

PROPOSED RULEMAKING

GAME COMMISSION

[58 PA. CODE CH. 137]

Wildlife; Chronic Wasting Disease

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its September 26, 2020, meeting to amend §§ 137.34 and 137.35 (relating to Chronic Wasting Disease and emergency authority of Director; and Chronic Wasting Disease restrictions) to expand the authority of the Executive Director to issue executive orders to address additional diseases and species beyond only Chronic Wasting Disease (CWD) and cervids. The Commission is proposing to amend § 137.35 to enhance its CWD response capabilities within this Commonwealth by defining the term “Established Area,” restricting the movement of high-risk parts outside from Established Areas and further expanding the ban on importation of high-risk parts to all areas outside this Commonwealth.

This proposed rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for this proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

This proposed rulemaking was made public at the September 26, 2020, meeting of the Commission. Comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until January 18, 2021.

1. *Purpose and Authority*

The Commission is proposing two changes to address wildlife disease within this Commonwealth. With the first change, the Commission is proposing to amend §§ 137.34 and 137.35 to expand the authority of the Executive Director to issue executive orders to address additional diseases and species of wildlife beyond only CWD and cervids. Section 137.34 currently addresses only the emergency authority of the Game Commission’s Executive Director as it pertains to CWD and cervids. This section does not address any other diseases or the impacts of these diseases on other species of wildlife. The Commission has determined that a more comprehensive regulation capable of application to any number of wildlife diseases would provide the Executive Director with the necessary authority and flexibility to respond to additional wildlife diseases other than CWD that threaten human, domestic and wild animal, or environmental health and safety within this Commonwealth. The need for expanding existing regulatory language was recently recognized as a result of the ongoing rabbit hemorrhagic disease outbreak in the southwestern United States.

The changes to § 137.34 primarily consist of replacing the terms “CWD” with the term “wildlife disease” and “cervid” with “wildlife” to give the section an expanded application to additional diseases and additional species of wildlife, but also includes a number of other house-keeping changes, including the addition of a provision limiting the Commission’s ability to take action under this section involving wildlife species concurrently regulated with the Federal government (such as migratory

birds) without the concurrence of the Federal government. The related amendments to § 137.35 in this first change are limited to an update to the reference to the new title of § 137.34.

In a related, but distinct second change, the Commission is also proposing to amend § 137.35 to enhance its CWD response capabilities within the Commonwealth by adding and defining the term “Established Area,” restricting the movement of high-risk parts outside from Established Areas and further expanding the ban on importation of high-risk parts to all areas outside this Commonwealth. Established Areas will be defined as any geographic area of this Commonwealth that is within a Disease Management Area and has a higher concentration of disease prevalence that is targeted by the Commission for enhanced CWD management activities. Implementation of these new Established Area controls are intended to reduce CWD transmission risk factors. This change also replaces the prohibition of importation of high-risk cervid parts from only CWD endemic states and Canadian provinces with a general prohibition against the importation of high-risk parts from cervids harvested, taken or killed anywhere outside of this Commonwealth. These changes reflect the strategies described in the CWD Response Plan recently adopted by the Commission.

Section 2102(a) of the code (relating to regulations) provides that “The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth.” The amendments to §§ 137.34 and 137.35 are proposed under this authority.

2. *Regulatory Requirements*

This proposed rulemaking will amend §§ 137.34 and 137.35 to expand the authority of the Executive Director to issue executive orders to address additional diseases and species of wildlife beyond only CWD and cervids. This proposed rulemaking will also amend § 137.35 to define the term “Established Area,” restricting the movement of high-risk parts outside from Established Areas and further expand the ban on importation of high-risk parts to all areas outside this Commonwealth.

3. *Persons Affected*

Persons wishing to import high-risk wildlife parts into the Commonwealth or export high-risk wildlife parts of any area designated as a Disease Management Area or Established Area will be affected by this proposed rulemaking.

4. *Cost and Paperwork Requirements*

This proposed rulemaking should not result in any additional cost or paperwork.

5. *Effective Date*

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

6. Contact Person

For further information regarding this proposed rulemaking, contact Jason L. DeCoskey, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

BRYAN J. BURHANS,
Executive Director

Fiscal Note: 48-462. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 137. WILDLIFE

§ 137.34. [**Chronic Wasting Disease**] Wildlife disease and emergency authority of Director.

(a) The Director has emergency authority to take actions to mitigate risk factors and to determine the prevalence and geographic distribution of [**Chronic Wasting Disease (CWD)**] wildlife diseases, if the Director concludes that the introduction or spread of [CWD] wildlife diseases poses a threat to human, [**farm animals, pets or other cervids**] domestic and wild animal, and environmental health and safety within or adjacent to this Commonwealth.

(1) The Director has emergency authority to:

(i) [**Prohibit the importation of high risk cervid parts from areas that are known to harbor CWD**] Institute importation and exportation restrictions to mitigate disease transmission risk factors.

(ii) Define and designate Disease Management Areas (DMAs) in this Commonwealth.

(2) The Director has emergency authority within designated DMAs to:

(i) Allow the taking of [**cervids**] wildlife without regard to established seasons and bag limits and methods of take.

(ii) Require mandatory [**checking of hunter-killed cervids**] disease testing or disposal of wildlife or wildlife parts.

(iii) Prohibit the [**removal**] movement of [**high risk cervid**] high-risk wildlife parts.

(iv) Prohibit the rehabilitation of [**cervids**] wildlife.

(v) Prohibit the use and possession of [**cervid urine-based attractants**] wildlife products.

(vi) Prohibit the feeding of [**cervids**] wildlife.

(vii) Prohibit [**any**] the issuance of new permits and allow the suspension or modification of existing permits to possess or transport live [**cervids**] wildlife.

(3) Notwithstanding paragraphs (1) and (2), the emergency authority of the Director will not be construed to extend to:

[**the**] (i) The regulation of captive [cervids] wildlife held under 3 Pa.C.S. Chapter [27] 23 (relating to Domestic Animal Law) or the requirements of a lawful quarantine order issued by the Department of Agriculture.

(ii) The unilateral regulation of wildlife concurrently managed by the Commonwealth and the Federal government.

(b) It is unlawful for a person to violate a provision of an Executive Order issued by the Director under the authority of this section. A person violating this section will, upon conviction, be sentenced to pay the fine prescribed in the act.

§ 137.35. Chronic Wasting Disease restrictions.

(a) *Importation.*

(1) It is unlawful to import any high-risk parts or materials from cervids harvested, taken or killed [**within any CWD-endemic state or Canadian province**] outside of this Commonwealth.

(2) This subsection may not be construed to limit the importation of non-high-risk parts or materials from cervids harvested, taken or killed [**within any CWD-endemic state or Canadian province**] outside of this Commonwealth.

(b) *Exportation.*

(1) It is unlawful to remove or export any high-risk parts or materials from cervids harvested, taken or killed, including by vehicular accident, within any Disease Management or Established Area established within this Commonwealth.

(2) This subsection may not be construed to limit the removal or exportation of non-high-risk parts or materials from cervids harvested, taken or killed within any Disease Management or Established Area established within this Commonwealth.

(3) This subsection may not be construed to limit the removal or exportation of high-risk parts or materials from cervids harvested, taken or killed in any Disease Management or Established Area established within this Commonwealth if the parts or materials are transported directly to any location or facility designated and approved in advance by the Commission to receive high-risk cervid parts for waste disposal, taxidermy or butchering purposes. Locations or facilities designated and approved to receive high-risk cervid parts for waste disposal, taxidermy or butchering purposes will be made known through public announcement, web site and other means reasonably intended to reach the widest audience.

(4) All cervids harvested, taken or killed within any Disease Management or Established Area established within this Commonwealth are subject to disease testing. This testing may require hunters to present cervids, or cervid parts, for checking and sampling at prescribed locations under conditions in a forthcoming notice. The submission process, if any, will be made known through public announcement, web site and other means reasonably intended to reach the widest audience. The cost of testing, sampling and analysis will be borne by the Commission.

(5) It is unlawful to rehabilitate wild, free-ranging cervids within any Disease Management or Established Area established within this Commonwealth.

(6) It is unlawful to use or possess cervid urine-based attractants in any outdoor setting within any Disease Management or Established Area established within this Commonwealth.

(7) It is unlawful to directly or indirectly feed wild, free-ranging cervids within any Disease Management or Established Area established within this Common-

wealth. This prohibition may not be construed to apply to normal or accepted agricultural, habitat management, oil and gas drilling, mining, forest management, or other legitimate commercial or industrial practices. If otherwise lawful feeding is attracting cervids, the Commission may provide written notice prohibiting this activity. Failure to discontinue this activity is a violation of this section.

(8) The Commission will not issue any new permit to possess or transport live cervids within any Disease Management or Established Area established within this Commonwealth.

(c) *Nonapplicability.*

(1) Nothing in this section shall be construed to extend to the regulation of captive cervids held under 3 Pa.C.S. Chapter 23 (relating to Domestic Animal Law) or the requirements of a lawful quarantine order issued by the Department of Agriculture.

(2) Nothing in this section shall be construed to limit the Commission's authority to establish or enforce additional importation, exportation, possession, transportation, or testing requirements or restrictions on cervid parts or materials under the authority of § 137.34 (relating to [**Chronic Wasting Disease**] wildlife disease and emergency authority of Director).

(d) *Authority to designate.* The Executive Director has the authority to designate and publish [**a list of current CWD-endemic states and Canadian provinces and**] Disease Management and Established Areas established within this Commonwealth. The Executive Director will publish this list and any updates in the *Pennsylvania Bulletin*.

(e) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

CWD—Chronic Wasting Disease—The transmissible spongiform encephalopathy of cervids.

[*CWD-endemic state or Canadian province—States or Canadian provinces where CWD has been detected in wild or captive cervid populations.*]

Cervid—Any member of the family Cervidae (deer), specifically including, but not limited to, the following

species: black-tailed deer; caribou; elk; fallow deer; moose; mule deer; red deer; sika deer; white-tailed deer; and any hybrids thereof.

Disease Management Area—Any geographic area of this Commonwealth influenced by a positive case of CWD and targeted by the Commission for CWD management activities.

Established Area—Any geographic area of this Commonwealth that is within a Disease Management Area and has a higher concentration of disease prevalence that is targeted by the Commission for enhanced CWD management activities.

Feeding—The act of placing any artificial or natural substance for the use or consumption of wild, free-ranging cervids on an annual, seasonal or emergency basis.

High-risk parts or materials—Any parts or materials, derived from cervids, which are known to accumulate abnormal prions. This includes any of the following: head (including brain, tonsils, eyes and lymph nodes); spinal cord/backbone (vertebra); spleen; skull plate with attached antlers, if visible brain or spinal cord material is present; cape, if visible brain or spinal cord material is present; upper canine teeth, if root structure or other soft material is present; any object or article containing visible brain or spinal cord material; and brain-tanned hide.

Non-high-risk parts or materials—Any parts or materials, derived from cervids, which are not known to accumulate abnormal prions. This includes any of the following: meat, without the backbone; skull plate with attached antlers, if no visible brain or spinal cord material is present; tanned hide or rawhide with no visible brain or spinal cord material present; cape, if no visible brain or spinal cord material is present; upper canine teeth, if no root structure or other soft material is present; and taxidermy mounts, if no visible brain or spinal cord material is present.

(f) *Violations.* A person violating a requirement or restriction in this section may be prosecuted under section 2102 or 2307 of the act (relating to regulations; and unlawful taking or possession of game or wildlife) and, upon conviction, be sentenced to pay the fine prescribed in the act.

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