



November 4, 2020

Chairman S. Reed Morian and TPWD Commissioners
c/o Mitch Lockwood
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, TX 78744

Dear Chairman Morian and TPWD Commissioners:

On behalf of the Texas Deer Association, please let this letter serve as formal comment regarding the proposed rule changes to sections §65.604, §§65.601-65.603, 65.605, and 65.610-65.612, concerning Deer Breeder's Permits.

First and foremost, the Texas Deer Association would like to commend TPWD leadership and staff for their efforts to maintain an open dialogue with the industry regarding these proposed rule changes. While our industry continues to have concerns related to some of the proposed changes, we are grateful for the opportunity to fully discuss each proposed rule change with department staff. I feel strongly that staff understands our concerns related to technical language within the proposed rules and the potential implications the rule changes may have on our current methods of conducting business. Our association is appreciative that TPWD staff remains committed to listening to our concerns throughout this process.

In order to provide succinct comments based on our concerns, the comments henceforth are arranged in the following sections:

Part I – Changes to the Definition of a Facility with Corresponding Additional Fees

Part II – TWIMS Mortality Reporting and CWD Sample Submission

Part III – Prohibiting Exotics and Other Species in Permitted Deer Facilities

Part IV – Rule Language for Standards of Care

Part V – Certified Pen Inspector

Part VI – Rules Applied to Escaped Deer

Part VII – Rule Changes Concerning Mule Deer and White-tailed Deer Comingling

Part VIII – Transfer Permit Activation Changes

Part IX – Emergency Transport of Deer to a Licensed Veterinarian

Part X – Length of Time in a Nursing Facility

PART I – Changes to the Definition of a Facility with Corresponding Additional Fees

The proposed rule change seeks to alter the definition of a “facility” to specify that enclosures within any given facility must be contiguous. Pens that are not contiguous must be assigned an additional breeder facility ID number. Currently, permittees are allowed to include any enclosures or pens on their property within one facility ID.

The industry remains concerned that requiring breeders to apply for additional facility ID's for non-contiguous enclosures presents an unnecessary financial burden while also potentially requiring additional CWD testing within herds already conducting adequate surveillance. Earlier this year, the department submitted comments to the Texas Sunset Commission to significantly increase fees for breeder permits. Now, department staff is also seeking to increase the number of permitted facilities within one parcel of private property – effectively doubling or tripling the cost for business owners to secure breeder permits each year. It is our opinion that implementation of both increases is unnecessary and duplicative.

Additionally, the industry has raised concerns with the ability of facility owners to meet the required testing in all non-contiguous facilities, should they be required to have separate CWD testing standards. Currently, breeders are required to test 80% of their eligible mortalities, while maintaining a sample size equal or greater to 3.6% of the age-eligible animals in their facility, for any permitted facilities each year. In current practice, this testing burden is shared across all age ranges and animal demographics within the facility.

The proposed rule changes alter the current way in which our industry currently conducts surveillance across all pens within a given facility. Often times, non-contiguous pens will house specific age cohorts of deer and often times do not carry a high mortality rate. Therefore, the proposed amendments to the rules will almost certainly force breeders to unnecessarily live test additional animals to meet existing CWD testing standards.

Part II – TWIMS Mortality Reporting and CWD Sample Submission

The proposed rule changes would require all animal mortalities to be reported in TWIMS within 14 days of discovery, and CWD samples to be submitted to TVMDL within 14 days of collection.

Our association understands the need to track mortalities, current inventory, and CWD sampling for animal traceability in a timely manner. The industry remains committed to working alongside the agency to find a more effective and expedited process for mortality reporting and sample submission in TWIMS. However, with respect to the timeline proposed, our industry would request the Commission consider 30 days for sample submission after mortalities are reported in TWIMS. The need for a 30-day sample submission timeline arises from the current practice of hand-delivering samples to the Texas Veterinary Medical Diagnostic Laboratory. The importance of secure sample delivery cannot be overstated. Missing or lost samples can have catastrophic impacts on a business. A diverse and significant cross-section of the deer industry prefers to hand-deliver CWD postmortem samples to the lab for security, verification, and peace of mind when submitting the required tissues. We feel strongly that the Commission should consider 30 days for sample submission – effectively ensuring that breeders would only have to travel the long distances to the TVMDL lab once a month.

Part III – Prohibiting Exotics and Other Species in Permitted Deer Facilities

The current proposed rule changes state that no person may possess deer, livestock, exotic livestock, or similar animals in a deer breeding facility, or allow deer, livestock, exotic livestock, or similar animals to access a deer breeding facility. The Texas Deer Association clearly understands the need to segregate species from one another for proper animal husbandry practices. However, as with many other

livestock and wildlife management practices, access to working facilities and structures such as a barn are essential for the humane treatment of any animal in captivity.

Our association remains committed to working with TPWD staff to ensure that only white-tailed deer or mule deer are housed in pens permitted under a specific deer breeding permit. However, we would urge staff and the Commission to allow any non-susceptible CWD species of animal access to working facilities and housing structures such as a barn.

Part IV – Rule Language for Standards of Care

The proposed rule changes would adopt language to require a facility to be constructed and contain infrastructure appropriate for the humane treatment of deer, including continuous supplies of water and ample supplies of food and cover or shelter. The Texas Deer Association appreciates TPWD staff working alongside industry veterinarians to improve the original language. Our association supports the adoption of this language to ensure proper care is provided for animals held under permit.

Part V – Certified Pen Inspector

The proposed rule changes would amend and replace the definition of a “Certified Wildlife Biologist” with “Certified Pen Inspector” and codify changes to the specific qualifications for inspectors. The Texas Deer Association supports these changes.

Part VI - Rules Applied to Escaped Deer

Proposed amendment to §65.605 would alter current subsection (b) to specify notification requirements for deer breeders in the event that a deer escapes from a breeding facility. Under current rule, a permittee must notify the department immediately upon discovering the escape of a deer from the breeding facility, which initiates a ten-day window for recapture efforts and provides for an additional five-day period provided the permittee proves to the department’s satisfaction that reasonable efforts have been made to recapture the deer. The Texas Deer Association appreciates the department’s efforts to provide an additional extension for operators doing their best recapture their animals.

Proposed amendments to §65.605 also would add new subsection (d) to address the failure to recapture breeder deer that escape from a deer breeding facility that is prohibited by law from receiving or transferring breeder deer under the provisions of Chapter 65, Subchapter B, Division 2 at the time of or subsequent to the escape. The proposed new subsection would address such instances by requiring the implementation of a disease-testing plan for the property where the breeding facility is located and any contiguous tract of land under common ownership. The disease-testing plan would specify CWD testing and reporting requirements for deer harvested on the affected properties and additional CWD testing requirements in the deer breeding facility. The intent of the proposed new subsection is to address concerns regarding deer that have escaped from breeding facilities known to be of epidemiological concern with respect to CWD.

While our association understands the need for consistent CWD surveillance, we remain apprehensive that this proposed rule change may create scenarios where permittees get trapped in overburdensome or restrictive disease testing plans through acts of nature, acts of God, or causes completely outside of their control. While TPWD staff has continued to communicate with our association regarding the

technical determinations of how escaped deer disease testing plans would be crafted, our industry must continue to express our concerns that a subjective process could inevitably be damaging for those permittees impacted by hurricanes, natural disasters, or floods.

To be abundantly clear, our association's apprehension to subjective disease testing plans are based in premise on our need to protect permittees from overburdensome regulation in times of disasters caused by forces outside of their control. We are - in no way - advocating for bad actors that take illegal or unethical actions to allow deer to leave their facilities. We remain determined to work alongside the department staff to ensure bad actors have no place in our industry.

Part VII – Rule Changes Concerning Mule Deer and White-tailed Deer Comingling

The Texas Deer Association understands the need for more clear rules governing comingling and release of white-tailed deer and mule deer. For decades, the lack of clear governing language within the statute and administrative code has created a multitude of problems for existing white-tailed deer and mule deer breeders. In an effort to clarify governing practices, the department has proposed multiple changes within the Deer Breeding Permit rules related to captive white-tailed deer and mule deer. The Texas Deer Association applauds the efforts of staff for trying to tackle this area of concern for the department.

It is the opinion of the Texas Deer Association that if the Commission intends to adopt significant changes to rules governing comingling, interbreeding, and release of white-tailed deer, mule deer, and hybrid animals, a very clear procedure for addressing the process for transition to the new rules must be crafted with industry input and communicated to permittees with ample amount of time to responsibly implement the changes. The Texas Deer Association formally requests the Commission seek clear and reasonable guidance from department staff and the industry as to how animals currently existing under permit should be handled to ensure the proper care for any living animal is taken into consideration. Our association stands ready and willing to participate in that process.

Part VIII – Transfer Permit Activation Changes

The proposed rule changes for contemplates minor changes to transfer permits authorizing the movement of the breeder deer identified on the activated permit. In summary, the changes include a process by which deer are identified specific to the process of movement or travel. In the event that (1) multiple vehicles are needed to transport deer to a destination, or (2) a single vehicle is employed for multiple trips to a single destination, or (3) a single instance of transport involves stops at multiple destinations, the specific deer on each trailer load will be identified on an addendum to the transfer permit (transport manifest). The Texas Deer Association agrees with the proposed changes.

Part IX – Emergency Transport of Deer to a Licensed Veterinarian

Under the proposed rule amendments, deer breeders may transport breeder deer without a transfer permit from a permitted facility to a licensed veterinarian's medical facility for emergency medical treatment provided: the breeder deer are not removed from the means of transportation at any point between the permitted facility and the veterinary medical facility, or if removed from the means of transportation, the deer are not housed in facilities that may have housed other species susceptible to chronic wasting disease. Furthermore, if a breeder deer is removed from the means of transportation to the medical facility and is temporarily housed in a location that may house other susceptible species,

then a transfer permit reflecting that transport must be activated and completed and an additional transfer permit must be activated prior to the deer returning to the deer breeding facility. The Texas Deer Association agrees with the overall direction of this proposed rule change based on the feedback provided by TPWD staff, in cooperation with industry veterinarians.

One concern that we would like to express regarding the proposed rule change is that if a veterinary hospital is permitted with a facility ID, we would request that language be codified in the rule exempting a Cervid veterinarian's facility from permit fee and all CWD testing requirements - including eligible mortality testing and the minimum number of age-eligible animals to be tested. If a death occurs at a veterinary facility, the testing requirements should be imposed on the facility that sent the animal for veterinary care. We hope the Commission will take this concern under consideration when adopting these proposed changes.

Part X – Length of Time in a Nursing Facility

Department staff has diligently worked with the industry to adopt a reasonable timeframe for fawns to be housed at a registered nursing facility. Proposed rule changes state that no person may possess a breeder deer in a nursing facility beyond 120 days following the deer's birth. Under normal circumstances, this timeframe is sufficient. With that said, the Texas Deer Association would like to request the Commission adopt language allowing department staff to provide for an extension of time based on extraordinary circumstances. In situations such as natural disasters, floods, premature births, or circumstances outside of the breeder's control, it is our opinion that department staff should have a mechanism to evaluate the need and prudence for an extension of time for fawns to remain housed at a nursery. The language for this extension should ensure that department staff has the ability to evaluate, approve, and recommend the duration of the necessary extension of time.

Again, we would like to thank TWPD staff for their willingness to work with association and industry representatives during this rulemaking. Your attention to our concerns listed for each issue would be greatly appreciated. Should you have any questions or concerns regarding our formal comment, please do not hesitate to contact our Association.

Respectfully,

A handwritten signature in black ink that reads "Patrick Tarlton". The signature is written in a cursive, flowing style.

Patrick Tarlton
Executive Director
Texas Deer Association