

RULES AND REGULATIONS

Title 58—RECREATION

GAME COMMISSION [58 PA. CODE CH. 137] Wildlife; Diseases

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its January 23, 2021, meeting amended §§ 137.34 and 137.35 (relating to wildlife 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 also amended § 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 final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 50 Pa.B. 6780 (November 28, 2020).

1. *Purpose and Authority*

The Commission amended two sections to address wildlife disease within this Commonwealth. With the first change, the Commission amended §§ 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. Previously, this section did 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 will 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 housekeeping 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 has also amended § 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 are 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 adopted under this authority.

2. *Regulatory Requirements*

This final-form rulemaking amends §§ 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 final-form rulemaking also amended § 137.35 to define the term ‘Established Area,’ restrict 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 final-form rulemaking.

4. *Comment and Response Summary*

There were no official comments received regarding this final-form rulemaking.

5. *Cost and Paperwork Requirements*

This final-form rulemaking should not result in any additional cost or paperwork.

6. *Effective Date*

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

7. Contact Person

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

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), known as the Commonwealth Documents Law, and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking; and adoption of regulations).

(2) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under the authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 137, are amended by amending §§ 137.34 and 137.35 to read as set forth in Annex A.

(b) The Executive Director of the Commission shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

BRYAN J. BURHANS,
Executive Director

Fiscal Note: Fiscal Note 48-462 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 137. WILDLIFE

§ 137.34. 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 wildlife diseases, if the Director concludes that the introduction or spread of wildlife diseases poses a threat to human, domestic and wild animal, and environmental health and safety within or adjacent to this Commonwealth.

(1) The Director has emergency authority to:

(i) Institute importation and exportation restrictions to mitigate disease transmission risk factors.

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

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

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

(ii) Require mandatory disease testing or disposal of wildlife or wildlife parts.

(iii) Prohibit the movement of high-risk wildlife parts.

(iv) Prohibit the rehabilitation of wildlife.

(v) Prohibit the use and possession of wildlife products.

(vi) Prohibit the feeding of wildlife.

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

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

(i) The regulation of captive wildlife 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.

(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 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 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 Commonwealth. 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 wildlife disease and emergency authority of Director).

(d) *Authority to designate.* The Executive Director has the authority to designate and publish 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.

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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