State Law As of May 31, 2006

Texas Administrative Code

TITLE 37 PUBLIC SAFETY AND CORRECTIONS
PART 1 TEXAS DEPARTMENT OF PUBLIC SAFETY
CHAPTER 21 EQUIPMENT AND VEHICLE STANDARDS

Rules

TITLE 31.NATURAL RESOURCES AND CONSERVATION

79R5726 KCR-D

By: Oliveira H.B. No. 2897

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of an all-terrain vehicle trail and recreational area program; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 3, Parks and Wildlife Code, is amended by adding Chapter 29 to read as follows:

CHAPTER 29. ALL-TERRAIN VEHICLE TRAIL AND RECREATIONAL AREA PROGRAM

Sec. 29.001. DEFINITION. In this chapter, "all-terrain vehicle" has the meaning assigned by Section 663.001, Transportation Code.

Sec. 29.002. ESTABLISHMENT AND OPERATION. (a) The all-terrain vehicle trail and recreational area program is established under the administration of the department. The purposes of the program are to establish and maintain a public system of trails and other recreational areas for use by owners and riders of all-terrain vehicles, to improve existing trails and other recreational areas open to the public for use by owners and riders of all-terrain vehicles, and to foster the responsible use of all-terrain vehicles.

(b) The department may establish trails and recreation areas for use by owners and riders of all-terrain vehicles on public land over which the department has authority or on land purchased by the department for the purpose of establishing and maintaining trails and other recreational areas for use by owners and riders of all-terrain vehicles.

(c) The department shall coordinate the implementation and operation of the program established by this chapter with the implementation and operation of the program established under Section 90.009.

Sec. 29.003. ALL-TERRAIN VEHICLE DECAL REQUIRED; FEE. (a) A person may not operate an all-terrain vehicle on a trail or in a recreation area established or maintained by the department under this chapter or on other public land without having obtained an all-terrain vehicle decal.

(b) The fee for an all-terrain vehicle decal, including a collector's edition decal, is $8 or an amount set by the commission, whichever amount is more.

Sec. 29.004. ISSUANCE, DISPLAY, AND EXPIRATION OF DECAL. (a) The department may issue an all-terrain vehicle decal to any person whose all-terrain vehicle is registered under Section 502.006, Transportation Code, on the payment of the fee under Section 29.003(b). The department may also issue collector's editions of the decal that do not entitle a person to operate an all-terrain vehicle on a trail or in a recreation area established or maintained by the department under this chapter or on other public land.

(b) The department shall prescribe the form and manner in which the decal must be issued to a person and displayed for use by the person.

(c) A decal issued under this section is valid only during the yearly period for which the decal is issued without regard to the date on which the decal is acquired. A yearly period begins on September 1 or another date set by the commission and extends through August 31 of the next year or another date set by the commission.

Sec. 29.005. DISPOSITION OF DECAL FEES. The department shall deposit all revenue, less allowable costs, collected under Section 29.004 to the credit of the all-terrain vehicle trail and recreational area account under Section 11.046.

Sec. 29.006. OTHER REVENUE. The department shall seek and use funding from the federal government and other sources outside the general revenue fund to identify and facilitate the development of all-terrain vehicle trails and recreation areas under this chapter.

Sec. 29.007. GRANTS. The department may make grants to political subdivisions and nonprofit organizations for the purpose of acquiring, developing, and maintaining public trails or recreation areas under this chapter.

Sec. 29.008. PENALTY. A person who violates Section 29.003 commits an offense that is a Class C Parks and Wildlife misdemeanor.

Sec. 29.009. RULES. The commission shall adopt rules necessary to implement this chapter.

SECTION 2. Chapter 11, Parks and Wildlife Code, is amended by adding Sections 11.046 and 11.047 to read as follows:

Sec. 11.046. ALL-TERRAIN VEHICLE TRAIL AND RECREATIONAL AREA ACCOUNT. (a) The all-terrain vehicle trail and recreational

area account is a separate account in the general revenue fund.

(b) The department shall deposit to the credit of the all-terrain vehicle trail and recreational area account all revenue, less allowable costs, from the following sources:

(1) decal fees collected under Chapter 29;

(2) fines assessed against persons operating all-terrain vehicles in violation of Chapter 29 or any other law relating to the operation of all-terrain vehicles;

(3) all funding outside the general revenue fund received by the department under Section 29.006; and

(4) all interest that accrues to the account.

Sec. 11.047. USE OF ALL-TERRAIN VEHICLE TRAIL AND RECREATIONAL AREA ACCOUNT. Money in the all-terrain vehicle trail and recreational area account may be used only for expenditures necessary under Chapter 29.

SECTION 3. The Parks and Wildlife Commission shall design and make available the decal required under Section 29.003, Parks and Wildlife Code, as added by this Act, not later than December 1, 2005.

SECTION 4. Section 29.008, Parks and Wildlife Code, as added by this Act, takes effect January 1, 2006.

SECTION 5. Except as provided by Section 4 of this Act, this Act takes effect September 1, 2005.

Part 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

Chapter 51. EXECUTIVE

Subchapter O. ADVISORY COMMITTEES

The Texas Parks and Wildlife Department (the department) proposes an amendment to §51.601, concerning General Provisions, and new §51.644, concerning the Big Bend Ranch State Park Task Force.

The amendment to §51.601 is necessary to allow department staff to informally consult with groups of experts and interested persons regarding contemplated rulemaking actions. The Administrative Procedure Act authorizes a state agency to "use an informal conference or consultation to obtain the opinions and advice of interested persons" and to "appoint committees of experts or interested persons or representatives of the public" in an effort to obtain advice about anticipated rulemaking. Tex. Gov't Code §2001.031. Periodically, rulemaking issues arise about which department staff would benefit from advice and opinions from interested and knowledgeable persons. Therefore, the department proposes adding subsection (m) to §51.601 to authorize the executive director of the department to appoint ad hoc advisory committees to advise department staff regarding rulemaking actions. Such committees would continue for no longer than one year, unless reappointed.

Proposed new §51.644 is necessary to implement the requirements of Government Code, Chapter 2110, and Parks and Wildlife Code, §11.0162. The Texas Parks and Wildlife Code authorizes the Chairman of the Texas Parks and Wildlife Commission (the

commission) to appoint advisory committees and to "adopt rules that set the membership, terms of service, qualifications, operating procedures, and other standards to ensure the effectiveness of an advisory committee appointed under this section." Tex. Parks & Wild. Code §11.0162. An advisory committee is a committee, council, commission, board, or task force or other entity with multiple members that has as its primary function advising a state agency in the executive branch of state government. Tex. Gov't Code §2110.001.

The Texas Government Code, Chapter 2110, requires that a state agency adopt rules regarding each agency advisory committee. Unless otherwise provided by specific statute, the rules must (1) state the purpose of the committee; (2) describe the manner in which the committee will report to the agency; and (3) establish the date on which the committee will automatically be abolished, unless the advisory committee has a specific duration established by statute. Tex. Gov't Code §§2110.005, 2110.008. Chapter 2110 also contains other requirements for advisory committees, such as annual evaluation, a limit of 24 members, balanced membership representation, selection of presiding officer by members, and four-year duration unless otherwise provided by rule. Tex. Gov't Code §§2110.002, 2110.003, 2110.006, 2110.008.

Proposed new §51.644 would establish the Big Bend Ranch State Park Task Force to advise the department on issues relevant to Big Bend Ranch State Park. Effective September 28, 2005, the commission adopted rules addressing department advisory committees, including §51.601, which addressed membership and the expiration date of advisory committees. The proposed new Big Bend Ranch State Park Task Force would be subject to §51.601. Therefore, the proposed Big Bend Ranch State Park Task Force will have no more than 24 members and will expire on the fourth anniversary of its creation.

Ann Bright, General Counsel, has determined that for each of the first five years the rules as proposed are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules, except for incidental administrative costs associated with scheduling and preparing for task force meetings.

Ms. Bright has also determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be to ensure proper management and effective use of department advisory committees; to ensure that department staff obtain knowledgeable and relevant input regarding contemplated rulemaking actions; and to ensure public participation in issues involving Big Bend Ranch State Park.

The proposed rules will result in no adverse economic effects to small or microbusinesses.

The department has not filed a local impact statement with the Texas Workforce Commission as required by the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

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 rules.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rules.

Comments on the proposed rules may be submitted by phone, written correspondence or e-mail to Ann Bright, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8558; or ann.bright@tpwd.state.tx.us.

1. GENERAL REQUIREMENTS

31 TAC §51.601

The amendment is proposed under the authority of Parks and Wildlife Code, §11.0162 and Government Code, §§2110.005 and 2110.008.

The proposed amendment affects Parks and Wildlife Code, §11.0162.

§51.601.General Requirements.

(a) Definitions. The following words and terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise.

(1) Advisory committee--a committee, council, commission, board, or task force or other entity with multiple members that has as its primary function advising the department.

(2) Chairman--the chairman of the Texas Parks and Wildlife Commission.

(3) Commission--the Texas Parks and Wildlife Commission.

(4) Department--the Texas Parks and Wildlife Department.

(5) Director--the Executive Director of the Texas Parks and Wildlife Department.

(b) Creation. The Chairman may appoint advisory committees to advise the commission on issues within the jurisdiction of the department or the commission.

(c) Function. Unless otherwise provided by law, an advisory committee will address only those matters about which advice is sought. An advisory committee will have no authority to establish agency policy.

(d) Expiration of advisory committee. Unless expressly provided in this subchapter or other law, each department advisory committee will expire on the fourth anniversary of the date of its creation. The date of creation shall be the date on which the rule establishing the advisory committee is effective.

(e) Membership. The chairman may, in his or her sole discretion, appoint individuals to serve on an advisory committee. Membership in an advisory committee will not exceed 24 (excluding ex officio members). Unless otherwise provided by specific statute, membership of each advisory committee shall be balanced to ensure representation of industries or occupations regulated or directly affected by the department and consumers of services provided by the department or by the industries or occupations regulated by the department to which the advisory committee relates. Each advisory committee shall include at least one department employee as an ex officio member. Members may be subject to removal and/or replacement at the discretion of the Chairman.

(f) Term of members. Unless expressly provided in this subchapter or other law, each member to an agency advisory committee will serve a term of four years. The terms may be staggered. Members' terms will expire at the end of four years or upon the termination of the advisory committee, whichever is earlier. Members may be reappointed. Members serve at the will of the chairman and may be removed at any time by the chairman. The terms of members appointed prior to September 1, 2005, expire on September 1, 2005.

(g) Presiding officer. The presiding officer of each advisory committee shall be selected by the members of the advisory committee from its membership. The chairman may make a recommendation to the advisory committee regarding the presiding officer.

(h) Subcommittees. The chairman may also appoint one or more subcommittees of an advisory committee, so long as the membership of the advisory committee, including any subcommittees does not exceed 24.

(i) Meetings. Each committee shall meet at least once a year, but may meet as often as necessary. The department ex officio member of each advisory committee shall work with the presiding officer to schedule advisory committee meetings and provide adequate notice to department staff and to other members.

(j) Reports. On or before October 1 of each year of its existence, each advisory committee shall submit a report to the department. Upon receipt of the report, the department shall evaluate the advisory committee's work, usefulness and costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities. Each report shall included the following:

(1) a summary or minutes of meetings conducted during the previous fiscal year (September 1-August 30);

(2) a summary of recommendations from the advisory committee; and

(3) other information determined by the advisory committee or the chairman to be appropriate and useful.

(k) Expenses. Members of each advisory committee will serve without compensation or reimbursement for travel or other out-of-pocket expenses.

(l) Rules. For each advisory committee appointed, the commission shall adopt rules that address the purpose of the advisory committee and membership qualifications. Such rules may also address the terms of service, operating procedures, and other standards to ensure the effectiveness of an advisory committee appointed under this subchapter.

(m) Rulemaking Committees. Notwithstanding other provisions of this subchapter, as authorized by Government Code, §2001.031, (the Administrative Procedure Act), the Director may, from time to time, appoint ad hoc committees of experts or interested persons or representatives of the public to advise the Department about contemplated rulemaking. Members of such committees shall serve at the will of the Director and shall serve without compensation. Committees appointed under this subsection shall continue for no longer than one year, unless extended by the Director.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 12, 2005.

TRD-200505765

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: January 22, 2006

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

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5. STATE PARKS

31 TAC §51.644

The new rule is proposed under the authority of Parks and Wildlife Code, §11.0162 and Government Code, §§2110.005 and 2110.008.

The proposed new rule affects Parks and Wildlife Code, §11.0162.

§51.644.Big Bend Ranch State Park Task Force.

(a) The Big Bend Ranch State Park Task Force is created to advise the department regarding issues related to Big Bend Ranch State Park.

(b) The Big Bend Ranch State Park Task Force shall consist of members of the public, representatives of governmental bodies and representatives of non-governmental organizations that have an interest in issues affecting Big Bend Ranch State Park.

(c) The Big Bend Ranch State Park Task Force shall comply with the requirements of §51.601 of this title (relating to General Requirements).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ann Bright

General Counsel

Texas Parks and Wildlife Department

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

Chapter 53. FINANCE

Subchapter A. FEES

1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.14

The Texas Parks and Wildlife Department proposes an amendment to §53.14, concerning Deer Management and Removal Permits. The amendment would increase the fees for scientific breeder's permits and renewals of scientific breeder's permits. The current fee for a scientific breeder's permit is $180; the current fee for a renewal is also $180. The proposed amendment would increase the respective fees to $400. The proposed amendment also would eliminate the fees for purchase and transport permits.

The past five years have seen explosive growth in the number of scientific breeder permits issued by the department. In 2000, the department issued 385 scientific breeder permits. By 2005, the numbers had mushroomed to 821 breeder permits. The growth of the program has introduced new levels of complexity and expense in administering the program, because keeping track of inventories, transactions, movements, and records is time-consuming and laborious. At the same time, the emergence of Chronic Wasting

Disease (CWD) as a threat to native free-ranging deer populations has assumed national proportions. Within the next five years, the U.S. Department of Agriculture is expected to impose mandatory identification and tracking protocols for captive cervids. Together, these developments point to the need for the department to develop and implement effective methods for quickly and efficiently gathering, collating, storing, and retrieving the large and growing amounts of data generated by the industry.

In another rulemaking published elsewhere in this issue, the department proposes to implement disease monitoring protocols, not only in anticipation of federal requirements, but to ensure the viability of the deer-breeding industry in this state for the future. The proposed fee increases, along with the elimination of the fees for transport and purchase permits, are intended to increase efficiency, but are also necessary to shift the full cost of administering the program from the department to the regulated community. Since the inception of the scientific breeder program, the fees paid by permittees have not generated revenue sufficient to fund the administrative expenses of the program. Thus, the program has been subsidized by revenues obtained from sources other than program participants. Parks and Wildlife Code, §43.355(c), gives the Texas Parks and Wildlife Commission (Commission) discretion to set fees for scientific breeder permits. The Commission has directed that the scientific breeder program be administered by the department according to a 'user-benefit/user-pay' model. Therefore, the department has determined that the fee for a scientific breeder permit (or renewal) should be set at $400. This value was obtained by taking the estimated cost to the department of administering and enforcing the provisions of this subchapter and relevant provisions of the Parks and Wildlife Code ($297,000, including the development and implementation of the automated identification and tracking protocols discussed previously) and dividing that value by the number of scientific breeder permits issued in 2005 (821). The resultant figure ($361.75) was then adjusted upward to account for the annual revenue lost by the elimination of the transport and purchase permits ($64,800) and rounded to $400.

The expected results of the rulemaking are increased program efficiency, more efficient and less time-consuming customer service, increased opportunity for the use of automation in the scientific breeder program, and the creation of a mechanism to produce coherent data for a number of useful purposes, such as disease monitoring.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rules. The increased revenue to the department as a result of the fee increase will offset the expense incurred by the department of administering the scientific breeder program, including the additional costs associated with designing and implementing an automated system to assist in program delivery and administration.

Mr. Macdonald also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the ability of the department to more accurately monitor the movement of deer in and out of scientific breeder facilities, which

will assist the department in detecting abuses and protecting wild, native deer from communicable diseases.

The direct adverse economic effect on small businesses, microbusinesses, and persons required to comply with the rule as proposed will be the additional $220 for a scientific breeder's permit or permit renewal imposed by the fee increase (the fee for a scientific breeder's permit is currently $180). The preponderance of deer breeding operations in the state qualify as small businesses or microbusinesses. The impact of the fee increase will be mitigated to some extent by the elimination of fees for transport and purchase permits, depending on the sales volume of each scientific breeder. Because the department cannot project in advance the number of deer that each scientific breeder will sell or purchase, the extent to which the elimination of the fees for transport and purchase permits will affect each breeder cannot be accurately quantified. The cost of compliance (i.e., the fee for a permit) is the same for the largest and smallest businesses affected by the proposed rule. The cost of compliance per employee will vary depending on the number of employees of the scientific breeder. For a very small scientific breeder operation with only two or three employees, the cost of compliance per employee could be as high as $110 per employee per year. On the other hand, if a scientific breeder has 100 employees, the cost of compliance would be only $2.20 per employee per year. Because the preponderance of deer breeding operations in the state qualify as small businesses or microbusinesses, the impact will be similar for most scientific breeders. The department has also determined that there is no feasible way to reduce the effect of the proposed rule on small or micro-businesses, because, as noted earlier, the preponderance of businesses affected by the proposed rule are probably small or microbusiness as defined in Government Code, §2006.002. The only alternative to the fee increase is to maintain the present method of program delivery and administration, which is operating at maximum capacity and unable to accommodate further growth without diminishing customer service and program efficiency.

The department has not filed a local impact statement with the Texas Workforce Commission as required by the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

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 rule.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rules.

Comments on the proposed rule may be submitted to Robert Macdonald, Texas Parks and Wildlife Department 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 (e-mail: robert.macdonald@tpwd.state.tx.us).

The amendment is proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which provides the Commission with authority to establish the fees for scientific breeder permits.

The proposed amendment affects Parks and Wildlife Code, Chapter 43.

§53.14.Deer Management and Removal Permits.

(a) Deer breeding and related permits.

[~~(1)~~] Scientific [~~scientific~~] breeder's and scientific breeder's renewal~~--~~ $400 [~~$180~~];

~~[(2) deer purchase application--$30; and]~~

~~[(3) deer transport application--$30].~~

(b) Trap, transport and transplant permit application fees:

(1) nonrefundable application processing fee--$180; and

(2) nonrefundable application processing fee for amendment to existing permit--$30.

(c) Urban white-tailed deer removal permit:

(1) nonrefundable application processing fee--$180; and

(2) nonrefundable application processing fee for amendment to existing permit--$30.

(d) Deer management permit:

(1) deer management permit--$1,000; and

(2) renewal of deer management permit--$600.

(e) Antlerless and spike buck deer control permit application processing fee--$360

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 12, 2005.

TRD-200505760

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: January 22, 2006

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

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31 TAC §53.17

The Texas Parks and Wildlife Department proposes new §53.17, concerning Miscellaneous Fees. The new section would establish the fee for an off-highway vehicle decal. The enactment of Senate Bill 1311 (S.B. 1311) by the 79th Texas Legislature (Regular Session) added Parks and Wildlife Code, Chapter 29, which created the Off-Highway Vehicle Trail and Recreational Area Program and added §11.046 and 11.046 regarding the Off Highway Vehicle Trails and Recreational Area Account. Under the provisions of S.B. 1311, a person may not operate an off-highway vehicle on a trail or in a recreational area established or maintained by the department under Chapter 29, or on land purchased or developed under a grant made under Chapter 29 or any other grant program operated or administered by the department without having obtained an off-highway vehicle decal. The fee for the off-highway vehicle decal is established by S.B. 1311 at $8. The rule is necessary to ensure that a record of all fees imposed or collected by the department is reflected in the Texas Administrative Code.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rule. The fee for an off-highway vehicle decal is established by statute and not by this rulemaking.

Mr. Macdonald also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the ability of any person to access Title 31 of the Texas Administrative Code to find fees imposed or collected by the department.

The direct adverse economic effect on small businesses, microbusinesses, and persons required to comply with the rule as proposed will be the $8 fee for an off-highway vehicle decal; however, the fee for an off-highway vehicle decal is established by statute and not by this rulemaking

The department has determined that the rule will not affect local economies; accordingly, no local employment impact statement has been prepared.

The department has determined that Government Code, § 2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rule.

(E) The department has determined that Government Code, Chapter 2007 (Governmental Action Affecting Private Property Rights), does not apply to the proposed rule.

Comments on the proposed rule may be submitted to Andy Goldbloom, Texas Parks and Wildlife Department 4200 Smith School Road, Austin, Texas 78744; (512) 912-7128 (e-mail: andy.goldbloom@tpwd.state.tx.us).

The new rule is proposed under the authority of Parks and Wildlife Code, §29.003, which authorizes the commission to establish a fee for the off-highway vehicle decal.

The proposed new rule affects Parks and Wildlife Code, Chapter 29.

§53.17.Miscellaneous Fees.

Off-highway vehicle decal--$8.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 12, 2005.

TRD-200505767

Ann Bright

General Counsel

Texas Parks and Wildlife Department

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

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3. TRAINING AND CERTIFICATION FEES

31 TAC §53.50

The Texas Parks and Wildlife Department (TPWD) proposes an amendment to §53.50, concerning Training and Certification Fees. The amendment would increase the fee for attending a hunter education class from $10 to $15. The amendment is necessary to maximize instructor recruitment efforts by increasing the monetary incentive for persons to become hunter education instructors. Under Parks and Wildlife Code, §62.014, the commission by rule may establish a procedure to allow a volunteer hunter education instructor to retain an amount from the fees collected by the instructor to cover the instructor's actual and necessary out-of-pocket expenses. The current rule, which has been in effect since 1995, authorizes an instructor to retain $5. The department has determined that economic factors over the last 10 years have affected the out-of-pocket expenses incurred by volunteer instructors, and that it is appropriate to increase the

amount retained by volunteer instructors to $10. Volunteer instructors are critical to the viability of the hunter education program. Last year, approximately 3,000 volunteers provided hunter education training to 33,000 persons in Texas.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rule, since the entirety of the additional revenue generated by the fee increase will be retained by private citizens who volunteer to be hunter education instructors.

Mr. Macdonald also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the safety of the hunting and non-hunting public, via the recruitment of competent persons to instruct hunters in the safe handling and use of firearms, archery equipment, and crossbows.

There will be no adverse economic effect on small businesses or microbusinesses required to comply with the rule as proposed, as no small businesses or microbusinesses are affected by the rule. There will be an economic cost to persons required to comply with the rule as proposed, namely, the $15 fee for obtaining hunter education certification.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

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 rule.

Comments on the proposed rule may be submitted to Steve Hall, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4568 (e-mail: steve.hall@tpwd.state.tx.us).

The amendment is proposed under Parks and Wildlife Code, §62.014, which authorizes the commission to establish a fee not to exceed $15 to defray the costs of administering a hunter education program and to establish a procedure to allow a volunteer instructor to retain an amount from the fees collected by a volunteer hunter education to cover actual and necessary out-of-pocket expenses.

The proposed amendment affects Parks and Wildlife Code, Chapter 62.

§53.50.Training and Certification Fees.

(a) Marine safety enforcement training and certification fees.

(1) The fee for certification as a marine safety enforcement officer is $25.

(2) The fee for certification as a marine safety enforcement officer instructor is $25.

(b) Hunter education fees.

(1) The registration fee for a hunter education course is $15 [~~$10~~], of which $10 [~~$5~~] may be directly retained by a volunteer instructor.

(2) The fee for a deferred hunter education option is $10; however, at the time a person who has used a deferred hunter education option chooses to enroll in a hunter education course, that person shall pay a $5 registration fee to be directly retained by the volunteer instructor.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 12, 2005.

TRD-200505769

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: January 22, 2006

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

Chapter 59. PARKS

Subchapter J. OFF-HIGHWAY VEHICLE TRAIL AND RECREATIONAL AREA PROGRAM

31 TAC §59.231

The Texas Parks and Wildlife Department proposes new §59.231, concerning the Off-Highway Vehicle Trail and Recreational Area Program. The proposed new section would provide for the definitions and general requirements necessary to administer the Off-Highway Vehicle Trail and Recreational Area Program (OHVTRAP) established by the enactment of Senate Bill 1311 (S.B. 1311) by the 79th Texas Legislature (Regular Session). S.B. 1311 added Chapter 29 and §§11.046 and 11.047 to the Texas Parks and Wildlife Code.

Under the provisions of S.B. 1311, the OHVTRAP was established to further the establishment of motor vehicle recreation sites, establish and maintain a public system of trails and other recreational areas for use by owners and riders of off-highway vehicles, improve existing trails and other recreational areas open to the public for use by owners and riders of off-highway vehicles, and to foster the responsible use of off-highway vehicles.

The proposed rule would provide definitions for 'off-highway motorcycle' and 'public land' and would specify that a valid off-highway vehicle decal be affixed to any off-highway vehicle operated in a recreational area established or maintained by the department under Parks and Wildlife Code, Chapter 29, on other public land, or on land purchased or developed under a grant made under Parks and Wildlife Code, §29.008 or any other grant program operated or administered by the department. The proposed new section also would clarify that possession of the off-highway vehicle decal does not authorize any person to enter public land or use an off-highway vehicle on public land if such entry or use is prohibited, and does not authorize any person to operate an off-highway vehicle on a public roadway.

The definition of 'off-highway motorcycle' is necessary because the term is created but not defined by statute and should be defined for enforcement purposes. S.B. 1311 defines an off-highway vehicle as an "all-terrain vehicle as defined by Transportation Code, §663.001; off-highway motorcycle; or any other four-wheel drive vehicle not registered to be driven on a highway." The definition in proposed §59.231(a) would establish an 'off-highway motorcycle' as any vehicle meeting the definition of a motorcycle under Transportation Code, §502.001(12) that is not registered for use on a public roadway. The definition is consistent with the statutory definition for 'other four-wheel drive vehicles,' in that the key distinction is registration for use on a public roadway. 'Public land' would be defined as 'any land on which an off-highway decal is required under Parks and Wildlife Code, §29.003. The amendment is necessary to provide clear meanings for the terminology used in the rule.

The requirement that an off-highway decal be affixed to all off-highway vehicles is necessary because although S.B. 1311 prohibits the operation of off-highway vehicles on public land unless an off-highway vehicle decal has been obtained, it does not create specific display or possession requirements. In order to verify compliance, the department would require a decal to be affixed to an off-highway vehicle at all times the off-highway vehicle is operated on public land, reasoning that this would be the easiest and least complicated method of proving compliance.

The clarification concerning the use of an off-highway decal is necessary to make clear that the decal is not a permit and does not make an off-highway vehicle lawful to operate on a public roadway.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rule.

Mr. Macdonald also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be rules that offer clarification and specificity in order to foster ease of compliance.

There will be no adverse economic effect on small businesses, microbusinesses, or persons required to comply with the rule as proposed.

The department has determined that the rule will not affect local economies; accordingly, no local employment impact statement has been prepared.

The department has determined that Government Code, § 2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rule.

The department has determined that Government Code, Chapter 2007 (Governmental Action Affecting Private Property Rights), does not apply to the proposed rule.

Comments on the proposed rule may be submitted to Andy Goldbloom, Texas Parks and Wildlife Department 4200 Smith School Road, Austin, Texas 78744; (512) 912-7128 (e-mail: andy.goldbloom@tpwd.state.tx.us).

The new rule is proposed under the authority of Parks and Wildlife Code, §29.010, which authorizes the commission to adopt rules necessary to implement Parks and Wildlife Code, Chapter 29.

The proposed new rule affects Parks and Wildlife Code, Chapter 29.

§59.231.Off-Highway Vehicle Trail and Recreational Area Program.

(a) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings assigned by Parks and Wildlife Code.

(1) Off-highway motorcycle--a vehicle meeting the definition in Transportation Code, §502.001(12), that is not registered for use on a public roadway.

(2) Public land--Any land on which an off-highway decal is required under Parks and Wildlife Code, §29.003.

(b) No person shall operate an off-highway vehicle on public land in this state unless an off-highway decal has been affixed to the off-highway vehicle.

(c) An off-highway vehicle decal does not authorize any person to:

(1) enter public land or operate an off-highway vehicle on public land if entry or use of an off-highway vehicle is otherwise prohibited; or

(2) operate an off-highway vehicle on a public roadway.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ann Bright

General Counsel

Texas Parks and Wildlife Department

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

Chapter 65. WILDLIFE

Subchapter C. PERMITS FOR TRAPPING, TRANSPORTING, AND TRANSPLANTING GAME ANIMALS AND GAME BIRDS

31 TAC §65.107, §65.109

The Texas Parks and Wildlife Department proposes amendments to §65.107 and §65.109, concerning Permits to Trap, Transport, and Transplant Game Animals and Game Birds.

The proposed amendment to §65.107, concerning Permit Applications and Processing, would widen the applicability of the current review process for permit denials to include decisions by the department not to process an application if the applicant is a defendant in a criminal prosecution for specified violations of the Parks and Wildlife Code or department regulations. The amendment is necessary because the proposed amendment to §65.109 would specify that the department may deny permit issuance on the basis of the applicant's history of convictions or violations of certain Parks and Wildlife Code provisions or department regulations.

The proposed amendment to §65.109, concerning Issuance of Permit, would modify the criteria used by the department to delay permit processing or issuance to persons on the basis of past convictions or violations of certain Parks and Wildlife Code provisions or department regulations. The proposed amendment would allow the department to refuse permit issuance to any person who applies for a permit to trap, transport, and transplant game animals and game birds ("Triple T" permit) within five years of being finally convicted of or receiving deferred adjudication for any violation of Parks and Wildlife

Code, Chapter 43, Subchapters C, E, L, or R, any violation of Parks and Wildlife Code that is a Class B misdemeanor, a Class A misdemeanor, or felony, or a violation of Parks and Wildlife Code, §63.002.

Under current rules, the department does not issue Triple T permits to applicants who have been finally convicted, during the two-year period immediately preceding the date of application, of any violation of the provisions governing the use of Triple T permits. The proposed amendment would eliminate the current automatic prohibition and allow permits to be issued at the department's discretion; however, the current two-year period of applicability would be expanded to five years, the provisions of the subsection would also apply to deferred adjudication in addition to convictions, and the subsection would apply to a wider range of offenses, including offenses involving any permit authorizing the possession of live animals and serious offenses involving violations of the Parks and Wildlife Code (i.e., offenses that are more serious than the common violations such as those involving bag limits, possession limits, etc).

The amendment also would allow the department to refuse to issue a permit to any person the department has reason to believe is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this subchapter from engaging in permitted activities. In some cases, persons who have been prohibited from obtaining certain types of permits have attempted to continue their activities by using proxies to obtain a permit. The department's intent is to ensure that persons the department intends to prevent from engaging in certain activities are in fact prevented from doing so.

The proposed amendment would apply the same standards to agents. In many cases, permit activities are conducted by other persons in addition to the permittee. The department believes in addition to provisions affecting permittees, it is appropriate to prevent persons who have been convicted of or received deferred adjudication for an offense which could result in permit denial from assisting in activities involving live animals.

The amendment also would authorize the department to deny or delay the processing of a Triple T application if the applicant is a defendant in a prosecution for a violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R, any violation of Parks and Wildlife Code that is a Class B misdemeanor, a Class A misdemeanor, or felony, or a violation of Parks and Wildlife Code, §63.002.

The amendment is part of an overall effort to create uniform criteria for the denial of special permits or permit processing to persons who have been proven to exhibit disregard for statutes and regulations governing the privilege of taking or possessing wildlife, particularly under department permits for the possession of live wildlife issued pursuant to Parks and Wildlife Code, Chapter 43 (scientific, educational, and zoological permits, Triple T permits, scientific breeder's permits, and deer management permits).

However, the department does not intend for a prosecution, conviction or deferred adjudication to be an automatic bar to obtaining a permit. The department intends to

consider a number of factors and make such determinations on a case-by-case basis. The factors that may be considered by the department in determining whether to deny a permit based on a conviction or deferred adjudication would include, but not be limited to, the seriousness of the offence, the number of offenses, the existence or absences of a pattern of offenses, the length of time between the offense and the permit application, the applicant's efforts towards rehabilitation, and the accuracy of the information provided by the applicant regarding the applicant's prior permit history.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years that the rule as proposed are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rule.

Mr. Macdonald has also determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the protection of live wildlife via the prevention of known abusers of wildlife permits from obtaining permits for the possession of live wildlife.

There will be no direct adverse economic effect on small businesses, microbusinesses, or persons required to comply with the rule as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

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 rules.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rules.

Comments on the proposed rule may be submitted to Robert Macdonald, Texas Parks and Wildlife Department 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 (e-mail: robert.macdonald@tpwd.state.tx.us).

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter E, which requires the commission shall adopt rules for the content of wildlife stocking plans, certification of wildlife trappers, and the trapping, transporting, and transplanting of game animals and game birds.

The proposed new rule and amendments affect Parks and Wildlife Code, Chapter 43.

§65.107.Permit Applications and Processing.

(a) Permit applications.

(1) Application for permits authorized under this subchapter shall be on a form prescribed by the department.

(2) A single application for a Trap, Transport, and Transplant Permit or an Urban White-tailed Removal Permit may specify multiple trap and/or release sites. A single application for a Trap, Transport, and Process Surplus White-tailed Deer Permit may specify multiple trap sites and/or processing facilities.

(3) A single application may not specify multiple species of game birds and/or game animals.

(4) The application must be signed by:

(A) the applicant;

(B) the landowner or agent of the trap site(s); and

(C) the landowner or agent of the release site(s) or the owner or agent of the processing facility or facilities.

(5) The applicant may designate certain persons and/or companies that will be involved in the permitted activities, including direct handling, transport and release of game animals or game birds. In the absence of the permittee, at least one of the named persons and/or companies shall be present during the permitted activities.

(b) Review. An applicant for a permit under this subchapter may request a review of a decision of the department to deny issuance or delay processing of a [~~the~~] permit.

(1) An applicant seeking review of a decision of the department with respect to permit issuance under this subchapter shall first contact the department within 10 working days of being notified by the department of permit denial.

(2) The department shall conduct the review and notify the applicant of the results within 10 working days of receiving a request for review.

(3) The request for review shall be presented to a review panel. The review panel shall consist of the following:

(A) the Director of the Wildlife Division;

(B) the Regional Director and District Leader with jurisdiction;

(C) the Big Game Program Director; and

(D) the White-tailed Deer or Mule Deer program leader, as appropriate.

(4) The decision of the review panel is final.

(5) The department shall report on an annual basis to the White-tailed Deer Advisory Committee the number and disposition of all reviews under this subsection.

§65.109.Issuance of Permit.

(a) Permits authorized under this subchapter:

(1) will be issued, with the exception of permits to trap, transport, and process surplus white-tailed deer, only if the activities identified in the application are determined by the department to be in accordance with the department's stocking policy;

(2) will be issued only if the application and any associated materials are approved by a Wildlife Division technician or biologist assigned to write wildlife management plans;

[~~(3) shall not be issued to individuals who are not in compliance with the reporting requirements specified in §65.115 of this title (relating to Reports)~~];

[~~(4) shall not be issued to applicants who have been finally convicted, during the two-year period immediately preceding the date of application, of any violation of the provisions of this subchapter;~~] and

(3) [~~(5)~~] do not exempt an applicant from the requirements of §§55.142-55.152 of this title (relating to Aerial Management of Wildlife and Exotic Animals).

(b) The department may refuse permit issuance or renewal to any person who within five years of applying for a Triple T permit has been finally convicted of or received deferred adjudication for:

(1) any violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R;

(2) any violation of Parks and Wildlife Code that is a Class A misdemeanor, a Class B misdemeanor, or felony; or

(3) a violation of Parks and Wildlife Code, §63.002.

(c) The department may prohibit any person for a period of five years from acting as an agent of any permittee if the person has been convicted of or received deferred adjudication for an offense listed in subsection (b) of this section.

(d) The department may deny or delay the processing of a permit or renewal application if the applicant is a defendant in a prosecution for an offense listed in subsection (b) of this section.

(e) The department may refuse to issue a permit to any person the department has reason to believe is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this subchapter from engaging in permitted activities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ann Bright

General Counsel

Texas Parks and Wildlife Department

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

Subchapter D. DEER MANAGEMENT PERMIT (DMP)

31 TAC §§65.131, 65.132, 65.138

The Texas Parks and Wildlife Department proposes amendments to §§65.131, 65.132, and 65.138, concerning Deer Management Permits (DMP). The proposed amendment to §65.131, concerning Deer Management Permit, would clarify that an approved deer management plan may be changed to comply with regulatory or statutory actions without being considered as a new application. Under current rule, any changes to a plan constitute a new plan and therefore the $1,000 fee for a new permit is applicable, rather than the renewal fee of $600. The amendment is necessary because the department wishes to make clear that changes necessitated by commission or legislative action do not constitute a new application.

The proposed amendment to §65.131(e) clarifies that the review process may be invoked to review a decision by the department to delay processing a permit or to deny a permit renewal, in addition to a decision to deny a new permit. This amendment is necessary to provide consistency with the amendments to §§65.132 and 65.138 which clarify the agency's authority to deny or delay issuing a permit or renewal. Although a review procedure is not required, the department wishes to avail itself of the opportunity to review and correct decisions that may have made in error. In addition, the department wishes to allow persons whose permit applications or renewals are denied or delayed the opportunity to discuss this matter with appropriate department personnel.

The proposed amendments to §65.132, concerning Permit Application, and §65.138, concerning Violations and Penalties, would clarify the criteria used by the department to deny permit issuance to or prohibit participation in permitted activities by persons on the basis of past convictions or pending prosecutions for certain types of violations of the Parks and Wildlife Code or department regulations. The Parks and Wildlife Code states that deer managed under a DMP "remain the property of the people of the state of Texas and the holder of the permit is considered to be managing the population on behalf of the state." Tex. Parks & Wild. §43.601. Permit activities are a privilege granted by the department under the assumption and expectation that the permittee will abide by permit provisions and applicable laws.

The proposed amendments would eliminate the current provisions regarding convictions and deferred adjudications in §65.138(b) and (c). Those provisions would be modified and moved to §65.132(c)-(e). Under current rules, the department may decline to issue a DMP to an applicant who has been finally convicted or has received deferred adjudication for any violation of the Parks and Wildlife Code within three years preceding the application for a DMP. The proposal would expand the current three-year period of applicability to five years. Also, the types of offenses which could prevent a person from obtaining a DMP would be modified to refer to offenses involving a permit authorizing the possession of live animals and serious offenses involving violations of the Parks and Wildlife Code (i.e., offenses that are more serious than the more common violations such as bag limits, possession limits, etc).

Under the proposed amendment to §65.132, the department may refuse to issue a permit to any person who applies for a DMP within five years of being finally convicted of or receiving deferred adjudication for any violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R, any violation of Parks and Wildlife Code that is a Class B misdemeanor, a Class A misdemeanor, or felony, or a violation of Parks and Wildlife Code, §63.002.

The proposed amendment to §65.132 also clarifies that the department may deny or delay the processing of an application for a DMP if the applicant is a defendant in a prosecution for a violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, and R, any violation of Parks and Wildlife Code that is a Class B misdemeanor, a Class A misdemeanor, or felony, or a violation of Parks and Wildlife Code, §63.002. When persons have been charged with a serious violation of certain provisions of the Parks and Wildlife Code or department regulations, it is reasonable for the department to reserve the right to deny or suspend the processing of a permit application because of the danger of further violations and the danger of harm to the resource.

The proposed amendment to §65.132 would provide that the department may refuse to issue a permit to any person the department has reason to believe is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this subchapter from engaging in permitted activities. In some cases, persons who have been prohibited from obtaining a permit have attempted to continue their activities by using proxies to

obtain a permit. The department's intent is to ensure that persons the department intends to prevent from engaging in certain activities are in fact prevented from doing so.

Proposed subsection 65.132(e) applies the same standards to agents. In many cases, permit activities are conducted by other persons in addition to the permittee. The department believes in addition to provisions affecting permittees, it is appropriate to prevent persons who have been convicted of or received deferred adjudication for an offense which could result in permit denial from assisting in activities involving live animals.

The department does not intend for a pending prosecution, conviction or deferred adjudication to be an automatic bar to obtaining a DMP. The department intends to consider a number of factors and make such determinations on a case-by-case basis. The factors that may be considered by the department in determining whether to deny a DMP based on a conviction, deferred adjudication or pending charges would include, but are not limited to, the seriousness of the offense, the number of offenses, the existence or absence of a pattern of offenses, the length of time between the offense and the permit application, the applicant's efforts towards rehabilitation, and the accuracy of the information provided by the applicant regarding the applicant's prior permit history.

The amendment also preserves, but moves from §65.138(c) to §65.132(d), the provision that completely bars a person from obtaining a DMP for three years after being convicted or receiving deferred adjudication for a violation of §65.136 of the department's regulations (relating to Release).

The proposed amendment to section §65.132 also would reword the final sentence of subsection (a) to clarify the department's interpretation of the provision. The current provision states that "A DMP will be issued following the approval of the applicant's deer management plan by a Wildlife Division technician or biologist assigned to write wildlife management plans." As reflected in the record of the original adoption of this section in August 2001, this provision was not intended to be a stand-alone criterion for permit issuance, but as an explanatory note to indicate that a deer management plan must be approved in order for a permit to be issued. Obviously, other provisions must be satisfied (payment of fees, completion of application materials, etc.) by an applicant before a permit is issued. The proposed amendment would state that a DMP will not be issued unless the applicant's deer management plan has been approved by a Wildlife Division technician or biologist assigned to write wildlife management plans. The amendment is necessary to avoid confusion about the intent of the provision.

The amendment to §65.138 would eliminate the provisions of subsections (b) and (c). Subsection (b) is no longer necessary, as it is being supplanted by proposed §65.132(c). Section 65.138(c) is being relocated without change to proposed §65.132(d)

The amendments are part of an overall effort to create uniform criteria for the denial of permits to persons who have been proven to exhibit disregard for statutes and regulations governing the privilege of taking or possessing wildlife, particularly under department

permits for the possession of live wildlife issued pursuant to Parks and Wildlife Code, Chapter 43 (scientific, educational, and zoological permits, Triple T permits, scientific breeder's permits, and deer management permits).

Robert Macdonald, regulations coordinator, has determined that for each of the first five years that the rule as proposed are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rule.

Mr. Macdonald has also determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the protection of live wildlife via the prevention of known abusers of wildlife permits from obtaining permits for the possession of live wildlife.

There will be no direct adverse economic effect on small businesses, microbusinesses, or persons required to comply with the rule as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

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 rules.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rules.

Comments on the proposed rule may be submitted to Robert Macdonald, Texas Parks and Wildlife Department 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 (e-mail: robert.macdonald@tpwd.state.tx.us).

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter R, which authorizes the commission to issue a permit for the management of the wild white-tailed deer population on acreage enclosed by a fence capable of retaining white-tailed deer, subject to conditions established by the commission.

The proposed amendments affect Parks and Wildlife Code, Chapter 43.

§65.131.Deer Management Permit (DMP).

(a) The department may issue a Deer Management Permit to a person who has met the requirements of §65.132 of this title (relating to Permit Application [~~and Fees~~]).

(b) A person who possesses a valid Deer Management Permit may trap and detain wild deer according to the provisions of this subchapter and Parks and Wildlife Code, Chapter

43, Subchapter R. A permittee shall abide by the terms of an approved deer management plan.

(c) The provisions of Parks and Wildlife Code, Chapter 43, Subchapters C, E, and L do not apply to deer lawfully being held in possession under authority of a valid DMP.

(d) Changes to an approved Deer Management Plan shall be considered as a new application , unless the changes are necessary to comply with regulatory or statutory requirements implemented after the deer management plan was approved .

(e) An applicant for a permit under this subchapter may request that a decision by the department to deny issuance or delay processing of a [~~the~~] permit or permit renewal be reviewed.

(1) An applicant seeking review of a decision of the department under this subsection shall contact the department within 10 working days of being notified by the department of permit denial.

(2) The department shall conduct the review and notify the applicant of the results within 10 working days of receiving a request for a review.

(3) The request for review shall be presented to a review panel. The review panel shall consist of the following:

(A) the Director of the Wildlife Division;

(B) the Regional Director with jurisdiction;

(C) the Big Game Program Director; and

(D) the White-tailed Deer Program Leader.

(4) The decision of the review panel is final.

(5) The department shall report on an annual basis to the White-tailed Deer Advisory Committee the number and disposition of all reviews under this subsection.

§65.132.Permit Application.

(a) Applicants for a DMP shall complete and submit an application on a form supplied by the department. Applications for a DMP shall be accompanied by a deer management plan containing the information stipulated by the application form and the nonrefundable fee as specified in Chapter 53, Subchapter A, of this title (relating to Fees). Incomplete applications will be returned to the applicant and will not be processed until complete. A DMP will not be issued unless [~~following the approval of~~] the applicant's deer

management plan has been approved by a Wildlife Division technician or biologist assigned to write wildlife management plans.

(b) A permit under this subchapter is valid from September 1 of one year through August 31 of the immediately following year.

(c) A person who receives deferred adjudication for or is finally convicted of a violation involving §65.136 of this title (relating to Release) is prohibited from obtaining a DMP for a period of three years from the date the conviction is obtained or deferred adjudication was received.

(d) The department may refuse to issue a permit or permit renewal to any person who within five years of applying for a permit has been convicted of or received deferred adjudication for:

(1) any violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R;

(2) any violation of Parks and Wildlife Code that is a Class B misdemeanor, a Class A misdemeanor, or felony;

(3) a violation of Parks and Wildlife Code, §63.002.

(e) The department may prohibit a person from acting as an agent for any permittee if the person is a defendant in a prosecution for an offense listed in subsection (d) of this subsection.

(f) The department may deny or delay the processing of a permit or renewal application if the applicant is a defendant in a prosecution for an offense listed in subsection (d) of this subsection.

(g) The department may refuse to issue a permit to any person the department has reason to believe is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this subchapter from engaging in permitted activities.

§65.138.Violations and Penalties.

[~~(a)~~] A person who violates any provision of this subchapter commits an offense and is subject to the penalties prescribed by Parks and Wildlife Code, Chapter 43, Subchapter R.

~~[(b) The department reserves the right to refuse permit issuance to any person receiving deferred adjudication for or finally convicted of a violation of the Parks and Wildlife Code within the three years immediately preceding an application for a DMP.]~~

~~[(c) A person who receives deferred adjudication for or is finally convicted of a violation involving §65.136 of this title (relating to Release) is prohibited from obtaining a DMP~~

~~for as period of three years from the date the conviction is obtained or the terms of the deferred adjudication have been satisfied.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ann Bright

General Counsel

Texas Parks and Wildlife Department

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

Subchapter T. SCIENTIFIC BREEDER'S PERMITS

The Texas Parks and Wildlife Department proposes the repeal of §65.609 and §65.610; amendments to §§65.601 - 65.603, 65.607, and 65.608; and new §65.604 and §65.610, concerning Scientific Breeder's Permits.

The proposed repeals, amendments, and new rules are a comprehensive revision of the department's rules governing the scientific breeder permit program. The intent of the rulemaking is to restructure the administrative process of the program to make it consistent with the anticipated federal requirements for cervid disease-monitoring and to improve program delivery and customer service.

The past five years have seen explosive growth in the number of scientific breeder permits issued by the department. In 2000, the department issued 385 scientific breeder permits and 947 purchase permits. By 2005, the numbers had mushroomed to 821 breeder permits and 2,084 purchase permits. At the same time, the emergence of Chronic Wasting Disease (CWD) as a potential threat to native free-ranging deer populations has assumed national proportions; the U.S. Department of Agriculture is expected to impose mandatory identification and tracking protocols for captive cervids within the next five to ten years to address issues related to numerous animal diseases. Together, these developments indicate a need for the department to develop and implement effective methods for quickly and efficiently gathering, collating, storing, and retrieving the large and growing amounts of data generated by the industry.

In a related proposed rulemaking published elsewhere in this issue, the department proposes to increase the fees for scientific breeder permits and renewals. These changes are intended to increase the efficiency in the administration and delivery of the scientific breeder program. The expected results are increased program efficiency; the provision of more efficient and less time-consuming customer service; and the generation of coherent data for a number of useful purposes, such as disease monitoring.

The proposed repeal of §65.609, concerning Purchase of Deer and Purchase Permit, is necessary because the department is eliminating the purchase permit and the transport permit and replacing them with a single permit called a transfer permit.

The proposed repeal of §65.610, concerning Transfer of Deer and Transfer Permit, is necessary because the department is eliminating the purchase permit and the transport permit and replacing them with a single permit called a transfer permit.

The amendment to §65.601, concerning Definitions, corrects a misspelling of the scientific name for mule deer, adds new definitions for the terms 'movement qualified,' 'release,' and 'transfer permit,' and alters definitions for the terms 'serial number' and 'unique number.' The definition of 'movement qualified' is necessary because proposed new §65.604, concerning Disease Monitoring, would condition the movement of scientific breeder deer on the maintenance and results of disease-testing protocols. The definition establishes the department's understanding of the meaning of the term, defining a status required for the introduction of deer to or removal of deer from a scientific breeder facility.

The proposed definition of 'release' would specify what the department considers to be the termination of possession of a scientific breeder deer. The definition is necessary to create an obvious point at which deer can no longer be considered in the possession of a scientific breeder.

The proposed amendment of 'serial number' clarifies that a serial number consists of the prefix "TX" followed by a four-digit number. The amendment is necessary to firmly establish what the department intends with respect to certain provisions involving serial numbers.

The definition of 'transfer permit' is necessary in order to establish that the transfer permit, although a multi-use permit, satisfies the requirements of Parks and Wildlife Code, §43.361 and §43.362, which require a person to possess a permit issued by the department to purchase, ship, or transport deer.

The proposed amendment of the definition of 'unique number' would eliminate the option for permittees to employ user-generated numbering conventions for deer held under a scientific breeder permit, thus having the effect of requiring all deer held under scientific breeder permits to be identified with a department-supplied unique number. The amendment is necessary because the current provision has resulted in confusing and/or misleading identification conventions that interfere with the department's attempts to

maintain accurate records and inventories. The proposed amendment also restates the purpose of the unique number. The current definition states that the unique number is "used by the department to track ownership of a deer." The proposed amendment would state that the purpose of the unique number is to provide for the identification of specific deer held under a scientific breeder permit. The amendment is necessary to accurately reflect the actual function of the unique numbering system.

The amendment to §65.602, concerning Permit Requirement and Permit Privileges, adds a new subsection (b)(2) to state that a scientific breeder may purchase or accept deer from another scientific breeder. The provision is a nonsubstantive addition for purposes of clarification; under current rules, scientific breeders are allowed to obtain deer from other scientific breeders. The amendment also adds the term 'transfer' to the provisions of paragraph (3). Since other provisions of this rulemaking would replace the transport and purchase permits and replace them with the transfer permit; the proposed amendment is necessary to add the function of the transfer permit to the list of activities authorized by a permit.

The amendment to §65.602 also imposes an expiration date of March 31, 2007, for the provisions of subsection (c), regarding requirements for the release of deer into the wild from a scientific breeder facility. Under current rule, scientific breeder deer may not be released unless they originate from a herd enrolled in a valid herd health plan approved by the Texas Animal Health Commission (TAHC). The rule was originally promulgated as part of a joint effort between the department and TAHC to reduce the potential spread of Chronic Wasting Disease (CWD) from deer imported to scientific breeder facilities from outside the state. The department seeks to allow a reasonable amount of time for permittees to comply with the disease monitoring provisions of proposed new §65.604, concerning Disease Monitoring. The proposed effective date for compliance with the provisions of proposed new §65.604 is April 1, 2007; therefore, it is necessary to continue the effectiveness of current §65.602(c) until that time.

Proposed new §65.604 would establish new provisions governing the movement and release of scientific breeder deer. Those provisions would allow a scientific breeder to establish a status ('movement qualified'), over time, that qualifies the scientific breeder to accept deer into or move deer out of a facility for purposes of sale or release, provided the scientific breeder continues to perform disease testing at a certain rate (provided there are no test results of 'detected'). In order to allow for a seamless transition, the department will delay the effectiveness of certain requirements within §65.604 for one permit-year (i.e., until March 31, 2007) in order to give scientific breeders the opportunity to attain movement qualified status. In the interim, the provisions of §65.602(c) will continue in effect. The amendment is necessary to implement a better and more effective protocol for preventing captive native cervids from becoming a disease vector. The proposed amendment also restructures paragraph (6) to reflect the addition of the transfer permit and the elimination of the purchase and transport permits.

The amendment to §65.603, concerning Application and Permit Issuance, would require an affirmation from a certified biologist that a prospective facility physically exists and

contains no deer prior to the time of application; change the permit year to run from July 1 to June 30 instead of from April 1 to March 31, consolidate all provisions governing the effect of criminal prosecutions on permit issuance in one place, and provide for a review of department decisions to refuse issuance of permits or renewals.

The department has discovered that in some cases persons have acquired scientific breeder deer and placed them within a facility before applying for a scientific breeder permit, then added deer at later dates. Another practice noticed by the department was the certification of plans by a certifying biologist even though the facility had not been built yet. This has caused significant discrepancies and difficulties for the department in identifying, tracking, and inventorying deer and transactions among scientific breeders. As a result, the department feels it is necessary, as a part of the application process, to require the certifying biologist to affirm that the prospective facility physically exists and that no deer are being held in the facility. The amendment is necessary to ensure that the department is able to maintain an accurate record of the number of deer within scientific breeder facilities.

The current permit-year (April 1 - March 31) has proven to be problematic for both permittees and the department. Given the tremendous growth of the program, department staff has found it difficult to process the large number of renewal applications, causing inconvenient delays for permittees. The proposed amendment to §65.603(c) is necessary to provide additional buffer time between the end of the reporting period (March 31) and the beginning of the following permit year (July 1) to enable the department to issue permit renewals prior to the start of the permit year.

Under current rules, the department may, at its discretion, refuse to issue a scientific breeder's permit or permit renewal to any person finally convicted of any violation of Parks and Wildlife Code, Chapter 43. In reviewing similar provisions in other regulations governing the possession of live animals, the department has determined that a more uniform approach to situations involving the criminal history (with respect to the Parks and Wildlife Code) of permit applicants is appropriate. Therefore, the department elsewhere in this issue is also proposing changes to similar provisions affecting deer management permits and permits for the trapping, transporting, and transplanting game animals and game birds. The department intends to propose similar changes to the permits governing scientific, educational, zoological, and rehabilitation permits at a later date.

As a result of the review, the department determined that the decision to issue or renew a permit should take into account the applicant's history of violations involving the possession of live animals and major violations of the Parks and Wildlife Code (Class B misdemeanors, Class A misdemeanors, and felonies). The department reasons that it is appropriate to deny the privilege of possessing live animals to persons who exhibit a demonstrable disregard for the regulations governing the possession of live animals. Similarly, it is appropriate to deny the privilege of possessing live animals to a person who has exhibited demonstrable disregard for wildlife law in general by committing more

egregious (Class B misdemeanors, Class A misdemeanors, and felonies) violations of wildlife law.

Therefore, proposed subsections 65.603(g)-(i) would specify that the department may refuse permit or renewal issuance to persons who have been finally convicted of or received deferred adjudication for a violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R (which govern specialized permits for the possession of live animals), violations of the Parks and Wildlife Code or rules of the commission that are Class B misdemeanors, Class A misdemeanors, or felonies, and violations of Parks and Wildlife Code, §63.002, which although a Class C misdemeanor, specifically addresses the unlawful possession of live game animals.

The department also notes that the current rule is open-ended; theoretically, persons can be prevented from ever obtaining a permit following a conviction. The department has determined that it is appropriate for the department to consider only those convictions or deferred adjudications that have occurred within five years prior to an application for a permit or renewal, reasoning that a potential five-year period of permit denial will act as a sufficient deterrent to intentional violations. The department also stresses that the intent of the proposed amendments is to give the department a credible response to persons with a history of blatant disregard for the rules.

However, the department does not intend for a conviction or deferred adjudication to be an automatic bar to obtaining a permit. The department intends to consider a number of factors and make such determinations on a case-by-case basis. The factors that may be considered by the department in determining whether to refuse to issue a permit or permit renewal based on a conviction or deferred adjudication would include, but not be limited to, the seriousness of the offense, the number of offenses, the existence or absences of a pattern of offenses, the length of time between the offense and the permit application, the applicant's efforts towards rehabilitation, and the accuracy of the information provided by the applicant regarding the applicant's prior permit history.

Proposed subsection 65.603(h) applies the same standards to agents. In many cases, permit activities are conducted by other persons in addition to the permittee. The department believes in addition to provisions affecting permittees, it is appropriate to prevent persons who have been convicted of or received deferred adjudication for an offense which could result in permit denial from assisting in activities involving live animals.

Proposed subsection 65.603(i) would allow the department to refuse permit issuance to persons who, in the judgment of the department, are acting as surrogates for persons who are prohibited from obtaining a permit. In light of the proposed five-year period of time during which the department could choose to refuse permit issuance to persons convicted of the offenses, it is reasonable to assume that persons might attempt to circumvent the intent of the department (that they not engage in the business of possessing, breeding and selling deer) by using another person to obtain a permit with the objective of continuing

to do business as usual in the name of the shadow permittee. It is therefore necessary to address the possibility.

Proposed subsection 65.603(j) would create a review process for department decisions concerning the issuance of permits and renewals. The proposed amendment is necessary to create a process to allow persons who have been denied issuance of permits or permit renewals to have the decision reviewed by a panel of senior department managers. The process as proposed would allow the department to reverse such decisions upon further review, and would require the department to report annually to the White-tailed Deer Advisory Committee on the number and disposition of reviews.

Proposed new §65.604, concerning Disease Monitoring, would establish new protocols for the testing of scientific breeder deer for chronic wasting disease (CWD). Current rules prohibit the release of deer from any facility that is not enrolled in a valid herd health plan for cervidae approved by the TAHC. The current rule was promulgated in 2003 in response to concerns about the emergence of CWD in both captive and free-ranging deer populations in other states, which represents a potential threat to wild deer populations in Texas.

The biological and epidemiological nature of CWD is not well understood and has not been extensively studied, but it is known to be communicable, incurable, and invariably fatal. The department has worked closely with the Texas Animal Health Commission to characterize the threat potential of CWD to native wildlife and livestock, and to determine the appropriate level of response. The department believes that vigilance and early detection are crucial to minimizing the severity of biological and economic impacts in the event that an outbreak occurs in Texas, and that the implementation of reasonable rules to detect the disease is necessary.

The proposed new §65.604 would allow a scientific breeder to release deer to the wild, provided the facility from which the deer are released is ‘movement qualified.’ Movement qualified status would be obtained by maintaining a herd-status level of at least "A" with the TAHC and testing eligible deer mortalities occurring within the facility such that test results of ‘not detected’ are returned on a minimum of 20% of all eligible mortalities and none are returned as ‘detected’ from the Texas Veterinary Medical Diagnostic Laboratories. Status would be maintained by continuing to test at the minimum level, but could be lost if deer from a facility that is not movement qualified are introduced. If status is lost as a result of the acceptance of deer from a facility that is not movement qualified, movement of deer from the facility would be prohibited for a minimum of one year and the facility would have to reestablish movement qualified status. The proposed new rule is necessary to provide an effective and scientifically valid mechanism for reasonably ensuring that deer held under a scientific breeder permit are free of communicable diseases.

The proposed amendment to §65.607, concerning Marking of Deer, would clarify that the unique number required to be tattooed in a deer’s ear must be a unique number assigned to the scientific breeder who possessed the deer when the deer was born or who lawfully

obtained the deer from an out-of-state source. By rule, a deer may not leave a facility unless it has been tattooed with a unique number. This means that when a deer leaves the facility in which it was born (or to which it was introduced, if it was lawfully obtained from an out-of-state source when such acquisition was lawful), the deer must be tattooed with a legible unique number identifying that facility. For purposes of clarification, the amendment would add language to make the requirements of the section unmistakable, and to stipulate that deer also may not be knowingly accepted into a scientific breeder facility unless the deer have been tattooed in accordance with the provisions of the subchapter.

The proposed amendment to §65.607 is necessary to ensure that the history of possession and movement of all deer held under scientific breeder permits is traceable for purposes of disease control and law enforcement. A tattoo can be an effective permanent marking if done correctly; however, poorly done tattoos can become illegible over time, which makes reliable identification problematic. To account for cases in which it is unpractical or impossible to identify deer by means of tattooing (e.g., there is no more room in the ear for an additional tattoo), the proposed amendment also would allow the department to prescribe alternative methods for permanent identification on a case-by-case basis.

The proposed amendment to §65.608, concerning Annual Reports and Records, would alter the reporting deadline for annual reports in order to comport the requirements of the section with changes that would alter the permit-year, discussed earlier in the proposed amendments to §65.603. The proposed amendment also would remove references to documentation such as purchase permits and invoices for temporary possession, which would no longer be necessary because they would be eliminated in favor of the transfer permit. The proposed amendment also requires that reports and records be maintained in a legible condition. The amendment is necessary to ensure that the department is able to accurately interpret information required to be kept by permittees. The proposed amendment also comports the section to reflect the creation of the transfer permit and the elimination of the purchase and transfer permits.

Proposed new §65.610, concerning Transfer Permit, would create a single permit for the movement of deer from a scientific facility to any other place for any other purpose. Under current rules deer may be moved under the scientific breeder's permit, a purchase permit, a transport permit, or a temporary invoice, each of which invoke different reporting and documentation standards, creating a problematic recordkeeping burden for the department and the regulated community. This system was workable when the number of scientific breeders and persons patronizing scientific breeders were few; however, given the growth of the industry, a new approach is necessary. In concert with other proposed provisions of this rulemaking, the proposed new rule would eliminate all permits other than the scientific breeders permit and replace them with a single permit that would be required in order to move deer to any destination for any purpose. In a proposed amendment to §53.14, published elsewhere in this issue, the department is addressing the elimination of the fees for the transport and purchase permits.

Proposed new §65.610(e) establishes the transfer permit, specifies the period of validity, sets forth the circumstances and manner in which it is required to be used, and prescribes the recordkeeping and reporting requirements incidental to permit use. Under current rules, a transfer or purchase permit costs $30 and is valid for 30 days from the time it is activated (i.e., when the user of the permit notifies the department of pending activities for which the permit would be required).

The proposed rule would eliminate the fee and impose a 48-hour period of validity. The 30-day period proved problematic for enforcement and recordkeeping purposes, since 30 days is simply too great a time span within which to monitor or verify permit activities, and recordkeeping and reporting errors tend to be multiplied if permittees do not keep up with records in real time but instead wait until the end of the period of validity. The department believes that the proposed 48-hour period of validity, coupled with the 48-hour mandatory reporting window following the completion of each act of transfer, will improve program efficiency, facilitate compliance by the regulated community, and make enforcement less problematic. Additionally, the requirement to report all deer movements, temporary or otherwise, within 48 hours, would greatly enhance the department's ability to quickly track animals for the purpose of epidemiological investigation in the unfortunate event of certain disease detection.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rules.

Mr. Macdonald has also determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the protection of wild, native deer from communicable diseases, thus ensuring the public of continued enjoyment of the resource. Additionally, the protection of native deer herds will have the simultaneous collateral benefit of protecting captive herds, maintaining the economic viability of deer breeding operations.

The direct adverse economic effect on small businesses, microbusinesses, and persons required to comply with the rules as proposed is associated with the disease-testing requirements of proposed new §65.604, concerning Disease Monitoring. The estimated average cost of compliance is between $200 and $750 per year for each breeder who desires to maintain movement qualified status, depending on whether private veterinarians are employed to remove, fix, and send samples or scientific breeders perform those functions themselves. This value was obtained by estimating the average number of eligible mortalities that will occur in each facility per year (five, although the number in most cases will be between one and three) and multiplying that value by the cost of a CWD test administered by the Texas Veterinary Medicine Diagnostic Lab (TVMDL) on a sample collected and submitted by the scientific breeder ($40: $25 for a brainstem in formalin or complete head, plus a $15 disposal fee by the lab). If the sample is collected, fixed, and submitted by a private veterinarian, the department estimates the cost to be approximately $150 per deer, testing included. The cost of compliance (i.e., the

fee for a test performed by TVMDL) is the same for the largest and smallest businesses affected by the proposed rule.

The cost of compliance per employee will vary depending on the number of employees of the scientific breeder. For a very small scientific breeder operation with only 2 or 3 employees, the cost of compliance per employee cold be as high as $100 to $375 per employee per year. On the other hand, if a scientific breeder has 100 employees, the cost of compliance would be only $2 to $7.50 per employee per year. Because the prepond erance of deer breeding operations in the state qualify as small businesses or microbusinesses, the impact will be similar for most scientific breeders. The department has also determined that there is no feasible way to reduce the effect of the proposed rule on small or micro-businesses, because, as noted earlier, the preponderance of businesses affected by the proposed rule are probably small or micro-business as defined in Government Code, §2006.002.

The department considered absorbing the costs of disease-testing, but determined that to do so would be fiscally impossible without additional fee increases; therefore, the department has determined that there is no alternative to the disease-testing requirements imposed by the rules, since the only way to be reasonably confident that CWD is not present in any given captive herd is to test at a statistically significant rate. The department also considered that federal and state programs are being developed to assist the regulated community in defraying or eliminating out-of-pocket expenses for disease testing. The department also notes that many, if not most, breeders are currently performing CWD testing as part of a herd health certification plan administered by TAHC and for those breeders the proposed rules will not impose additional costs and could result in reduced costs for disease testing.

The department also considered that a scientific breeder who in is compliance with current rules requiring enrollment in a herd health certification plan in order to release deer might not choose to obtain movement qualified status and thus would be prohibited from releasing deer, which could result in lost revenue to the breeder. The department reasons, however, that potential purchasers of deer will be aware of the potential danger of CWD and will prefer to purchase deer from herds that have been certified. Therefore, the department believes that most if not all scientific breeders will undertake testing.

There also will be direct adverse economic costs to small businesses, microbusinesses, and persons required to comply with proposed fee increases for scientific breeder permits and renewals; however, those impacts are discussed in the proposed amendment to §53.14, which is published elsewhere in this issue.

The department has not filed a local impact statement with the Texas Workforce Commission as required by the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

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 rules.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rules.

Comments on the proposed rule may be submitted to Robert Macdonald, Texas Parks and Wildlife Department 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 (e-mail: robert.macdonald@tpwd.state.tx.us).

31 TAC §§65.601 - 65.604, 65.607, 65.608, 65.610

The amendments and new rules are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which provides the Commission with authority to promulgate regulations governing the possession of white-tailed deer and mule deer for scientific, management, and propagation purposes.

The proposed amendments and new rules affect Parks and Wildlife Code, Chapter 43.

§65.601.Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings assigned by Parks and Wildlife Code.

(1) Authorized agent--An individual designated by the permittee to conduct activities on behalf of the permittee. For the purposes of this subchapter, the terms 'scientific breeder' and 'permittee' include authorized agents.

(2) Certified Wildlife Biologist--A person not employed by the department who has been certified as a wildlife biologist by The Wildlife Society, or who:

(A) has been awarded a bachelor's degree or higher in wildlife science, wildlife management, or a related educational field; and

(B) has not less than five years of post-graduate experience in research or wildlife management associated with white-tailed deer or mule deer within the past 10 years.

(3) Common Carrier--Any licensed firm, corporation or establishment which solicits and operates public freight or passenger transportation service or any vehicle employed in such transportation service.

(4) Deer--White-tailed deer of the species Odocoileus virginianus or mule deer of the species Odocoileus hemionus [~~hemonius~~].

(5) Facility--One or more enclosures, in the aggregate and including additions, that are the site of scientific breeding operations under a single scientific breeder's permit.

(6) Movement qualified--A status, determined by the department, under which the removal of deer from a facility is authorized.

(7) [~~(6)~~] Propagation--The holding of captive deer for reproductive purposes.

(8) Release--the intentional release of a live deer from a permitted facility, or from a vehicle or trailer at a location other than a facility.

(9) [~~(7)~~] Sale--The transfer of possession of deer for consideration and includes a barter and an even exchange.

(10) [~~(8)~~] Scientific--The accumulation of knowledge, by systematic methods, about the physiology, nutrition, genetics, reproduction, mortality and other biological factors affecting deer.

(11) [~~(9)~~] Serial Number--A permanent four-digit number assigned to the scientific breeder by the department. A serial number shall be preceded by the prefix "TX".

(12) Transfer permit--A permit authorizing the movement or shipping of deer as a result of purchase, sale, barter, exchange, or any other arrangement under which deer are physically removed from or accepted into a permitted facility.

(13) [~~(10)~~] Unique number--A four-digit alphanumeric identifier assigned to a permittee for the purposes of individually identifying the [~~used by the department to track the ownership of a~~] specific deer held by the permittee . [~~Unique numbers may be assigned by the department or by the permittee. If the permittee chooses to assign the unique numbers, each deer must be tattooed with the permittee's serial number in one ear and the unique number in the other ear. No two deer shall share a common unique number.~~]

§65.602.Permit Requirement and Permit Privileges.

(a) No person may possess a live deer in this state unless that person possesses a valid permit issued by the department under the provisions of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R.

(b) Except as otherwise provided by this subchapter, a [~~A~~] person who possesses a valid scientific breeder's permit may:

[~~(1) possess deer within the permitted facility for the purpose of propagation;~~]

(1) [~~(2)~~] engage in the business of breeding legally possessed deer within the facility for which the permit was issued;

(2) purchase or otherwise lawfully take possession of deer lawfully possessed by another scientific breeder;

(3) sell or transfer deer that are in the legal possession of the permittee;

(4) release deer from a permitted facility into the wild as provided in this subchapter;

(5) recapture lawfully possessed deer that have been marked in accordance §65.607 of this title (relating to Marking of Deer) that have escaped from a permitted facility;

(6) temporarily relocate and hold deer in accordance with the applicable provisions of §65.610[~~(a)(2) and (3)~~] of this title (relating to Transfer Permit [~~Transport of Deer and Transport Permit~~]) [~~for breeding or nursing purposes~~]; and

(7) temporarily relocate and recapture buck deer under the provisions of Subchapter D of this chapter (relating to Deer Management Permit).

(c) The provisions of this subsection are effective until March 31, 2007. No person may release a deer obtained or possessed under this subchapter to the wild unless the person can prove that the deer came directly from a facility enrolled in a current, valid herd health plan for cervidae approved by Texas Animal Health Commission.

§65.603.Application and Permit Issuance.

(a) An applicant for an initial scientific breeder's permit shall submit the following to the department:

(1) a completed notarized application on a form supplied by the department;

(2) a breeding plan which identifies:

(A) the activities proposed to be conducted; and

(B) the purpose(s) for proposed activities;

(3) a letter of endorsement by a certified wildlife biologist which states that:

(A) the certified wildlife biologist has reviewed the breeding plan;

(B) the activities identified in the breeding plan are adequate to accomplish the purposes for which the permit is sought; [~~and~~]

(C) the biologist has conducted an inspection of the facility identified in the application and affirms that:

(i) the facility identified in the application :

(I) physically exists; and

(II) is adequate to conduct the proposed activities; and

(ii) no deer are present within the facility;

(4) a diagram of the physical layout of the facility;

(5) the application processing fee specified in Chapter 53, Subchapter A, of this title (relating to Fees); and

(6) any additional information that the department determines is necessary to process the application.

(b) A scientific breeder's permit may be issued when:

(1) the application and associated materials have been approved by the department; and

(2) the department has received the fee as specified in Chapter 53, Subchapter A, of this title (relating to Fees).

(c) A scientific breeder's permit shall be valid from the date of issuance until the immediately following July 1 [~~March 31~~].

(d) Except as provided in subsection (g) of this section, a [~~A~~] scientific breeder's permit may be renewed annually, provided that the applicant:

(1) is in compliance with the provisions of this subchapter;

(2) has submitted a notarized application for renewal;

(3) has filed the annual report in a timely fashion, as required by §65.608 of this title (relating to Annual Reports and Records); and

(4) has paid the permit renewal fee as specified in Chapter 53, Subchapter A, of this title (relating to Fees).

(e) An authorized agent may be added to or deleted from a permit at any time by faxing or mailing an agent amendment form to the department. No person added to a permit under this subsection shall participate in any activity governed by a permit until the department has received the agent amendment form.

(f) If a scientific breeder facility is enlarged or added to, the permittee shall submit an accurate diagram of the facility, including the additions or enlargements, to the department. No person shall introduce or cause the introduction of deer to a pen that has been added or enlarged unless the diagram required by this subsection is on file at the department's Austin headquarters.

(g) The department may refuse permit issuance or renewal to any person who within five years of applying for a scientific breeder's permit has been finally convicted of or received deferred adjudication for:

(1) any violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R;

(2) any violation of Parks and Wildlife Code that is a Class B misdemeanor, a Class A misdemeanor, or felony; or

(3) a violation of Parks and Wildlife Code, §63.002.

[~~(g) The department may, at its discretion, refuse to issue a permit or permit renewal to any person finally convicted of any violation of Parks and Wildlife Code, Chapter 43.~~]

(h) The department may prohibit any person for a period of five years from acting as an agent of any permittee if the person has been convicted of or received deferred adjudication for an offense listed in subsection (g) of this section.

(i) The department may refuse to issue a permit to any person the department has reason to believe is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this subchapter from engaging in permitted activities.

(j) An applicant for a permit under this subchapter may request a review of a decision of the department to refuse issuance of a permit or permit renewal.

(1) An applicant seeking review of a decision of the department with respect to permit issuance under this subchapter shall first contact the department within 10 working days of being notified by the department of permit denial.

(2) The department shall conduct the review and notify the applicant of the results within 10 working days of receiving a request for review.

(3) The request for review shall be presented to a review panel. The review panel shall consist of the following:

(A) the Assistant Executive Director for Operations (or his or her designee);

(B) the Director of the Wildlife Division; and

(C) the Big Game Program Director.

(4) The decision of the review panel is final.

(5) The department shall report on an annual basis to the White-tailed Deer Advisory Committee the number and disposition of all reviews under this subsection.

§65.604.Disease Monitoring.

(a) The provisions of subsections (b)-(d) and (g) of this section take effect April 1, 2007.

(b) No person shall remove, or authorize or cause the removal of a live deer from a facility permitted under this subchapter unless:

(1) the facility is designated by the department as movement qualified; or

(2) the removal is specifically authorized by the department.

(c) No person shall knowingly or intentionally allow the introduction of a live deer from a facility that is not movement qualified into a facility permitted under this subchapter.

(d) The department may authorize the transfer of deer from a facility that is not movement qualified and for which there is no valid scientific breeder permit to a facility permitted under this subchapter; however, the receiving facility shall not allow any deer to be moved from the facility for a period of one year from the date the transfer occurs.

(e) A facility permitted under this subchapter is movement qualified if:

(1) it has been certified by the Texas Animal Health Commission (TAHC) as having a CWD Monitored Herd Status of Level A or higher; and/or

(2) less than five eligible deer mortalities have occurred within the facility as of April 1, 2006;

(3) no CWD test results of 'detected' have been returned from the Texas Veterinary Medical Diagnostic Laboratories for deer submitted from the facility; and

(4) CWD test results of 'not detected' have been returned from the Texas Veterinary Medical Diagnostic Laboratories on a minimum of 20% of all eligible deer mortalities occurring within the facility as of April 1, 2006.

(f) An eligible mortality is any lawfully possessed deer aged 16 months or older that has died within a facility after April 1, 2006.

(g) A facility is no longer movement qualified if it cannot meet the requirements of subsection (e) of this section as of March 31 of any year; however, a facility may reestablish movement qualified status at any time by meeting the requirements of subsection (e) of this section.

(h) If a person receives or accepts into a facility that is movement qualified a deer from a facility that is known by the person not to be a movement qualified facility, the receiving facility immediately and automatically loses movement qualified status for a period of one year from the date the transfer occurred, as determined by the department.

(i) Except as provided in this subsection, 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 test result of 'detected' has been obtained by the Texas Veterinary Medical Diagnostic Laboratories. The provisions of this subsection take effect immediately upon the posting of notice by the department at the facility that a 'detected' result has been obtained and continue in effect until:

(1) the facility meets the requirements of subsection (e) of this section; and

(2) the department specifically authorizes the resumption of permitted activities at the facility.

§65.607.Marking of Deer.

(a) No two scientific breeder deer in this state may have the same unique number.

(b) [~~(a)~~] Each deer held in captivity by a permittee under this subchapter shall be permanently marked by an ear tag that shows the letters "TX" followed by the serial number assigned to the scientific breeder. All deer within a scientific breeder facility shall be ear-tagged by March 31 of the year immediately following their birth.

(c) [~~(b)~~] No person shall remove or knowingly allow the removal of a deer held in a facility by a permittee under this subchapter unless it has been permanently and legibly tattooed in one or both ears with the [~~a~~] unique number assigned to the scientific breeder in lawful possession of the deer when the deer was born or who lawfully obtained the deer from an out-of-state source.

(d) No person shall knowingly accept of knowingly allow the acceptance of a deer into a facility permitted under this subchapter unless it has been permanently and legibly tattooed in one or both ears with the unique number assigned to the scientific breeder in lawful possession of the deer when the deer was born or who lawfully obtained the deer from an out-of-state source.

(e) [~~(c)~~] No person shall introduce and no person shall accept a deer into a facility permitted under this subchapter if:

(1) an ear tag bearing the TX number of any scientific breeder other than the scientific breeder receiving the deer has not been removed; and

(2) the deer has not been affixed with an ear tag bearing the TX number of the scientific breeder receiving the deer [~~under the provisions of a purchase permit unless the ear tag identifying the seller has been removed from the deer and replaced with an ear tag bearing the TX number of the purchaser~~].

(f) In the event that a tattoo is illegible and additional tattoos are impossible, the department may prescribe alternative methods of uniquely identifying a deer held under the provisions of this subchapter.

§65.608.Annual Reports and Records.

(a) Each scientific breeder shall file a legible, completed annual report on a form supplied or approved by the department[~~, accompanied by photocopies of all invoices for the temporary relocation of deer and all purchase permits used by the permittee during the reporting period,~~] by not later than May 15 [~~April 16~~] of each year.

(b) The holder of a scientific breeder's permit shall maintain and, on request, provide to the department adequate documentation as to the source or origin of all deer held in captivity[~~, including all invoices for the temporary relocation of deer, and buyer's and seller's invoices, as applicable, of all purchase permits used by the permittee~~].

(c) A person other than a scientific breeder holding deer for nursing , breeding, or health care purposes shall maintain and, upon request, provide copies of transfer permits indicating [~~appropriate invoices attesting to~~] the source of all deer in the possession of that person.

§65.610.Transfer of Deer.

(a) General requirement. No person may remove deer from or accept deer into a permitted facility unless a valid transfer permit on a form provided by the department has been activated as provided in this section.

(b) Transfer by scientific breeder. The holder of a valid scientific breeder's permit may transfer legally possessed deer:

(1) to or from another scientific breeder as a result of sale, purchase or other arrangement;

(2) to or from another scientific breeder on a temporary basis for breeding or nursing purposes;

(3) to an individual who purchases or otherwise lawfully obtains the deer for purposes of release but does not possess a scientific breeder's permit;

(4) to an individual for the purpose of obtaining medical attention, provided the deer do not leave this state; and

(5) to a facility authorized under Subchapter D of this chapter (relating to Deer Management Permit) to receive buck deer on a temporary basis.

(c) Transfer by person other than scientific breeder. An individual who does not possess a scientific breeder's permit may possess deer under a transfer permit if the individual is

transporting deer within the state and the deer were legally purchased or obtained from a scientific breeder for purposes of release.

(d) Release.

(1) The department may authorize the release of deer for stocking purposes if the department determines that the release of deer will not detrimentally affect existing populations or systems.

(2) Deer lawfully purchased, possessed, or obtained for stocking purposes may be held in captivity for no more than 30 days:

(A) to acclimate the deer to habitat conditions at the release site;

(B) when specifically authorized by the department;

(C) if they are not hunted prior to release; and

(D) if the temporary holding facility is physically separate from any scientific breeder facility and the deer being temporarily held are not commingled with deer being held in a scientific breeder facility. Deer removed from a scientific breeder facility to a temporary holding facility shall not be returned to any scientific breeder facility. No deer shall be released from a temporary holding facility during an open season or within ten days of an open season unless the antlers immediately above the pedicel have been removed.

(3) An individual who does not possess a scientific breeder's permit may possess deer under a transfer permit if the individual is transporting deer within the state and the deer were legally purchased or obtained from a scientific breeder for purposes of release.

(e) Transfer permit.

(1) A transfer permit is valid for 48 consecutive hours from the time of activation.

(2) A transfer permit authorizes the transfer of deer to one and only one receiver.

(3) A transfer permit is activated only by:

(A) notifying the Law Enforcement Communications Center in Austin prior to the transport of any deer; or

(B) utilizing the department's web-based activation mechanism prior to the transport of any deer.

(4) A person in possession of live deer at any place other than within a permitted facility shall also possess on their person a department-issued transfer permit legibly indicating, at a minimum:

(A) the species, sex, and unique number of each deer in possession;

(B) the source and destination facilities, or, if applicable, the specific release location for each deer in possession;

(C) the date and time that the permit was activated.

(5) Not later than 48 hours following the completion of all activities under a transfer permit, the permit shall be:

(A) legibly completed and faxed to the Wildlife Division in Austin by the person designated on the permit as the party responsible for notification of the department; or

(B) completed and submitted using the department's web-based permit-completion mechanism.

(f) Marking of vehicles and trailers. No person may possess, transport, or cause the transportation of deer in a trailer or vehicle under the provisions of this subchapter unless the trailer or vehicle exhibits an applicable inscription, as specified in this subsection, on the rear surface of the trailer or vehicle. The inscription shall read from left to right and shall be plainly visible at all times while possessing or transporting deer upon a public roadway. The inscription shall be attached to or painted on the trailer or vehicle in block, capital letters, each of which shall be of no less than six inches in height and three inches in width, in a color that contrasts with the color of the trailer or vehicle. If the person is not a scientific breeder, the inscription shall be "TXD". If the person is a scientific breeder, the inscription shall be the scientific breeder serial number issued to the person.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ann Bright

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4814

31 TAC §65.609, §65.610

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which provides the Commission with authority to establish the fees for scientific breeder permits.

The proposed repeals affect Parks and Wildlife Code, Chapter 43.

§65.609.Purchase of Deer and Purchase Permit.

§65.610.Transport of Deer and Transport Permit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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