-1) or (a-2) or (a-3) of the USDA Treatment Manual.

(2) Personnel using a treatment prescribed under paragraph (1) of this subsection must clean their hands according to requirements in D301.75-11 of the USDA Treatment Manual.

(3) Sodium hypochlorite, peroxyacetic acid, and sodium 0-phenyl phenate (SOPP) must be applied for disinfecting hands in accordance with label directions.

§19.406. Consequences for Failure to Comply with Quarantine Requirements or Restrictions.

(a) A person who fails to comply with quarantine restrictions or requirements or a Department order relating to the quarantine is subject to administrative or civil penalties up to \$10,000 per day for any violation of the order and to the assessment of costs for any treatment or destruction that must be performed by the Department in the absence of such compliance.

(b) The Department is authorized to seize and treat or destroy or order to be treated or destroyed, any quarantined article:

(1) that is found to be infested with the quarantined pest; or, regardless of whether infected or not;

(2) that is transported within, out of, or through the quarantined area in violation of this subchapter.

(c) Regulated articles seized pursuant to any Department order shall be destroyed at the owner's expense under the supervision of a Department inspector.

§19.407. Appeal of Department Action Taken for Failure to Comply with Quarantine Restrictions.

An order under the quarantine may be appealed according to procedures set forth in the Texas Agriculture Code, §71.010.

§19.408. Conflicts between Graphical Representations and Textual Descriptions; Other Inconsistencies.

(a) In the event that discrepancies exist between graphical representations and textual descriptions in this subchapter, the representation or description creating the larger geographical area or more stringent requirements regarding the handling or movement of quarantined articles shall control.

(b) The textual description of the plant disease shall control over any graphical representation of the same.

(c) Where otherwise clear as to intent, the mistyping of a scientific or common name in this subchapter shall not be grounds for exemption of compliance with the requirements of this subchapter.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

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For further information, please call: (512) 463-4075



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 2. CHRONIC WASTING DISEASE - MOVEMENT OF DEER

31 TAC §65.94

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* (41 TexReg 815).

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.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

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For further information, please call: (512) 389-4775



31 TAC §65.95

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 in 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 the *Texas Register* (41 TexReg 815). 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.

(a) 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:

- (1) a permit to trap, transport, and transplant game animals or game birds (Triple T permit);
- (2) a permit to trap, transport, and process surplus white-tailed deer (TTP permit); and
- (3) an urban white-tailed deer removal permit.

(b) General.

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

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

(A) Class III release site; or

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

(3) 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.

(4) 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.

(5) 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.

(6) 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.

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

(8) 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.

(9) Notwithstanding the provisions of subsections (c) and (d) of this section, a sample size shall be not more than 40 nor less than 10 deer.

(c) Disease Testing Requirements for Triple T Permit.

(1) 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.

(2) 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.

(d) Disease Testing Requirements for TTP Permit.

(1) 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.

(2) 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.

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

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 29, 2016.

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