

State of California
Fish and Game Commission
Initial Statement of Reasons for Regulatory Action

Amend Sections 257.5, 475, 676 and 712, and Add Sections 681 and 714
Title 14, California Code of Regulations
Re: Mitigating risks for cervid importation and movement

I. Date of Initial Statement of Reasons: April 26, 2023

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing

Date: June 14-15, 2023

Location: Sacramento

(b) Discussion Hearing

Date: August 22-23, 2023

Location: Fortuna

(c) Adoption Hearing

Date: October 11-12, 2023

Location: San Jose

III. Description of Regulatory Action

(a) Statement of Specific Purpose of Regulatory Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary

Unless otherwise specified, all references in this document are regarding Title 14 of the California Code of Regulations (CCR). The California Department of Fish and Wildlife (Department) is recommending that the California Fish and Game Commission (Commission) amend Sections 257.5, 475, 676, and 712, and add Sections 681 and 714.

Background

Diseases can have significant long-term effects on native wildlife populations, especially novel diseases. Once a disease becomes established in a wild population there are often very few management strategies available, and successes are limited. Prevention is generally the most effective management practice for diseases affecting wildlife. Chronic wasting disease (CWD) is the most significant disease affecting cervids (deer, elk, moose, caribou) in North America, but it has never been detected in California. To prevent CWD and other diseases from being imported into California, the Department recommends that new regulations be adopted which will target known risk factors and mitigate the possibility of accidental importation.

Chronic wasting disease is caused by a misfolded, infectious protein called a prion. These prions are concentrated in the central nervous system of an infected animal, but can be found in most tissues, secretions, and excreta including muscles (meat), blood, glandular fluids, saliva, feces, and urine respectively. The disease is always fatal, there is no vaccine or treatment, and all cervid species native to North America are susceptible. Despite efforts to manage and contain the disease, it has continued to spread (Figure 1) due to prion ecology, limited management options, and anthropogenic

movement of infectious animals or materials. Prions are extremely stable in the environment, remain infective for years to decades, and are shed by infected animals long before they show any signs of disease. This can lead to seeding of the environment with infectious prions, an important factor in the spread and maintenance of CWD, before any diseased animals are seen on the landscape. Once established in an area, eradication of CWD has proven to be infeasible if not impossible. The Department has been testing for CWD since 1999 and, to date, it has never been detected in California's deer and elk herds.

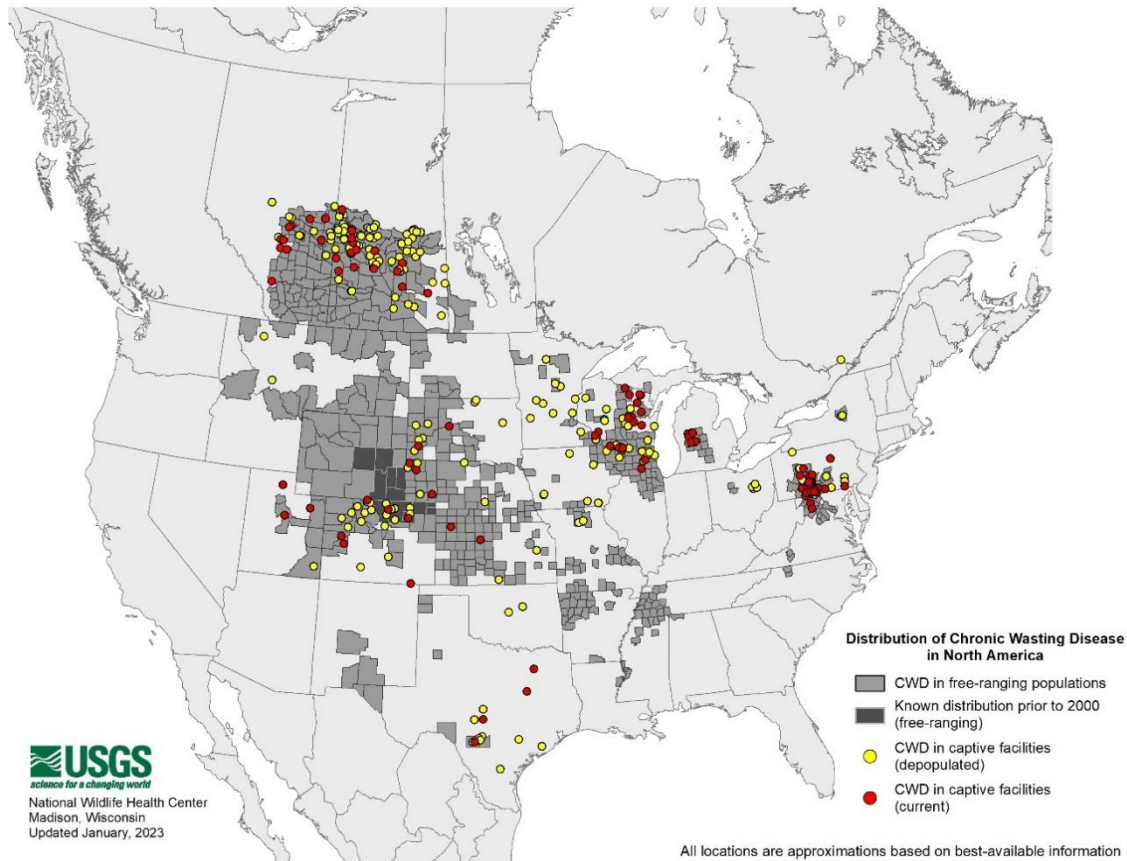


Figure 1: First detected in free-ranging deer and elk in Colorado's front range in the 1980s and considered established in northeastern Colorado and southeastern Wyoming by 2000 (dark gray shaded counties), CWD has since been confirmed in free-ranging (light gray counties) and captive (yellow and red circles) deer and elk from at least 30 states and 4 Canadian provinces.

[Distribution of Chronic Wasting Disease in North America | U.S. Geological Survey \(usgs.gov\)](https://www.usgs.gov/science/diseases-and-conditions/chronic-wasting-disease)

Detecting CWD in California's deer or elk would require irrevocable changes to how the Department manages these species. As CWD prevalence increases in a population, population growth rates (λ) decrease and once past a certain threshold, populations will decline. CWD in California could result in changes to California's hunting regulations and traditions, and would require significant Department resources to manage. State and federal government agencies have spent hundreds of millions of dollars on CWD-related efforts since 2000. States that have detected CWD on average spend eight times more on CWD management efforts than states that have not detected CWD. Human dimensions research suggests that hunter participation may decrease in areas

where CWD has been detected, particularly as CWD prevalence rates increase. Increasing costs to manage this disease and decreasing hunting license sales could compound and significantly affect the Department's ability to manage CWD, deer, elk, and other species in California.

Some risks associated with CWD are either difficult to quantify or incompletely understood. Infectious prions can bind to or be taken up by plants, which could be a mechanism to spread the disease. Increasingly sophisticated diagnostic and molecular assays have shown that there are multiple strains of CWD and that CWD prions can differentiate when passed through multiple hosts, creating new strains with altered host susceptibilities and disease characteristics. For example, the predominant CWD prion strain in Norway is different than the predominant strain in North America, with different pathologic characteristics. Foremost of these difficult to quantify or incompletely understood risks is the risk CWD may pose to people or livestock. CWD is in the same class of diseases as bovine spongiform encephalopathy (aka BSE or Mad Cow Disease), a prion disease of cows believed to cause variant Creutzfeldt-Jakob disease (vCJD), a neurodegenerative disease in people, through the consumption of BSE-tainted meat. While CWD has never been linked to any human diseases, public health officials remain cautious, recommending individuals and agencies do whatever possible to keep the agents of all known prion diseases from entering the human food chain.

While CWD poses a significant risk to cervids, it is not the only disease of concern associated with the movement of captive cervids. Cervids are susceptible to bovine tuberculosis (bTB) and brucellosis, two important diseases that affect the livestock industry. The USDA has established disease programs to limit or eliminate these diseases from livestock. While the Commission's regulations currently require testing for these diseases, the testing requirements have not been amended for many years. Since the testing requirements were last updated, the scientific understanding of these diseases and disease prevention methods have evolved. To align with current USDA testing standards, the Commission is updating disease testing requirements in addition to introducing CWD-specific regulations.

Existing Authorities

Current statutory authorities focus mostly on regulating the take, possession, or movement of animals and their parts and include:

Fish and Game Code Section 4150 provides that nongame mammals may not be taken or possessed except as provided in the code or in accordance with regulations adopted by the Commission.

Fish and Game Code Section 2118 provides that animals of the order Artiodactyla are considered wild animals. Animals of the family Cervidae are of the order Artiodactyla.

Fish and Game Code sections 2120 and 2122 authorize the Commission, in cooperation with California Department of Food and Agriculture (CDFA), to adopt regulations regarding the entry, importation, possession, transportation, keeping, or confinement of wild animals that are "not normally domesticated in this state as determined by the Commission."

Fish and Game Code Section 2118.2 prohibits importation of elk into this state, but this statute does not apply to zoos that are certified by the US Department of Agriculture and does not apply to other cervids.

Fish and Game Code Section 200 provides the Commission with the power to regulate the take or possession of birds, mammals, fish, amphibians, and reptiles.

Current Regulations

Section 257.5 prohibits taking resident game birds and mammals by the aid of bait. The current definition of bait in this section does not extend to biofluid-based lures, which may attract animals through scent or hormonal cues.

Section 475 defines methods of take allowed for nongame birds and nongame mammals. This section similarly prohibits the use of bait, but the definition of bait does not extend to biofluid lures.

Section 671 identifies all cervids as “Detrimental” species requiring special restricted species permits to possess. Subsections outline the requirements to import, transport, and possess restricted species; however, there is no permit specific to importation required for restricted species beyond the permit to possess.

Section 676 outlines requirements for permitting and disease testing for importation of live fallow deer, a cervid. The permit incorporated in this section was last updated in 1997 and covers only the species *Dama dama* (fallow deer). The disease testing requirements for the species are similarly dated.

Section 712 currently prohibits importation and possession of hunter harvested cervid carcasses but does not explicitly define cervid to include all species in the family Cervidae, allowing for interpretation that only deer and elk are included. This section also permits the importation of clean skull plates but does not explicitly define a skull plate.

Proposed Regulatory Changes

This rulemaking will make the following changes:

Section 257.5

Subsection (a): Adds cervid-derived biofluid to the list of substances which can be used to define a “baited area” for purposes of the section. Adding it to the definition of baited area prohibits the take of game birds and mammals in an area where such biofluids are used. This is necessary to prevent the introduction of CWD through the use of cervid-derived biological fluids (biofluids) as lures or attractants. Biofluids, including urine and glandular secretions, can contain CWD-causing prions which could be a source of CWD infection for California’s native deer and elk.

Subsection (b): Adds a new subsection which makes it unlawful to use any lures or similar materials that contain, or are labeled or advertised to contain, biological fluids from cervids to take game birds or mammals. This will prevent the use of cervid-derived biofluids in any capacity for take. This is necessary to prevent the introduction of biofluids from cervids into California’s environment, as they could contain CWD-causing prions.

Subsection (c): Previously subsection (b), renumbered accordingly.

Section 475

Subsection (g): Adds a new subsection making it unlawful to use lures or similar materials that contain, or are labeled or advertised as containing, any biological fluid derived from a cervid. This will prevent use of cervid-derived biofluids to take non-game birds and mammals (whereas Section 257.5 covers game birds and mammals). This is necessary to prevent the introduction of CWD through the use of biofluids as lures or attractants. Biofluids, including urine and glandular secretions, can contain CWD-causing prions which could be a source of CWD infection for California's native deer and elk.

Section 676

Subsection (e)(1): Removes the currently incorporated Fallow Deer Farming Importation Application form and replaces it with a new Cervidae Importation Application form, to be described in Section 681. This is necessary to ensure that there are not multiple forms intended to serve the same purpose (importation of some type of cervid), which could confuse the regulated public. The proposed revisions also update the name of the Department, and provide for an email address contact where to send the completed application. Both are necessary to provide accurate contact information.

Subsection (e)(2): Defines requirements for a health certificate to accompany imported live cervids. This change is to ensure consistency between this section and the proposed new section 681(c)(2)(A).

Subsection (e)(3): Replaces a reference to the prior fallow deer farming importation application form with the new cervidae importation application and updated contact information. This is necessary because the form referenced will no longer be in use.

Subsection (e)(4)(A): Updates defined bovine tuberculosis testing requirements. This is necessary to ensure current, up-to-date testing standards are applied and to ensure consistency between this section and the proposed new section 681(c)(2)(B).

Subsection (e)(4)(B): Updates defined brucellosis testing requirements. This is necessary to ensure current, up-to-date testing standards are applied and to ensure consistency between this section and the proposed new section 681(c)(2)(C).

Section 681

This new subsection will be added to implement the new importation permit for any live cervids. It outlines the requirements for permit application.

Subsection(a): Defines cervid for purposes of this new section. This is necessary to identify the species subject to the requirements laid out in this section.

Subsection (b): Defines prohibitions on importation of live cervids so that the regulated public will be aware of what is prohibited for importation. Prohibitions on importation are necessary because the prohibited species could carry diseases that pose serious risk to California's native cervid species.

Subsection (b)(1): Establishes that it shall be unlawful to import any cervid into California except as authorized and permitted by the Department. This provides law enforcement and prosecutors with authority to enforce the requirements under this section and makes it clear that authorization from the Department is required for the importation of cervids.

Subsection (b)(2): Makes it unlawful to import into California any cervid from a state where CWD has been detected. This is necessary to mitigate the risk of importing CWD into California given that there is currently no reliable test to determine whether a live cervid carries CWD. Without this restriction, the Department is unable to ensure that cervids at the highest risk of being exposed to CWD are kept out of the state. Effective prevention, detection, and management of CWD, and other diseases affecting cervids, requires adaptive management strategies. The statutory definition of “credible science” in the Fish and Game Code is referenced to establish the type of information the Department will consider and acknowledges the need for adaptive management as scientific knowledge and available tools evolve. The Department currently utilizes resources from the U.S. Geological Survey (USGS) and the USDA as credible science for determining CWD detections in states and Canadian provinces.

Subsection (c): Establishes the new cervid import permit application and requirements, with the exception of gametes, which are not subject to the requirements for importation of entire animals for subsections (c)(2) through(c)(5). This is necessary so that the regulated public will be aware of what is required to obtain a permit to legally import a live cervid.

Subsection (c)(1): Establishes the new application to be used for a cervid importation permit and incorporates the application into regulation, and provides guidance on where obtain a copy of the application. This is necessary so that the regulated public will know what application to use when attempting to import a live cervid.

Subsection (c)(2): Establishes application requirements for a permit to import live cervids. This is necessary to inform applicants of the requirements for obtaining authorization from the Department to import cervids. Disease testing requirements (bTB and brucellosis) align with other state and federal interstate movement requirements associated with livestock disease programs. Specific CWD testing requirements are not included in this subsection because there are no live animal testing standards for CWD.

Subsection (c)(2)(A): Establishes requirement of a health certificate, formally known as a Certificate of Veterinary Inspection or CVI, for importation of live cervids. These are regulated by the USDA and require a veterinarian that is licensed in the state where the animals originate and accredited by the USDA to inspect the species in question for interstate travel. This is necessary to ensure animals are healthy prior to interstate movement of animals and is a requirement for the interstate movement for most animals regulated both federally and by the state.

Subsection (c)(2)(B): Establishes requirement of a negative bovine tuberculosis (bTB) test from the herd of origin for importation of a live cervid. Bovine tuberculosis

is a USDA program disease, meaning the USDA has established criteria for bTB certifications for livestock herds and areas. Under this disease program, the USDA has established official testing requirements which include cervids. This section is necessary to align with those disease program requirements to aid in the eradication or control of bTB in the U.S. Given changes in understanding of diseases and their detection since these regulations, it would be inappropriate and potentially detrimental to California's native wildlife or livestock not to bring these disease testing requirements into alignment as part of this regulatory amendment.

Subsection (c)(2)(C): Establishes requirement for brucellosis testing and attestation that the imported cervid is not known to be infected with brucellosis nor has been in contact with any animals of unknown brucellosis status. Similar to bTB, brucellosis is another USDA program disease with similar testing requirements and certification. This section is necessary to align with those disease program requirements to aid in the eradication or control of brucellosis in the U.S.

Subsection (c)(3): Establishes requirements for disease prevention and control concerning importation of live cervids. This is necessary to define the Department's authority to deny imports based on test results and disease status. Authority to deny importation is an important piece of the Department's ability to keep infectious animals out of the state and prevent the spread of CWD.

Subsection (c)(3)(A): Authorizes the Department to deny cervid importation permit application for any cervid that the Department determines may have been exposed to CWD. This is necessary to give the Department authority to restrict the importation of cervids where credible science indicates that the cervid(s) poses a higher risk of carrying CWD, which prevents the potential importation of CWD into the state. No approved live animal tests exist, and the precautionary principle is applied due to the catastrophic consequences if CWD is imported and established.

Subsection (c)(3)(B): Establishes that the Department shall require additional testing as a condition of a cervid importation if a state-licensed and USDA-accredited veterinarian determines that other health risks may be present. This is necessary to identify and mitigate health risks given the dynamic nature of disease conditions. Without this subsection, the Department would be ill-equipped to address disease concerns that may exist in the future or are not yet recognized.

Subsection (c)(4): Establishes that cervid importation permits are valid for 30 days. This aligns with the federally mandated length of time a Certificates of Veterinary Inspection is valid 30 days and ensures that the imported animal's health status is current at the time of importation. If a longer period of time elapsed between the time of disease testing and importation, the likelihood of imported animals carrying diseases that they were not exposed to at the time of testing is increased.

Subsection (c)(5): Defines required identifying markings for cervids imported under a cervid importation permit. This is necessary for the Department to individually identify imported cervids for disease traceability to align with USDA Animal Disease Traceability requirements for cervids. This will assist in contact tracing to identify disease origin or potentially exposed individuals if a CWD-positive individual is identified. The Department reserves some discretion in this subsection to allow for

alternative methods of identifying markings to give applicants more flexibility when animal welfare considerations may apply.

Subsection(c)(6): Establishes that the Department may deny a cervid importation permit for failure to comply with Fish and Game Code or regulations. This is necessary to promote compliance with the law and applicable regulations, and make sure that applicants can be trusted to comply with the requirements for cervid importation. Past behavior will be taken into consideration when determining whether an application will be approved. Doing so reduces the risk of cervids being imported unlawfully and posing health risks.

Subsection (c)(7): Establishes that a cervid importation permit issued by the Department may be revoked or suspended by the Department for failure to comply with the terms of that permit. This is necessary to provide the Department with recourse in cases where permittees fail to comply with the law and mitigate the risk of importing a disease.

Subsection (d): Establishes that the Department will not charge permit or application fees in administering and enforcing this section. This provides clarity to the regulated public about requirements for the permit and allows the Department a clear location to amend regulations if fees are required in the future.

Subsection (e): Requires maintenance of all health records of cervids for a minimum of three years. CWD may take months to years to manifest as a clinical disease. This is necessary for disease traceability and herd health assessments to assess potential disease risks.

Subsection (e)(1): Requires that any person holding a cervid importation permit must exhibit records required to be maintained upon the request of any Department employee. This is necessary for the Department to ensure compliance with this section, and to assist with disease traceability and risk mitigation if a suspected disease case is found.

Subsection (e)(2): Establishes that all live cervids imported into California shall be inspected by the Department or its designee, with notice, at the place of entry into the state or at other locations within the state if the Department determines it is needed for disease transmission concerns. This is necessary to provide the Department with the tools to investigate and detect potential disease outbreaks in addition to ensuring compliance with this section.

Subsection (e)(3): Requires that any cervid imported in violation of Section be seized or denied entry by the department. Animals seized by the department may be relocated or seized in place. This is necessary to mitigate the risk of disease or parasites spreading in the state, and to ensure compliance with this section. Enforcement options would include, but not necessarily be limited to, seizure (in place or otherwise), denied entry, or destruction dependent on the circumstances. Department discretion in the method of removal of an animal is necessary to effectively address disease concerns associated with a wide variety of situations.

Section 712

The proposed revisions explicitly include all members of the family Cervidae and provide a list of examples including deer, elk, moose, caribou, and reindeer. The previous language was unclear and could be interpreted to apply only to deer and elk. These additions are necessary to clarify that this section applies to all members of the family Cervidae and not just deer and elk. This is necessary because hunter-harvested carcasses of any cervid species could contain CWD-causing prions, and the importation of their carcasses could introduce CWD into California.

Subsection (c): Adds a new definition of skull plate. Skull plate was not previously defined and was not interpreted uniformly by hunters, some of whom interpreted this section to include the entire skull. This clarifies the meaning of this regulation and minimizes the chance of accidental importation of brain tissue into California via improperly processed carcasses. This is necessary because brain tissue has a very high concentration of CWD-causing prions, and importation of brain tissue could introduce CWD to California's environment.

Section 714

Adds a new section which makes it unlawful to import or possess any material that contains or is labeled or advertised as containing any biological fluid derived from a cervid. This prevents importation or possession, whereas in sections 257.5 and 475 the CWD-sensitive cervid biofluid prohibition apply to take of game and non-game birds and mammals, respectively. This is necessary to prevent the introduction of cervid biofluids to California's environment either by importation or other possession, as they could contain CWD-causing infectious prions.

Proposed form DFW 1681 – Cervidae Importation Application

Form 1676a, Fallow Deer Farming Importation Application, is currently incorporated by reference in Section 676. The prior version of this form was incorporated by reference in 1997 and the Department does not have an editable version in its records. The old form will be struck out and a completely new form, re-named to DFW 1681, "Cervidae Importation Application," with similar content, is proposed for incorporation into reference into proposed Section 681. However, the new form will apply to importation of all cervids from out of state, not just fallow deer – consistent with animals in Family Cervidae, which is necessary to be able to screen importations of these animals for CWD. The fields in the new form are listed and justified below.

Applicant (Consignee): This begins the section for the cervid import applicant, the consignee, who will be receiving cervids imported from out-of-state and provides details to identify the business, person, location, possession permit, and modes of contact for the applicant.

Business Name and Mailing Address (Consignee): This field is necessary to identify the permittee's organization and mailing address so the Department is aware of who is applying to import cervids.

Corresponding Possession Permit Type: This field is necessary to identify the corresponding permit required to possess a live cervid in the state of California, i.e. whether possession is allowed under a Restricted Species permit (T14, section 671) or Fallow Deer Farming permit (T14, section 676). One of these permits is required before an importation permit can be approved.

Possession Permit Number: This field is necessary for the Department to match the importation permit with the corresponding possession permit identified in the previous field. This makes it possible to look up the permit and verify possession information.

First Name/M.I./Last Name: This field is necessary to identify the permit applicant/holder.

Email Address (Voluntary): This field gives applicants the option to share their email contact information so that the individuals can be contacted by the Department if desired.

Physical Address/City/State/Zip Code (where the animals will be held): This field is necessary to determine the physical location cervids will be imported to within California to enable inspection by the Department, disease risk assessment, and traceback if a disease were to occur.

Fax Number (Voluntary): This field gives applicants an alternative form of communication via facsimile.

Day/Evening Telephone: This field is necessary to allow for communication via telephone during the day or evening, as the Department will primarily communicate with applicants by telephone.

Provide Details of Animals to Be Acquired: This field is necessary to describe and identify the animal covered by the permit to enable proper inspection and traceback.

Current Owner of Herd (Consignor): This begins the section for the current, out-of-state owner or consignator of the cervids to be imported and provides details to identify the business or owner, mailing address, physical location of the animals to be imported, name of the veterinarian issuing the Certificate of Veterinary Inspection, and the veterinarians telephone number.

Business Name and Address: This field is necessary to identify the consignator's organization and mailing address to provide a contact for the owner of the origin herd and an entity to refer to if further investigation is needed to assess an import application.

First Name/M.I./Last Name: This field is necessary to identify the consignator by name and may be an alternative to the Business Name if one or the other is more or less appropriate. Similarly, provides a contact for the origin herd.

Day Telephone: This field is necessary so that the consignor may be contacted by telephone for additional information as needed by the Department to assess and review an importation application.

Physical Address/City/State/Zip Code: This field is necessary to determine the origin of the animals to be imported. This is needed in addition to the business name and address as the two may not be the same. The location of the animals is required to properly review and assess an importation permit.

Name/Day Telephone of Veterinarian Issuing Health Certificate: This field is necessary to identify the certified veterinarian that issued the health certificate and provide a contact number for that veterinarian in case there are any additional health or disease related questions while reviewing an importation application.

Conditions for Importation of Cervids into California: This field is necessary to establish permit conditions aimed at mitigating health risks and ensuring compliance as justified under subsection 681(c), including conditions 1 and 2 for disease testing (bTB and brucellosis pursuant to subsection 681(c)(2)(B) and (c)(2)(C)), condition 3 for Certificate of Veterinary Inspection (pursuant to subsection 681(c)(2)(A)), condition 4 for other disease testing (pursuant to subsection 681(c)(3)(B) and general record retention requirements.

Signature/Date: This field is necessary for the applicant to certify that all of the information provided is true and correct, and that they will abide by the conditions set forth on the application.

Status of Application: This field is necessary to establish whether the application has been approved, denied, or put on hold.

Reason*: This field is necessary for the Department to provide applicants with justification when an application is denied or put on hold. If the application is approved, this field is left blank.

Reviewed By: This field is necessary so the Department's Wildlife Health Lab can confirm that an application was reviewed and to indicate when a final determination was made.

Instructions for Completing the Cervidae Importation Application: This section is necessary to give applicants the information they need to complete the application. The information provided includes contact information, additional permits that may be required, signature requirements, and submission of test results.

(b) Goals and Benefits of the Regulation

The goal of these regulations is to prevent the importation of CWD, and other diseases affecting cervids, into California by enhancing the Department's ability to regulate known risk factors for the movement, transmission, and spread of CWD and other diseases: movement of live cervids, their parts, and their products. The proposed regulations provide the Department with greater control over the importation of live animals which may carry the disease. Prohibition on the possession and use of cervid-

derived biofluids, such as urine-based lures, mitigates the risk of importing infectious prions through such products. Additional specificity in hunter importation regulations will make it clear to the regulated public which animals are included in the cervid group and therefore require precautions to be imported after harvest and assist them in processing their harvested animals to avoid potentially importing parts of animals which may carry infectious prions. The benefit of these proposed regulations is to provide tools to further prevent to importation of diseases like CWD.

(c) Authority and Reference Sections from Fish and Game Code for Regulation

- Section 257.5
Authority: Sections 200, 203 and 265, Fish and Game Code.
Reference: Sections 110, 200, 201, 203, 203.1, 260, 265, 270, 275, 3800 and 3950, Fish and Game Code.
- Section 475
Authority: Sections 200, 203, 265, 355, 3003.1, 3800 and 4150, Fish and Game Code.
Reference: Sections 110, 203, 203.1, 265, 355, 356, 2055, 3003.1, 3004.5, 3800 and 4150, Fish and Game Code.
- Section 676
Authority: Sections 1002, 2120, 2150 and 2150.2, Fish and Game Code.
Reference: Sections 2116.5, 2120, 2124, 2150, 2150.2, 2150.4, 2150.5, 2151, 2185, 2186, 2187, 2189, 2190, 2350 and 2355, Fish and Game Code.
- Section 681
Authority: Sections 1002, 1050, 2120, 2122, 2150, 2150.2, and 3005.5, Fish and Game Code.
Reference: Sections 13.5, 33, 80, 200, 240, 1001, 1008, 2118, 2118.2, 2118.4, 2120, 2121, 2122, 2193, 2350, 2353, 2355, 3219, 4011 and 4150, Fish and Game Code.
- Section 712
Authority: Sections 200, 203, 240 and 2355, Fish and Game Code.
Reference: Sections 200, 203 and 2355, Fish and Game Code.
- Section 714
Authority: Sections 200 and 203, Fish and Game Code.
Reference: Sections 80, 200, 203 and 240, Fish and Game Code.

(d) Specific Technology or Equipment Required by Regulatory Change

No specific technology or equipment will be required by the regulatory change.

(e) Identification of Reports or Documents Supporting Regulation Change

- Association of Fish and Wildlife Agency (AFWA) Best Management Practices for Prevention, Surveillance, and Management of Chronic Wasting Disease Summary - [AFWA_CWD_BMPS_12_September_2018_FINAL.pdf \(fishwildlife.org\)](https://www.fishwildlife.org/files/AFWA_CWD_BMPS_12_September_2018_FINAL.pdf)

- AFWA Technical Report on Best Management Practices for Prevention, Surveillance, and Management of Chronic Wasting Disease - [AFWA Technical Report on CWD BMPs FINAL.pdf \(fishwildlife.org\)](#)
- New York State Dept. of Environmental Conservation, Management Plan for White-Tailed Deer in New York State, 2021-2030, Appendix 3: Recommendation to Prohibit Cervid Biofluids in New York. - [Management Plan for White-tailed Deer in New York State 2021-2030 \(ny.gov\)](#)
- Escobar, L. E., S. Pritzkow, S. N. Winter, D. A. Grear, M. S. Kirchgessner, E. Domingues-Villegas, G. Machado, A. Townsend Peterson, C. Soto. 2019. The ecology of chronic wasting disease in wildlife. *Biological Reviews* 95(2):393-408. <https://doi.org/10.1111/brv.12568>
- Zabel, M. and A. Ortega. 2017. The ecology of prions. *Microbiology and Molecular Biology Reviews* 81:e00001-17. <https://doi.org/10.1128/MMBR.00001-17>
- Chiavacci, S. 2022. The economic costs of chronic wasting disease in the United States. *PLoS ONE* 17(12):e0278366. <https://doi.org/10.1371/journal.pone.0278366>
- Needham, M. D., Vaske, J.J., & Manfredo, M.J. 2006. State and Residency Differences in Hunters' Responses to Chronic Wasting Disease, *Human Dimensions of Wildlife*, 11:159-176, 2006 Routledge, Taylor & Francis Group, LLC
- Chronic Wasting Disease (CWD) | Prion Diseases | CDC. <https://www.cdc.gov/prions/cwd/index.html>

(f) Public Discussions of Proposed Regulations Prior to Notice Publication

The Department met with hunting conservation groups on September 12, 2022 to inform them of the proposed regulatory changes and subsequently presented these proposed regulatory changes at the September 15, 2022 WRC meeting of the FGC.

Hunting conservation organizations responded with some questions, concerns, and comments including a letter from The California Bowmen Hunters Association/State Archery Association. Responses supported clarifying hunter import regulations and further regulating live cervid importations but requested greater research into scent lures and how proposed regulations may affect California hunters. The Department completed additional research into biofluids and the scent lure industry which informed a second presentation at the January 11, 2023 WRC meeting of the FGC. This second presentation to the WRC focused largely on addressing specific questions, concerns, and comments offered by hunting conservation organizations about scent lures (commercially available, biofluid-based products that would be affected by these recommendations), providing additional justification for this proposed regulation.

IV. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

The following alternatives were considered, but not pursued:

- Live cervid import permit – outright ban on the importation of any cervid.

- Cervid-derived biofluids – allow for the use and possession of products certified through Responsible Hunting Scent Association (RHSA). While this may decrease the risk, it would not eliminate the risk of using cervid-derived biofluid-based lures or products and the consequences of CWD in California are immense. Hunting conservation organizations posed additional questions about the proposed prohibitions to cervid-derived biofluids. These excellent questions led to additional research into cervid-derived biofluids, the hunting scent lure industry, and current CWD certification programs, yielding additional justification for the proposed prohibitions:
 - Commercially available biofluid-based scent lures were developed and marketed for white-tailed deer hunting and are almost exclusively derived from captive white-tailed deer. There are no white-tailed deer hunting opportunities in California.
 - While the commercial scent lure industry has developed a program to certify urine-based lures as “CWD free,” there is no agency oversight, the test used for these certifications is not United States Department of Agriculture (USDA) approved for the detection of CWD, and the test and testing process, as a whole, lacks the sensitivity and specificity analyses to fully evaluate the effectiveness of such a program.
 - USDA’s Herd Certification Program for CWD has multiple certified “CWD-free” herds turn up CWD-positive every year, highlighting the difficulties of testing, preventing, and managing CWD due to the ecology and pathophysiology of the disease.
 - Informal surveys and market research confirmed that scent lures are not widely used in California. One reason for this may be that mule deer behavior is different from white-tailed deer behavior and scent lures may not be particularly effective.
 - Synthetic alternatives are available and would remain an option for use in California.
 - While the risk associated with a single biofluid-derived product is likely small, that risk compounds with repeated use over time as prions remain infectious in the environment for years to decades and the infectious dose for CWD is exceedingly small.
- Clarifying hunter import regulations – none.

(b) No Change Alternative

- Live cervid import permit – there would be little to no regulatory authority to deny the import of CWD-susceptible, at risk, and potentially infectious lives cervids.
- Cervid-derived biofluids – would continue to be used and possessed increasing the risk of infectious prions being brought into California and placed on the landscape increasing the risk of contaminating California’s deer and elk habitat with infectious prions allowing susceptible deer or elk to be exposed and infected by CWD.
- Clarifying hunter import regulations – would remain vague as to which species the regulation applies to and what parts can be imported.

V. Mitigation Measures Required by Regulatory Action

The proposed regulation would have no impact on the environment. No mitigation measures are necessary.

VI. Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States

The Commission does not anticipate significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states. The businesses affected by cervid importation permit requirements would largely be 1) restricted species (Title 14, section 671) permit holders that have cervids (e.g. zoos, sanctuaries, and other exhibitors) and permitted fallow deer farms (Title 14, Section 676); people looking to start one of these businesses; similar businesses looking to travel through CA, (i.e. import permits would still be required even if just traveling through CA); 2) businesses affected by a cervid-derived biofluid ban, including retailers that sell cervid-derived biofluid-based lures which are not widely sold or used in the state, but artificial scent lures would not be affected by these regulations and would remain available; and 3) restricted species breeder permit holders looking to import semen for artificial insemination. Clarifications of the regulations regarding the importation of cervid body parts into the state will not introduce any new costs or demand for goods and services.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment.

The Commission anticipates that the proposed regulations will not impact the creation or elimination of jobs within the state, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses in California because these proposed regulatory changes to mitigate CWD and other diseases will impose discretionary non-monetary costs on a small sector of the state with little to no stimulus to the demand for goods or services within the state economy. The proposed prevention measures will benefit fallow deer farming and outdoor recreation businesses by helping to ensure healthy cervid populations.

Direct benefits are anticipated to the state's environment, specifically the native deer and elk populations while indirect benefits are anticipated to be the health and welfare of California residents by preserving hunting traditions and wildlife viewing opportunities.

Additionally, the proposed disease prevention measures would deter substantially increased Department management costs in the long-run by preventing the importation of CWD. This will allow current budgets to continue to further conservation programs to

preserve deer, elk, and other California native species for their ecosystem values and as a resource for consumption and enjoyment by state and non-state residents.

(c) Cost Impacts on a Representative Private Person or Business

The Commission estimates no cost impacts on representative businesses for importing live cervids for restricted species or fallow deer farming permit holders. The import application and permit approval would have no associated fee. Costs for disease testing and Certificate of Veterinary Inspection are already incurred for most cervid imports into California because of federal interstate movement regulations and best practices. These proposed requirements would not increase that cost. Records retention requirements may involve additional time that live deer farming businesses and zoos will incur should they continue to choose to import live deer. Importing deer is not strictly necessary for fallow deer farms and is discretionary. Time spent on permit applications and records retention requirements will remain a small fraction of the total cost of importation of live cervids. No cost impacts to representative private persons are anticipated.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State

The Commission anticipates no new costs or savings to state agencies or to federal funding to the State. The proposed regulatory measures to mitigate the risk of disease importation into the state are projected to save the Department costs in the long-run. Other states' experiences show that state wildlife agencies spend eight-fold more managing CWD once the disease is detected within the state. The Department Wildlife Health Laboratory (WHL) effort to review and approve cervid importation permits is expected to be unchanged. Department law enforcement costs are expected to be unchanged, as the routine level of field enforcement is expected to be sufficient. There may be a decrease in the number of citations for improper importation of parts from hunter harvested animals as the regulation change will clarify what can and cannot be imported from cervids harvested out-of-state.

(e) Nondiscretionary Costs/Savings to Local Agencies

None.

(f) Programs Mandated on Local Agencies or School Districts

None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code

None.

(h) Effect on Housing Costs

None.

VII. Economic Impact Assessment

(g) Effects of the Regulation on the Creation or Elimination of Jobs Within the State

The Commission does not anticipate that the proposed regulation would induce any impact on the creation or elimination of jobs because the proposed regulatory action is not anticipated to stimulate or diminish demand for services related to chronic wasting disease mitigation measures.

(b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State

The Commission does not anticipate that the proposed regulation would induce any impact on the creation of new businesses or elimination of existing businesses within the state because the proposed regulatory action is not anticipated to stimulate or diminish demand for goods or services resulting from the clarification of chronic wasting disease mitigation measures.

(c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State

The Commission does not anticipate that the proposed regulation would induce any impacts on the expansion of businesses currently doing business within the state because importing deer is not strictly necessary for deer breeding farms, it is discretionary, and there remains options for importing deer through the Cervidae Importation Application (Section 681). Reporting time costs will remain a small fraction of the total cost of importing new breeding stock.

(d) Benefits of the Regulation to the Health and Welfare of California Residents

The Commission does not anticipate that the proposed regulation would directly benefit the health and welfare of California residents. However, the proposed regulations are to help prevent and mitigate the risk of importing CWD and infecting California's cervid populations. While CWD has never been shown to affect people, the recommendations of the U.S. Centers for Disease Control and Prevention (CDC) and the World Health Organization (WHO) is to not consume meat from CWD-positive deer or elk. The proposed regulations will lessen the likelihood of such contact.

(e) Benefits of the Regulation to Worker Safety

The Commission does not anticipate that the proposed regulation would directly benefit or decrease worker safety. The enhanced requirement to vet additional cervid species types will not significantly impact the amount of prions law enforcement are exposed to when checking deer for import, nor will the ban of scent lures require any prion contact.

(f) Benefits of the Regulation to the State's Environment

Direct benefits are anticipated to the state's environment, specifically the native deer and elk populations. Additionally, the proposed CWD prevention measures should benefit the environment by avoiding potential increases in Department management costs in the long-run (if CWD was to enter the state) and allow current budgets to

continue to further conservation programs to preserve deer, elk, and other California native species.

(g) Other Benefits of the Regulation

The proposed amendments to section 712 will clarify what parts from hunter-harvested cervids are and are not allowed to be imported, a clarification that hunters and law enforcement have fully supported during outreach.

Informative Digest/Policy Statement Overview

The California Department of Fish and Wildlife (Department) is recommending that the California Fish and Game Commission (Commission) amend sections 257.5, 475, 676, and 712 and add sections 681, and 714 to target known risk factors for the introduction and spread of wildlife diseases such as chronic wasting disease (CWD) to California's cervid populations.

Diseases can have significant long-term effects on native wildlife populations, especially novel diseases. Once a disease becomes established in a wild population, there are often few effective management strategies, and successes are limited. Prevention is generally the most effective management practice for diseases affecting wildlife. CWD is the most significant disease affecting cervids (deer, elk, moose, caribou) in North America, and as of yet, has not been detected in California. The disease is caused by mis-folded proteins called prions which can be found in just about every tissue as well as glandular secretions, blood, feces, and urine of an infected animal. Once established in an area, eradication is infeasible if not impossible. The Department has been testing for CWD since 1999 and, to date, it has never been detected in California's deer or elk herds. Detection of CWD in California's deer or elk would require irrevocable changes to how the Department manages these species. The most effective management practice for CWD and other diseases that affect wildlife is prevention. To prevent CWD and other diseases from being imported into California, the Department recommends that new regulations be adopted which will target known risk factors and mitigate the possibility of accidental importation.

Current Regulations

Section 257.5 prohibits taking resident game birds and mammals by the aid of bait. The current definition of bait in this section does not include cervid-derived biofluid-based lures which may attract animals through scent or hormonal cues.

Section 475 defines methods of take that are allowed for nongame birds and nongame mammals; this section also prohibits use of bait but, as in 257.5, but does not include cervid-derived biofluid-based lures.

Section 712 regulates what parts of hunter harvested cervid carcasses may be imported and possessed but the language used seems to define cervid as deer and elk only. This section also permits the importation of clean skull plates but does not define skull plate.

Section 671 establishes a list of restricted species, which may not be imported into California without a permit issued by the Department. It further outlines requirements for possession, importation, and movement of restricted species including disease testing requirements. All Cervidae are considered "detrimental animals" under section 671, and therefore may only be possessed under permit by the Department. There is currently no regulatorily established permitting process specifically for the importation of species listed as restricted species, including the broader group Cervidae.

Section 676 outlines requirements for possession, use, movement, and importation of live fallow deer, a cervid, including permitting and disease testing requirements for fallow deer farming. The importation permit incorporated in this section was last updated in 1997 and covers only the species *Dama dama* (fallow deer).

Proposed Changes

- Section 257.5 – Add cervid-derived biofluid-based lures to the list of prohibited baits for the take of game birds and mammals.
- Section 475 – Add cervid-derived biofluid-based lures to the list of prohibited baits for the take of nongame birds and nongame mammals.
- Section 676 – Remove the current Fallow Deer Farming Importation Application, LRB 1676A (3/97) from regulation, it will be superseded by a new importation permit for all members of the family Cervidae including fallow deer.
- Section 712 – Clearly state that the regulation applies to all species in the family Cervidae, not just deer and elk. Define what a skull plate is to clarify what parts may be imported.
- Add a new section (Section 681) requiring a Cervidae Importation Permit to import live animals in the family Cervidae. This section will provide details on requirements for permit application, disease testing, and identifying markers for imported cervids as well as clear denial authority based on disease risk.
- Add a new section (Section 714) that defines cervid-derived biofluids and prohibits the possession of cervid-derived biofluids, or products containing cervid-derived biofluids.

Benefit of the Regulations

These regulations will benefit California's environment by helping to prevent the importation of CWD protecting California's native deer and elk populations from this disease. This will provide further benefits to California's hunting community, fallow deer farming community, and outdoor recreation communities by maintaining healthy cervid populations as a resource for consumption and enjoyment. Keeping California's deer and elk populations free of chronic wasting disease will save the Department and stakeholders money and resources allowing for more conservation programs protecting deer, elk, and other California native species.

Consistency and Compatibility with Existing Regulations

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. Section 2118 of the Fish and Game Code classifies cervids as wild animals. Pursuant to Fish and Game Code section 2120, the Commission has the authority to regulate the entry, importation, possession, transportation, keeping, confinement, and release of all wild animals that will be or have been imported into California. Pursuant to Section 200 of the Fish and Game Code, the Commission has the authority to regulate the taking and possession of mammals. Section 80 of the Fish and Game Code provides that a provision of the Fish and Game Code that applies to a whole animal is presumed to also apply to a part of the animal. The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Commission has searched the California Code of Regulations and finds no other State agency regulations pertaining to

the importation of live cervids, importation of hunter harvested cervid parts, or use and possession of lures.