

Regulatory Impact Statement

1. Statutory Authority.

Section 3-0301 of the Environmental Conservation Law (ECL) directs the Department of Environmental Conservation (DEC or Department) to protect the wildlife resources of New York State. Section 11-0325 of the ECL directs DEC to take action necessary to protect fish and wildlife from dangerous diseases. Where a disease is a threat to livestock, as well as to the fish and wildlife populations of the state, Section 11-0325 requires that the Department consult the Department of Agriculture and Markets (DAM). If the Department and the DAM jointly determine that a disease which endangers the health and welfare of fish or wildlife populations, or of domestic livestock, exists in any area of the state or is in imminent danger of being introduced into the state, the Department is authorized to adopt measures or regulations necessary to prevent the introduction or spread of such disease. ECL section 11-1905 directs DEC to regulate the possession, propagation, transportation and sale of captive-bred white-tailed deer.

2. Legislative Objectives

The legislative objectives behind the statutory provisions listed above are to authorize the Department to establish, by regulation, certain basic wildlife management tools, including necessary actions to protect New York's wildlife resources, to respond to the presence or threat of a disease that endangers the health or welfare of fish or wildlife populations, to codify joint responsibility of the Department and the DAM when such disease also poses a threat to livestock, and to provide the Department with authority to regulate the captive-bred white-tailed deer held under a license issued by the Department.

3. Needs and Benefits

Chronic wasting disease (CWD) is an untreatable and fatal central nervous system disease

found in deer, elk, moose and reindeer. CWD was first discovered in New York in captive and wild deer in Oneida County in 2005. Since then, no new cases of CWD have been found in the state. However, despite nationwide efforts to control the disease, CWD continues to be detected in additional states and in new areas within those states. CWD is now confirmed in Pennsylvania in both wild and captive-bred deer.

CWD represents a serious threat to New York State's wild white-tailed deer population with potentially devastating economic, ecological, and social repercussions. Recurrence of CWD in New York could drastically affect wild deer populations and management and annually cost the state millions in monitoring and containment measures. Additionally, New York has a captive cervid (deer and elk) industry that would be severely impacted if CWD is rediscovered or reintroduced in the state.

In the long term, CWD could have many potential consequences, including ecological as the herbivory related to a significantly diminished deer herd could result in changes to plant communities at landscape levels; monetary as funding from unrelated programs is redirected toward CWD response; recreational as hunters' attitudes toward potentially diseased deer decreases participation, and societal as the public view sick deer and perceive deer as a disease threat to humans. The impact on captive cervid owners would be immediate, with strict limitations on their abilities to move animals and sell products. If CWD is discovered in a captive herd, all animals would likely be destroyed and the land quarantined behind a deer-proof fence for at least 5 years. Thus, it is imperative that all reasonable measures be taken to prevent the introduction or spread of CWD in New York.

New York State has had a CWD regulation in effect since 2002, but revisions are necessary to better reflect recent advances in the science associated with disease prevention and control and continued spread of CWD in North America. Comprehensive disease management regulations

related to the movement of potentially CWD infected materials are needed now to stop actions and movement of animals that could potentially infect New York's wild deer and moose herds now and for generations into the future.

DEC and DAM recently adopted an Interagency CWD Risk Minimization Plan which outlines numerous recommended actions to reasonably minimize the risk of re-entry and spread of CWD in New York State and is based on three overarching goals: 1) keep infectious material and animals out of the state to prevent new introductions; 2) prevent exposure of infectious material to wild white-tailed deer and moose in New York; and 3) provide education to increase the public understanding of CWD risks and impact on wild deer health. This rule making seeks to implement several of those recommended actions by amending existing CWD regulations.

Because importation of hunter-killed CWD susceptible cervid carcasses could introduce infectious material into New York, current regulations prohibit importation of whole carcasses from those states where CWD has been detected or from any captive cervid facility. To date, DEC has taken emergency action in response to each new confirmation of CWD in wild or captive cervids to expand the list of states or provinces where potentially infected parts could not be imported, on a case-by-case, piecemeal basis. This rule making proposes to prohibit the import of intact carcasses or carcass parts from anywhere outside New York, with exceptions for meat and antlers and other low-risk parts.

To increase simplicity and provide regulatory relief of captive cervid owners, this rule making proposes to remove reference to those cervid species that have not been found to be susceptible to CWD and only focus on known CWD-susceptible species.

Additionally, this rule making proposes to require captive cervid owners to comply with the captive cervid health requirements of 1 NYCRR Part 68, as adopted by DAM. This provision will

allow DEC Environmental Conservation Officers (ECOs) to better and comprehensively enforce CWD regulations of both DEC and DAM, which is essential as DAM does not have the same law enforcement capabilities as DEC. Though ECOs already possess the authority to enforce DAM regulations pursuant to their status as peace officers provided in the New York State Criminal Procedure Law, by referencing DAM's cervid health requirements in DEC regulations, ECOs will be better able to address violations by issuing tickets pursuant to the Environmental Conservation Law. This streamlines the process, and allows the person in violation to handle the matter more efficiently, utilizing local town courts. The proposed action would not expand existing enforcement authority of ECOs.

Finally, while a prohibition on feeding wild deer and moose is a best management practice for disease minimization, the justifications for prohibiting the feeding of deer and moose extend well beyond risks associated with CWD. In a separate rule making, DEC has proposed creation of a new Part 186 to establish the necessary prohibitions and appropriate exceptions for feeding deer and moose. Thus, this rule making will remove prohibitions related to feeding deer and moose from Part 189, as those provisions are proposed in Part 186.

4. Costs

This rule making will not result in additional costs to the department beyond normal administrative costs. Meat-cutting businesses that process hunter-killed deer may lose some revenue or need to adjust their business practices because whole carcasses will no longer be allowed to be imported from anywhere into New York. However, businesses have adapted as hunters have been prohibited from importing carcasses from an increasing list of states and provinces since 2002, including from neighboring Pennsylvania since 2012.

5. Paperwork

There is no additional paperwork required based on this regulatory proposal.

6. Local Government Mandates

These amendments do not impose any program, service, duty or responsibility upon any county, city, town, village, school district or fire district.

7. Duplication

None.

8. Alternatives

No Action: The Department has rejected this option. Failing to take reasonable precautions to prevent CWD re-introduction to New York would unwisely threaten the health and future of New York's wild deer and moose population potentially leading to significant economic, ecological and social impacts should CWD become established in New York.

The actions proposed in this rule making are consistent with DEC's and DAM's recently adopted Interagency CWD Risk Minimization Plan.

9. Federal Standards

There are no federal standards associated with CWD prevention in populations of wild cervids.

10. Compliance Schedule

Licensed hunters would have to comply with the new regulations beginning in the fall of 2018, if they are adopted as proposed.