

# EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 65. WILDLIFE

#### SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

#### DIVISION 1. CHRONIC WASTING DISEASE (CWD)

##### 31 TAC §65.81

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 §65.81, concerning Disease Detection and Response, to establish new Containment Zone 7 (CZ 7) in Hunt and Kaufman counties in response to the recent detection of chronic wasting disease (CWD) in free-ranging white-tailed deer on two release sites associated with a deer breeding facility where CWD is present.

The department's executive director has determined that the nature of CWD and its detection in free-ranging white-tailed deer in Hunt and Kaufman counties 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 department's response to the emergence of CWD in captive and free-ranging populations is guided by the department's CWD Management Plan (Plan) <https://tpwd.texas.gov/huntwild/wild/diseases/cwd/plan.phtml>.

Developed in 2012 in consultation with the Texas Animal Health Commission, other governmental entities and conservation organizations, and various advisory groups consisting of landowners, hunters, deer managers, veterinarians, and epidemiologists, the Plan sets forth the department's CWD management strategies and informs regulatory responses to the detection of the disease in captive and free-ranging cervid populations in the state of Texas. The Plan is intended to be dynamic; in fact, it must be so in order to accommodate the growing understanding of the etiology, pathology, and epidemiology of the disease and the potential management pathways that emerge as it becomes better understood through time. The Plan proceeds from the premise that disease surveillance and active management of CWD once it is detected are absolutely critical to containing it on the landscape. Accordingly, the first step in the department's response to

CWD detections is the timely establishment of management zones around locations where detection occurs. One type of management zone is the containment zone (CZ), defined by rule as "a department-defined geographic area in this state within which CWD has been detected or the department has determined, using the best available science and data, CWD detection is probable." Within a CZ, the movement of live deer is subject to restrictions and the presentation of harvested deer at department check stations is required. In addition, deer carcass movement restrictions set forth in §65.88 of Subchapter B, Division 1 apply.

The Texas Parks and Wildlife Commission recently directed staff to develop guidelines or a standard operating procedure (SOP) with respect to the establishment and duration of the various management zones, including Surveillance Zones (SZs). At the March 2023 meeting of the commission, staff presented the SOP for establishing SZs. Obviously, the discovery of CWD in any location is a serious matter and calls for immediate action. In cases where CWD is discovered in a deer breeding facility but not on associated release sites, the department is confident that the breeding facility itself can function as a de facto CZ, because the deer within the facility are behind a high fence and subjected to routine CWD surveillance testing under current rules. However, in situations where CWD is detected in a free-ranging deer the department has little choice but to impose a CZ in response. The SOP dictates that a CZ consist of all properties that are wholly or partially located within five miles of the property (or properties, if the premises consists of several separately deeded but contiguous properties) where the positive deer was discovered.

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 proceed to the publication of proposed rules pursuant to the Administrative Procedure Act's notice and comment rulemaking process during the period of effectiveness of this emergency action.

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). To date there are no known cases where humans have been infected CWD from consuming venison from infected deer. However, recent research suggests that CWD transmission from animals to humans through consump-

tion of infected meat should not be ruled out. 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 received confirmation of CWD in three free-ranging white-tailed deer in the area being designated as CZ 7. Based on the epidemiological knowledge concerning 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 designate CZ 7 and to do so by emergency rule with fewer than 30 days' notice. This action will restrict the movement of deer and deer carcasses.

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, unless expressly authorized by rule. A deer breeding facility located within a CZ that is not epidemiologically connected to a deer infected with CWD may receive deer from any deer breeding facility in the state that is authorized to transfer deer, and may release or transfer deer within the CZ. Harvest requirements, including maintaining a harvest log, apply to release sites within a CZ.

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 populations as well as associated industries.

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.

The emergency adoption affects Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, and R.

*§65.81. Containment Zones; Restrictions.*

The areas described in paragraph (1) of this section are CZs.

(1) Containment Zones.

(A) - (F) (No change.)

(G) Containment Zone 7 is that portion of the state lying within the area described by the following latitude-longitude coordinate pairs: -96.21356759520, 32.93034177510; -96.20861492790, 32.93062271340; -96.20769578840, 32.93067232720; -96.20732503750, 32.93068140220; -96.20710298860, 32.93068643390; -96.20688260170, 32.93070985230; -96.20442195490, 32.93094106890; -96.19879387970, 32.93124448120; -96.19315431390, 32.93123658430; -96.18752746450, 32.93091741310; -96.18193748280, 32.93028833640; -96.17640835920, 32.92935205410; -96.17096382300, 32.92811258320; -96.16562723700, 32.92657524440; -96.16042149880, 32.92474663220; -96.15536893750, 32.92263459410; -96.15049122610, 32.92024819270; -96.14580927730, 32.91759766400; -96.14134316220, 32.91469438080; -96.13711201920, 32.91155079520; -96.13622641360, 32.91083798810; -96.12494000920, 32.90162215750; -96.12184819660, 32.89896427870; -96.11814108320, 32.89538116920; -96.11471996870, 32.89160108390; -96.11159948660, 32.88764023130; -96.10879297770, 32.88351559240;

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~~-96.24551380660, 32.92217362860; -96.24045318480,~~  
~~32.92427184950; -96.23524047500, 32.92608622810;~~  
~~-96.22989803890, 32.92760897730; -96.22444879930,~~  
~~32.92883356430; -96.21891613860, 32.92975473360; and~~  
~~-96.21356759520, 32.93034177510.~~

(H) [(G)] 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.)

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 26, 2023.

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