

TEXAS PARKS AND WILDLIFE DEPARTMENT

EXECUTIVE DIRECTOR ORDER NO. 017-002

Under the provisions of Parks and Wildlife Code, §12.027, if the Texas Parks and Wildlife Commission (the Commission) or the Executive Director of the Texas Parks and Wildlife Department (the Department) finds that there is an immediate danger to a species authorized to be regulated by the Department, the Commission or the Executive Director may adopt emergency rules as provided by Government Code, §2001.034.

White-tailed deer and mule deer are game animals subject to regulation by the Commission under the provisions of various chapters of the Parks and Wildlife Code, including Chapters 43 (Subchapters E, L, R, and R-1), 61, 62, and 63. Chronic Wasting Disease (CWD) is a transmissible, fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer and mule deer.

On January 26, 2017, the Executive Director found that the discovery of CWD in a free-ranging white-tailed deer in Medina County created an immediate danger to the white-tailed deer and mule deer resources of Texas and that the adoption of emergency rules with fewer than 30 days' notice was necessary to address that immediate danger by designating a Containment Zone and a Surveillance Zone in portions of Bandera, Medina, and Uvalde counties within which the movement of live deer under Department-issued permits and the carcasses of deer harvested by hunters are subject to restrictions. The emergency adoption was published in the February 10, 2017, issue of the *Texas Register* (42 TexReg 531).

The Department subsequently proposed rules to replace the emergency rules; the proposed rules were published in the April 21, 2017, issue of the *Texas Register* (42 TexReg 2135) and will be deliberated for adoption by the Texas Parks and Wildlife Commission (Commission) on May 24-25, 2017. Under the provisions of Government Code, §2001.034, a state agency may extend the effectiveness of an emergency rule for an additional 60 days. An extension of the emergency rules is necessary to continue their effectiveness until the adoption of the proposed rules can be deliberated.

Therefore, finding that the immediate danger of CWD to native deer continues to exist, the Executive Director hereby ORDERS a 60-day extension of 31 TAC §§65.81 and 65.82. This order is effective immediately upon filing, and authorizes publication of a Notice of Extension of Emergency Adoption in the *Texas Register*.

This order is issued pursuant to §12.027 of the Texas Parks and Wildlife Code and §2001.034 of the Texas Government Code and is effective immediately.

Signed this the 22nd day of May, 2017.



Carter Smith
Executive Director
Texas Parks and Wildlife Department

DISEASE DETECTION AND RESPONSE RULES
EMERGENCY RULE EXTENSION
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, a 60-day extension of the effectiveness of amendments to §65.81 and §65.82, concerning Disease Detection and Response, adopted on an emergency basis on January 26, 2017 and published in the February 10, 2017 issue of the *Texas Register* (42 TexReg 531).

Pursuant to Government Code, §2001.034 (the Texas Administrative Procedure Act), the initial effectiveness of an emergency rule can be no more than 120 days, but may be extended for an additional 60 days. In the notice of adoption of the emergency rules, the department stated its intent to also publish proposed rules pursuant to the Administrative Procedure Act's notice and comment rulemaking process. Those rules were published in the April 21, 2017, issue of the *Texas Register* (42 TexReg 2135) and will be deliberated for adoption by the Texas Parks and Wildlife Commission (Commission) on May 24-25, 2017. The extension of the emergency rules is necessary to enable their effectiveness to continue until the proposed rules can be deliberated by the Commission, which will take place prior to the expiration of the 60-day extension. The proposed rules, if adopted, will replace the emergency rules and the emergency rules will be withdrawn simultaneously upon the effectiveness of the proposed rules, if adopted. Therefore, the entirety of the 60-day extension may not be necessary.

The department notes that the proposed rules are not identical to the emergency rules. The proposed rules differ from the emergency rules by refining the boundary of Containment Zone 3 (CZ 3) in portions of Bandera, Medina, and Uvalde counties, by establishing Surveillance Zone 3 (SZ 3) in portions of Bandera, Medina, and Uvalde counties, and by liberalizing restrictions on the movement of breeder deer within CZs

and SZs generally; however, the extension of the emergency adoption will continue the boundaries and associated rules of CZ 3 as defined in the emergency rulemaking.

The department's executive director has determined that the nature of CWD and its recent detection in a free-range white-tailed deer in Medina County pose an immediate danger to white-tailed deer, which is a 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 action is necessary to protect the state's white-tailed deer populations, as well as associated industries.

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 that CWD is invariably fatal to certain species of cervids, and is transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). Moreover, a high prevalence of the disease in wild populations correlates with deer population declines and human dimensions research indicates that hunters will 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 be significant. There is no scientific evidence to indicate that CWD is transmissible to humans.

The department has engaged in several rulemakings over the years to address the threat posed by CWD. In 2005, the department closed the Texas border to the entry of out-of-state captive white-tailed and mule deer and increased regulatory requirements

regarding disease monitoring and record keeping. (The closing of the Texas border to entry of out-of-state captive white-tailed and mule deer was updated, effective in January 2010, to address other disease threats to white-tailed and mule deer (35 TexReg 252).)

On July 10, 2012, the department confirmed that two mule deer sampled in the Texas portion of the Hueco Mountains tested positive for CWD. In response, the department adopted new rules in 2012 (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, and Deer Management Permits) is restricted, and required deer harvested in specific geographical areas to be presented at check stations to be tested for CWD. In 2016, 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. Subsequent testing confirmed the presence of CWD in additional white-tailed deer at the index facility. The source of the CWD at the index facility has not been determined. In response, 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, including SZ 3, which affects portions of Bandera, Medina, and Uvalde counties. The rules imposed restrictions on the movement to, from, and within SZs and CZs of live deer under various permits issued by the department, but exempted SZ 3 from the applicability of §65.85, concerning Mandatory Check Stations, and §65.88, concerning Deer Carcass Movement Restrictions, which imposes certain restrictions on the movement of dead deer and parts of dead deer from SZs. The department was approached by concerned county officials and landowners in Medina County who committed to organizing a volunteer hunter and landowner effort to provide the department with a sufficient number of valid “not detected” CWD test results, which would allow the department to make an epidemiologically sound determination about the prevalence (if any) of CWD within SZ 3.

On January 24, 2017, the department received confirmation that a 1.5-year-old male white-tailed deer harvested by a hunter within SZ 3 in Medina County during the 2016-2017 hunting season had tested positive for CWD. The deer was free-ranging and was harvested on a low-fenced property.

Prior to the recent detection in a free-ranging white-tailed deer, the CWD discovery in this part of the state occurred in deer breeding facilities and associated release sites, which are required by law to be designed and built to both prevent the free movement of deer and contact with free-ranging deer, which facilitate the control and management of CWD. In addition, the breeding facilities and release sites where CWD was previously discovered have been issued quarantines and/or hold orders by TAHC, which restrict deer movement and require CWD testing at a level equal to or greater than that required in a CZ. The discovery of CWD in free-ranging populations in this part of the state alters risk-management assessments and requires increased restrictions on the movement of live deer and deer carcasses.

The department has undertaken an extensive outreach effort to inform the public with respect to the emergency rules and the proposed rules.

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.

3. Rule Text.

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

(1) Containment Zones.

(A) Containment Zone 1: That portion of the state within the boundaries of a line beginning in Culberson County where U.S. Highway (U.S.) 62-180 enters from the State of New Mexico; thence southwest along U.S. 62-180 to F.M. 1111 in Hudspeth County; thence south on F.M. 1111 to I.H. 10; thence west along I.H. 10 to S.H. 20; thence northwest along S.H. 20 to Farm-to Market Road (F.M.) 1088; thence south along F.M. 1088 to the Rio Grande; thence northwest along the Rio Grande to the Texas-New Mexico border.

(B) Containment Zone 2: That portion of the state within the boundaries of a line beginning where I.H. 40 enters from the State of New Mexico in Deaf Smith County; thence east along I.H. 40 to U.S. 385 in Oldham County; thence north along U.S. 385 to the Oklahoma state line.

(C) Containment Zone 3. That portion of the state lying within a line beginning at U. S. 90 in Hondo in Medina County; thence west along U.S. Highway 90 to F.M. 187 in Uvalde County; thence north along F.M. 187 to F. M. 470 in Bandera County; thence east along F.M. 470 to Tarpley in Bandera County; thence south along F.M. 462 to U.S. 90 in Hondo.

~~(D)~~ 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) Restrictions.

(A) Except as provided in this section or §65.87 of this title (relating to Exception), no person within a CZ 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.

(B) If the department receives an application for a deer breeder permit for a new facility that is to be located within an area designated as a CZ, the department will issue the permit but will not authorize the possession of susceptible species within the facility so long as the CZ designation exists.

(C) Deer that escape from a deer breeding facility within a CZ may not be recaptured unless specifically authorized under a hold order or herd plan issued by the Texas Animal Health Commission.

(D) 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. Breeder deer may not be transferred to or from a TC 2 or TC 3 deer breeding facility located within a CZ.

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

(1) Surveillance Zones.

(A) Surveillance Zone 1: That portion of the state lying within a line beginning where U.S. 285 enters from the State of New Mexico in Reeves County; thence southeast along U.S. 285 to R.M. 652; thence west along R.M. 652 to Rustler Springs Rd./FM 3541 in Culberson County; thence south along Rustler Springs Rd./F.M. 3541 to F.M. 2185; thence south along F.M. 2185 to Nevel Road; thence west along Nevel Road to County Road 501; thence south along County Road 501 to Weatherby Road; thence

south along Weatherby Road to F.M. 2185; thence southwest along to F.M. 2185 to S.H. 54; thence south on S.H. 54 to U.S. 90; thence south along U.S. 90 to the Culberson County line; thence southwest along the Culberson County line to the Rio Grande River in Hudspeth County; thence north along the Rio Grande to F.M. 1088; thence northeast along F.M. 1088 to S.H. 20; thence southeast along S.H. 20 to I.H. 10; thence southeast along I.H. 10 to F.M. 1111; thence north on F.M. 1111 to U.S. 62/180; thence east and north along U.S. 62/180 to the New Mexico state line in Culberson County.

(B) Surveillance Zone 2. That portion of the state lying within a line beginning at the New Mexico state line where U.S. 60 enters Texas; thence northeast along U.S. 60 to U.S. 87 in Randall County; thence north along U.S. 87 to I.H. 27; thence north along U.S. 87/I.H. 27 to U.S. 287 in Moore County; thence north along US 287 to the Oklahoma state line.

~~[(C) Surveillance Zone 3. That portion of the state lying within a line beginning at U. S. 90 in Hondo in Medina County; thence west along U.S. Highway 90 to F.M. 187 in Uvalde County; thence north along F.M. 187 to F. M. 470 in Bandera County; thence east along F.M. 470 to Tarpley in Bandera County; thence south along F.M. 462 to U.S. 90 in Hondo.]~~

~~(C)~~~~(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) Restrictions.

(A) Except as provided in §65.87 of this title (relating to Exception) and subparagraph (B) of this paragraph, no person within a SZ may conduct, authorize or cause any activity involving the movement of a susceptible species, into, out of, or within a SZ 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, or causing the transportation, introduction or removal of a live susceptible species into, out of, or within a SZ.

(B) Breeder Deer.

(i) Except as provided in Division 2 of this subchapter, a breeding facility that is within a SZ and designated as a:

(I) TC 1 breeding facility may:

(-a-) transfer to or receive breeder deer from any other deer breeding facility in this state; and

(-b-) transfer breeder deer in this state for purposes of liberation, including to release sites within the SZ.

(II) TC 2 breeding facility:

(-a-) may receive deer from any facility in the state that is authorized to transfer deer;

(-b-) may transfer deer to a breeding facility or release site that is within the same SZ; and

(-c-) is prohibited from transferring deer to any facility outside of the SZ.

(ii) Deer that escape from a breeding facility within a SZ may not be recaptured unless specifically authorized under a hold order or herd plan issued by the Texas Animal Health Commission.

(C) Permits to Transplant Game Animals and Game Birds (Triple T permit). The department may authorize the release of susceptible species in a SZ under the provisions of a Triple T permit issued by the department under the authority of Parks and Wildlife Code, Chapter 43, Subchapter E and the provisions of Subchapter C of this chapter, but the department will not authorize the trapping of deer within a SZ for purposes of a Triple T permit.

(D) Deer Management Permit (DMP). The department may issue a DMP for a facility in a SZ; however, any breeder deer introduced to a DMP facility must be released and may not be transferred to any deer breeding facility.

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