



Agriculture and Markets

ANDREW M. CUOMO
Governor

RICHARD A. BALL
Commissioner

October 10th, 2018

RE: Public Hearing on Cervid Importation Ban and Request for Written Comments

To Whom It May Concern:

In November 2013 an emergency regulation was implemented prohibiting the importation of cervids susceptible to Chronic Wasting Disease (CWD) into New York through August 2018. In April 2017 a hearing was held to hear comments on whether 1) the importation ban should be extended for an additional 5 years; 2) the ban should become permanent; or 3) the ban should be discontinued. In addition to the hearing, written comments were also received. The current list of CWD-susceptible cervids includes, but is not limited to: white tailed deer, mule deer, elk, red deer, sika deer, and moose. The USDA intends to expand the list of susceptible species to include muntjac and reindeer.

Based on what is currently known about Chronic Wasting Disease and comments received, the Department of Agriculture and Markets amended 1 NYCRR 69.3(b) to extend the prohibition on importing live CWD-susceptible species for another 5 years through emergency rule making on August 1st, 2018. On October 25, 2018, a public hearing will be held at the New York State Department of Agriculture and Markets. The purpose of this hearing will be to receive public comment concerning the ramifications of the ban and comment on whether the emergency rulemaking should be made permanent.

The Division of Animal Industry is also requesting written comments from interested stakeholders regarding the ban. All comments are welcome, both in favor of and opposed to continuation of the ban, and all reasonable economic and scientific arguments will be considered. The deadline for written comments is November 10th, 2018. Comments may be submitted to:

Dr. David Smith, Director
Division of Animal Industry
New York State Department of Agriculture and Markets
10B Airline Drive
Albany, NY 12235

Sincerely,

David C. Smith, DVM
Director, Division of Animal Industry

RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

AAM -the abbreviation to identify the adopting agency
01 -the *State Register* issue number
96 -the year
00001 -the Department of State number, assigned upon receipt of notice.
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

Department of Agriculture and Markets

EMERGENCY/PROPOSED RULE MAKING HEARING(S) SCHEDULED

Importation of Cervids Susceptible to Chronic Wasting Disease (“CWD”)

I.D. No. AAM-34-18-00001-EP

Filing No. 708

Filing Date: 2018-08-01

Effective Date: 2018-08-01

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Proposed Action: Amendment of section 68.3 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 72 and 74

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: Chronic Wasting Disease (“CWD”) is a disease of captive and free-ranging susceptible cervids. CWD is generally spread from an infected cervid, via its bodily fluids and excretions, to an uninfected cervid. A cervid that has contracted CWD will experience weight loss, stumbling, tremors, and other symptoms and will, eventually, die due to having contracted such disease.

The proposed rule will amend 1 NYCRR section 68.3(b) to extend the prohibition upon the importation of cervids susceptible of contracting CWD from August 1, 2018, the date that such prohibition is due to expire, until August 1, 2023. The proposed rule is necessary to, generally, protect the general welfare and, specifically, to protect the State’s cervid popula-

tion and those industries and businesses that are dependent upon the health of such population.

Presently, the State’s cervid population is believed to be to be free of CWD. However, CWD has been detected in both captive and free-ranging cervids in other states and, if an infected cervid were to be imported into New York, that cervid could, in turn, infect other cervids. The proposed rule, by extending the prohibition upon the importation of CWD-susceptible cervids, will not provide a guarantee but will significantly lessen the possibility that the State’s cervid population will contract CWD; indeed, since the prohibition was initially promulgated (i.e., August 1, 2013), no CWD-infected cervid has been found in the State.

The proposed rule is necessary to ensure that the State’s cervid population remains CWD-free. This objective cannot effectively be achieved by any other measure; at this time there is no ante-mortem test approved for determining if a cervid has contracted CWD and there is no generally-accepted procedure that would allow that determination to be made, based upon a cervid’s appearance, because CWD-infected cervids typically do not exhibit symptoms until a period after being infected. Furthermore, it has been determined that a captive cervid in a herd enrolled in the United States Department of Agriculture’s Herd Certification Program (designed to ensure that cervids in such a “certified herd” are at low risk for CWD) nevertheless had contracted that disease; as such, and based upon the foregoing, only a prohibition of the type referred to above will effectively promote the State’s interest in ensuring that the State’s cervid population is CWD-free.

Based upon the facts and circumstances set forth above, the Department has determined that the immediate adoption of the proposed rule is necessary for the preservation of the general welfare and that compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: Importation of cervids susceptible to Chronic Wasting Disease (“CWD”).

Purpose: To help control the spread of CWD into the State’s cervid population.

Public hearing(s) will be held at: 11:00 a.m., Oct. 25, 2018 at Department of Agriculture and Markets, 10B Airline Dr., Albany, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of emergency/proposed rule: Subdivision (b) of section 68.3 of 1 NYCRR is amended to read as follows:

(b) All movements of CWD susceptible cervids into New York State are prohibited until August 1 [2018] 2023, except movements to a zoo accredited by the Association of Zoos and Aquariums, 8403 Colesville Road, Suite 710, Silver Springs, MD 20910-3314. No such movements shall be made unless approved prior to the movement by the commissioner or his/her designee in consultation with the New York Department of Environmental Conservation. [Prior to August 1, 2018, the commissioner shall hold public hearings to reevaluate the risks and impacts of allowing limited movement of CWD susceptible cervids into New York from other states and propose amendments to this Part if needed to prevent the introduction of Chronic Wasting Disease into New York.]

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire October 29, 2018.

Text of rule and any required statements and analyses may be obtained from: David Smith, D.V.M., Director, Division of Animal Industry, NYS Dept. of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-3502, email: David.Smith@agriculture.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: Five days after the last scheduled public hearing.

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

A Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not submitted, but will be published in the *Register* within 30 days of the rule's effective date.

Department of Audit and Control

NOTICE OF ADOPTION

Adjustments to Merchandise/Invoice Receipt Dates

I.D. No. AAC-21-18-00037-A

Filing No. 710

Filing Date: 2018-08-02

Effective Date: 2018-08-22

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of sections 18.7, 18.14, 18.16 and 18.17; repeal of section 18.10 of Title 2 NYCRR.

Statutory authority: State Finance Law, section 179-m

Subject: Adjustments to merchandise/invoice receipt dates.

Purpose: To correct internal regulatory inconsistencies relating to adjustments to merchandise/invoice receipt dates.

Text or summary was published in the May 23, 2018 issue of the Register, I.D. No. AAC-21-18-00037-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany, NY 12236, (518) 473-4146, email: jelacqua@osc.ny.gov

Assessment of Public Comment

The agency received no public comment.

New York State Authorities Budget Office

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Requires Posting All Forms and Policies on Industrial Development Agencies Website, Consistent with Chapter 563 of Laws of 2015

I.D. No. ABO-34-18-00005-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: This is a consensus rule making to add Part 250 to Title 19 NYCRR.

Statutory authority: Public Authorities Law, sections 2(2), 6(h), (e); L. 2005, ch. 766; L. 2009, ch. 506

Subject: Requires posting all forms and policies on industrial development agencies website, consistent with chapter 563 of Laws of 2015.

Purpose: To promote transparency and accountability of industrial development agencies and authorities.

Public hearing(s) will be held at: 1:30 p.m., Sept. 4, 2018 at Office of General Services, Conference Rm., Empire State Concourse, Albany, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: A new Part 250 is proposed to be added to Title 19 of the New York Codes, Rules, and Regulations (NYCRR) as follows:

Part 250.1 Standard Application Form

(a) Each industrial development agency or authority shall develop a standard application form, which shall be posted and be made publicly accessible on its website. Such Standard Application Form shall be used by the agency or authority to accept requests for financial assistance from all individuals, firms, companies, developers or other entities or organizations. The standard application form shall include the following, including all supporting documents and information provided by or on behalf of the applicant:

(i) the name and address of the project applicant;

(ii) a description of the proposed project for which financial assistance is requested, including the type of project, proposed location and purpose of the project;

(iii) the amount and type of financial assistance being requested, including the itemized estimated value of each type of tax exemption sought to be claimed by reason of the agency or authority involvement in the project;

(iv) a statement that there is a likelihood that the project would not be undertaken but for the financial assistance provided by the agency or authority, or, if the project could be undertaken without financial assistance provided by the agency or authority, a statement indicating why the project should be undertaken by the agency or authority;

(v) an itemized estimate of capital costs of the project, including all costs of each real property and equipment acquisition and building construction or reconstruction, financed from private sector sources, an estimate of the percentage of project costs financed from public sector sources, and an estimate of both the total amount to be invested by the applicant and the amount to be borrowed to finance the project.

(vi) the projected number of full time equivalent jobs that would be retained and that would be created if the request for financial assistance is granted (and if part-time jobs are part of the financial assistance a proportion of a full time equivalent job is to be calculated), the projected monthly timeframe for the creation of new jobs per year, the estimated salary and fringe benefit averages or ranges for categories of the jobs that would be retained or created if the request for financial assistance is granted, and an estimate of the number of residents of the economic development region as established pursuant to section two hundred thirty of the economic development law or the labor market area as defined by the agency or authority, in which the project is located that would fill such jobs. The labor market area defined by the agency or authority for this purpose may include no more than six contiguous counties in the state, including the county in which the project is to be located;

(vii) a statement, signed by the chief executive officer and the president of the board, expressing that the provisions of subdivision one of section eight hundred sixty-two of this chapter will not be violated if financial assistance is provided for the proposed project; e.g., for interstate moves, "The completion of this entire project will not result in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state." Or in the event that such project moves intrastate, "The completion of this entire project will result in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state because the project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry."

(viii) a statement signed by the chief executive officer and the president of the board that the owner, occupant or operator receiving financial assistance is in substantial compliance with applicable local, state and federal tax, worker protection and environmental laws, rules and regulations; and

(ix) a statement signed by the project applicant acknowledging that the submission of any knowingly false or knowingly misleading information may lead to the immediate termination of any financial assistance and the reimbursement of an amount equal to all or part of any tax exemptions claimed by reason of agency or authority involvement in the project as well as may lead to other possible enforcement actions.