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For Department of State Use Only

Sequence Number: 12-27-18
Rule ID(s): 7956
File Date: 12/21/18
Last Effective Day: 6/15/19

Emergency Rule Filing Form

Emergency rules are effective from date of filing, unless otherwise stated in the rule, for a period of up to 180 days.

Agency/Board/Commission: Department of Agriculture
Division: Consumer & Industry Services
Contact Person: Jay Miller
Address: Post Office Box 40627, Nashville, Tennessee
Zip: 37204
Phone: (615) 837-5341
Email: jay.miller@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Statement of Necessity:

This rule is promulgated to prevent or to slow the spread of Chronic Wasting Disease (CWD) in Tennessee's cervidae populations.

Under T.C.A. §44-2-102, the commissioner of agriculture and the state veterinarian are charged with general supervision and protection of animal health within the state. In December 2018, 13 positive cases of CWD were reported and confirmed in northern Mississippi and southwest Tennessee. These are the first confirmed cases of CWD within the state and exhibit a significant concentration of the disease within a defined area.

CWD is a contagious neurological disease affecting deer, elk, and moose. Infected animals suffer from a spongy degeneration of the brain resulting in emaciation, abnormal behavior, loss of bodily functions and death. CWD is always fatal to infected animals, and no known treatment or vaccine exists for the disease. While CWD is not known to affect humans, the contagious disease poses significant concerns for management of wild deer and elk populations in Tennessee. Negative effects to those populations may potentially cascade across state interests, including: the ecological stability of affected areas; eroded confidence in agri-tourism and hunting of cervidae; and commercial viability of custom slaughter facilities that process deer; etc.

For these reasons, the department finds that greater accounting, testing, and movement restrictions for Tennessee's cervidae populations are immediately necessary to the sustainability of these animal populations and that the concentration of CWD in the state poses an immediate danger to the public welfare such that use of any other form of rulemaking authorized under the Tennessee Uniform Administrative Procedures Act would not adequately protect the public.

This rule is promulgated to continue in effect from the date of its filing until June 15, 2019.

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)

| Chapter Number | Chapter Title |
|----------------|---|
| 0080-02-01 | Health Requirements for Admission and Transportation of Livestock and Poultry |
| Rule Number | Rule Title |

Amendment

Chapter 0080-02-01

Health Requirements for Admission and Transportation of Livestock and Poultry

Rule 0080-02-01-.12 Bison and Cervidae is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) Bison shall comply with the requirements for cattle as set forth under 0080-02-01-.05 and as ordered by the state veterinarian.
- (2) Cervidae.
 - (a) Definitions.
 1. Captive cervidae means any animal of the family Cervidae (commonly referred to as “the deer family”) that is domesticated in captivity. This definition does not include white-tail deer, wild elk, or any other animal held by means of high-fencing that preserves wildlife conditions within its enclosure;
 2. Certified status herd means a cervidae herd enrolled in a CWD surveillance program, approved by a state or federal animal health agency, for a period of five years during which the agency identified no evidence of CWD or trace back or trace forward concerns for the herd. Certified status is contingent on continued compliance of the herd with annual inspections and the surveillance program standards;
 3. CWD means Chronic Wasting Disease, a transmissible spongiform encephalopathy of cervidae that causes weight loss and death in infected animals;
 4. CWD susceptible cervidae means any member of the following species: Rocky Mountain Elk (*Cervus Canadensis*); Red Deer (*Cervus elaphus*); Mule Deer or Black-tailed Deer (*Odocoileus hemionus*); Sika Deer (*Cervus nippon*); or Moose (*Alces alces*); or any species determined by USDA to be CWD susceptible; and,
 5. Move, ship, transport, or words of similar import mean to relocate in any manner an item from one real property to another.
 - (b) Import.
 1. Brucellosis. Any person who imports sexually intact cervidae six months of age or older shall have in his possession proof that the animal tested negative for brucellosis within 30 days prior to import or that the animal originated directly from a certified brucellosis-free cervidae herd.
 2. CWD.
 - (i) No person shall import CWD susceptible cervidae from an area where CWD has been detected by a state or federal animal health control official. The control zone around such area shall be 50 miles in radius, unless otherwise ordered by the state veterinarian for good cause shown.
 - (ii) Any person who imports CWD susceptible cervidae shall have in his possession:
 - (I) Proof that the cervidae originated from a certified status herd that has not suffered a loss or reduction in status during its program enrollment; and,
 - (II) A certificate of veterinary inspection (CVI), completed in full; and, an entry permit, obtained by the veterinarian issuing the CVI, for the

cervidae.

3. Tuberculosis.

- (i) Any person who imports captive cervidae or CWD susceptible cervidae shall have in his possession proof that the animal:
 - (I) Tested negative for tuberculosis within 30 days prior to import and that it originated from a herd that tested negative on a whole herd test for tuberculosis within 12 months prior to import; or,
 - (II) Tested negative for tuberculosis within 30 days prior to import and that it originated from a certified status herd; or,
 - (III) Tested negative on two single cervical tests at least 90 days apart and the second of which was conducted within 30 days prior to import.
- (ii) Proof of tuberculosis testing must be conducted by either USDA-approved single cervical test methods or other USDA-approved tests.

(c) Intrastate movement and maintenance.

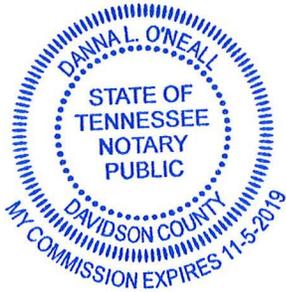
- 1. Any person who holds captive cervidae within the state must:
 - (i) Annually report to the department herd inventory, including the location, number and species of cervidae held, on or before February 1 of each year on forms provided by the department;
 - (ii) Immediately report to the department any captive cervidae illness or death within 24 hours of discovery; and,
 - (iii) Make the carcass of any dead captive cervidae available to the department for testing ordered by the state veterinarian.
- 2. No person shall move captive cervidae within the state unless:
 - (i) The cervidae is identified by two forms of identification, one of which must be an official tag or microchip used within the department's CWD Herd Certification Program; and,
 - (ii) The state veterinarian has provided prior written approval authorizing the movement.
- 3. No person shall move captive cervidae to or from a location that is within 50 miles of an area where CWD has been detected by a state or federal animal health control official, unless otherwise ordered by the state veterinarian for purposes of destruction, research, or other good cause shown.

Authority: T.C.A. §§ 4-3-203 and 44-2-102.

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|--------------|-----|----|---------|--------|-------------------------|
| | | | | | |

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.



Date: December 20, 2018

Signature: [Handwritten Signature]

Name of Officer: Charles W. Hatcher, DVM

Title of Officer: State Veterinarian

Subscribed and sworn to before me on: 12-20-18

Notary Public Signature: Danna L. O'Neal

My commission expires on: 11-05-19

Agency/Board/Commission: Department of Agriculture

Rule Chapter Number(s): 0080-02-01

All emergency rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[Handwritten Signature]

Herbert H. Slatery III
Attorney General and Reporter

12/21/2018
Date

Department of State Use Only



Filed with the Department of State on: 12/21/18

Effective for: 176 *days

Effective through: 6/15/19

* Emergency rule(s) may be effective for up to 180 days from the date of filing.

[Handwritten Signature]
The Hargett
Secretary of State

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

No impact is expected on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The rule adds inventory and movement requirements for captive cervidae within the state and extends the control zone around confirmed cases of CWD from 25 miles to 50 miles for purposes of limiting import and movement. Remaining portions of the previous rule are reorganized and rewritten for clarity.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Under T.C.A. §44-2-102, the commissioner of agriculture and the state veterinarian are charged with general supervision and protection of animal health within the state. 9 CFR part 81 details federal restrictions for identification and movement of cervidae.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Captive cervidae farmers are most directly affected by this rule.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

Bean v. Bredesen, 2005 WL 1025767 (Tenn. Ct. App. 2005) (ban on private possession of white-tailed deer for prevention of CWD spread is not unconstitutional for vagueness or violation of commerce clause; "Preventing the spread of CWD to Tennessee's indigenous white-tailed deer is an interest of the highest order," id at *7); *Griffin v. State*, 595 S.W.2d 96 (Tenn. Cr. App. 1980) (regulation for prevention of spreading disease was valid and reasonable exercise of power; courts will not disturb reasonable decision by agency with expertise, experience, and knowledge in appropriate field); Tenn. Op. Atty. Gen. No. 07-49 (re TDA and TWRA classification and jurisdiction over various elk species in Tennessee)

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The estimated increase in departmental revenues and expenditures resulting from this rule is minimal.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Charles Hatcher, DVM, State Veterinarian, Tennessee Department of Agriculture

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Charles Hatcher, DVM, State Veterinarian, Tennessee Department of Agriculture

- (H)** Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

436 Hogan Road, Nashville, Tennessee 37220; (615) 837-5183; charles.hatcher@tn.gov

- (I)** Any additional information relevant to the rule proposed for continuation that the committee requests.

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REDLINE

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Agency/Board/Commission: Department of Agriculture
Division: Consumer & Industry Services
Contact Person: Jay Miller
Address: Post Office Box 40627, Nashville, Tennessee
Zip: 37204
Phone: (615) 837-5341
Email: jay.miller@tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

Statement of Necessity:

This rule is promulgated to prevent or to slow the spread of Chronic Wasting Disease (CWD) in Tennessee's cervidae populations.

Under T.C.A. §44-2-102, the commissioner of agriculture and the state veterinarian are charged with general supervision and protection of animal health within the state. In December 2018, 13 positive cases of CWD were reported and confirmed in northern Mississippi and southwest Tennessee. These are the first confirmed cases of CWD within the state and exhibit a significant concentration of the disease within a defined area.

CWD is a contagious neurological disease affecting deer, elk, and moose. Infected animals suffer from a spongy degeneration of the brain resulting in emaciation, abnormal behavior, loss of bodily functions and death. CWD is always fatal to infected animals, and no known treatment or vaccine exists for the disease. While CWD is not known to affect humans, the contagious disease poses significant concerns for management of wild deer and elk populations in Tennessee. Negative effects to those populations may potentially cascade across state interests, including: the ecological stability of affected areas; eroded confidence in agri-tourism and hunting of cervidae; and commercial viability of custom slaughter facilities that process deer; etc.

For these reasons, the department finds that greater accounting, testing, and movement restrictions for Tennessee's cervidae populations are immediately necessary to the sustainability of these animal populations and that the concentration of CWD in the state poses an immediate danger to the public welfare such that use of any other form of rulemaking authorized under the Tennessee Uniform Administrative Procedures Act would not adequately protect the public.

This rule is promulgated to continue in effect from the date of its filing until June 15, 2019.

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| Chapter Number | Chapter Title |
|----------------|---|
| 0080-02-01 | Health Requirements for Admission and Transportation of Livestock and Poultry |
| Rule Number | Rule Title |

Amendment

Chapter 0080-02-01

Health Requirements for Admission and Transportation of Livestock and Poultry

Rule 0080-02-01-.12 Bison and Cervidae is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) Bison shall comply with the requirements for cattle as set forth under 0080-02-01-.05 ~~above~~ and as ordered by the state veterinarian.
- (2) ~~Requirements for Cervidae.~~
 - (a) ~~Tuberculosis Definitions.~~
 1. ~~All cervidae under the jurisdiction of the Department of Agriculture shall have originated from herds that have tested negative on a whole herd test for tuberculosis, using the USDA-approved single cervical test or other USDA-approved tests, not more than twelve (12) months prior to entering the state. In addition, individual imported animals shall have tested negative on the USDA-approved single cervical test or other USDA-approved tests not more than thirty (30) days prior to entry; or Captive cervidae means any animal of the family Cervidae (commonly referred to as "the deer family") that is domesticated in captivity. This definition does not include white-tail deer, wild elk, or any other animal held by means of high-fencing that preserves wildlife conditions within its enclosure;~~
 2. ~~Shall have originated from an accredited herd, and individual imported animals shall have tested negative on the USDA-approved single cervical test or other USDA-approved test not more than thirty (30) days prior to entry; or Certified status herd means a cervidae herd enrolled in a CWD surveillance program, approved by a state or federal animal health agency, for a period of five years during which the agency identified no evidence of CWD or trace back or trace forward concerns for the herd. Certified status is contingent on continued compliance of the herd with annual inspections and the surveillance program standards;~~
 3. ~~Animals that have not originated from tested herds as described above must have tested negative on two (2) single cervical tests at least ninety (90) days apart, with the second test conducted not more than thirty (30) days prior to entry. CWD means Chronic Wasting Disease, a transmissible spongiform encephalopathy of cervidae that causes weight loss and death in infected animals;~~
 4. ~~CWD susceptible cervidae means any member of the following species: Rocky Mountain Elk (Cervus Canadensis); Red Deer (Cervus elaphus); Mule Deer or Black-tailed Deer (Odocoileus hemionus); Sika Deer (Cervus nippon); or Moose (Alces alces); or any species determined by USDA to be CWD susceptible; and,~~
 5. ~~Move, ship, transport, or words of similar import mean to relocate in any manner an item from one real property to another.~~
 - (b) ~~Brucellosis-Import.~~
 1. ~~Brucellosis. Any person who imports All~~ sexually intact cervidae six months of age or older shall:
 - (i) ~~Have in his possession proof that the animal~~ tested negative for brucellosis within 30 days prior to ~~entry-import~~; or
 - (ii) ~~Have that the animal~~ originated directly from a certified brucellosis-free cervidae herd.

2. CWD.

- (i) No person shall import CWD susceptible cervidae from an area where CWD has been detected by a state or federal animal health control official. The control zone around such area shall be 50 miles in radius, unless otherwise ordered by the state veterinarian for good cause shown.
- (ii) Any person who imports CWD susceptible cervidae shall have in his possession:
 - (I) Proof that the cervidae originated from a certified status herd that has not suffered a loss or reduction in status during its program enrollment; and,
 - (II) A certificate of veterinary inspection (CVI), completed in full; and, an entry permit, obtained by the veterinarian issuing the CVI, for the cervidae.

3. Tuberculosis.

- (i) Any person who imports captive cervidae or CWD susceptible cervidae shall have in his possession proof that the animal:
 - (I) Tested negative for tuberculosis within 30 days prior to import and that it originated from a herd that tested negative on a whole herd test for tuberculosis within 12 months prior to import; or,
 - (II) Tested negative for tuberculosis within 30 days prior to import and that it originated from a certified status herd; or,
 - (III) Tested negative on two single cervical tests at least 90 days apart and the second of which was conducted within 30 days prior to import.
- (ii) Proof of tuberculosis testing must be conducted by either USDA-approved single cervical test methods or other USDA-approved tests.

(c) Intrastate movement and maintenance.

1. Any person who holds captive cervidae within the state must:

- (i) Annually report to the department herd inventory, including the location, number and species of cervidae held, on or before February 1 of each year on forms provided by the department;
- (ii) Immediately report to the department any captive cervidae illness or death within 24 hours of discovery; and,
- (iii) Make the carcass of any dead captive cervidae available to the department for testing ordered by the state veterinarian.

2. No person shall move captive cervidae within the state unless:

- (i) The cervidae is identified by two forms of identification, one of which must be an official tag or microchip used within the department's CWD Herd Certification Program; and,
- (ii) The state veterinarian has provided prior written approval authorizing the movement.

3. No person shall move captive cervidae to or from a location that is within 50 miles of an area where CWD has been detected by a state or federal animal health control official,

unless otherwise ordered by the state veterinarian for purposes of destruction, research, or other good cause shown.

~~(3) — Other Requirements for Captive, Chronic Wasting Disease Susceptible Cervidae.~~

~~(a) — Definitions.~~

- ~~1. — Certified status herd means a cervidae herd enrolled in a CWD surveillance program, approved by a state or federal animal health agency, for a period of five years during which the agency identified no evidence of CWD or trace back or trace forward concerns for the herd. Certified status is contingent on continued compliance of the herd with annual inspections and the surveillance program standards.~~
- ~~2. — CWD means Chronic Wasting Disease, a transmissible spongiform encephalopathy of cervidae that causes weight loss and death in infected animals.~~
- ~~3. — CWD susceptible cervidae means any member of the following species: Rocky Mountain Elk (Cervus Canadensis); Red Deer (Cervuselaphus); Mule Deer or Black-tailed Deer (Odocoileus hemionus); Sika Deer (Cervus nippon); or Moose (Alces alces); or any species determined by USDA to be CWD susceptible.~~

~~(b) — Import Requirements.~~

- ~~1. — No person shall import CWD susceptible cervidae from an area where CWD has ever been diagnosed in wildlife. The control zone around such area shall be 25 miles in radius, unless otherwise ordered by the state veterinarian for good cause shown.~~
- ~~2. — No person shall import CWD susceptible cervidae into the state unless,
 - ~~(i) — The cervidae originated from a certified status herd that has had no loss or reduction in status during its program enrollment; and,~~
 - ~~(ii) — The person importing the cervidae has in his possession a certificate of veterinary inspection, completed in full including signature of the owner/agent section—and a prior entry permit for the cervidae obtained by the issuing veterinarian from the state veterinarian's office.~~~~

Authority: T.C.A. §§ 4-3-203 and 44-2-102.