

BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 32.4.502 importation of	)	AMENDMENT
restricted or prohibited alternative	)	
livestock and 32.4.1309 import	)	NO PUBLIC HEARING
requirements for cervids	)	CONTEMPLATED

TO: All Concerned Persons

1. The Department of Livestock proposes to amend the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on January 20, 2020, to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

32.4.502 IMPORTATION OF RESTRICTED OR PROHIBITED ALTERNATIVE LIVESTOCK (1) through (1)(b) remain the same.

~~(c) Wild or captive elk, mule deer, and whitetail deer may not be imported or transported from a geographic area or alternative livestock farm where chronic wasting disease is endemic or has been diagnosed unless they meet all importation requirements, transportation requirements and any other requirements mandated by statute, rule or order of the state veterinarian under the authority of Title 81, chapter 2, MCA.~~ Importation of wild or captive elk, mule deer, and whitetail deer into Montana, except direct to slaughter, is restricted except pursuant to a diagnostic technique and test protocol for the antemortem detection of chronic wasting disease that is approved by the state veterinarian. No animal may be imported from a geographic area or alternative livestock area where chronic wasting disease is endemic or has been diagnosed ever.

(2) through (4) remain the same.

AUTH: 81-2-102, 81-2-103, 87-4-422, MCA  
IMP: 81-2-102, 81-2-103, 87-4-422, MCA

REASON: The department is proposing to amend this rule because of the risk of Chronic Wasting disease (CWD) to Montana's captive cervid industry. The amendment would prohibit the importation of cervids to Montana for reasons other than slaughter until an acceptable antemortem test for CWD becomes available. In

FY18, there were 15 detections of CWD in farmed cervid herds in the United States. Of these 15 affected herds (11 white-tailed deer, 2 elk, 1 reindeer, 1 mixed), 7 herds or 47% were certified herds in approved CWD Herd Certification Programs (HCP). One additional positive herd participated in an approved CWD HCP. In FY19, there were 19 detections of CWD in farmed cervid herds (9 white-tailed deer, 6 elk, 2 mixed). Of these, 9 or 47% were certified herds.

Because of the number of CWD positive certified herds, the department is concerned that participation in an approved HCP, even at the certified level, is not sufficient to prevent the movement of a CWD positive animal across state lines. Because of the long incubation period of the disease, recent disease introductions, even in long-certified herds, may go undetected prior to animal movement across state lines.

The incidence and geographic distribution of CWD in wildlife is unknown in much of the country due to limited or absent wildlife surveillance. As of August 2019, there were 277 counties in 24 states with reported CWD in free-ranging cervids. That number is continuing to grow. The department does not believe that limiting importation of captive cervids to areas or counties where CWD has not been diagnosed adequately addresses the risk of importing a CWD positive animal, as the disease may exist in an area or county and remain undetected.

The USDA CWD Program Standards outline the required response to a detection of CWD and require both CWD-Positive and CWD Exposed Herds be quarantined for five years beyond the last exposure to a CWD-positive animal. The importation of an animal found to be CWD positive post importation would have a significant impact on the Montana producer. This impact would include long-term quarantine, potential herd depopulation, increased labor requirements, and financial loss.

32.4.1309 IMPORT REQUIREMENTS FOR CERVIDS (1) and (2) remain the same.

(3) The state veterinarian may deny importation from states that do not meet the following requirements:

(a) The state of origin must have the legal means of control ~~and/or~~ disposition of CWD affected, exposed or trace herds;

(b) the state of origin must have the power and authority to quarantine CWD affected, exposed or trace herds; ~~and~~

(c) if CWD has been confirmed in any herds within the state of origin, the state veterinarian of that state must have completed an epidemiological investigation and identified all CWD affected, exposed or trace herds; ~~and~~

(d) no confirmed cases of CWD in wildlife as established by a wildlife surveillance program that the state veterinarian determines is equivalent to or more robust than Montana's program.

(4) remains the same.

AUTH: 81-2-102, 81-2-103, 87-4-422, MCA

IMP: 81-2-102, 81-2-103, 87-4-422, MCA

REASON: See the reason for the proposed amendment to ARM 32.4.502. The department proposes this amendment to address the potential risk of importing CWD positive animals in the absence of an approved antemortem test. This proposed amendment was originally included as part of MAR Notice No. 32-19-298, but is included in this notice to address public comment received in response to that notice and to incorporate the additional information in the department's reason for the proposed amendment.

4. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to the Executive Officer, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., January 24, 2020.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m., January 24, 2020.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the businesses who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 3, based upon approximately 30 current producers who hold an active alternative livestock license.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

BY: /s/ Michael S. Honeycutt  
Michael S. Honeycutt  
Executive Officer  
Board of Livestock  
Department of Livestock

BY: /s/ Cinda Young-Eichenfels  
Cinda Young-Eichenfels  
Rule Reviewer

Certified to the Secretary of State December 17, 2019.