

NOTICES OF EMERGENCY RULEMAKING

Under the Administrative Procedure Act, an agency may determine that adoption, amendment, or repeal of a rule is necessary for immediate preservation of the public health, safety or welfare and the notice and public participation requirements are impracticable. Under this determination, the agency may adopt the rule as an emergency and submit it to the Attorney General for review. The Attorney General approves the rule and then files it with the Secretary of State. The rule takes effect upon filing with the Secretary of State and remains in effect for 180 days. An emergency rule may be renewed for one 180-day period if the requirements of A.R.S. § 41-1026 are met. If the emergency rule is not renewed or the rule is not permanently adopted by the end of the 180-day period, the emergency rule expires and the text of the rule returns to its former language, if any.

NOTICE OF EMERGENCY RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

PREAMBLE

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| <u>1. Sections Affected</u>
R12-4-429 | <u>Rulemaking Action</u>
New Section |
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- 2. The specific statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 17-231(B)(8)
Implementing statutes: A.R.S. §§ 17-238 and 17-306
- 3. The effective date of the rules:**
To become effective immediately upon expiration of the current emergency rule—December 27, 2002
- 4. Is this rulemaking a renewal of a previous emergency rulemaking?**
Yes
If yes, the Register citation to previous notices of emergency rulemaking:
Notice of Emergency Rulemaking: 8 A.A.R. 3127, July 26, 2002
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

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- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**

The proposed rulemaking will impose regulations on cervids designated as restricted live wildlife in R12-4-406(A)(9)(b), including a ban on their importation into the state of Arizona, to prevent the introduction of chronic wasting disease to free-ranging or captive wildlife in the state.

Chronic wasting disease (CWD) was first recognized by biologists in the 1960s as a disease syndrome of captive deer held in wildlife research facilities in Ft. Collins, Colorado, but was not recognized as a transmissible spongiform encephalopathy until the late 1970s. This disease was subsequently recognized in captive deer, and later in captive elk, from wildlife research facilities near Ft. Collins, Kremmling, and Meeker, Colorado, and Wheatland, Wyoming, as well as in at least two zoological collections. More recently, CWD has been diagnosed in privately owned elk residing on game ranches in several Western states and provinces. Although CWD was first diagnosed in captive research cervids, the original source (or sources) of CWD in either captive cervids or free-ranging cervids is unknown; whether CWD in research animals really preceded CWD in the wild, or *vice versa*, is equally uncertain.

Much of the information we have on this disease comes from the endemic area of northeastern Colorado and southeastern Wyoming where it appears that, on average, CWD probably infects about 5-15 percent of the deer in the area. Modeling of the impact of this disease indicates that this rate of infection is sufficient to suppress deer population levels in this area.

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In addition to cases in captive research and free-ranging deer and elk, CWD has been diagnosed in privately owned elk on game farms in several states beginning in 1996. Infection has been particularly severe in a group of interconnected facilities near Rapid City, South Dakota, that appear to be the original source of infection for other South Dakota game farms as well as the Saskatchewan epidemic. In contrast, infected elk in two of three Nebraska farms originated in Colorado, and infected elk in Oklahoma apparently originated in Montana; CWD has been confirmed in the Montana and Colorado source herds.

At this time, the detection of CWD in new areas is expanding rapidly as there have been detections in free-ranging deer in additional areas of Nebraska, Alberta, Wisconsin and South Dakota during 2002. In addition to the problems associated with this disease on wild populations, there is also a significant economic impact with the detection of the disease in both free ranging and captive cervids. As an example, Saskatchewan has spent approximately \$30 million in attempts at eradicating the disease in infected game farms. In Wisconsin, where the disease was detected approximately six weeks ago, the cost of collections for additional detection of the disease and for information dissemination is approximately \$250,000. In Colorado, a supplemental appropriation of \$300,143 was made in December 2001, and an additional appropriation of \$430,750 is being considered for the fiscal year beginning on July 1, 2002.

One of the problems with this disease is that it is virtually impossible to eradicate once it enters into a jurisdiction. This conclusion is based on the fact that there is no live animal test for the disease, so an agency cannot implement testing and elimination of only infected animals. Second, there is a long incubation period associated with the disease. Some of the research that has been completed suggests that the incubation period may exceed 36 months, and perhaps even longer. Another problem is that the epidemiological links from one positive herd to 38 other infected captive elk herds in Saskatchewan and the shipment of exposed elk from one infected captive elk operation in Colorado to facilities in 19 states indicate the potential for the spread of CWD via the captive cervid industry. This means that from a few herds, the disease has the potential to have been spread to as many as 19 other states. Finally, a significant issue with this disease is that one of the measures considered to control its spread is extreme reduction of animal density. This entails removal of a large number of deer that otherwise could be harvested by hunters, which in turn equates to a potential economic loss to not only the Department but also to local businesses such as restaurants and hotels that are supported by hunters.

In summary, there is a lot of information needed to better understand the disease. At this time, however, the most effective management approach has to be to take measures to ensure, to the greatest extent possible, that the disease does not enter into Arizona. If it does, there will be substantial financial impact to the Department and to the industry that is supported, in part, by hunting. At this time, the only groups that would be affected by the proposed rulemaking would be anyone maintaining cervids under the auspice of a game farm permit or a zoo permit issued by the Department. This is a very small number of permittees. In considering the potential adverse impact to a multitude of businesses through loss of hunting related revenue, this approach is clearly a benefit to the state's economy.

The proposed new rule will include the following specific requirements related to chronic wasting disease (CWD) in cervids:

1. No cervid designated as restricted live wildlife in R12-4-406(A)(9)(b) can be imported into Arizona.
2. All cervids currently in Arizona under the authority of a Department issued Game Farm or Zoo License and any of their progeny shall be required to be permanently marked with either a tattoo or a microchip within seven days of the effective date of the rule.
3. Game Farm and Zoo License operators shall be required to submit the head of any cervid that dies on their premises or under their control to the Arizona Vet Diagnostic Lab for analysis for CWD.
4. All facilities that maintain cervids under a Game Farm or Zoo License shall be required to keep records of animals moved onto or off of the facility and to provide these reports to the Department.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The summary of the economic, small business, and consumer impact:

The Department anticipates that there will be little financial impact to those regulated by the proposed rule. This rule would directly impact persons or organizations that import cervids (animals of the deer family) under either a zoo or game farm license issued by the Arizona Game and Fish Department. Currently, there are very few of these permits issued (29 game farm and 14 zoo). The Department believes the costs imposed by enacting this rule will be minimal because it does not preclude continued operations of existing programs such as breeding cervids held at the time of enactment of this rule and to market live animals or parts thereof. Conversely, if chronic wasting disease (CWD) were established in Arizona, the cost would be high and the number of people adversely impacted would be high.

That CWD is being spread through game-farmed cervids is indisputable. There is a question about the mechanism by which CWD is spread between animals; however, there is ample evidence that indicates that the spread is horizontal (from one animal to another of similar type) and there is thus a risk posed to the native deer and elk in Arizona if CWD were to be inadvertently introduced into the state. If CWD were to be introduced into the state and be spread to wild cervids, the hundreds of thousands of hunters in the state would be adversely affected. Further, hotels, restau-

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rants and other businesses that draw economic benefit from hunting would also be adversely impacted. Finally, the cost to the state would be high if CWD is introduced. Management of CWD in Saskatchewan has cost approximately \$30,000,000. A recent detection in Wisconsin has cost the State Wildlife Agency approximately \$250,000 in the first month and the costs continues to rise. In Colorado, management of the disease required an additional appropriation from the State Legislature of approximately \$350,000. Simply put, management of this disease is a tremendously expensive proposition for the state to deal with, and measures must be taken to prevent its introduction into Arizona.

While there is no known connection between CWD and human disease, because of the similarity of this disease to “mad cow disease” there is natural concern from hunters who harvest native cervids. If CWD were to become established in Arizona, there would be a loss of interest in obtaining permits to harvest deer and elk. There would also be a significant loss to local (and mostly rural) economies, if hunters do not travel to these regions of the state to harvest wildlife. In addition to the loss of revenue, the Department would be required to expend hundreds of thousands of dollars in increased surveillance and other management issues associated with this disease. This is not a budgeted item and would result in the loss of many of the existing programs the Department maintains. This rule is supported by the Arizona Department of Agriculture due to concerns that this disease may have the capability to “jump” species and infect domestic livestock. Based upon the currently available research on this disease, this is not likely, but one of the problems with this disease is dealing with public perception of a disease that is 100% fatal to wildlife that develop clinical signs.

There will be no additional costs to any political subdivision, as enforcement will be done by the Department, and there is no direct impact to employment in the sector directly regulated by the proposed rule. There will be positive impacts to the Arizona Departments of Agriculture, Game and Fish, and Health Services as this rule greatly reduces the risk of importing animals that are infected with CWD. Health Services and Agriculture will directly benefit from not having to dedicate staff time to provide information to the public and livestock operators regarding the risk of this disease. The Game and Fish Department will directly benefit as the resources that we are charged to manage will be better protected and we will not have to expend additional resources dealing with responding to the introduction of this disease.

In evaluating the most efficient method to provide protection to the state’s valued wildlife resources, the Department examined several options to preclude, to the extent possible, the spread of CWD to Arizona. The Department considered restricting import of live cervids if these animals came from a facility that had entered into a CWD program, and the animals had been found to be disease free for a period of less than 60 months, and precluding importation of live cervids from any state/provinces where an animal had tested positive for CWD. Both of these options were rejected, as there was still a risk of importing CWD-infected animals into the state. Given the great economic and social risk of this disease being spread to Arizona, the proposed rule balances the cost of effective disease management with the cost to small businesses. The proposed rulemaking can therefore be seen as the best possible tool to accomplish the goal of protecting both wild and captive cervids from this fatal disease.

CWD was once thought to be a problem for the three states (Colorado, Wyoming, and Nebraska) where the disease was endemic. It is now understood to be an emerging crisis in the wildlife health field and any delay in protecting the wild and game-farmed cervids of the state poses an unacceptable risk to both. After careful evaluation of this issue, the Department has determined that the benefits of the proposed rulemaking outweigh the costs.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

10. Incorporations by reference and their location in the rules:

None

11. An explanation of the situation justifying the rule’s adoption as an emergency rule:

Although chronic wasting disease (CWD) is not a new disease, there are a number of factors that have escalated the importance of this disease in the last three months. Until recently, this disease was largely thought of as a disease of the 11-county region comprised of southeastern Wyoming, northeastern Colorado, and the panhandle region of Nebraska. However, recently, this disease has been detected in free-ranging wildlife in South Dakota, the West Slope region of Colorado, and in Wisconsin. This signals to the wildlife health community that the disease has the capacity to expand to outside what was thought to be the endemic area. The economic consequences of these new detections are immense as is evidenced from the experience in Wisconsin. Within the first month after detection, the Wisconsin wildlife management agency expended approximately \$250,000 in control and public information efforts. This has proven to be the tip of the iceberg as the agency has announced plans to kill approximately 15,000 animals in the focal area. This will also cost the agency considerable money.

Much of the information on this disease comes from the endemic area of northeastern Colorado and southeastern Wyoming where it appears that, on average, CWD probably infects about 5-15 percent of the deer in the area. Modeling of the impact of this disease indicates that this rate of infection is sufficient to suppress deer population levels in this area. At this time, the most effective management approach has to be taken to ensure, to the greatest extent possible, that the disease does not enter into Arizona. Management of this disease is a tremendously expensive proposition for the state to deal with, and measures must be taken to prevent its introduction into Arizona.

One of the problems with this disease is that it is virtually impossible to eradicate once it enters into a jurisdiction. This conclusion is based on the fact that there is no live animal test for the disease, so an agency cannot implement testing and elimination of only infected animals. Second, there is a long incubation period associated with the disease. Some of the research that has been completed suggests that the incubation period may exceed 36 months, and perhaps even longer. There is a question about the mechanism by which CWD is spread between animals; however, there is ample evidence that indicates that the spread is horizontal (from one animal to another of similar type) and there is thus a risk posed to the native deer and elk in Arizona if CWD were to be inadvertently introduced into the state.

The fact that CWD is being spread through game-farmed cervids is indisputable. If CWD were to become established in Arizona, there would be a loss of interest in obtaining permits to harvest deer and elk. There would also be a significant loss to local (and mostly rural) economies, if fewer hunters travel to these regions of the state to harvest wildlife. In addition to the loss of revenue, the Department would be required to expend hundreds of thousands of dollars in increased surveillance and other management issues associated with this disease. This is not a budgeted item and would result in the loss of many existing programs the Department maintains.

The Department has initiated Regular Rulemaking to address the issue of CWD, including new Section R12-4-430, which will replace emergency rule R12-4-429. The anticipated effective date for the Regular Rulemaking package is May 2003, however, necessitating the need for the extension of the emergency rule to ensure that the wildlife resources of the state are protected (to the greatest extent possible) from the introduction of chronic wasting disease.

12. The date of the Attorney General's approval of the emergency rules:

December 20, 2002

13. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 4. LIVE WILDLIFE

Section

R12-4-429. ~~Reserved~~ Importation Restrictions and Requirements for Cervids

ARTICLE 4. LIVE WILDLIFE

R12-4-429. Reserved Importation Restrictions and Requirements for Cervids

- A.** In addition to the definitions provided in A.R.S. § 17-101, R12-4-101, and R12-4-401, the following definitions apply to this Section:
1. "Cervid" means all members of the family cervidae designated as restricted live wildlife in subsection R12-4-406(A)(9)(b).
 2. "Private game farm" means any facility licensed by the Arizona Game and Fish Department under R12-4-413, and
 3. "Zoo" means any facility licensed by the Arizona Game and Fish Department under R12-4-420.
- B.** An individual shall not import a live cervid designated as restricted live wildlife under R12-4-406(A)(9)(b) into Arizona.
- C.** Within seven days of the effective date of this Section, the holder of a private game farm or zoo license shall permanently mark all captive cervids and their progeny held under a private game farm or zoo license with either an individually identifiable microchip or a tattoo.
- D.** Within seven days of the effective date of this Section, the holder of a private game farm or zoo license shall provide to the Department a report listing the following for each cervid currently in the licensee's possession:
1. Name of the license holder.
 2. License holder's address and telephone number.
 3. Number of cervids held under the private game farm or zoo license, and
 4. Microchip or tattoo number of each cervids held under the private game farm or zoo license.
- E.** The holder of a private game farm or zoo license shall ensure that the head of a cervid that dies on the licensee's premises or under the licensee's control is submitted within 72 hours of the time of death to the University of Arizona Veterinary Diagnostic Lab for analysis for chronic wasting disease. The cost of the veterinary analysis shall be paid for by the Arizona Game and Fish Department. The holder of a private game farm or zoo license shall also include the following information with the shipment of the deceased animal's head:
1. Name of the license holder.
 2. License holder's address and telephone number, and
 3. A copy of the deceased animal's health certificate.

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- F.** The holder of a private game farm or zoo license shall keep accurate records of all cervids maintained in Arizona, all cervids exported from Arizona, and any cervid that dies on the licensee's premises or under the licensee's control. The holder of a private game farm or zoo license shall ensure that the records required under this subsection include the following:
1. Number of cervids held under the private game farm or zoo license;
 2. Number of cervids exported from Arizona, and where the animals were exported
 3. Number of cervids that have died on the licensee's premises or under the licensee's control;
 4. The manner of death of cervids that have died on the licensee's premises or under the licensee's control;
 5. All additional records required by R12-4-413 for private game farm licensees or all additional records required by R12-4-420 for zoo licensees.
- G.** The Department shall seize and destroy, at the owner's expense, any cervid imported into Arizona in violation of this Section.