

DISEASE DETECTION AND RESPONSE RULES
EMERGENCY ADOPTION PREAMBLE

1. Introduction.

Pursuant to Parks and Wildlife Code, §12.027, and Government Code, §2001.034, the executive director of the Texas Parks and Wildlife Department (the department) adopts, on an emergency basis, amendments to §65.81 and §65.82, concerning Disease Detection and Response. The rules are contained in Division 1 of Subchapter B. The emergency adoption establishes a new chronic wasting disease (CWD) Containment Zone (CZ) and Surveillance Zone (SZ) in portions of Val Verde County in response to the recent detection of CWD in a free-ranging white-tailed deer in Val Verde County.

The department's executive director has determined that the nature of CWD and its recent detection in a free-ranging white-tailed deer in Val Verde County pose an immediate danger to white-tailed deer and mule deer, which are species authorized to be regulated by the department, and that the adoption of the amendment on an emergency basis with fewer than 30 days' notice is necessary to address this immediate danger.

The emergency rules will initially be in effect for no longer than 120 days, but may be extended for an additional 60 days. It is the intent of the department to also publish proposed rules pursuant to the Administrative Procedure Act's notice and comment rulemaking process.

2. Justification for the Rules.

CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Although CWD remains under study, it is known to be invariably fatal to certain species of cervids, and is transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). (There has never been a

documented transmission of CWD to a human. The Center for Disease Control recommends that people not consume venison from CWD-positive animals.) Moreover, a high prevalence of the disease in wild populations correlates with deer population declines and there is evidence that hunters tend to avoid areas of high CWD prevalence. If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion dollar ranching, hunting, wildlife management, and real estate economies could potentially be significant.

The department has engaged in several rulemakings over the years to address the threat posed by CWD. In 2005, the department closed the Texas border to the entry of out-of-state captive white-tailed and mule deer and increased regulatory requirements regarding disease monitoring and record keeping (30 TexReg 3595). (The closing of the Texas border to entry of out-of-state captive white-tailed and mule deer was updated, effective in January 2010, to address other disease threats to white-tailed and mule deer (35 TexReg 252).)

On July 10, 2012, the department confirmed that two mule deer sampled in the Texas portion of the Hueco Mountains tested positive for CWD. In response, the department adopted new rules in 2013 (37 TexReg 10231) to implement a CWD containment strategy in far West Texas. The rules established a system of concentric zones within which the movement of live deer under department permits (Deer Breeder Permits, Triple T Permits, Deer Management Permits, Scientific Research Permits, Zoological Collection Permits, Educational Display Permits, and Wildlife Rehabilitation Permits) is restricted, and required deer harvested in specific geographical areas to be presented at check stations to be tested for CWD. In 2015, those rules were modified (41 TexReg 7501) in response to additional CWD discoveries in the Texas Panhandle and Medina County, creating additional SZs and CZs.

In June of 2015, the department received confirmation that a two-year-old white-tailed deer held in a deer breeding facility in Medina County (“index facility”) had tested positive for CWD, which was followed by positive test results for white-tailed deer in four additional deer breeding facilities. In response to the index case, the department first adopted emergency rules (40 TexReg 5566) to respond immediately to the threat, then developed interim rules (41 TexReg 815) intended to function through

the 2015-2016 hunting season until permanent rules could be implemented. Working closely with the Texas Animal Health Commission (TAHC), the regulated community, and key stakeholders, and with the assistance of the Center for Public Policy Dispute Resolution of the University of Texas School of Law, the department developed comprehensive CWD management rules (Subchapter B, Division 2), adopted in 2016 (41 TexReg 5726). The comprehensive CWD management rules address the movement and consequences of movement of live deer under various department-issued permits (Deer Breeder Permits, Triple T Permits, and Deer Management Permits). Concurrently, the department engaged in rulemaking affecting Subchapter B, Division 1 (41 TexReg 7501) to create additional SZs and CZs affecting portions of Bandera, Medina, and Uvalde counties.

Based on the epidemiological science of CWD and in consultation with TAHC, the department has determined that prompt action to contain CWD in Val Verde County is necessary and that it is prudent to designate new CZ 4 and SZ 4 by emergency rule with fewer than 30 days' notice.

The emergency rules impose restrictions on the movement to, from, and within SZs and CZs of live deer under various permits issued by the department and impose additional restrictions on the movement of dead deer and parts of dead deer from the CZ and SZ (including mandatory check station and documentation requirements).

Within a CZ, no person shall conduct, authorize or cause any activity involving the movement of a susceptible species under a permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, R, or R-1. Such prohibited activity includes, but is not limited to, transportation, introduction, removal, authorizing the transportation, introduction or removal of, or causing the transportation, introduction or removal of a live susceptible species into, out of, or within a CZ. The rules also prohibit the possession of susceptible species within new deer breeding facilities within a CZ, prohibit the recapture of escaped breeder deer unless authorized under a hold order or herd plan issued by TAHC, and prohibit the transfer of breeder deer to or from a TC 2 or TC 3 deer breeding facility located within a CZ; however, a TC 1 deer breeding facility located in a CZ may release breeder deer to immediately adjoining acreage if the release site and the breeding facility share the same ownership, but may not transfer deer to or

from any other location. Additionally, the CZ designation imposes specific carcass movement restrictions on deer and parts of deer harvested within a CZ. The department also intends to establish mandatory check stations within CZ 4.

The department will undertake to inform the public with respect to the emergency rules and permanent rules to follow.

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

3. Statutory Authority.

The rules are adopted on an emergency basis under Parks and Wildlife Code, §12.027, which authorizes the department's executive director to adopt emergency rules if there is an immediate danger to a species authorized to be regulated by the department, and under Government Code §2001.034, which authorizes a state agency to adopt such emergency rules without prior notice or hearing.

4. Rule Text.

§65.81. Containment Zones; Restrictions. The areas described in paragraph (1) of this section are CZs.

(1) Containment Zones.

(A) - (C) (No change.)

(E) Containment Zone 4: That portion of the state lying within the boundaries of a line beginning in Val Verde County at the International Bridge and proceeding northeast along Spur 239 to U.S. 90; thence north along U.S. 90 to the intersection of U.S. 277/377, thence north along U.S. 277/377 to the U.S. 277/377 bridge at Lake Amistad (29.496183°, -100.913355°), thence west along the southern shoreline of Lake Amistad to International boundary at Lake Amistad dam, thence south along the Rio Grande River to the International Bridge on Spur 239.

Figure: 31 TAC §65.81(D)

~~(F)~~ Existing CZs may be modified and additional CZs may be designated as necessary by the executive director as provided in §65.84 of this title (relating to Powers and Duties of the Executive Director).

(2) (No change.)

§65.82. Surveillance Zones; Restrictions. The areas described in paragraph (1) of this section are SZs.

(1) Surveillance Zones.

(A) - (C) (No change.)

(D) Surveillance Zone 4: That portion of the state lying within a line beginning in Val Verde County at the confluence of Sycamore Creek and the Rio Grande River (29.242341°, -100.793906°); thence northeast along Sycamore Creek to U.S. 277; thence northwest on U.S. 277 to Loop 79; thence north along Loop 79 to the Union Pacific Railroad; thence east along the Union Pacific Railroad to Liberty Drive (north entrance to Laughlin Airforce Base); thence north along Liberty Drive to U.S. 90; thence west along U.S. 90 to Loop 79; thence north along Loop 79 to the American Electric Power (AEP) Ft. Lancaster-to-Hamilton Road 138kV transmission line (29.415542°, -100.847993°); thence north along the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line to a point where the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line turns northwest (29.528552°, -100.871618°); thence northwest along the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line to the AEP Ft. Lancaster-to-Hamilton Road maintenance road (29.569259°, -100.984758°); thence along the AEP Ft. Lancaster-to-Hamilton Road maintenance road to Spur 406; thence northwest along Spur 406 to U.S. 90; thence south along U.S. 90 to Box Canyon Drive; thence west along Box Canyon Drive to Bluebonnet Drive; thence southwest along Bluebonnet Drive to Lake Drive; thence south along Lake Drive to Lake Amistad (29.513298°, -101.172454°), thence southeast along the International Boundary to the International Boundary at the Lake Amistad dam; thence southeast along the Rio Grande River to the confluence of Sycamore Creek (29.242341°, -100.793906°).

(E)~~(D)~~ Existing SZs may be modified and additional SZs may be designated as necessary by the executive director as provided in §65.84 of this title (relating to Powers and Duties of the Executive Director).

(2) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on