

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 §65.82

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 Surveillance Zones: Restrictions. The emergency adoption creates new Surveillance Zone 23 (SZ 23) in Kimble County in response to the recent detection of chronic wasting disease (CWD) in a deer breeding facility located in that county. The SZ will include all properties wholly or partially within a two-mile radius around the positive facility.

The department's executive director has determined that given the nature of CWD and its recent detection in a deer breeding facility there is an immediate danger to white-tailed 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 rule-making 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.

Much remains unknown about CWD, although robust efforts to increase knowledge are underway in many states and countries. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through

time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. Currently, there is scientific evidence to suggest that CWD has zoonotic potential; however, no confirmed cases of CWD have been found in humans. Consequently, both the Centers for Disease Control and Prevention and the World Health Organization strongly recommend testing animals taken in areas where CWD exists, and if positive, recommend not consuming the meat. What is known is 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). 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.

The department has engaged in several rulemakings over the years to address the threat posed by CWD, including rules to designate a system of zones in areas where CWD has been confirmed or could reasonably be expected. The purpose of those CWD zones is to determine the geographic extent and prevalence of the disease while containing it by limiting the unnatural movement of live CWD-susceptible species as well as the movement of carcass parts.

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 (TAHC), 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 SZ, defined by rule as "a department-defined geographic area in this state within which the department has determined, using the best available science and data, that the presence of CWD could reasonably be expected." Within a SZ, the movement of live deer is subject to restrictions and the presentation of harvested deer at a department check station is required.

In addition, deer carcass movement restrictions set forth in existing §65.88 of Subchapter B, Division 1 apply.

On September 7, 2023, the department received confirmation that a six-year-old female deer in a deer breeding facility located in Kimble County had been confirmed positive for CWD. Historically, when CWD has been detected in a deer breeding facility but not on any associated release sites, the department has considered the property on which the breeding facility is located to be a de facto Containment Zone because it is surrounded by a fence capable of retaining deer at all times and is immediately subject to a quarantine and a herd plan by the Texas Animal Health Commission. In such cases, the department has designated only a SZ around the positive facility.

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 an SZ by emergency rule with fewer than 30 days' notice. This action will restrict movement of deer and deer carcasses within the designated zone.

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 who 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.

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.

§65.82. Surveillance Zones; Restrictions.

The areas described in paragraph (1) of this section are SZs and the provisions of this subchapter applicable to SZs apply on all properties lying wholly or partially within the described areas.

(1) Surveillance Zones.

(A) - (V) (No change.)

(W) Surveillance Zone 23. Surveillance Zone 23 is that portion of Kimble County lying within the area described by the following latitude/longitude pairs: -99.95180989610, 30.29840729940; -99.95400264050, 30.29847039980; -99.95618594120, 30.29865777320; -99.95835045740, 30.29896861810; -99.96048692840, 30.29940160460; -99.96258621300,

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(X) [(W)] 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.)

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 September 29, 2023.

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Texas Parks and Wildlife Department

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Expiration date: January 26, 2024

For further information, please call: (512) 389-4775

