

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 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 - COMPREHENSIVE RULES

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, an amendment to 31 TAC §65.95, concerning Movement of Breeder Deer, in response to the ongoing and most recent detections of chronic wasting disease (CWD) in additional deer breeding facilities.

The department's executive director has determined that the nature of CWD, its continued spread, and its recent detection in additional deer breeding facilities in Brooks, Frio, Zavala, Kimble, and Cherokee counties pose an immediate danger to white-tailed deer, which is a species authorized to be regulated by the department, and that the adoption of rules on an emergency basis with fewer than 30 days' notice is necessary to address this immediate danger.

The department's response to the emergence of CWD in captive and free-ranging populations is guided by the department's CWD Management Plan (Plan) <https://tpwd.texas.gov/huntwild/wild/diseases/cwd/plan.phtml>. Developed in 2012 in consultation with the Texas Animal Health Commission, other governmental entities and conservation organizations, and various advisory groups consisting of landowners, hunters, deer managers, veterinarians, and epidemiologists, the Plan sets forth the department's CWD management strategies and informs regulatory responses to the detection of the disease in captive and free-ranging cervid populations in the state of Texas. The Plan is intended to be dynamic; in fact, it must be so in order to accommodate the growing understanding of the etiology, pathology, and epidemiology of the disease and the potential management pathways that emerge as it becomes better understood through time. The Plan proceeds from the premise that disease surveillance and active management of CWD once it is detected are absolutely critical to containing it on the landscape.

This emergency action replaces an emergency adoption (48 TexReg 4337) filed on July 24, 2023, which expires on the date

of this filing; however, provisions affecting 31 TAC §65.911, concerning Prohibited Acts, have been removed. The department is therefore specifying a 60-day period of effectiveness for this emergency adoption so as not to exceed a total period of effectiveness of 180 days for the remaining provisions (§65.95). On November 2, 2023, the Texas Parks and Wildlife Commission adopted an amendment to §65.95. The department will withdraw this emergency action when the permanent amendment to §65.95 takes effect.

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 TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Although CWD remains under study, it is known to be invariably fatal to certain species of cervids, and is transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). To date there are no known cases where humans have been infected with CWD from consuming venison from infected deer. However, recent research suggests that CWD transmission from animals to humans through consumption of infected meat should not be ruled out. If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion-dollar ranching, hunting, wildlife management, and real estate economies could potentially be significant.

Since mid-July of this year, the department has received confirmation of CWD in deer breeding facilities in Brooks, Frio, Zavala, Kimble, and Cherokee counties. Current rules provide that when CWD is detected in a breeding facility or at a location where breeder deer have been released, the facility and any directly connected facilities are immediately prohibited from receiving or transferring deer and the department and Texas Animal Health Commission (TAHC) staff immediately begin epidemiological investigations to determine the extent and significance of possible disease transmission.

In the case of the Brooks County breeding facility, department records indicate that the facility has within the last five years transferred 1,057 deer to 51 deer breeding facilities, five Deer Management Permit (DMP) sites, and 77 release sites located in a total of 67 counties, as well as to three destinations in Mexico. In the case of the Frio County breeding facility, department records indicate that the facility has "certified herd" status under the TAHC herd certification program and within the last five years has transferred 627 deer to 46 deer breeding facilities, two nursing facilities, two DMP sites, and 29 release sites located in a total of 41 counties. In the case of the Zavala County breeding facility, department records indicate that within the last five years

the facility has transferred 276 deer to three deer breeding facilities, one DMP facility, and 21 release sites located in a total of 14 counties. In the case of the Kimble County breeding facility, the facility was the source or destination for 282 deer, including deer sent to seven release sites. In the case of the Cherokee County breeding facility, the facility received 17 deer from four breeding facilities but did not transfer deer to another breeding facility or release site. The breeding facilities, nursing facilities, DMP facilities, and release sites that have received deer from the positive facilities are directly connected to those facilities and are of epidemiological concern. These facilities are by current rule also prohibited from receiving or transferring deer unless and until epidemiological investigation determines that Movement Qualified (MQ) status can be restored. Deer breeding facilities that received deer from one or more of the directly connected breeding facilities (referred to as "Tier 1" facilities) are indirectly connected to the positive facilities and are of epidemiological concern because they have received exposed deer that were in a trace-out breeding facility.

The recent detections of CWD in breeding facilities located in Brooks, Frio, Zavala, Kimble, and Cherokee counties are part of an ongoing outbreak of CWD in deer breeding facilities. Since March 29, 2021, CWD has been detected in 15 counties. In 2023 alone, CWD has been detected in 12 deer breeding facilities located in nine counties. Prior to 2021, CWD was detected in six deer breeding facilities located in four counties.

In response to the magnitude and the potential severity of this situation, the emergency rules require the ante-mortem testing of test eligible deer prior to transfer from a breeding facility to another breeding facility.

The emergency action is necessary to protect the state's white-tailed deer populations, as well as associated industries.

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, Parks and Wildlife Code, Subchapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession of breeder deer, reporting requirements, and procedures and requirements for the purchase, transfer, sale, or shipment of breeder deer; and under Government Code §2001.034, which authorizes a state agency to adopt such emergency rules without prior notice or hearing.

§65.95. *Movement of Breeder Deer.*

(a) General. Except as otherwise provided in this division, a breeding facility may transfer breeder deer under a transfer permit that has been activated and approved by the department to:

(1) another breeding facility as provided in subsection (b) of this section;

(2) an approved release site as provided in subsection (c) [(b)] of this section;

(3) - (4) (No change.)

(b) Transfer From Breeding Facility to Breeding Facility. A breeder deer may be transferred from one breeding facility to another breeding facility only if:

(1) an ante-mortem test on rectal or tonsil tissue collected from the deer within the eight months immediately preceding the transfer has been returned with test results of "not detected"; and

(2) the deer is at least six months of age at the time the test sample required by this paragraph is collected.

(3) An ante-mortem test result of "not detected" submitted to satisfy the requirements of §65.92(d) of this title (relating to CWD Testing) may be utilized a second time to satisfy the requirements of this subsection, provided the test sample was collected as provided in paragraph (1) of this subsection.

(4) A facility from which deer are transferred in violation of this subsection is automatically NMQ and any further transfers are prohibited until the permittee and the owner of the destination facility have complied with the testing requirements of the department, based on an epidemiological assessment as specified in writing.

(c) [(b)] Release Sites; Release of Breeder Deer.

(1) - (6) (No change.)

(d) [(e)] Trace-out Release Site.

(1) - (3) (No change.)

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 November 20, 2023.

TRD-202304340

James Murphy

General Counsel

Texas Parks and Wildlife Department

Effective date: November 20, 2023

Expiration date: January 18, 2024

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

