

**COMPREHENSIVE CWD MANAGEMENT RULES**  
**PROPOSAL PREAMBLE**

1. Introduction.

The Texas Parks and Wildlife Department (the Department, or TPWD) proposes the repeal of §§65.90-65.94 and new §§65.90-65.99 concerning Chronic Wasting Disease - Movement of Deer. The rules proposed for repeal were intended to function as interim rules (Interim Deer Breeder Rules) in order to maintain regulatory continuity for the duration of the 2015-16 deer season and the period immediately thereafter. As stated in previous rulemakings, the department's intent was to review the interim rules and, 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, present the results of that review to the Parks and Wildlife Commission (Commission) in the spring of 2016 for possible modifications.

To ensure that the concerns and interests of the regulated community were fully understood and considered, the Department engaged the Center for Public Policy Dispute Resolution at the University of Texas School of Law to provide facilitation services for the spectrum of stakeholders (including deer breeders, landowners and land managers, hunters, veterinarians, wildlife enthusiasts, the Texas Animal Health Commission (TAHC), and the Department), the purpose of which was to negotiate and develop a consensus concerning the essential components of eventual regulations to comprehensively address and implement effective chronic wasting disease (CWD) management strategies. The stakeholder group convened three times during February and March at which time apparent consensus was reached. The stakeholders also participated in a final phone conference on March 21. The official report of the facilitator is available on the department's website at <http://tpwd.texas.gov/huntwild/wild/diseases/cwd/>.

At the March 23, 2016 meeting of the Texas Parks and Wildlife Commission (Commission), Department staff briefed the Commission on the process and results of the facilitation and presented a synoptic overview of the substantive regulatory provisions being recommended for

proposal by staff to address both the consensus issues that emerged from the facilitation and additional regulatory components necessary to operationalize consensus decisions, as well as other regulatory components deemed necessary but on which there was no consensus.

In addition to the facilitated process, the new rules are also a result of extensive cooperation between the department and 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).

### **Regulatory Authority**

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) and permits for the removal of urban white-tailed deer.

Under Parks and Wildlife Code, Chapter 43, Subchapter L, the department regulates the possession of captive-raised deer within a facility for breeding purposes and the release of such deer into the wild. A deer breeder permit affords deer breeders certain privileges, such as (among other things) the authority to buy, sell, transfer, lease, and release captive-bred white-tailed and mule deer, subject to the regulations of the Commission and the conditions of the permit. Breeder deer may be purchased, sold, transferred, leased, or received only for purposes of propagation or liberation. There are currently 1,275 permitted deer breeders (operating more than 1,300 deer breeding facilities) in Texas.

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 propagation within an enclosure on property surrounded by a fence capable of retaining deer. At the current time, there are no rules authorizing DMP activities for mule deer.

In addition the department regulations authorize the introduction of a deer from a deer breeding facility into a DMP facility for propagation. Deer breeders are permitted under Parks and Wildlife Code, Chapter 43, Subchapter L and 31 TAC Chapter 65, Subchapter T.

### **Background Regarding CWD**

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 variant Creutzfeldt-Jakob Disease (vCJD) in humans. Currently, the only test certified by the U.S. Department of Agriculture (USDA) for CWD must be conducted post-mortem by extracting and testing the obex (a structure in the brain) or medial retropharyngeal lymph node, although the department in this rulemaking proposes to allow certain ante-mortem tests to be valid.

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 to cervids, and is transmitted both directly (through deer-to-deer contact) and indirectly (through environmental contamination). Moreover, a high prevalence of the disease correlates with deer population decline in at least one free-ranging population, and human dimensions research suggests that hunters will avoid areas of high CWD prevalence. Additionally, the apparent persistence of CWD in contaminated environments represents a significant obstacle to eradication of CWD from either farmed or free-ranging cervid populations. The potential implications of CWD for Texas and its annual, multi-billion dollar ranching, hunting, real estate, tourism, and wildlife management-related economies could be

significant, unless it is contained and controlled.

### **Discovery of CWD**

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 50,000 “not detected” CWD test results have been obtained from free-ranging (i.e., not breeder) deer in Texas, and deer breeders have submitted approximately 20,000 “not detected” test results as well. The intent of the proposed new rules is to reduce the probability of CWD being spread from facilities where it might exist and to increase the probability of detecting and containing CWD if it does exist.

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. Under the provisions of the Agriculture Code, §161.101(a)(6) CWD is a reportable disease and requires a veterinarian, veterinary diagnostic laboratory, or person having care, custody, or control of an animal to report the existence of CWD to TAHC within 24 hours after diagnosis. 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 last five years, 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 two DMP facilities in Texas, as well as two destinations in Mexico). The department estimates that 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. At least one of those locations, a deer breeding facility in Lavaca County, was also confirmed to have a CWD positive white-tailed deer acquired from the index facility.

Heightened testing requirements resulted in additional discoveries. A total of 10 white-tailed breeder deer have now been confirmed positive at four facilities (including the index facility). A total of four CWD positive deer were found in the in the index facility. Three CWD positive deer that originated from the index facility were discovered in the Lavaca County facility. A CWD positive deer was harvested from a Medina County release site and another

CWD positive deer was sampled in the associated Uvalde County breeding facility located on the same ranch. While the Uvalde County breeding facility is epidemiologically linked to the index facility, neither positive deer at this location originated from the index facility. More recently, another CWD positive deer was reported in a Medina County deer breeding facility and a free-ranging hunter-harvested mule deer in Hartley County was confirmed to have CWD.

### **Previous CWD Rulemaking**

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 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 (31 TAC §§65.80-65.88), among other things, require deer harvested in a specific geographical area (the Containment Zone), to be presented at check stations to be tested for CWD.

In response to the first discovery of CWD in a deer breeding facility in Medina County, the department adopted emergency rules on August 18, 2015 (40 TexReg 5566) to address deer breeding facilities and release sites for breeder deer. The department followed the emergency rulemaking with the “interim” rules that are proposed for repeal as part of this rulemaking, which were published for public comment in the October 2, 2015, issue of the *Texas Register*, adopted by the Commission on November 5, 2015, and published for adoption in the January 29, 2016, issue of the *Texas Register* (41 TexReg 815).

The department also adopted emergency rules governing DMP and Triple T activities (effective October 5, 2015, published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7305, 7307) and followed with interim DMP rules published for public comment in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9086), adopted by the Commission on January 21, 2016, and published for adoption in the February 19, 2016, issue of the *Texas Register* (41 TexReg 1250).

### **Consensus Rule Components**

As mentioned previously, the proposed new rules contain provisions that represent a consensus resulting from facilitation. Early in the facilitation process, representatives of the regulated community stated that two important goals for the regulatory community were that new rules allow live-animal testing and that the new rules allow for the transfer of breeder deer without requiring testing at the release site. At a subsequent facilitation meeting, stakeholders suggested the creation of several regulatory components, the most important of which was the creation of four new subcategories of “TC 1” deer breeding facilities (in the rubric of the interim rules, those facilities representing the least amount of risk of spreading CWD), each with a different testing regime. The proposed TC 1 testing regime would allow ante-mortem testing, and would allow the transfer of breeder deer without requiring CWD testing at the release site. After extended discussion and refinement over the remaining facilitation meetings, all stakeholders agreed that the structure was suitable for attaining the goals of both the regulated community, the other stakeholders, and the department.

The major consensus provisions emerging from the facilitation process are:

1. TC 1 breeding facility testing plans which require no release site testing for recipients of breeder deer;
2. The requirements for TC2 breeding facilities and Class II release sites;
3. The requirements for TC 3 breeding facilities and Class III release sites;
4. Standards for valid ante-mortem testing;
5. Standards for post-mortem testing;
6. The definition for “eligible-aged deer” to provide for breeder deer 12 months and older,

- provided the breeding facility is enrolled in the TAHC Herd Certification Program;
7. The stipulation that breeding facilities and release sites that accept breeder deer assume the lowest facility status of all originating facilities;
  8. The provisions allowing breeding facilities to maintain MQ authorization or facility status by making up for missed tests;
  9. The allowance of ante-mortem tests to be submitted in lieu of post-mortem tests;
  10. Stipulation that failure to test a release site make the site ineligible for future releases;
  11. Testing requirements for DMP sites;
  12. Testing requirements for Triple T and TTP permits;
  13. Testing requirements at Triple T release sites;
  14. Tagging requirements for Class III release sites; and
  15. Testing requirements and prohibitions for release sites that failed to comply with the interim rules and release sites that fail to comply with the new rules.

### **Non-consensus Rule Components**

The stakeholders at the facilitation were unable to reach consensus on the following:

1. The release of breeder deer to sites not surrounded by a 7-foot high fence; which is a provision of the interim rules and which the department has retained in the proposed new rules.
2. Standardized ear tagging requirements were a part of the stakeholder discussions. There was no consensus on this issue nor do the proposed rules prescribe a change to the standard for ear tagging requirements for all breeder deer, with the exception of Class III release sites.

### **Description of the Rules**

#### **Definitions**

Proposed new §65.90, concerning Definitions, would set forth the meanings of specialized words and terms in order to eliminate ambiguity and enhance compliance and enforcement.

Proposed new §65.90(1) would define “accredited testing facility” as “a laboratory approved by the United States Department of Agriculture to test white-tailed deer or mule deer

for CWD.” The definition is necessary in order to provide a standard for testing facilities.

Proposed new §65.90(2) would define “ante-mortem” testing as “a CWD test performed on a live deer.” The definition is necessary because the proposed new rules allow or require ante-mortem testing in addition to post-mortem testing.

Proposed new §65.90(3) would define “breeder deer” as “a white-tailed deer or mule deer possessed under a permit issued by the department pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter.” The definition is necessary to establish a shorthand term for a phrase that is used frequently in the proposed new rules but cumbersome to repeat.

Proposed new §65.90(4) would define “confirmed” as “a CWD test result of “positive” received from the National Veterinary Service Laboratories (NVSL) of the United States Department of Agriculture.” The definition is necessary in order to provide a definitive standard for asserting the presence of CWD in a sample. Samples collected from breeder deer are sent initially to an accredited testing facility, such as the Texas Veterinary Medical Diagnostic Laboratory (TVMDL). A test result of “suspect” is returned when CWD is detected, and a tissue sample is forwarded to the NVSL for confirmation.

Proposed new §65.90(5) would define “CWD” as “chronic wasting disease.” The definition is necessary to provide an acronym for a term that is used repeatedly in the rules.

Proposed new §65.90(6) would define “CWD-positive facility” as “a facility where CWD has been confirmed.” The definition is necessary because the proposed new rules contain provisions that are predicated on whether or not CWD has been detected and confirmed in a given deer breeding, DMP, nursing, or other facility authorized to possess white-tailed deer or mule deer.

Proposed new §65.90(7) would define “deer breeder” as “a person who holds a valid deer breeder’s permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter.” As with several other definitions in the proposed new rules, the definition is necessary to establish a shorthand term for a phrase that is used frequently in the proposed new rules but cumbersome to repeat.

Proposed new §65.90(8) would define “deer breeding facility (breeding facility)” as “a

facility permitted to hold breeder deer under a permit issued by the department pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter.” As with several other definitions in the proposed new rules, the definition is necessary to establish a shorthand term for a phrase that is used frequently in the proposed new rules but cumbersome to repeat.

Proposed new §65.90(9) would define “department (department)” as “Texas Parks and Wildlife Department.” The definition is necessary to avoid confusion, since the proposed new rules contain references to another state agency.

Proposed new §65.90(10) would define “Deer Management Permit (DMP)” as “a permit issued 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)) that authorizes the temporary detention of deer for propagation purposes. The proposed new rules would regulate certain aspects of activities conducted under a DMP and a definition is necessary to avoid any confusion as to what is meant by the term.

Proposed new §65.90(11) would define “eligible-aged deer” as “if the deer is held in a breeding facility enrolled in the TAHC CWD Herd Certification Program, 12 months of age or older or for any other deer, 16 months of age or older.” CWD is difficult to detect in deer younger than 12 months of age. The department’s previous CWD testing rules at §65.604(e) of this title provided for testing of mortalities that were 16 months or older. The department is retaining that standard but is also recognizing that the TAHC and USDA use a standard of 12 months.

Proposed new §65.90(12) would define “eligible mortality” as “an eligible-aged deer that has died.” The proposed new rules stipulate CWD testing requirements. As mentioned earlier, CWD is difficult to detect in younger animals; therefore, the proposed new rules would require that all deer tested be of eligible age.

Proposed new §65.90(13) would define “exposed deer.” This definition would replace the former definition for “Tier 1,” which proved to be easily confused with other terms such as “TC 1.” The definition would provide that “unless the department determines through an epidemiological investigation that a specific breeder deer has not been exposed to CWD, an

exposed deer is a white-tailed deer or mule deer that is in a CWD-positive facility or was in a CWD-positive facility within the five years preceding the confirmation of CWD in that facility.” The definition is necessary to distinguish the circumstances under which certain provisions of the proposed new rules are applicable. The five-year timeframe was selected because a deer infected with CWD could shed prions (the infectious agent believed to cause CWD) and infect other animals during this period before exhibiting clinical symptoms of the disease. However, if an epidemiological investigation concludes that any part of the five-year window is unnecessary, the status of “exposed” could be altered.

Proposed new §65.90(14) would define “facility” as “any location required to be registered in TWIMS under a deer breeder permit, Triple T permit, or DMP, including release sites and/or trap sites.” The definition is necessary to provide a shorthand term for the locations to which the proposed new rules apply, rather than having to enumerate a cumbersome list of sites.

Proposed new §65.90(15) would define “hunter-harvested deer” as “a deer required to be tagged under the provisions of Subchapter A of this chapter (relating to Statewide Hunting Proclamation).” The definition is necessary because the proposed rules in some instances require deer harvested by hunters (as opposed to other types of mortality) to be tested for CWD.

Proposed new §65.90(16) would define “hunting year.” Because the proposed new rules would stipulate the testing of deer harvested by lawful hunting it is necessary to create a term that covers hunting under the normal seasons and bag limits established for each county by the Commission and hunting that occurs during the period of validity of Managed Lands Deer Permits; therefore, “hunting year” would be defined as “that period of time between September 1 and August 31 of any year when it is lawful to hunt deer under the provisions of Subchapter A of this chapter (relating to Statewide Hunting Proclamation).”

Proposed new §65.90(17) would define “landowner (owner)” as “any person who has an ownership interest in a tract of land, and includes a landowner’s authorized agent.” The definition is necessary because the proposed new rules set forth testing requirements and other obligations for persons who own land where breeder deer are released.

Proposed new §65.90(18) would define “landowner’s authorized agent” as “a person

designated by a landowner to act on the landowner's behalf." The definition is necessary for the same reason set forth in the discussion of proposed new §65.90(17).

Proposed new §65.90(19) would define "liberated deer" as "a free-ranging deer that bears evidence of a tattoo (including partial or illegible tattooing) or of having been eartagged at any time (holes, rips, notches, etc. in the ear tissue)." The definition is necessary because the proposed new rules would in certain circumstances require the testing of hunter-harvested deer that could be identified as breeder deer that had been liberated.

Proposed new §65.90(20) would define "Movement Qualified (MQ)." Because the proposed new rules require deer breeding facilities to maintain a minimum level of testing over specified time period in order to be authorized by the department to transfer breeder deer to other deer breeders or for purposes of release, it is necessary to create a shorthand term to reference that ability. Therefore, "Movement Qualified (MQ)" would be defined as "a designation made by the department pursuant to this division that allows a deer breeder to lawfully transfer breeder deer."

Proposed new §65.90(21) would define "Not Movement Qualified (NMQ)" as "a designation made by the department pursuant to this division that prohibits the transfer of deer by a deer breeder." Because the proposed new rules would prohibit the movement of deer from any facility that is not MQ, a definition for that condition is necessary.

Proposed new §65.90(22) would define "NUES tag" as "an ear tag approved by the United States Department of Agriculture for use in the National Uniform Eartagging System (NUES)." The definition is necessary because the proposed new rules require certain breeder deer and Triple T deer released to a release site to be tagged with either a RFID or NUES tag.

Proposed new §65.90(23) would define "originating facility" as "any facility from which deer have been transported, transferred, or released, as provided in this division or as determined by an investigation of the department, including for breeder deer, the source facility identified on a transfer permit and for deer being moved under a Triple T permit, the trap site.

Proposed new §65.90(24) would define "post-mortem test" as "a CWD test performed on a dead deer," which is necessary in order to delineate the situations in which the proposed new rules require post-mortem testing as opposed to ante-mortem testing.

Proposed new §65.90(25) would define “properly executed.” Because the proposed new rules would require the submission of electronic reports and forms that provide critical information to the department, it is necessary to make clear that all information on such a form or report must be provided. Therefore, the proposed new rules would define “properly executed” as “a form or report required by this division on which all required information has been entered.”

Proposed new §65.90(26) would define “reconciled herd” as “the deer held in a breeding facility for which the department has determined that the deer breeder has accurately reported every birth, mortality, and transfer of deer in the previous reporting year.” The definition is necessary because the proposed rules require a deer breeder to have a reconciled herd in order to transfer or release breeder deer.

Proposed new §65.90(27) would define “release site” as “a specific tract of land that has been approved by the department for the release of deer under this division.” The definition is necessary because the proposed new rules impose CWD testing and other requirements for certain tracts of land where breeder deer are liberated or transferred.

Proposed new §65.90(28) would define “reporting year” as “the period of time from April 1 of one calendar year to March 31 of the next calendar year.” Deer breeders are required to file annual reports with the department. The proposed new rules condition the eligibility of deer breeders to transfer and release deer on the completeness and accuracy of those reports.

Proposed new §65.90(29) would define “RFID tag” as “a button-type ear tag conforming to the 840 standards of the United States Department of Agriculture’s Animal Identification Number system.” The definition is necessary because the proposed new rules require certain breeder deer and Triple T deer released to release sites to be tagged with either an RFID or NUES tag.

Proposed new §65.90(30) would define “status” as “the level of testing required by this division for any given deer breeding facility or release site.” The definition also clarifies that the highest status for a Transfer Category is 1 and the lowest status is Transfer Category 3. Similarly, Class I is the highest status for release sites and Class III is the lowest. As noted previously, the proposed new rules categorize breeding facilities and release sites based on

relative risk. The definition is necessary because the proposed new rules include regulatory requirements that are predicated upon the status of a breeding facility or release site.

Proposed new §65.90(31) would define “submit.” In order to eliminate lengthy repetition throughout the proposed new rules, “submit” is defined as “when used in the context of test results, provided to the department, either directly from a deer breeder or via an accredited testing laboratory.”

Proposed new §65.90(32) would define “suspect.” The testing process for determining that a deer is in fact infected with CWD is two-fold. If the initial test on a sample indicates the presence of the disease, the sample or another sample from the same animal is re-tested. Because the proposed new rules would make any facility NMQ pending confirmation (i.e., the re-test), it is necessary to create a term for the initial test result that causes the re-test. Therefore, “suspect” would be defined as “an initial CWD test result of “detected” that has not been confirmed.”

Proposed new §65.90(33) would define “TAHC” as “Texas Animal Health Commission.”

Proposed new §65.90(34) would define “TAHC CWD Herd Certification Program” as “the disease-testing and herd management requirements set forth in 4 TAC §40.3 (relating to Herd Status Plans for Cervidae).” The proposed new rules have provisions specific to deer breeders who participated in the TAHC herd certification program. The definition makes it clear that references to herd certification are references to the herd certification program administered by TAHC.

Proposed new §65.90(35) would define “TAHC Herd Plan” as “a set of requirements for disease testing and management developed by TAHC for a specific facility.” The proposed new rules in some cases make eligibility to transfer or receive breeder deer contingent on compliance with a herd plan developed by TAHC. The definition makes it clear that references to herd plans are references to herd plans developed by TAHC.

Proposed new §65.90(36) would define “Test, Test Result(s), or Test Requirement” as “a CWD test, CWD test result or CWD test requirement as provided in this division,” for the same reasons described in the explanation of the definition for “submit.”

Proposed new §65.90(37) would define “trap site” as “a specific tract of land approved by

the department for the trapping of deer under this chapter and Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, and R-1,” which is necessary because the proposed new rules would impose testing and reporting requirements on trap sites under various permits.

Proposed new §65.90(38) would define “Triple T permit.” Because the proposed new rules would affect certain activities conducted under Triple T permits, the term is defined in order to eliminate any confusion. A Triple T permit is “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).” In the context of the proposed new rules, a reference to Triple T permit is limited to a Triple T permit for activities involving white-tailed and mule deer.

Proposed new §65.90(39) would define “Trap, Transport and Process (TTP) permit” — as “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), to trap, transport, and process surplus white-tailed deer (TTP permit).” The proposed definition is necessary to clarify and distinguish TTP and Triple T permit requirements.

Proposed new §65.90(40) would define “TWIMS” as “the department’s Texas Wildlife Information Management Services (TWIMS) online application.” TWIMS is the system that all deer breeders are required to use to file required notifications and reports required by current rule.

### **General Provisions**

Proposed new §65.91, concerning General Provisions, would set forth a number of provisions that are applicable to the transfer or release of deer.

Proposed new §65.91(a) would stipulate that in the event that a provision of the proposed new rules conflicts with any other provision of 31 TAC Chapter 65, the new rules (if adopted) would apply. In order to avoid confusion resulting from a conflict between regulations, the proposed new rules with the agency’s existing rules governing white-tailed deer and mule deer. Therefore, the proposed new rules would clarify that the proposed new rules govern in the

event of conflict.

Proposed new §65.91(b) would prohibit the transfer of live breeder deer or deer trapped under a Triple T permit, TTP permit or DMP for any purpose except as provided by the proposed new rules. Because deer breeders, landowners, and wildlife managers frequently transfer deer under various permits, it is necessary in light of the emergence of CWD in Texas deer breeding facilities as well as in free-ranging deer to prohibit the movement of breeder deer except as authorized by the proposed rules.

Proposed new §65.91(c) would prohibit the movement of deer to or from any facility where CWD has been detected, beginning with the notification that a “suspect” test result has been received from an accredited testing laboratory, irrespective of how the sample was obtained or who collected the sample and would stipulate that such prohibition would take effect immediately upon the notification of a CWD 'suspect' test result and continue in effect until the department expressly authorizes the resumption of permitted activities at that facility. The proposed new provision is necessary because CWD is an infectious disease, which makes it necessary to prohibit certain activities in order to contain the potential spread of the disease while test results are confirmed.

Proposed new §65.91(d) would provide that a facility (including a facility permitted after the effective date of this division) that receives breeder deer from an originating facility of lower status automatically assumes the status associated with the originating facility and becomes subject to the testing and release requirements of the division at that status for a minimum of two years, if the facility is a breeding facility, or for the period specified for release sites in §65.95(c)(1)(D) of this title (relating to Movement of Breeder Deer). The proposed new rules create a tiered system of testing requirements based on the level of risk of transmission of CWD for each deer breeding facility or release site. The level of risk is based on the degree to which the facility has been monitored for the presence of CWD, or contains or is connected to exposed animals. Epidemiological science dictates that a population receiving individuals from a higher risk population is itself at greater risk; therefore, the proposed new rules would address such transfers from higher risk to lower risk populations by requiring the receiving facility or release site to comply with the testing requirements associated with the originating facility, and would

stipulate a duration for the application of continued testing requirements.

Proposed new §65.91(e) would provide that a deer breeding facility that was initially permitted after March 31, 2016 will assume the lowest status among all originating facilities from which deer are received. The proposed new subsection is necessary for the same reasons addressed in the discussion of proposed new §65.91(d).

Proposed new §65.91(f) would provide that the designation of status by the department in and of itself does not authorize the transfer or movement of deer and prohibit any person from removing or causing the removal of deer from a facility that has been designated NMQ by the department. The provision is necessary because a breeding facility of any status can be designated NMQ.

Proposed new §65.91(g) would require all applications, notifications, and requests for change in status required by this division shall be submitted electronically via TWIMS or by another method expressly authorized by the department. To provide greater regulatory efficiency, it is necessary to require the use of an automated system.

Proposed new §65.91(h) would provide that in the event that technical or other circumstances prevent the development or implementation of automated methods for collecting and submitting the data required by this division via TWIMS, the department may prescribe alternative methods for collecting and submitting the data required by this division, which is necessary to provide for continuity of administration in the event of technical disruptions.

### **CWD Testing**

Proposed new §65.92, concerning CWD Testing, would establish the general provisions regarding the collection and submission of CWD test samples.

Proposed new §65.92(a) would require all CWD test samples at the time of submission for testing to be accompanied by a properly executed, department-prescribed form provided for that purpose. The technical response being developed by the department would provide for the accredited laboratories that perform CWD testing notify the department of test results electronically. Requiring persons who submit test samples to those laboratories to use a department-supplied form that contains data fields that can be entered by the laboratory, the

process of notification and the sharing of records is enhanced by eliminating the need for manual data entry by the department after the test results have been received.

Proposed new §65.92(b) would set forth the requirements for valid ante-mortem testing, including the identification of the specific tissues that may be used, the requirement that tissue samples be collected by a licensed veterinarian, that the testing be done by an accredited laboratory, that samples be submitted within six months of submission from a live deer that is at least 16 months of age, has been in the facility for at least 16 months; and has not been the source of a “not detected” ante-mortem test result submitted within the previous 36 months. Under the Texas Veterinary Practices Act (Occupations Code, Chapter 801) only a licensed veterinarian is authorized to perform the procedures that the proposed new rules would allow for purposes of meeting ante-mortem testing requirements. Additionally, in order to be minimally accurate and epidemiologically valuable, tissue samples must be extracted from deer older than 16 months of age that have been in one environment long enough to be expected to have contracted CWD if it were present (which also allows epidemiologists to determine where the disease was acquired). Finally, the most significant epidemiological distinction between ante-mortem testing and post-mortem testing is that the testing of animals that have died provides a much higher likelihood of detecting the presence of disease, since diseased animals are more likely to die than healthy animals. In order to prevent the repeated use of tissues from an animal that has produced “not detected” results in the recent past, it is necessary to stipulate a minimum frequency that an animal may be used to provide tissue samples. The department has chosen the 36-month interval because it is approximately half the amount of the known maximum incubation period for CWD (five years). It should also be noted that although ante-mortem testing has not yet been acknowledged as an official test protocol by the USDA, the submission of a “suspect” ante-mortem test would cause the subject animal to be euthanized and subjected to post-mortem testing for confirmation.

Proposed new §65.92(c) would stipulate that ante-mortem tests submitted by a deer breeder for purposes of attaining a higher status would have to be collected and submitted between October 15 of one year and March 15 of the following year. This time period was chosen because it encompasses the time period when breeder deer are most likely to be handled

by deer breeders for other reasons (affording the opportunity to take tissue samples at convenient times) and because it is necessary for the department to impose a “window” for logistical and administrative purposes.

Proposed new §65.92(d) would set forth the requirements for post-mortem testing, stipulating that a post-mortem CWD test is not valid unless it is performed by an accredited testing laboratory on the obex of an eligible mortality, which may be collected only by a qualified licensed veterinarian or other person certified by TAHC to perform that procedure. The provision also would stipulate that a medial retropharyngeal lymph node collected from the eligible mortality by an qualified licensed veterinarian or other person approved by the department could be submitted to an accredited testing facility for testing in addition to or in lieu of the obex (if the obex cannot be obtained) of the eligible mortality. Obviously, the department’s efforts to detect and contain CWD depend on the quality of the testing itself. At the current time, USDA will not certify herd plans for cervidae unless post-mortem CWD testing is performed by laboratories that have been approved by USDA. The standard for approval is compliance with 9 CFR §55.8, which sets forth the specific tests, methodology, and procedure for conducting post-mortem CWD tests. Therefore, in order to ensure that post-mortem CWD tests are performed in accordance with uniform standards, the proposed new rules would require all CWD tests to be performed by a laboratory approved by USDA. Additionally, the proposed new subsection would specify which tissues must be submitted and who is authorized to collect those tissues. At the current time, the only CWD testing approved by USDA must be performed on certain tissues from eligible mortalities, such as the obex (a structure in the brain) or certain lymph nodes. Laypersons can be trained to remove an obex, but the successful extraction of appropriate lymph nodes requires an experienced veterinarian, technician, or biologist. Therefore, the proposed new subsection also stipulates that to be valid, a CWD test must be performed on an obex, which can be collected by anyone. If a lymph node is to be tested in addition to the obex, it must be a medial retropharyngeal lymph node collected from the eligible mortality by an accredited veterinarian or other person approved by the department.

Proposed new §65.92(e) would allow ante-mortem tests to be substituted for required post-

mortem tests at a ratio of 2:1, provided at least two eligible mortalities have occurred in the facility in the corresponding report year; and the number of “not detected” post-mortem test results is equal to at least 50 percent of the total test results required have been submitted. The department acknowledges that natural mortality is unpredictable and that therefore there will be time periods when test results for a sufficient number of mortalities cannot be submitted; therefore, the proposed new rule allows limited substitution of ante-mortem tests for post-mortem tests. For reasons discussed earlier, test results from natural mortalities have a higher epidemiological value than ante-mortem tests and the department believes that ante-mortem testing should not replace more than half of the total required post-mortem testing.

Proposed new §65.92(f) would prohibit the use of a single ante-mortem test result more than once to satisfy any testing requirement of the division. From an epidemiological perspective, the use of one test result to satisfy more than one testing requirement (especially if the submissions take place in more than one reporting year) creates a weakness because the test result is then not unique.

Proposed new §65.92(g) would stipulate that the testing requirements of the division cannot be altered by the sale or subdivision of a property to a related party if the purpose of the sale or subdivision is to avoid the requirements of this division. The department believes that a person subject to the provisions of the proposed new rules should not be able to avoid compliance simply by selling, donating, or trading property to another person related to the seller.

Proposed new §65.92(h) would provide that the owner of a release site agrees, by consenting to the release of breeder deer on the release site, to submit all required CWD test results to the department as soon as possible but not later than May 1 of each year for as long as CWD testing is required at the release site under the provisions of this division. The proposed new rules contemplate a disease management strategy predicated on the results of CWD testing. Incomplete, inadequate, or tardy reporting of test results confound that strategy. For this reason, the proposed new rule would establish a date certain for reporting test results to the department.

### **Harvest Log**

Proposed new §65.93, concerning Harvest Log, would set forth the elements and requirements for on-site harvest documentation. The proposed new rules require a harvest log to be maintained on Class II and Class III release sites and Triple T release sites. For each deer harvested from a Class II or Class III release site for which a harvest log is required, the proposed new rules would require the hunter's name and hunting license number (or driver's license number, if the daily harvest log is also being used as a cold storage/processing book) to be entered into the harvest log, along with the date of kill, type of deer killed, any alphanumeric identifier tattooed on the deer, the tag number of any RFID or NUES tag affixed to the deer; and any other identifier and identifying number on the deer. The proposed new provision would enable the department to identify all deer harvested at a given release site (including deer that were released breeder deer) if an epidemiological investigation becomes necessary. The proposed new paragraph also would require the daily harvest log to be presented to any department employee acting within the scope of official duties and for the contents of the daily harvest log to be reported to the department via TWIMS by no later than April 1 of each year, and would also provide for the format and retention of the harvest.

### **Breeding Facility Minimum Movement Qualification**

Proposed new §65.94, concerning Breeding Facility Minimum Movement Qualification, would set forth the testing requirements necessary for a breeding facility to be able to transfer deer to other deer breeders or for purposes of release. The proposed new provision would cause any breeding facility to be NMQ (prohibited from transferring breeder deer anywhere for any purpose) if the breeding facility was not in compliance with MQ requirements in effect prior to the new rules, if the breeding facility is not in compliance with the testing requirements of the new rules as of their effective date and moving forward, if the facility is prohibited from transferring deer by order of TAHC, if the facility does not have a reconciled herd inventory, or if the facility was not in compliance with reporting and recordkeeping requirements. Among the requirements for achieving the movement qualification standard in proposed new §65.94(a) is a requirement to submit CWD "not detected" test results for at least 50% of eligible

mortalities occurring in the facility during each reporting year beginning April 1, 2016. However, the department recognizes that if a breeding facility has unusually low eligible mortalities, this provision would result in the submission of very few test results. Therefore a provision is included to require that beginning April 1, 2021, the number of “not detected” test results submitted during the previous five consecutive years must be equal to or greater than the sum of the eligible-aged population in the breeding facility at the end of each of the previous five consecutive reporting years, plus the sum of the eligible mortalities that occurred within the breeding facility for each of the previous five consecutive reporting years, multiplied by 2.25 percent. This provision is intended to provide a minimum number of tests that must be submitted in a five-year period. To develop this number, the department considered that the average natural mortality in a deer breeding facility is 4.5 percent of the eligible-aged deer population in the breeding facility each year. Therefore, if a deer breeding facility with an average natural mortality rate among eligible-aged deer and tested 50% of those mortalities, the breeding facility would test 2.25 percent (i.e., 50% of 4.5%) of the eligible-aged population each year. In order to calculate this number over a five-year period, the eligible-aged population of the breeding facility (the eligible-aged population of the breeding facility plus eligible-aged mortalities) for each of the previous five years is added together. That number is multiplied by 2.25 percent. The resulting number is 50 percent of the average eligible-aged mortality for a deer breeding facility over a five-year period.

Proposed new §65.94(b) would provide that a breeding facility that has been designated as NMQ for failure to comply with testing requirements would be restored to MQ when sufficient “not detected” test results are submitted. The department has determined that once a breeding facility is compliant with applicable testing requirements, MQ authority should be restored, so long as the other requirements being MQ are met.

Proposed new §65.94 (c) would require a facility designated NMQ to report all mortalities within the facility to the department immediately upon discovery. From an epidemiological perspective, once a breeding facility cannot provide the minimum assurance that adequate disease surveillance is being maintained, there is an increased risk that if CWD is present it could be spread. Therefore, the proposed new rule requires noncompliant facilities to report all

mortalities immediately, rather than at the end of the reporting year.

Proposed new §65.94 (d) would require that immediately upon the notification that a facility has received a “suspect” test result, all facilities that received deer from or provided deer to the suspect facility within the previous five years would be designated NMQ until a determination that the facility is not epidemiologically linked to the suspect deer or upon further testing the “suspect” deer is determined not to be positive. The proposed new rules are intended to detect CWD if it is present and prevent the spread of CWD once it is detected; therefore, the department has determined that it is prudent, once a “suspect” test result has been returned, to stop all movement to and from all connected facilities until the “suspect” test is either confirmed or determined to be non-positive.

### **Movement of Breeder Deer**

Proposed new §65.95, concerning Movement of Deer, would establish the various status levels and attendant testing requirements for breeding facilities and release sites.

Proposed new §65.95(a) would allow a TC 1 or TC 2 breeding facility designated MQ and in compliance with the applicable provisions of the divisions to transfer breeder deer under existing rules to another breeding facility, an approved release site, a DMP facility, or to another person for nursing purposes.

Proposed new §65.95(b) would establish three categories of breeder facilities based on level of epidemiological risk. The TC 1 category represents the lowest risk of transmitting CWD, based on the provenance of the deer within the facility and the testing regimen performed at the facility on annual and five-year time periods. The proposed new rule would establish TC 1 status for breeding facilities that have “fifth-year” or “certified” status in the TAHC CWD Herd Certification Program. The proposed new rule would also establish TC 1 status for breeding facilities that have submitted “not detected” post-mortem test results equivalent to one the following testing regimes (discussed in greater detail later in this preamble: 1) results equivalent to at least 80 percent of the total number of eligible mortalities that occurred in the breeding facility in each reporting year of the immediately preceding five-year period and each year thereafter, as well as a five-year record of minimum post-mortem testing based on the facility

population; 2) ante-mortem tests of at least 80 percent of eligible-aged deer in the facility's inventory at the time the testing is conducted and post-mortem tests of at least 80 percent of all eligible mortalities during each reporting year thereafter, as well as a five-year record of minimum post-mortem testing based on the facility population; or 3) annual ante-mortem tests of at least 25 percent of eligible-aged deer in the facility's inventory at the time the testing is conducted and annual post-mortem tests of at least 50 percent of eligible mortalities. These categories were developed during the facilitation effort discussed earlier in this preamble. The department is confident that the testing requirements provide an increased potential to detect and contain CWD compared to the interim rules.

Among the options provided in proposed new §65.95(b) for obtaining TC 1 status is an option to test at least 80 percent of the total number of eligible mortalities that occurred in the breeding facility in each reporting year of the immediately preceding five-year period and each year thereafter. Another option is to conduct ante-mortem tests of at least 80 percent of eligible-aged deer in the facility's inventory at the time the testing is conducted and post-mortem tests of at least 80 percent of all eligible mortalities during each reporting year thereafter. For both of those options, the department recognizes that if a breeding facility has an unusually low number of eligible mortalities, the requirement to submit post-mortem tests for 80 percent of all eligible mortalities during year could result in a lower number of post-mortem tests. Therefore, both provisions contain a minimum number of post-mortem tests to be submitted over a five-year period. That number is calculated as the sum of the eligible-aged population in the breeding facility at the end of each of five consecutive reporting years, plus the sum of the eligible mortalities that have occurred within the breeding facility for each of the five consecutive years, multiplied by 3.6 percent. To develop this number, the department considered that the average natural mortality in a deer breeding facility is 4.5 percent of the eligible-aged deer population in the breeding facility each year. Therefore, if a deer breeding facility with an average number of natural mortalities among eligible-aged deer and tested 80% of those mortalities, the breeding facility would test 3.6 percent (i.e., 80% of 4.5%) of the eligible-aged population each year. In order to calculate this number over a five-year period, the eligible-aged population of the breeding facility (the eligible-aged population of the breeding

facility plus eligible-aged mortalities) for each of the previous five years is added together. That number is multiplied by 3.6 percent. The resulting number is 80 percent of the average eligible-aged mortality for a deer breeding facility over a five-year period.

Proposed new §65.95(b) also would stipulate consequences for breeding facilities that have failed to comply with the testing requirements for TC 1 breeding facilities, providing for reduction in status to TC 2, provisions for re-attaining TC 1 status if testing compliance is achieved within 60 days of being reduced in status, the stipulation of a minimum time period of two years at TC 2 status if TC 1 status is not re-attained within 60 days, and a provision for ineligibility to regain TC 1 status if breeder deer from a lower status facility are accepted during the 60-day re-attainment period. The department believes that failure to comply with testing requirements is problematic from an epidemiological point of view and should result in demotion to a lower status, but recognizes that it is not necessarily possible to observe or locate mortalities in a timely manner; therefore, the proposed new rules would offer a limited time period for delinquent facilities to “catch up” before being reduced in status for a two-year period.

Proposed new §65.95(b)(2) would establish testing requirements for TC 2 breeding facilities, which would be the minimum testing requirements for MQ status stipulated in §65.94, relating to Breeding Facility Minimum Movement Qualification. A TC 2 breeding facility is a facility that is neither a TC 1 breeding facility nor a TC 3 facility.

Proposed new §65.95(b)(2) also would establish provisions regarding classification and requirements for TC 3 breeding facilities. A TC 3 facility is any breeding facility registered in TWIMS that is under a TAHC hold order and/or herd plan and received an exposed deer within the previous five years, transferred deer to a CWD-positive facility within the five-year period preceding the confirmation of CWD in the CWD-positive facility, or possessed a deer that was in a CWD-positive facility within the previous five years. As such, TC 3 breeder facilities are the facilities with the highest risk of harboring and spreading CWD. Therefore, the proposed new rule prohibits the transfer of deer from any TC 3 facility unless such transfer is expressly authorized in a TAHC herd plan and then only in accordance with the provisions of this division and the TAHC herd plan, and requires all transferred deer to be tagged in one ear with

a NUES tag or button-type RFID tag approved by the department.

Proposed new §65.95(c) would set forth provisions governing release sites.

Proposed new §65.95(c)(1) would provide that an approved release site consists solely of the specific tract of land to which deer are released and the acreage designated as a release site in TWIMS, require that liberated breeder deer have complete, unrestricted access to the entirety of the release site, and stipulate that all release sites onto which breeder deer are liberated be surrounded by a fence of at least seven feet in height that is capable of retaining deer at all times (and make the owner of the release site responsible for ensuring that the fence and associated infrastructure retain deer). In order to provide a measure of confidence that CWD is not spread from those places where breeder deer are released, it is necessary to identify the specific location where breeder deer are authorized to be released. Similarly, it is necessary to establish a level of vigilance sufficient to give reasonable assurance that breeder deer are not allowed to leave the specific premise where they were released. It is also necessary to ensure that released deer are not confined in smaller enclosures within a permitted release site, which have the effect of creating unnatural densities that could encourage the spread of disease if present.

Proposed new §65.95(c)(1) also would provide that any testing requirements of the division continue in effect until “not detected” test results are submitted for five consecutive hunting years following the last date on which breeder deer were liberated on the release site, that a release site not in compliance with the testing requirements of this subsection is ineligible to receive deer, prohibit any intentional act that allows any live deer to leave or escape from a release site, and require a harvest log to be maintained. In addition, the owner of a Class II or Class III release site would be required to maintain a harvest log.

The proposed new rule would establish that a Class I release site is a release site that has received deer only from TC 1 facilities and is in compliance with the applicable provisions of the division. On that basis, Class I release sites represent the lowest risk of harboring or spreading CWD and are therefore not required to perform CWD testing. A Class II release site is a release site that receives deer from a TC 2 breeding facility (but not a breeding facility of lower status). The proposed new rule would require that for each year a Class II release site receives deer from any TC 2 breeding facility, the owner of the release site must, for a period of

five consecutive hunting years immediately following the release, submit “not detected” post-mortem test results for 50 percent of liberated deer that are harvested at the release site or, if no liberated deer are harvested at the release site in any hunting year, 50 percent of hunter-harvested deer. Because a Class II release site receives breeder deer that represent a higher risk of harboring and spreading CWD than breeder deer from a TC 1 facility, the department has determined that some level of testing is prudent. The 50 percent value for hunter-harvested deer provides an additional level of surveillance from an epidemiological perspective, as does the alternative of testing 50 percent of liberated deer (deer that were previously breeder deer). The five-year period for testing represents the approximate time period during which CWD could be expected to be detected. The proposed new rule would also provide that once the testing requirements have been met, the site becomes a Class I release site (no testing required).

Finally, proposed new §65.95 would provide that a Class III release site is any release site that has received deer from an originating facility that is a TC 3 facility, received an exposed deer within the previous five years, transferred deer to a CWD-positive facility within the five-year period preceding the confirmation of CWD in the CWD-positive facility, and has not been released from a TAHC hold order. The proposed new rule would require the landowner of a Class III release site to submit post-mortem CWD test results for 100 percent of all hunter-harvested deer or one hunter-harvested deer per liberated deer released on the release site between the last day of lawful hunting on the release in the previous hunting year and the last day of lawful hunting on the release site during the current hunting year, whichever is greater and condition the minimum harvest and testing provision on terms prescribed in a TAHC herd plan. The proposed new rule also would prohibit the transfer of a breeder deer to a Class III release site unless the deer has been tagged in one ear with a NUES tag or button-type RFID tag.

### **Movement of DMP Deer**

Proposed new §65.96, concerning Movement of DMP Deer, would set forth the movement and testing requirements associated with DMP activities. The proposed new rule would require a DMP release site to which breeder deer from a TC 2 breeding facility are released, or if the DMP property from which deer are trapped for DMP purposes is a Class II release site, to

submit “not detected” test results equivalent to 50 percent of the number of hunter-harvested deer in each hunting year for five consecutive hunting years, beginning with the hunting year immediately following the liberation. As discussed elsewhere in this preamble, a TC 2 breeding facility or Class II release site represents a higher risk of transmitting CWD than a TC 1 breeding facility or Class I release site; therefore some level of testing is appropriate. The department has determined that testing half the hunter-harvested deer each year for five years (the approximate time period during which CWD could be expected to be detected) provides a reasonable assurance that CWD would be detected if it were present. The proposed new rule would prohibit the transfer of deer from a TC 3 breeding facility to a DMP facility because breeder deer in a TC 3 breeding facility are presumed to be exposed and therefore present an unacceptable risk of spreading CWD to free-ranging populations. The proposed rules would not impose testing requirements on any DMP facility that either does not receive breeder deer or receives breeder deer solely from TC 1 deer breeding facilities.

#### **Testing and Movement of Deer Pursuant to a Triple T or TTP Permit**

Proposed new §65.97, concerning Testing and Movement of Deer Pursuant to a Triple T or TTP Permit, would set forth general provisions and testing requirements applicable to the movement of deer under a Triple T or TTP permit.

Proposed new §65.97(a) would stipulate that the disease detection provisions of §65.102 cease effect upon the effective date of the proposed new section, if adopted. This is necessary to prevent regulatory conflict.

Proposed new §65.97(a) also would provide that the department may require a map of any prospective Triple T trap site to be submitted as part of the application process, which is necessary to address situations in which the exact nature of a prospective Triple T site and its relationship to nearby or adjoining tracts of land is unclear with respect to previous releases.

Proposed new §65.97(a) would further enumerate the criteria under which the department will not authorize deer to be trapped at a specific site, including a release site that has received breeder deer within five years of the application for a Triple T permit, a release site that has failed to fulfill testing requirements, any site where a deer has been confirmed positive for

CWD, any site where a deer has tested “suspect” for CWD, or any site under a TAHC hold order. Further, proposed §65.97(a) would provide that in addition to the reasons for denying a Triple T permit listed in §65.103(c) (concerning Trap, Transport, and Transplant Permit), the department will not issue Triple T permit if the department determines, based on epidemiological assessment and consultation with TAHC that to do so would create an unacceptable risk for the spread of CWD. Each of the enumerated criteria for permit refusal represents an unacceptable risk of spreading CWD to free-ranging populations.

In addition, proposed new §65.97(a) would require all Triple deer to be tagged prior to release in one ear with a button-type RFID tag approved by the department and for the RFID tag information to be submitted to the department. The proposed new provision would enable the department to identify all deer harvested at a given release site (including deer that were released breeder deer) if an epidemiological investigation becomes necessary.

Proposed new §65.97(a) would further stipulate that a Triple T permit does not authorize 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 as provided in Subchapter A of this chapter (relating to Statewide Hunting Proclamation), which is necessary to ensure that all deer are harvested by hunters under the regulations established for lawful hunting.

Proposed new §65.97(a) also would require all test samples to be collected or tested after the Saturday closest to September 30 (the first day of lawful hunting in any year), which is necessary to ensure that test samples are temporally linked to the year for which activities of the permit are authorized; however, this requirement would not apply to permits issued for the removal of urban deer, for which test samples could be collected between April 1 and the time of application.

Additional provisions of proposed new §65.97(a) include a harvest log requirement, the stipulation that a Triple T release site consist solely of the specific tract of land to which deer are released and the acreage designated as a release site in TWIMS, the requirement that deer released pursuant to a Triple T permit must have complete, unrestricted access to the entirety of the release site, the requirement that the testing requirements of the section continue in effect

until “not detected” test results have been submitted for five consecutive hunting years following the last date on which deer were released, and the provision that a Triple T release site that does not comply with the testing requirements of the subsection becomes ineligible to be a release site in the future.

Proposed new §65.97(b) would establish the testing requirements for Triple T trap and release sites. At the trap site, the proposed new rule would require 15 “not detected” post-mortem test results to be submitted prior to permit issuance. For release sites, the proposed new provision would require the landowner of a Triple T release site to submit “not detected” post-mortem test results for a period of five consecutive hunting years immediately following the release for either 50 percent of liberated deer that are harvested at the Triple T release site, or if no liberated deer are harvested at the Triple T release site in any hunting year, 50 percent of hunter-harvested deer.

Proposed new §65.97(b) also would stipulate that 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.

Proposed new §65.97(c) would set forth the testing requirements for TTP permits. The proposed new provision would require “not detected” test results for at least 15 eligible-aged deer from the trap site to be submitted and would require the landowner of a Class III release site where TTP deer are trapped to submit CWD test results for 100% of the deer trapped. The proposed new rule also would require test results related to a TTP permit to be submitted to the department by the method prescribed by the department by the May 1 immediately following the completion of permit activities.

### **Transition Provisions**

Proposed new §65.98, concerning Transition Provisions would set forth provisions to clarify enforcement of regulations with respect to the effective dates of various provisions and would stipulate that the department’s executive director develop a transition plan and issue appropriate guidance documents to facilitate an effective transition to this division from previously applicable regulations.

## **Violations and Penalties**

Proposed new §65.99, concerning Violations and Penalties, would prescribe the penalties and sanctions for violations of a condition of a permit or a provision of the division.

### 2. Fiscal Note.

Clayton Wolf, Wildlife Division Director, has determined that for each of the first five years that the rules as proposed are in effect, there will initially be no fiscal implications to state and local governments as a result of enforcing or administering the rules as proposed, as department personnel currently allocated to the administration and enforcement of the permit programs affected will administer and enforce the rules as part of their current job duties and resources already in place will be reallocated for purposes of program administration, primarily to address programming costs. However, if administering the program following the initial transition requires continued reallocation of staff and resources, there may be a need for additional personnel to assist in administering the program.

### 3. Public Benefit/Cost Note.

Mr. Wolf also has determined that for each of the first five years the new rules as proposed are in effect:

(A) The public benefit anticipated as a result of enforcing or administering the rules as proposed will be a reduction of the probability of CWD being spread from facilities where it might exist and an increase in the probability of detecting CWD if it does exist, thus ensuring the public of continued enjoyment of the resource and also ensuring the continued beneficial economic impacts of hunting in Texas. Additionally, the protection of free-ranging deer herds will have the simultaneous collateral benefit of protecting captive herds, and maintaining the economic viability of deer breeding operations.

(B) There will be adverse economic impact on persons required to comply with the rules as proposed. For deer breeders, those impacts are the same as the adverse economic impacts to small and microbusinesses, which are addressed later in this preamble.

For persons who obtain breeder deer for purposes of release (including under a DMP permit) or trap free-ranging deer under a Triple T or TTP permit, the adverse economic impacts of the proposed new rules consist of the CWD testing requirements that the proposed new rules would impose, based on the source and history of the deer being released.

The current cost of a CWD test administered by the Texas Veterinary Medicine Diagnostic Lab (TVMDL) is a minimum of \$46, to which is added a \$6 submission fee (which may cover multiple samples submitted at the same time). If a whole head is submitted to TVDML there is an additional \$20 sample collection fee, plus a \$20 disposal fee. Thus, the fee for submitting an obex or obex/medial retropharyngeal lymph node pair would be \$52, plus any veterinary cost (which the department cannot quantify) and the fee for submitting an entire head for testing would be \$92. Therefore, for any Class II or Class III release site owner, the cost of compliance with the testing requirements of the proposed new rules would be approximately \$92 per animal required to be tested.

There are no adverse economic impacts for persons who obtain and release breeder deer from solely from TC 1 breeding facilities because under the rules as proposed, a release site that receives breeder deer only from TC 1 facilities is a Class I release site and no CWD testing is required.

For persons who obtain breeder deer from TC 2 breeding facilities or facilities of higher status (making the release site a Class II release site), the proposed new rules would require the landowner to test either 50 percent of the liberated deer (deer that were ever held under a deer breeder permit) harvested by hunters or, if no liberated deer are harvested, 50 percent of the deer harvested by hunters. Thus, the adverse economic impacts would be a function of the number and type of deer harvested, which could be as low as the cost of testing one deer (i.e., if only two liberated deer were part of the harvest, one would have to be tested and the testing requirement would be met).

For Class III release sites, the proposed new rules would require the landowner to test 100% of hunter-harvested deer. Therefore, the cost of compliance would be the cost of a CWD test for every deer harvested. Historically there have been liberations of up to 175 deer; however, the vast majority of releases involve fewer than 10 deer.

For a person trapping deer under a Triple T or TTP permit, the adverse economic impact would be would be the cost of complying with the requirement to submit 15 valid CWD test results of “not detected” to the department prior to permit issuance.

The proposed new rules will result in adverse economic impacts to landowners of Class II and Class III release sites, who would be required to comply with certain testing requirements. Only those landowners who receive breeder deer from TC 2 and/or TC 3 breeding facility would be subject to the testing requirements imposed by the proposed rules.

For a Class II release site, if deer are hunter-harvested, a number of deer equivalent to 50 percent of the number of liberated breeder deer that are harvested at the site or 50 percent of all hunter-harvested deer if not liberated deer are harvested.

For a Class III release site, the proposed new rules would require 100 percent of all hunter-harvested deer to be tested or one hunter-harvested deer per breeder deer released between the last day of lawful deer hunting at the site in the previous year and the last day of lawful deer hunting at the site in the current year.

Also, because the proposed new rules require all release sites for breeder deer to be enclosed by a fence of at least seven feet in height, a landowner desiring to have breeder deer released on a tract that is not surrounded by such a fence would incur the cost of building one. The cost of fence construction varies by terrain and region, but anecdotal information suggests that it is \$10,000 per linear mile or more. The department notes that only 610 breeder deer were released to low-fence environments in 2014 (the last year that such releases were allowed), and that the practice is extremely rare because the breeder deer purchased for liberation represent a significant purchase cost and once they are released they become free-ranging deer and may be legally killed on an adjoining property should they wander from the release site.

### **Small and Microbusiness Impact Analysis**

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), in April 2008, the Office of the Attorney General issued guidelines to assist

state agencies in determining a proposed rule's potential adverse economic impact on small businesses. These guidelines state that "[g]enerally, there is no need to examine the indirect effects of a proposed rule on entities outside of an agency's regulatory jurisdiction." The guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. The guidelines also list examples of the types of costs that may result in a "direct economic impact." Such costs may include costs associated with additional recordkeeping or reporting requirements; new taxes or fees; lost sales or profits; changes in market competition; or the need to purchase or modify equipment or services.

Parks and Wildlife Code, §43.357(a), authorizes a person to whom a breeder permit has been issued to "engage in the business of breeding breeder deer in the immediate locality for which the permit was issued" and to "sell, transfer to another person, or hold in captivity live breeder deer for the purpose of propagation." As a result, deer breeders are authorized to engage in business activities; namely, the purchase and sale of breeder deer. The same is not true of DMP or Triple T permit holders, who are authorized only to trap, temporarily detain, and release deer and are not authorized by those permits to buy or sell deer, or to exchange deer for anything of value.

Government Code, §2006.001(1), defines a small or micro-business as a legal entity "formed for the purpose of making a profit" and "independently owned and operated." A micro-business is a business with 20 or fewer employees. A small business is defined as a business with fewer than 100 employees, or less than \$6 million in annual gross receipts. Although the department does not require deer breeders to file financial information with the department, the department believes that most if not all deer breeders would qualify as a small or micro-business. Since the rules as proposed would impact the ability of a deer breeder to engage in certain activities undertaken to generate a profit, the proposed rules may have an adverse impact on deer breeders.

### **Impact on Sales**

The variety of business models utilized by deer breeders makes meaningful estimates of

potential adverse economic impacts difficult. Although a deer breeder has the permit privilege to buy and sell breeder deer and many deer breeders participate in a market for breeder deer, other deer breeders are interested only in breeding and liberating deer on their own property to provide hunting opportunity. Once a breeder deer is liberated, it cannot be returned to a breeding facility and assumes the same legal status as all other free-ranging deer. Thus, if a person who is a deer breeder is engaged primarily in buying and selling deer, the potential adverse economic impact is greater than that for a deer breeder who engages in deer breeding activities primarily for purposes of release onto that person's property. The department does not require deer breeders to report the buying or selling prices of deer. However, publicly available and anecdotal information indicates that sale prices, especially for buck deer, may be significant. The sale price for a single deer may range from hundreds of dollars to many thousands of dollars.

It should also be noted that some aspects of this analysis are based on anticipated marketplace behavior which cannot be accurately predicted. In addition, to the extent that any marketplace analysis can be conducted, it is difficult, if not impossible, to accurately separate and distinguish marketplace behavior that is the result of the proposed new rules from marketplace behavior that is the result of the discovery of CWD. For reasons unrelated to the proposed new rules, it is possible, perhaps even likely, that breeders and release site owners will be reluctant to purchase a breeder deer from a facility with a close relationship to a facility at which CWD has been detected.

The proposed new rules would not completely prohibit the transfer of deer except facilities that are not movement qualified or TC 3 facilities that are not otherwise authorized to transfer deer pursuant to a TAHC herd plan (in addition to facilities that were not allowed to transfer deer under previous regulations due to failure to test a minimum number of deer or failure to comply with record-keeping requirements). All TC 1 and TC 2 facilities would be allowed to transfer deer, provided certain conditions are met.

For TC 1 facilities, the department has determined that there will likely be no adverse economic impact on sales as a result of the proposed new rules. Since transfers of breeder deer from TC 1 facilities are subject to the fewest restrictions under the proposed new rules, breeder

deer from a TC 1 facility can more easily be sold to other breeders or to landowners for purposes of liberation. In addition, TC 1 facilities are subject to monitoring and testing at a higher level. Since classification as a TC 1 facility requires certain actions by deer breeders as provided in the proposed rules, the Department cannot accurately identify the number of deer breeders willing to undertake the obligations required to be classified as a TC 1 facility. One category of TC 1 facilities are facilities with “fifth” year or “certified” status in the TAHC CWD Herd Certification Program.

For TC 2 and TC 3 facilities, the adverse economic impact of the proposed new rules would consist of testing costs and the possible loss of sales to TC 1 facilities and Class I release sites. The proposed new rules would not prohibit the transfer of breeder deer by TC 2 facilities, but because the proposed new rules would cause any TC 1 facility or Class I release site that accepts deer from a TC 2 (or TC 3) facility to assume the status (and regulatory obligations, such as testing) of the TC 2 (or TC 3) facility, and because TC 2 facilities carry a greater risk of exposure to CWD, it can be assumed that TC 1 facilities or Class I release sites will be less likely destinations for breeder deer coming from facilities of lower status. Historically there have been liberations of up to 175 deer; however, the vast majority of releases involve fewer than 10 deer. As noted above, since the proposed rules would provide a mechanism for more breeder facilities to be classified as a TC 1 facility, many facilities classified as TC 2 under the Interim Rules may elect to undertake the requirements of the proposed rule necessary to attain TC 1 status. Since such decisions are personal and business decisions to be made by each breeder, the Department cannot accurately identify the number of deer breeders willing to undertake the obligations required to be classified as a TC 1 facility.

As noted above, if a release site is unwilling to obtain deer from a TC 2 facility, the impact of the proposed rules to a TC 2 deer breeder would be the loss of sales and any attendant profit from the sale of deer. Similarly, a TC 1 facility that acquires a breeder deer from a TC 2 facility would assume the lower TC 2 status. As previously mentioned in this analysis, the department does not require holders of deer breeder permits to disclose the dollar values of sales and purchases of breeder deer; therefore, an exact quantification of the possible impact of the proposed new rules on TC 2 facilities cannot be accurately calculated. However, based on

public and anecdotal information, such impact could be from few hundred dollars or less per deer or to thousands of dollars per deer.

The proposed new rules would prohibit the introduction to or removal of deer from TC 3 breeder facilities unless authorized by a TAHC herd plan and then only in compliance with the requirements of this division. TC 3 facilities are breeder facilities that received an exposed deer within the previous five years, transferred deer to a CWD-positive facility within the five-year period preceding the confirmation of CWD in the CWD-positive facility; or possessed a deer that was in a CWD-positive facility within the previous five years. The proposed rules would result in an adverse economic impact to deer breeders whose facilities are TC 3 facilities. The extent of such adverse economic impact would consist of loss of revenue as a result of being unable to introduce or remove deer from the breeding facility and thus being unable to deliver or accept deer that have been bought or sold. The dollar value of the adverse economic impact is dependent on the volume of deer produced or acquired by any given permittee, which can vary from a few deer to hundreds of deer. However, as noted above, it is difficult, if not impossible, to accurately determine whether and how much any adverse economic impact is due to the presence of CWD in a facility (or a related facility) or attributable to the proposed new rules. Department records indicate that there are currently 304 TC 3 facilities in the state; if the proposed new rules are adopted, that number will be less than 100. The department notes that with the exception of breeding facilities that are CWD-positive, the proposed new rules allow "exposed" facilities (which would be classified as TC 3 facilities) to transfer breeder deer following successful compliance with the testing and other provisions of the proposed new rules.

### **Testing Costs**

The proposed new rules would cause an adverse economic impact to deer breeders who must undertake disease-testing requirements to continue certain activities. As a result, deer breeders and owners of release sites that are not Class I release sites would incur costs related to the increased testing and monitoring requirements of the proposed new rules.

The cost of a CWD testing administered by the Texas Veterinary Medicine Diagnostic Lab

(TVMDL) on a sample collected and submitted by a deer breeder is a minimum of \$46, to which is added a \$6 submission fee (which may cover multiple samples submitted at the same time). If a whole head is submitted to TVDML there is an additional \$20 sample collection fee, plus a \$20 disposal fee. Thus, the fee for submitting an obex or obex/medial retropharyngeal lymph node pair would be \$52, plus any veterinary cost (which the department cannot quantify) and the fee for submitting an entire head for testing would be \$92.

A significant factor that differentiates the proposed new rules from the interim rules is that the proposed new rules either require or allow ante-mortem (live animal) tests for CWD to be submitted by deer breeders seeking to maintain or increase status. Under the Veterinary Practice Act, the samples necessary for ante-mortem testing can only be obtained a licensed veterinarian. Because veterinary practice models vary significantly (flat rates, graduated rates, included travel costs, herd call rates, sedation costs, etc.) in addition to pricing structures determined by the presence or absence of economic competition in different parts of the state, the cost of ante-mortem testing is difficult to quantify; however, based on anecdotal information and an informal survey of knowledgeable veterinarians, the department estimates the cost of tonsillar or rectal biopsies at approximately \$30-70 per head and the cost of ante-mortem lymph node biopsies at approximately \$700 per head (these costs are in addition to the estimated \$92 lab fee per sample for the actual CWD test). It is important to note that ante-mortem procedures for CWD testing are very new and at the current time there are very few veterinarians with the training and expertise to perform them reliably; thus, the fee structure for such procedures can best be described as still evolving.

Additionally, deer breeders who seek “certified” or “fifth year” facilities are also required to obtain an annual inventory by an accredited veterinarian. The cost of an annual inventory by an accredited veterinarian is estimated by TAHC to be approximately \$250. However, it should be noted that the requirements for obtaining “certified” or “fifth year” status are not imposed by the proposed rules, but rather by existing TAHC regulations.

The department notes that because CWD has been proven to be transmissible by direct contact (including through fences) and via environmental contamination, there may be adverse economic impacts unrelated to the proposed new rules in the event that CWD is confirmed in a

breeding facility due to the possible reluctance of potential customers to purchase deer from a facility that accepted deer from a CWD-positive facility. Additionally, in the absence of the proposed new rules, if CWD is detected within a facility or breeder deer that have been in a facility that accepted deer from a CWD-positive facility, there could be lost revenue to the permittee since potential purchasers who are aware of CWD would likely refrain from purchasing deer from such a facility. Therefore, the proposed new rules, by providing a mechanism to minimize the spread of CWD, could also protect the economic interests of the regulated community.

The department also notes that for any given deer breeder that is currently not qualified to move or release deer, compliance with the proposed new rules could be achieved in five years or less and at the additional direct economic cost of CWD testing requirements imposed by the proposed new rules.

### **Loss of Sacrificed Deer**

The proposed new rules would allow for the testing of additional deer (compared to the previous testing requirements) for some deer breeders who desire to move to a higher status. If deer are sacrificed for testing (in order to reach the required number of post-mortem tests to be movement qualified, maintain status, or in increase in status), there could be an economic impact from the loss of the deer and any revenue that might have been realized from the sale of the deer to another breeder or to a release site for liberation. As noted previously, the department does not require that breeders report financial data. The economic impact on a deer breeder would depend on whether the deer breeder sacrifices deer to achieve testing requirements, and the number and type of deer sacrificed. As noted above, the lost revenue from the sacrificed deer could range from few hundred dollars or less per deer to thousands of dollars per deer. However, it should also be noted that the option in the proposed rules for ante-mortem testing should result in fewer deer being sacrificed for purpose of testing.

### **Alternatives Considered**

In the development of the proposed rules, including through discussions among

stakeholders and through the facilitated rulemaking process, several alternatives were raised, discussed and/or considered to achieve the goals of the proposed new rules while reducing potential adverse impacts on small and micro-businesses and persons required to comply.

One alternative was to allow the interim rules to expire on their own terms on August 31, 2016. If the interim rules expired, the CWD testing and deer movement requirements would revert to those that existed prior to the 2015 discovery of CWD in Medina County. This alternative was rejected because the presence of CWD in breeding facilities and free-ranging populations presents an actual, direct threat to free-ranging and farmed cervid populations and the economies that depend upon them. Although the previous rules provided some level of monitoring and containment, the 2015 discovery of CWD in a white-tailed deer in Medina County and the subsequent discovery of CWD in additional white-tailed deer warrants a more comprehensive approach. Therefore, because the department has a statutory duty to protect and conserve the wildlife resources of the state, the previous rules would not achieve the necessary level of vigilance needed to detect the presence and/or spread of CWD. Therefore, this alternative was rejected.

Another alternative would have been to propose rules identical or very similar to the interim rules. This alternative was rejected for several reasons. The interim rules were intended to be an interim regulatory response to the 2015 discovery of CWD in white-tailed deer, and were not intended to be a long-term response. The interim rules were developed to implement requirements necessary to protect deer herds through the 2015-2016 hunting season, and facilitate continuation of activities by deer breeders. As a result, the interim rules did not provide for a fuller universe of options, such as live-animal (ante-mortem) testing of breeder deer. Therefore, this alternative was rejected.

Another alternative would be an absolute prohibition on the movement of deer within the state for any purpose. While this alternative would significantly reduce the potential spread of CWD, it would also have the simultaneous effect of preventing landowners and land managers from implementing popular management strategies involving the movement of deer, and would deprive deer breeders of the ability to engage in the business of buying and selling breeder deer. Therefore, this alternative was rejected because the department determined that it

placed an avoidable burden on the regulated community.

Another alternative would be imposing less stringent testing requirements. This alternative was rejected because the testing requirements in the proposed new rules reflect mathematical models aimed at higher confidence than is possible under current disease-testing requirements that CWD is or is not present. Less stringent testing requirements would reduce confidence and therefore impair the ability of the department to respond in the event that CWD actually is present. The department also believes that a higher testing intensity is necessary to provide assurance to the hunting public, private landowners, and the regulated community that wildlife resources are safe and reliable.

(C) The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not result in direct impacts to local economies.

(D) The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed new rules. Any impacts resulting from the discovery of CWD in or near private real property would be the result of the discovery of CWD and not the proposed rules.

#### 4. Request for Public Comment.

Comments on the proposed rule may be submitted to Mitch Lockwood, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (830) 792-9677 (e-mail: [mitch.lockwood@tpwd.texas.gov](mailto:mitch.lockwood@tpwd.texas.gov)); or via the department's website at [www.tpwd.texas.gov](http://www.tpwd.texas.gov).

#### 5. Statutory Authority.

The repeals are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure; Subchapter R-1, which authorizes the commission to establish the

conditions of a deer management permit, including the number, type, and length of time that mule deer may be temporarily detained in an enclosure (although the department has not yet established a DMP program for mule deer authorized by Subchapter R-1); and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The proposed repeals affect Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, and R-1.

§65.90. Definitions.

§65.91. General Provisions.

§65.92. Transfer Categories and Requirements.

§65.93. Release Sites – Qualifications and Testing Requirements.

§65.94. Chronic Wasting Disease – Deer management Permit Provisions.

The new rules are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure; Subchapter R-1, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that mule deer may be temporarily detained in an enclosure (although the department has not yet established a DMP program for mule deer authorized by Subchapter R-1); and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The proposed new rules affect Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, and R-1.

6. Rule Text.

§65.90. Definitions. The following words and terms shall have the following meanings, except in cases where the context clearly indicates otherwise.

(1) Accredited testing laboratory--A laboratory approved by the United States Department of Agriculture to test white-tailed deer or mule deer for CWD.

(2) Ante-mortem test—A CWD test performed on a live deer.

(3) Breeder deer--A white-tailed deer or mule deer possessed under a permit issued by the department pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter.

(4) Confirmed—A CWD test result of “positive” received from the National Veterinary Service Laboratories of the United States Department of Agriculture.

(5) CWD--chronic wasting disease.

(6) CWD-positive facility--Any facility in or on which CWD has been confirmed.

(7) Deer breeder--A person who holds a deer breeder’s permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter.

(8) Deer breeding facility (breeding facility)--A facility authorized to hold breeder deer under a permit issued by the department pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter (Deer Breeder’s Permit).

(9) Department (department)--Texas Parks and Wildlife Department.

(10) Deer Management Permit (DMP)-- A permit issued 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)) that authorizes the temporary detention of deer for the purpose of propagation.

(11) Eligible-aged deer —

(A) if the deer is held in a breeding facility enrolled in the TAHC CWD Herd Certification Program, 12 months of age or older; or

(B) for any other deer, 16 months of age or older.

(12) Eligible mortality—An eligible-aged deer that has died.

(13) Exposed deer--Unless the department determines through an epidemiological

investigation that a specific deer has not been exposed, an exposed deer is a white-tailed deer or mule deer that:

(A) is in a CWD-positive facility; or

(B) was in a CWD-positive facility within the five years preceding the confirmation of CWD in the CWD-positive facility.

(14) Facility – Any location required to be registered in TWIMS under a deer breeder’s permit, Triple T permit, or DMP, including release sites and/or trap sites.

(15) Hunter-harvested deer--A deer required to be tagged under the provisions of Subchapter A of this chapter (relating to Statewide Hunting Proclamation).

(16) Hunting year—That period of time between September 1 and August 31 of any year when it is lawful to hunt deer under the provisions of Subchapter A of this chapter (relating to Statewide Hunting Proclamation).

(17) Landowner (owner)--Any person who has an ownership interest in a tract of land and includes landowner’s authorized agent.

(18) Landowner’s authorized agent (agent)--A person designated by a landowner to act on the landowner’s behalf.

(19) Liberated deer—A free-ranging deer that bears evidence of having been liberated including, but not limited to a tattoo (including partial or illegible tattooing) or of having been eartagged at any time (holes, rips, notches, etc. in the ear tissue).

(20) Movement Qualified (MQ)—A designation made by the department pursuant to this division that allows a deer breeder to lawfully transfer breeder deer.

(21) Not Movement Qualified (NMQ).—A designation made by the department pursuant to this division that prohibits the transfer of deer by a deer breeder.

(22) NUES tag--An ear tag approved by the United States Department of Agriculture for use in the National Uniform Eartagging System (NUES).

(23) Originating facility—Any facility from which deer have been transported, transferred, or released, as provided in this definition or as determined by an investigation of the department, including:

(A) for breeder deer, the source facility identified on a transfer permit; and

(B) for deer being moved under a Triple T permit, the trap site.

(24) Post-mortem test—A CWD test performed on a dead deer.

(25) Properly executed—A form or report required by this division on which all required information has been entered.

(26) Reconciled herd--The breeder deer held in a breeding facility for which every birth, mortality, and transfer of breeder deer in the previous reporting year has been accurately reported.

(27) Release site--A specific tract of land to which deer are released, including the release of deer under the provisions of this chapter or Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, or R-1.

(28) Reporting year—For a deer breeder's permit, the period of time from April 1 of one calendar year through March 31 of the next calendar year.

(29) RFID tag--A button-type ear tag conforming to the 840 standards of the United States Department of Agriculture's Animal Identification Number system.

(30) Status--A level assigned under this division for any given facility on the basis of testing performance and the source of the deer. For the transfer categories established in §65.95(b) of this title (relating to Movement of Breeder Deer), the highest status is Transfer Category 1 (TC 1) and the lowest status is Transfer Category 3 (TC3). For the release site classes established in §65.95(c) of this title, Class I is the highest status and Class III is the lowest.

(31) Submit-- When used in the context of test results, provided to the department, either directly from a deer breeder or via an accredited testing laboratory.

(32) Suspect—An initial CWD test result of “detected” that has not been confirmed.

(33) TAHC--Texas Animal Health Commission.

(34) TAHC CWD Herd Certification Program--The disease-testing and herd management requirements set forth in 4 TAC §40.3 (relating to Herd Status Plans for Cervidae).

(35) TAHC Herd Plan--A set of requirements for disease testing and management developed by TAHC for a specific facility.

(36) Test, Test Result(s), or Test Requirement--A CWD test, CWD test result, or CWD test requirement as provided in of this division.

(37) Trap Site -- A specific tract of land approved by the department for the trapping of deer under this chapter and Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, and R-1.

(38) Triple T permit--A permit to trap, transport, and transplant white-tailed or mule deer (Triple T 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),

(39) Trap, Transport and Process (TTP) permit--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), to trap, transport, and process surplus white-tailed deer (TTP permit).

(40) TWIMS--The department's Texas Wildlife Information Management Services (TWIMS) online application.

#### §65.91. General Provisions.

(a) To the extent that any provision of this division conflicts with any other provision of this chapter, this division prevails.

(b) Except as provided in this division, no live breeder deer or deer trapped under a Triple T permit, TTP permit or DMP may be transferred anywhere for any purpose.

(c) Except as provided in this division, no person shall introduce into or remove deer from or allow or authorize deer to be introduced into or removed from any facility for which a CWD test result of "suspect" has been obtained from an accredited testing laboratory, irrespective of how the sample was obtained or who collected the sample. The provisions of this subsection take effect immediately upon the notification of a CWD "suspect" test result, and continue in effect until the department expressly authorizes the resumption of permitted activities at that facility.

(d) A facility (including a facility permitted after the effective date of this division) that receives breeder deer from an originating facility of lower status automatically assumes the status associated with the originating facility and becomes subject to the testing and release requirements of this division at that status for:

(1) a minimum of two years, if the facility is a breeding facility; or

(2) for the period specified in §65.95(c)(1)(D) of this title (relating to Movement of Breeder Deer), if the facility is a release site.

(e) A deer breeding facility that was initially permitted after March 31, 2016 will assume the lowest status among all originating facilities from which deer are received.

(f) The designation of status by the department in and of itself does not authorize the transfer or movement of deer. No person may remove or cause the removal of deer from a facility that has been designated NMQ by the department pursuant to this division.

(g) Unless expressly provided otherwise in this division, all applications, notifications, and requests for change in status required by this division shall be submitted electronically via TWIMS or by another method expressly authorized by the department.

(h) In the event that technical or other circumstances prevent the development or implementation of automated methods for collecting and submitting the data required by this division via TWIMS, the department may prescribe alternative methods for collecting and submitting the data required by this division.

#### §65.92. CWD Testing.

(a) All CWD test samples at the time of submission for testing shall be accompanied by a properly executed, department-prescribed form provided for that purpose.

(b) For the purposes of this subchapter, an ante-mortem CWD test is not valid unless it is performed by an accredited laboratory on retropharyngeal lymph node, rectal mucosa, or tonsillar tissue collected by or under the supervision of a qualified licensed veterinarian within six months of submission from a live deer that:

(1) is at least 16 months of age;

(2) has been in the facility for at least 16 months; and

(3) has not been the source of a “not detected” ante-mortem test result submitted within the previous 36 months.

(c) Ante-mortem tests submitted by a deer breeder for purposes of attaining a higher status under the provisions of this section shall be collected and submitted between October 15 of one year and March 15 of the following year.

(d) A post-mortem CWD test is not valid unless it is performed by an accredited testing laboratory on the obex of an eligible mortality, which may be collected only by a qualified licensed veterinarian or other person certified by TAHC to perform that procedure. A medial retropharyngeal lymph node collected from the eligible mortality by an qualified licensed veterinarian or other person approved by the department may be submitted to an accredited testing facility for testing in addition to or in lieu of the obex (if the obex cannot be obtained) of the eligible mortality.

(e) To meet the requirements of §65.94(a)(1)(B) and (C) of this title (relating to Breeding Facility Minimum Movement Qualifications), or §65.95 of this title, ante-mortem test results may be substituted for post-mortem test results at a ratio of two “not detected” ante-mortem test results for each required “not detected” post-mortem test result, provided:

(1) at least two eligible mortalities have occurred in the facility in the corresponding report year; and

(2) “not detected” post-mortem test results equal to at least 50 percent of the total test results required have been submitted.

(f) Except as provided in this section, an ante-mortem test result may not be used more than once to satisfy any testing requirement of this division.

(g) The testing requirements of this division cannot be altered by the sale or subdivision of a property to a related party if the purpose of the sale or subdivision is to avoid the requirements of this division.

(h) The owner of a release site agrees, by consenting to the release of breeder deer on the release site, to submit all required CWD test results to the department as soon as possible but not later than May 1 of each year for as long as CWD testing is required at the release site under the provisions of this division.

#### §65.93. Harvest Log.

(a) When a release site is required by this division to maintain a harvest log, the harvest log shall be maintained daily and shall meet the requirements of this section.

(b) For each deer harvested on the release site the landowner must, on the same day that the deer is harvested, legibly enter the following information in the daily harvest log:

(1) the name and hunting license of the person who harvested the deer;  
(2) the date the deer was harvested;  
(3) the species (white-tailed or mule deer) and type of deer harvested (buck or antlerless);  
(4) any alphanumeric identifier tattooed on the deer;  
(5) any RFID or NUES tag number of any RFID or NUES tag affixed to the deer;  
and

(6) any other identifier and identifying number on the deer, including a description of any evidence or indication that the deer was a liberated deer including, but not limited to evidence of having been eartagged at any time (holes, rips, notches, etc. in ear tissue).

(c) The daily harvest log shall be made available upon request to any department employee acting in the performance of official duties.

(d) By not later than April 1 of each year, the owner of a release site shall submit the contents of the daily harvest log to the department via TWIMS or via another method specified by the department.

(e) The daily harvest log shall be on a form provided or approved by the department and shall be retained for a period of one year following submission and acceptance by the department.

#### §65.94. Breeding Facility Minimum Movement Qualification.

(a) Notwithstanding any other provision of this division, a breeding facility is designated NMQ and is prohibited from transferring breeder deer anywhere for any purpose if the breeding facility:

(1) has not complied with the following testing requirements:

(A) submitted CWD “not detected” test results for at least 20% of the total number of eligible mortalities that occurred in the facility since May 23, 2006;

(B) submitted CWD “not detected” test results for at least 50% of eligible mortalities occurring in the facility during each reporting year beginning April 1, 2016; and,

(C) beginning April 1, 2021, the number of “not detected” test results submitted during the previous five consecutive years must be equal to or greater than the

following number: the sum of the eligible-aged population in the breeding facility at the end of each of the previous five consecutive reporting years, plus the sum of the eligible mortalities that occurred within the breeding facility for each of the previous five consecutive reporting years, multiplied by 2.25 percent; tests submitted pursuant to subparagraph (B) of this paragraph may be used to satisfy the testing requirements of this subparagraph;

(2) is not authorized pursuant to a TAHC Herd Plan associated with a TAHC hold order or TAHC quarantine;

(3) does not have a reconciled herd inventory;

(4) is not in compliance with the provisions of §65.608 of this title (relating to Annual Reports and Records).

(b) A facility that has been designated as NMQ for failure to comply with the testing requirements specified in subsection (a) of this section, will be restored to MQ when sufficient “not detected” test results as described in subsection (a) of this section are submitted.

(c) A facility designated NMQ shall report all mortalities within the facility to the department immediately upon discovery of the mortality.

(d) Immediately upon the notification that a facility has received a CWD suspect” test result (a CWD suspect facility), all facilities that received deer from or provided deer to the CWD suspect facility within the previous five years shall be designated NMQ by the department until it is determined that the facility is not epidemiologically linked to the CWD suspect deer, or it is determined upon further testing that the “suspect” deer is not a confirmed positive.

#### §65.95. Movement of Breeder Deer.

(a) General. Except as otherwise provided in this division, a TC 1 or TC 2 breeding facility may transfer breeder deer under a transfer permit that has been activated and approved by the department as provided in §65.610(e) of this title (relating to Transfer of Deer) to:

(1) another breeding facility;

(2) an approved release site as provided in subsection (a)(3) of this section;

(3) a DMP facility; or

(4) to another person for nursing purposes.

(b) Breeder Facilities.

(1) TC 1.

(A) Except as may be otherwise provided in this division, a breeding facility is a TC 1 facility if:

(i) it has “fifth-year” or “certified” status in the TAHC CWD Herd Certification Program;

(ii) has submitted “not detected” post-mortem test results equivalent to:

(I) at least 80 percent of the total number of eligible mortalities that occurred in the breeding facility in each reporting year of the immediately preceding five-year period and each year thereafter; and

(II) a number of “not detected” post-mortem test results submitted during the previous five consecutive years equal to or greater than the following number: the sum of the eligible-aged population in the breeding facility at the end of each of the previous five consecutive reporting years, plus the sum of the eligible mortalities that occurred within the breeding facility for each of the previous five consecutive reporting years, multiplied by 3.6 percent; tests submitted pursuant to subclause (I) of this clause may be used to satisfy the testing requirements of this subclause.

(iii) has submitted the following “not detected” test results:

(I) ante-mortem tests of at least 80 percent of eligible-aged deer in the facility’s inventory at the time the testing is conducted;

(II) post-mortem tests of at least 80 percent of all eligible mortalities during each reporting year thereafter; and

(III) beginning April 1, 2021, the number of “not detected” post-mortem test results submitted within the previous five consecutive years must be equal to or greater than the following number: the sum of the eligible-aged population in the breeding facility at the end of each of five consecutive reporting years, plus the sum of the eligible mortalities that have occurred within the breeding facility for each of the five consecutive years, multiplied by 3.6 percent; tests submitted pursuant to subclause (II) of this clause may be used

to satisfy the testing requirements of this subclause; or

(iv) “not detected” test results are submitted on an annual basis for:

(I) ante-mortem tests of at least 25 percent of eligible-aged deer in the facility’s inventory at the time the testing is conducted; and

(II) post-mortem tests of at least 50 percent of eligible mortalities.

(B) Failure to Comply with TC 1 Testing Requirements.

(i) Upon processing of the annual report, a TC 1 facility that has not met the post-mortem testing requirements of this section becomes a TC 2 facility.

(ii) If the deer breeder seeks to regain TC 1 status, the deer breeder must, within 60 days from the date the breeder is notified by the department of the change in status, furnish the test results necessary to be in full compliance with the applicable TC 1 testing requirements in order to be returned to TC1 status.

(iii) If after 60 days the department has not received test results sufficient to achieve compliance with the applicable TC 1 testing requirements, the breeding facility is not eligible to regain TC 1 status for a period of two years.

(iv) A breeder will not be eligible to regain TC 1 status, if breeder deer from a lower status breeding facility are transferred to the breeding facility during the 60 days in which the breeder is seeking to regain TC 1 status.

(2) TC 2.

(A) A breeding facility is a TC 2 facility if:

(i) it is not a TC 1 facility; and

(ii) it is not a TC 3 facility.

(B) The testing requirements for a TC 2 facility are the minimum testing requirements established for MQ designation in §65.94(a)(1) of this title (relating to Breeding Facility Minimum Movement Qualification).

(3) TC 3.

(A) A TC 3 facility is any breeding facility registered in TWIMS that is under a TAHC hold order and/or herd plan and meets any of the following criteria:

(i) received an exposed deer within the previous five years;

(ii) transferred deer to a CWD-positive facility within the five-year period preceding the confirmation of CWD in the CWD-positive facility; or

(iii) possessed a deer that was in a CWD-positive facility within the previous five years.

(B) No deer from a TC 3 facility may be transferred or liberated unless expressly authorized in a TAHC herd plan and then only in accordance with the provisions of this division and the TAHC herd plan.

(C) A TC 3 breeding facility remains a TC 3 breeding facility until the TAHC hold order in effect at the breeding facility has been lifted.

(D) A TC3 breeding facility may not transfer a breeder deer for any purpose unless the deer has been tagged in one ear with a NUES tag or button-type RFID tag approved by the department.

(c) Release Sites.

(1) General.

(A) An approved release site consists solely of the specific tract of land to which deer are released and the acreage designated as a release site in TWIMS.

(B) Liberated breeder deer must have complete, unrestricted access to the entirety of the release site.

(C) All release sites onto which breeder deer are liberated must be surrounded by a fence of at least seven feet in height that is capable of retaining deer at all times. The owner of the release site is responsible for ensuring that the fence and associated infrastructure retain deer.

(D) The testing requirements of this subsection continue in effect until “not detected” test results have been submitted for five consecutive hunting years following the last date on which breeder deer were liberated on the release site. A release site that is not in compliance with the testing requirements of this subsection is ineligible to receive deer.

(E) No person may intentionally cause or allow any live deer to leave or escape from a release site onto which breeder deer have been liberated.

(F) The owner of a Class II or Class III release site shall maintain a harvest

log at the release site that complies with §65.93 of this title (relating to Harvest Log).

(2) Class I Release Site. A release site that is in compliance with the applicable provisions of this division and receives deer only from TC 1 facilities is a Class I release site and is not required to perform CWD testing, unless it becomes a Class II or Class III release site.

(3) Class II Release Site.

(A) A release site that receives deer from a TC 2 breeding facility is a Class II release site unless it becomes a Class III release site.

(B) Each year that a Class II release site receives deer from any TC 2 breeding facility, the owner of the release site must, for a period of five consecutive hunting years immediately following the release, submit “not detected” post-mortem test results for:

(i) 50 percent of liberated deer that are harvested at the release site; or  
(ii) if no liberated deer are harvested at the release site in any hunting year, 50 percent of hunter-harvested deer.

(C) Upon the satisfaction of the provisions of paragraph (3)(B) of this subsection, a Class II release site becomes a Class I release site.

(4) Class III Release Site.

(A) A release site is a Class III release site if:

(i) it has:  
(I) received deer from an originating facility that is a TC 3 facility; or  
(II) received an exposed deer within the previous five years or has transferred deer to a CWD-positive facility within the five-year period preceding the confirmation of CWD in the CWD-positive facility; and  
(ii) has not been released from a TAHC hold order related to activity described in clause (i) of this subparagraph.

(B) The landowner of a Class III release site must submit post-mortem CWD test results for one of the following values, whichever represents the greatest number of deer tested:

(i) 100 percent of all hunter-harvested deer; or

(ii) one hunter-harvested deer per liberated deer released on the release site between the last day of lawful hunting on the release in the previous hunting year and the last day of lawful hunting on the release site during the current hunting year; provided, however, this minimum harvest and testing provision may only be substituted as prescribed in a TAHC herd plan.

(C) No breeder deer may be transferred to a Class III release site unless the deer has been tagged in one ear with a NUES tag or button-type RFID tag approved by the department.

§65.96. Movement of DMP Deer. This subsection applies to the movement of deer under a DMP.

(1) Testing Requirements.

(A) There are no CWD testing requirements for a DMP facility that:

- (i) does not receive breeder deer; or
- (ii) receives breeder deer solely from TC 1 deer breeding facilities.

(B) A release site onto which deer are liberated from the following is required to submit “not detected” test results equivalent to 50 percent of the number of hunter-harvested deer in each hunting year for five consecutive hunting years, beginning with the hunting year immediately following the liberation of:

- (i) deer from a DMP facility that receives breeder deer from a TC 2 deer breeding facility; or
- (ii) deer from a DMP facility that receives deer trapped deer from a Class II release site.

(2) The department will not authorize the transfer of deer to a DMP facility from a TC 3 breeding facility.

§65.97. Testing and Movement of Deer Pursuant to a Triple T or TTP Permit.

(a) 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 may require a map of any Triple T trap site to be submitted

as part of the application process.

(3) The department will not issue a Triple T permit authorizing deer to be trapped at a:

(A) release site that has received breeder deer within five years of the application for a Triple T permit;

(B) release site that has failed to fulfill testing requirements;

(C) any site where a deer has been confirmed positive for CWD;

(D) any site where a deer has tested “suspect” for CWD; or

(E) any site under a TAHC hold order.

(4) 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 determines, based on epidemiological assessment and consultation with TAHC that to do so would create an unacceptable risk for the spread of CWD.

(5) All deer released under the provisions of this section must be tagged prior to release in one ear with a button-type RFID tag approved by the department. RFID tag information must be submitted to the department.

(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 as provided in Subchapter A of this chapter (relating to Statewide Hunting Proclamation).

(7) Except for a permit issued for the removal of urban deer, a test result is not valid if the sample was collected or tested after the Saturday closest to September 30 of the year for which activities of the permit are authorized.

(8) For permits issued for the removal of urban deer, test samples may be collected between April 1 and the time of application.

(9) The owner of a Triple T release site shall maintain a harvest log at the release site that complies with §65.93 of this title (relating to Harvest Log).

(10) A Triple T release site consists solely of the specific tract of land to which deer are released and the acreage designated as a release site in TWIMS.

(11) Deer transferred pursuant to a Triple T permit must have complete, unrestricted access to the entirety of the release site.

(12) The testing requirements of this subsection continue in effect until “not detected” test results have been submitted for five consecutive hunting years following the last date on which deer were transferred to the site pursuant to a Triple T permit. A Triple T release site that is not in compliance with the testing requirements of this subsection will be ineligible as a release site.

(b) Testing Requirements for Triple T Permit.

(1) The department will not issue a Triple T permit unless “not detected” post-mortem test results have been submitted for 15 eligible-aged deer from the trap site.

(2) The landowner of a Triple T release site shall submit “not detected” post-mortem test results for a period of five consecutive hunting years immediately following the release for:

(A) 50 percent of liberated deer that are harvested at the Triple T release site; or

(B) if no liberated deer are harvested at the Triple T release site in any hunting year, 50 percent of hunter-harvested deer.

(3) 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.

(c) Testing Requirements for TTP Permit.

(1) “Not detected” test results for at least 15 eligible-aged deer from the trap site must be submitted.

(2) The landowner of a Class III release site must submit CWD test results for 100% of the deer harvested pursuant to a TTP permit, which may include the samples required under paragraph (1) of this subsection.

(3) Test results related to a TTP permit must be submitted to the department by the method prescribed by the department by the May 1 immediately following the completion of permit activities.

§65.98. Transition Provisions.

(a) This division does not apply to an offense committed before the effective date of this division. An offense committed before the effective date of this division is governed by the regulations that existed on the date the offense was committed, including, but not limited to the following:

(1) Deer Breeder: published in the Texas Register September 4, 2015 (40 TexReg 5566); January 1, 2016 (41 TexReg 9); January 29, 2016 (41 TexReg 815);

(2) DMP: published in the Texas Register October 23, 2015 (40 TexReg 7305); February 12, 2016 (41 TexReg 1049); February 19, 2016 (41 TexReg 1250); and,

(3) Triple T/TTP: published in the Texas Register October 23, 2015 (40 TexReg 7307); January 1, 2016 (41 TexReg 9).

(b) A release site that was in compliance with the Interim Deer Breeder Rules (41 TexReg 815) shall be not subject to testing requirements until deer are liberated or released onto the release site under the provisions of this division.

(c) A release site that was not in compliance with the Interim Deer Breeder Rules (41 TexReg 815) shall:

(1) be required to comply with the applicable provisions of this division regarding Class II or Class III sites for a period of five years beginning on the first day of lawful hunting for the 2016-2017 hunting year; and,

(2) be ineligible to be a release site for breeder deer or deer transferred pursuant to a Triple T permit until the release site has complied with paragraph (1) of this subsection.

(d) The department's executive director shall develop a transition plan and issue appropriate guidance documents to facilitate an effective transition to this division from previously applicable regulations. The transition plan shall include, but is not limited to, provision addressing a mechanism for classifying facilities that have obtained "not detected" ante-mortem test results at a level that meets or exceeds that required in this division prior to the effective date of this division.

§65.99. Violations and Penalties.

(a) A person who violates a provision of this division or a condition of a deer

breeder's permit, DMP, Triple T permit, or TTP permit commits an offense and is subject to the penalties prescribed by the applicable provisions of the Parks and Wildlife Code.

(b) A person who possesses or receives white-tailed deer or mule deer under the provisions of this division and/or Subchapters C, D, or T of this chapter is subject to the provisions of TAHC regulations at 4 TAC Chapter 40 (relating to Chronic Wasting Disease) that are applicable to white-tailed or mule deer.

(c) A person who fails to comply with a provision of this division or a condition of a deer's breeder permit, DMP, Triple T permit, or TTP permit may be prohibited by the department from future permit eligibility or issuance.