

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, an amendment to §65.82, concerning Disease Detection and Response. The rules are contained in Division 1 of Subchapter B. The emergency adoption will create new Surveillance Zone 9 (SZ 9) in Gillespie County and new SZ 10 in Limestone County in response to the recent detection of chronic wasting disease (CWD) in deer breeding facilities located in those counties.

The department's executive director has determined that given the nature of CWD and its recent detection in two deer breeding facilities there is 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 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 if there is a continuing need for the zones.

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 is no scientific evidence to indicate that CWD is transmissible to humans.) 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. (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, 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. The rules have been modified several times since then in response to repeated detections of CWD in deer breeding facilities in various parts of the state.

On August 30, 2022, the department received confirmation that a yearling white-tailed buck deer in a deer breeding facility located in Gillespie County had tested positive for CWD. Additional testing at that facility resulted in another positive test confirming CWD in a male yearling white-tailed deer on September 20, 2022.

On September 12-13 and October 12, 2022, the department received confirmation that five female white-tailed deer of approximately three years of age in a deer breeding facility located in Limestone County had tested positive for CWD.

Based on the epidemiological science of CWD and in consultation with TAHC, the department has determined that prompt action to contain CWD in this area is necessary and that it is prudent to create additional SZs by emergency rule with fewer than 30

days' notice. This action will restrict movement of deer and deer carcasses within the designated zones.

Except as otherwise may be provided by rule, 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 the transportation, introduction, or removal of, the authorization of the transportation, introduction, or removal of, or the causing of the transportation, introduction, or removal of a live susceptible species into, out of, or within a SZ. In addition, pursuant to existing §65.88, regarding Deer Carcass Movement Restrictions, there are restrictions on the movement of the carcass of a susceptible species, including white-tailed deer, from a property located within a SZ. Hunters that harvest a white-tailed deer or other CWD susceptible species within the SZ are required to bring their harvested animal to a TPWD check station within 48 hours of harvest.

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

The emergency action is necessary to protect the state's captive and free-ranging white-tailed deer populations.

3. Statutory Authority.

The rule is 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.

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

(1) Surveillance Zones.

(A) - (H) (No change.)

(I) Surveillance Zone 9.

(i) That portion of the state lying within a line beginning at the intersection of Kramer Road and F.M. 783 in Gillespie County; thence east along F.M. 783 to Jung Road; thence east along Jung Road to Old Harper Road; thence east along Old Harper Road to Maner Road; thence north along Maner Road to Cut Off Road; thence northeast along Cut Off Road to Doss Spring Creek Road; thence south along Doss Spring Creek Road to Old Harper Road; thence east along Old Harper Road to Reeh Road; thence north along Reeh Road to Crenwelge Road; thence north along Crenwelge Road to Squaw Creek Road; thence northeast along Squaw Creek Road to F.M. 648; thence west along F.M. 648 to Lange's Mill Road; thence north along Lange's Mill Road to Jack Rabbit Road; thence north along Jack Rabbit Road to Threadgill Creek Road; thence west along Threadgill Creek Road to Geistweidt Road; thence west along Geistweidt Road to Onion Creek Road; thence northwest along Onion Creek Road to Salt Branch Loop Road; thence west along Salt Branch Loop Road to East Mill Creek Road; thence west along East Mill Creek Road to the intersection of James River Road and East Mill Creek road and Gypsum Mine Road; thence south along Gypsum Mine Road to C.R. 433; thence southwest along C.R. 433 to F.M. 385; thence south along F.M. 385 to the intersection of Falls Prong Creek; thence east along Falls Prong Creek to Wendel Road; thence south along Wendel Road to Josephine Road; thence east along Josephine Road to Gina Road; thence northeast along Gina Road to Kramer Road; thence south along Kramer Road to F.M. 783.

(ii) For the purposes of this subchapter, the zone described in clause (i) of this subparagraph also includes the following:

(I) The city limits of Harper; and

(II) the roadway and right-of-way of:

(-a-) F.M. 385 from the intersection of F.M. 385 and C.R. 430 in Kimble County to U.S. 290;

(-b-) U.S. 290 from the intersection of F.M. 385 and to U.S. 290 to the intersection Reeh Road and U.S. 290 in Gillespie County;)

(-c-) Wendel Road from the intersection of U.S. 290 and Wendel Road to the intersection of Wendel Road and Josephine Road in Gillespie

County;

(-d-) F.M. 783 from the intersection of F.M. 783 and U.S. 290 to the intersection of F.M. 783 and Jung Road;

(-e-) Old Harper Road from the intersection of Old Harper Road and U.S. 290 to the intersection of Old Harper Road and Jung Road;

(-f-) Reeh from the intersection of Reeh Road and U.S. 290 to the intersection of Reeh Road and Old Harper Road;

(-g-) Doss Spring Creek Road from the intersection of Doss Spring Creek Road and U.S. 290 to the intersection of Doss Spring Creek Road and Old Harper Road;

(-h-) Cornehl from the intersection of Cornehl Road and U.S. 290 to the intersection of Cornehl and Old Harper Road; and

(-i-) East Mill Creek Road, from the intersection of East Mill Creek Road and James River Road in Mason County to C.R. 4301 in Kimble County; and from C.R. 4301 to C.R. 430, along C.R. 430 to F.M. 385.

(j) Surveillance Zone 10. That portion of the state lying within a line beginning at the intersection of U.S. 84 and C.R. 146 in Limestone County; thence north along C.R. 146 to the intersection of C.R. 145; thence north along C.R. 145 to F.M. 73; thence northeast along F.M. 73 to F.M. 341; thence north along F.M. 341 to the intersection of C.R. 150; thence northeast along C.R. 150 to C.R. 173; thence north along C.R. 173 to C.R. 170; thence north along C.R. 170 to C.R. 158; thence east along C.R. 158 to C.R. 156, thence north along C.R. 156 to F.M. 936; thence north along F.M. 936 to S.H. 31; thence northeast along F.M. 31 to F.M. 709 in Navarro County; thence south along F.M. 709 to F.M. 638; thence southeast along F.M. 638 to S.H. 442 (S. Second St. W); thence east along S.H. 442 to Westminster St.; thence south along Westminster St. (C.R. 234) to S.H. 171; thence south along S.H. 171 to F.M. 2838; thence southwest along F.M. 2838 to U.S. 84; thence west along U.S. 84 to C.R. 146.

(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