

EXECUTIVE REORGANIZATION ORDER

E.R.O. No. 2004-2

287.981 Transfer of powers and duties of the department of agriculture under the Cervidae act to the department of natural resources by type II transfer.

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, facilities and operations for captive cervidae including deer, elk, moose, and reindeer, can have serious impacts on the state's wildlife population and the agricultural industry;

WHEREAS, unlike domestic livestock species, when deer and elk escape from privately-owned cervidae livestock facilities and operations, they are indistinguishable from free-ranging deer and elk, and also pose a potential risk to native animals, such as the transmission of parasites and disease;

WHEREAS, deer and other cervidae are migratory animals often moving substantial distances seasonally, magnifying potential impacts on Michigan's wildlife population;

WHEREAS, Chronic Wasting Disease is an incurable neurological disease of deer and elk that can be spread directly from animal to animal, or indirectly from soil or surface to animal;

WHEREAS, Chronic Wasting Disease was once considered to be a disease limited to small endemic areas of Western United States, but has recently been discovered in more than 15 states and in Canada.

WHEREAS, while the disease has the potential to devastate Michigan's deer and elk population, with state action, and the cooperation of private industry, Michigan can work to prevent Chronic Wasting Disease and other potential problems to maintain a healthy and safe future for Michigan wildlife;

WHEREAS, it is imperative that Michigan remain vigilant and act decisively in adopting measures to protect native deer and elk from Chronic Wasting Disease and reduce vulnerabilities to the spread of the disease;

WHEREAS, in light of the potential impact on Michigan's wildlife population, the Governor's Chronic Wasting Disease Task Force, chaired by Dr. Howard Tanner, has recommended that the licensing, application, registration, and inspection functions for privately-owned cervidae livestock facilities and operations be transferred to the Department of Natural Resources;

WHEREAS, the Governor's Chronic Wasting Disease Task Force has also recommended a complete audit of Michigan's privately-owned cervidae livestock facilities and operations, which under current budgetary conditions can most effectively be performed by the Department of Natural Resources;

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to effect changes in the organization of the executive branch of state government;

NOW THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in me by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

A. As used in this Order:

1. "Biosecurity" means measures, actions, or precautions taken to prevent the transmission of disease in, among, or between free-ranging and privately-owned cervidae species.

2. "Cervidae" means members of the cervidae family, including, but not limited to, deer, elk, moose, reindeer, and caribou.

3. "Cervidae Act" means the Privately Owned Cervidae Producers Marketing Act, 2000 PA 190, MCL 287.951 to 287.969.

4. "Cervidae livestock facility" means a privately-owned cervidae livestock operation on privately-controlled lands capable of holding cervidae.

5. "Cervidae livestock operation" means an operation that contains 1 or more privately-owned cervidae involving the producing, growing, propagation, using, harvesting, transporting, exporting, importing, or marketing of cervidae or cervidae products.

6. "Cervidae products" means any products, co-products, or by-products of cervidae, including antler, antler velvet, meat, or any part of the animal.

7. "Commission on Agriculture" means the commission created under Section 1 of 1921 PA 13, MCL 285.1 and designated as the head of the Department of Agriculture under Section 176 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.276.

8. "Department of Agriculture" means the principal department of state government created under Section 1 of 1921 PA 13, MCL 285.1, and Section 175 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.275.

9. "Department of Natural Resources" means the principal department of state government created under Section 250 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.350, and Section 501 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.501, as modified by Executive Order 1995-18, MCL 324.99903.

10. "Type II Transfer" means that type of transfer as defined in Section 3(b) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103(b).

II. TRANSFER OF RESPONSIBILITIES FOR REGULATUION AND BIOSECURITY OF CERVIDAE LIVESTOCK FACILITIES AND OPERATIONS

A. All of the following authority, powers, duties, functions, responsibilities, and rule-making authority of the Department of Agriculture under the Cervidae Act are transferred by Type II Transfer to the Department of Natural Resources:

1. The administration of the Cervidae Act as authorized under Subsection (1) of Section 3 of the Cervidae Act, MCL 287.953, consistent with the provisions of this Order.

2. Enforcement of Subsection (5) of Section 4 of the Cervidae Act, MCL 287.954, regarding the movement, importing, or exporting of cervidae or cervidae products.

3. Processing of applications for registration, issuance of registrations, provision for registration classes, determination of standards, and charging fees for initial and renewal applications under the Cervidae Act.

4. Receipt of applications for registration and adoption of standards under Subsection (1) of Section 6 of the Cervidae Act, MCL 287.956.

5. Receipt of business plans and requests for additional information considered necessary by the department under Subsection (2) of Section 6 of the Cervidae Act, MCL 287.956.

6. Transmission of notices to local units of government, receipt of responses, and determinations related to notices under Subsection (3) of Section 6 of the Cervidae Act, MCL 287.956.

7. Provision of informal departmental reviews of applications under Subsection (5) of Section 6 of the Cervidae Act, MCL 287.956.

8. Receipt of notices, extension of time periods, and verification of removals of wild cervidae under Subsection (1) of Section 7 of the Cervidae Act, MCL 287.957.

9. Transmission of notices under Subsection (2) of Section 7 of the Cervidae Act, MCL 287.957.

10. Provision of informal departmental reviews of applications under Subsection (4) of Section 7 of the Cervidae Act, MCL 287.957.

11. Conduct of any hearings or administrative proceedings under the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328, authorized by the Cervidae Act.

12. Return of any registration fees under the Cervidae Act.

13. Receipt of notices under Subsection (7) of Section 8 of the Cervidae Act, MCL 287.958.

14. Inspections and determinations under Section 12 of the Cervidae Act, MCL 287.962.

15. Denials, suspensions, revocations or limitations of or on registrations under Section 14 of the Cervidae Act, MCL 287.964.

16. Receipt of notices under Subsection (2) of Section 17 of the Cervidae Act, MCL 287.967.

17. Recovery of reasonable costs and attorney fees under Section 18 of the Cervidae Act, MCL 287.968.

B. All of the authority, powers, duties, functions, responsibilities, and rule-making authority of the Commission of Agriculture under Section 6 of the Cervidae Act, MCL 287.956 are transferred by Type II Transfer to the Department of Natural Resources.

C. All of the following authority, powers, duties, functions, responsibilities, and rule-making authority of the Director of the Department of Agriculture, or his or her designee, under the Cervidae Act are transferred by Type II Transfer to the Department of Natural Resources:

1. Demands for documentation under Subsection (2) of Section 5 of the Cervidae Act, MCL 287.955.

2. Forwarding copies of applications to state departments under Subsection (3) of Section 6 of the Cervidae Act, MCL 287.956.

3. Inspections, determinations regarding standards and requirements, issuance of registrations, and affirmation of denials under Subsections (4) and (5) of Section 6 of the Cervidae Act, MCL 287.956.

4. Inspections, determinations regarding standards and requirements, issuance of registrations, and affirmation of denials under Subsection (1) of Section 7 of the Cervidae Act, MCL 287.957.

5. Determinations and denials under Subsection (2) of Section 7 the Cervidae Act, MCL 287.957.

6. Determinations regarding standards and requirements, issuance of registrations, and affirmation of denials under Subsection (4) of Section 7 of the Cervidae Act, MCL 287.957.

7. Activities related to the memorandum of understanding under Section 10 of the Cervidae Act, MCL 287.960.

8. Inspections under Section 12 of the Cervidae Act, MCL 287.962.
 9. Activities described under Section 13 of the Cervidae Act, MCL 287.963.
 10. Issuance of orders as authorized under Cervidae Act.
 11. Promulgation of rules necessary to implement and enforce the Cervidae Act.
 12. Actions relating to enforcement authorized under Section 18 of the Cervidae Act, MCL 287.968.
- D. All of the following authority, powers, duties, functions, responsibilities, and rule-making authority of the Department of Natural Resources under the Cervidae Act are transferred by Type II Transfer to the Department of Agriculture:
1. Consultation regarding the administration of the Cervidae Act as authorized under Subsection (1) of Section 3 of the Cervidae Act, MCL 287.953.
 2. Consultation regarding the amendment updating or supplementing of standards under Subsection (1) of Section 6 of the Cervidae Act, MCL 287.956.
 3. Receipt of copies of applications under Subsection (3) of Section 6 of the Cervidae Act, MCL 287.956.
 4. Participation in informal departmental reviews under Subsection (5) of Section 6 of the Cervidae Act, MCL 287.956, as applicable.
 5. Participation in informal departmental reviews under Subsection (4) of Section 7 of the Cervidae Act, MCL 287.957, as applicable.
 6. Consultation with other state departments under Subsection (2) of Section 14 of the Cervidae Act, MCL 287.964.

III. IMPLEMENTATION

A. The Department of Agriculture shall assist the Department of Natural Resources in the exercise of authority, powers, duties, functions, and responsibilities transferred to the Department of Natural Resources under this Order. The Department of Agriculture shall share with the Department of Natural Resources information in the possession of the Department of Agriculture regarding privately-owned cervidae livestock facilities and operations, including information obtained under the Animal Industry Act, 1988 PA 466, MCL 287.701 to 287.745, and information necessary for the Department of Natural Resources to conduct an audit of the privately-owned cervidae livestock facilities and operations.

B. The Director of the Department of Agriculture and the Director of the Department of Natural Resources shall immediately initiate coordination to facilitate the implementation of the transfers under this Order.

C. The Director of the Department of Natural Resources shall provide executive direction and supervision for the implementation of all transfers to the Department of Natural Resources under this Order. The functions transferred to the Department of Natural Resources under this Order shall be administered under the direction and supervision of the Director of the Department of Natural Resources, including but not limited to, any prescribed functions of rule-making, licensing, registration, and the prescription of rules, regulations, standards, and adjudications.

D. The Director of the Department of Agriculture shall provide executive direction and supervision for the implementation of all transfers to the Department of Agriculture under this Order. The functions transferred to the Department of Agriculture under this Order shall be administered under the direction and supervision of the Director of the Department of Agriculture, including but not limited to, any prescribed functions of rule-making, licensing, registration, and the prescription of rules, regulations, standards, and adjudications.

E. All records, personnel, property, and funds used, held, employed, or to be made available to the Department of Agriculture for the activities transferred to the Department of Natural Resources under this Order are transferred to the Department of Natural Resources.

F. All records, personnel, property, and funds used, held, employed, or to be made available to the Department of Natural Resources for the activities transferred to the Department of Agriculture under this Order are transferred to the Department of Agriculture.

G. The Director of the Department of Agriculture and the Director of the Department of Natural Resources shall develop memoranda of record identifying any pending settlements, issues of compliance with any applicable state or federal laws or regulations, or other obligations to be resolved by the Department of Agriculture.

H. The Director of the Department of Natural Resources and the Director of the Department of Agriculture shall develop memoranda of record identifying any pending settlements, issues of compliance with any applicable state or federal laws or regulations, or other obligations to be resolved by the Department of Natural Resources.

I. Any authority, duties, powers, functions, and responsibilities transferred to the Department of Natural Resources in this Order and not mandated otherwise statutorily may in the future be reorganized to promote efficient administration by the Director of the Department of Natural Resources.

J. Any authority, duties, powers, functions, and responsibilities transferred to the Department of Agriculture in this Order and not mandated otherwise statutorily may in the future be reorganized to promote efficient administration by the Director of the Department of Agriculture.

K. The Director of the Department of Natural Resources may perform a duty or exercise a power conferred by law or executive order upon the Director of the Department of Natural Resources at the time and to the extent the duty or power is delegated to the Director of the Department of Natural Resources by law or order.

L. The Director of the Department of Agriculture may perform a duty or exercise a power conferred by law or executive order upon the Director of the Department of Agriculture at the time and to the extent the duty or power is delegated to the Director of the Department of Agriculture by law or order.

M. The Director of the Department of Natural Resources may by written instrument delegate a duty or power conferred by law or this Order and the person to whom the duty or power is delegated may perform the duty or exercise the power at the time and to the extent the duty or power is delegated by the Director of the Department of Natural Resources.

N. The Director of the Department of Agriculture may by written instrument delegate a duty or power conferred by law or this Order and the person to whom the duty or power is delegated may perform the duty or exercise the power at the time and to the extent the duty or power is delegated by the Director of the Department of Agriculture.

O. The Director of the Department of Natural Resources shall administer the assigned functions transferred under this Order in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

P. The Director of the Department of Agriculture shall administer the assigned functions transferred under this Order in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

IV. MISCELLANEOUS

A. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary to implement this Order.

B. All rules, orders, contracts, and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, or repealed.

C. Any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected by this Order, shall not abate by reason of the taking effect of this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by this Order.

D. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

History: 2004, E.R.O. No. 2004-2, Eff. June 14, 2004

Compiler's Notes: For transfer of powers and duties of department of natural resources and environment to department of natural resources, see E.R.O. No. 2011-1, compiled at MCL 324.99921.