

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #3 ■

Do Not Mark In This Box

FILED

2004 AUG 23 P 2: 35

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: BOC DNR Wildlife Resources Section TITLE NUMBER: 58

CITE AUTHORITY: 20-1-7(30), 20-2-11 and 20-2-13

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 63

TITLE OF RULE BEING AMENDED: Commercial Sale of Wildlife

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: 8/23/04

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) DNR Wildlife Resources Section
1900 Kanawha Blvd., E.
Capitol Complex, Bldg. 3,
Charleston, WV 25305

LEGISLATIVE RULE TITLE: ~~58-63~~ Commercial Sale of Wildlife

1. Authorizing statute(s) citation 20-1-7-(30), 20-2-11 and 20-2-13

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 28, 2004

b. What other notice, including advertising, did you give of the hearing?
News Release

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 28, 2004

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached X No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 23, 2004

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Curtis I. Taylor
DNR Wildlife Resources Section
1900 Kanawha Blvd., E.
Capitol Complex, Bldg. 3, Room 842
Charleston, WV 25301

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

same

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

n/a

b. Date of hearing or comment period:

n/a

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

n/a

d. Attach findings and determinations and reasons:

Attached n/a

Curtis Taylor

From: "Wildlife" <wildlife@dnr.state.wv.us>
To: "Curtis Taylor" <ctaylor@dnr.state.wv.us>
Sent: Monday, July 19, 2004 3:32 PM
Subject: Fw: DNR Wildlife Resources Section Files Legislative Rule for Review

----- Original Message -----

From: "G.R. Welsh" <gw5@umail.umd.edu>
To: <wildlife@dnr.state.wv.us>
Sent: Monday, July 19, 2004 12:40 PM
Subject: DNR Wildlife Resources Section Files Legislative Rule for Review

> Dear Sirs:

>
> I would like to express my support for the recently announced proposed
> legislative rule changes dealing with the importation of carcasses from
> areas having Chronic Wasting Disease. I assume there are already
> regulations dealing with the importation of live deer or other cervids
> from these areas. This is not to say i am opposed to the importation of
> elk for the purposes of reintroduction, by the State, as long as the
> health of the herd's background has been closely monitored.

>
> Thank you,

>
> G.R. Welsh, Jr.
> Shepherdstown, WV

> ---
> [This e-mail was scanned for viruses by F-Prot/Declude Antivirus]

>
>

[This e-mail was scanned for viruses by F-Prot/Declude Antivirus]

Billie Shearer

From: Sherri Young [syoung@dnr.state.wv.us]
Sent: Wednesday, August 11, 2004 10:47 AM
To: gw5@umail.umd.edu
Cc: 'Billie Shearer'
Subject: Commercial Sale of Wildlife

Dear Mr. Welsh:

Thank you for providing comment on the Legislative Rule *Commercial Sale of Wildlife*, recently filed by the West Virginia Division of Natural Resources that prohibits the importation of live cervids, intrastate movement of live cervids within the state's borders and importation of carcasses from areas having chronic wasting disease. This rule has been prepared to address the emerging and ongoing risks associated with chronic wasting disease infection to the state's white-tailed deer herd.

The West Virginia Division of Natural Resources welcomes comments from the public on its various management programs and appreciates your support on this important issue.

Paul R. Johansen, Assistant Chief
In Charge of Game Management

**TITLE 58
LEGISLATIVE RULE
DIVISION OF NATURAL RESOURCES**

**SERIES 63
COMMERCIAL SALE OF WILDLIFE**

SUMMARY

Title 58, Series 63, Commercial Sale of Wildlife establishes regulations to govern the sale or transfer of wildlife raised, imported or captured under licenses issued by the Division.

**TITLE 58
LEGISLATIVE RULE
DIVISION OF NATURAL RESOURCES**

**SERIES 63
COMMERCIAL SALE OF WILDLIFE**

CIRCUMSTANCES

The Division of Natural Resources proposed to add 4.10 to prohibit the importation of cervid carcasses from states which have diagnosed chronic wasting disease and captive deer facilities.

■
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Series 63, Commercial Sale of Wildlife

Type of Rule: X Legislative _____ Interpretive _____ Procedural

Agency: Division of Natural Resources, Wildlife Resources Section

Address: 1900 Kanawha Blvd., E.

Capitol Complex, Bldg. 3, Room 842

Charleston, WV 25305

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	0	0	0	0	0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:
Cost to implement this rule are negligible.

3. Objectives of These Rules:
To establish regulations to govern the sale or transfer of wildlife raised, imported or captured under licenses issued by the Division.

Rule Title: Series 6, Commercial Sale of Wildlife

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

Chronic wasting disease could potentially cause significant losses in the \$249 million annual economic benefits of deer hunting in West Virginia.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

Chronic wasting disease could significantly decrease the recreational opportunities associated with the deer herd in West Virginia.

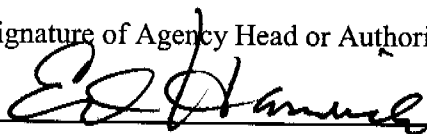
C. Economic Impact on Citizens/Public at Large.

Loss of revenue associated with deer hunting and viewing could seriously injure small businesses associated with these activities.

Date:

8/19/04

Signature of Agency Head or Authorized Representative:



TITLE 58
LEGISLATIVE RULES
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES

FILED

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SERIES 63
COMMERCIAL SALE OF WILDLIFE

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§ 58-63-1. General.

1.1. Scope. -- This legislative rule governs the sale or transfer of wildlife raised, imported, or captured under licenses issued by the Division pursuant to W. Va. Code §§20-2-11, 20-2-13, 20-2-47, 20-2-48, 20-2-51, and 20-2-52.

1.2. Authority. -- W. Va. Code §§20-2-11, 20-1-7, and 20-2-13.

1.3. Filing Date. --

1.4. Effective Date. --

§ 58-63-2. Definitions.

2.1. "Facility" means the property on which a person engages in an activity for which one of the licenses listed in Subsection 2.2 of this rule or issued pursuant to W. Va. Code §20-2-51 and 20-2-52, is required by statute and includes, but is not limited to, buildings, enclosures, grounds, impoundments, and ponds.

2.2. "Licensee" means a person who has been granted one of the following permits and licenses issued by the Division or issued pursuant to W. Va. Code §§20-2-51 and 20-2-52:

2.2.1. A license for the operation of a private game preserve for the propagation of wild animals or wild birds for commercial purposes (W. Va. Code §20-2-47). The Division will issue three (3) categories of this license:

2.2.1.a. Commercial game farm license. This license authorizes the licensee to breed or raise wild animals and wild birds as specified by the license, to sell the wild animals and wild birds dead or alive, or to sell the eggs of birds in accordance with the provisions of this rule and under the terms and conditions of the license. This license does not include the acquisition or holding of foxes or raccoons trapped from the wild by a legal trapper (W. Va. Code §20-2-11);

2.2.1.b. Hound coursing/training pen game farm license. This license authorizes the licensee to purchase, hold, and release into hound coursing/training pens in accordance with the provisions of this rule and under terms and conditions of the license, live foxes or raccoons obtained from the wild by a legal trapper (W. Va. Code §20-2-11) or live wildlife obtained by means specified under Section 3 of this rule; and

2.2.1.c. Incorporated sportsmen club game farm license. This license authorizes incorporated sportsmen clubs in West Virginia to purchase, hold, and release in accordance with the provisions of this rule and under terms and conditions of the license, live foxes and raccoons obtained from the wild by a legal trapper (W. Va. Code §20-2-11) or other means specified under Section 3 of this rule for the purpose of restocking; and

2.2.2. A license for the operation of a private plant, pond, or business for the propagation, sale, or purchase of fish, frogs, turtles, or other forms of aquatic life for commercial purposes (W. Va. Code §20-2-48).

This license authorizes the licensee to breed or raise the species specified by the license and to buy and sell those species dead or alive or the eggs of the species in accordance with the provisions of this rule.

2.3. "Wildlife" means wild animals, wild birds, fish, reptiles, amphibians, mollusks, crustaceans, and all forms of aquatic life used as fish bait, whether dead or alive.

2.4. "Legal Trapper" means a trapper possessing a valid West Virginia trapping license or its equivalent (W. Va. Code §§20-2-27 and 20-2-28).

2.5. "Hound Coursing/Training Pen" means a permanent enclosure of no less than forty (40) acres from which there is no reasonable expectation of escape of the animals placed within, except that fox hound coursing/training pens must enclose no less than one hundred (100) acres.

2.6. "Incorporated Sportsmen Club" means a club, organization, or group formed for a common purpose to further the tradition of hunting, fishing, or trapping and registered with the Secretary of State for that purpose.

2.7. "Native" means commonly accepted and documented in scientific literature to live in the wild as part of the present or historic natural fauna of this State.

2.8. "Cervid" means all members of the deer family, native or exotic.

2.9. All other terms have the meaning prescribed in W. Va. Code §20-1-2.

§ 58-63-3. Wildlife Acquisition.

3.1. Wildlife held by a licensee shall have been:

3.1.1. Obtained from a person licensed by the Division to sell wildlife in this State;

3.1.2. Imported into this State under the provisions of W. Va. Code §20-2-13;

3.1.3. Born at the licensee's facility as the offspring of wildlife legally held by the licensee; or

3.1.4. Obtained from a legal trapper under the provisions of W. Va. Code §20-2-11. The animal, captured within the county in which the licensee is to hold and release the animal or captured from counties specified by the Director for which inter-county sale or possession transfer may occur, shall only be acquired under terms and conditions of the license.

3.2. If a licensee acquires wildlife in the manner specified in Subdivision 3.1.1 of this rule, the licensee shall retain a bill of sale from the supplying vendor as proof of legal acquisition and carry it while transporting the wildlife to and from the licensee's facility.

3.3. If a licensee acquires wildlife in the manner specified in Subdivision 3.1.2 of this rule, the licensee shall retain the importation permit issued by the Division, the health certificate from the state of origin, and a bill of sale from the supplying vendor as proof of legal acquisition and carry these documents while transporting the wildlife to and from the licensee's facility.

3.4. If a licensee acquires wildlife in the manner specified in Subdivisions 3.1.1, 3.1.2, and 3.1.3 of this rule, the licensee shall keep a record in accordance with the provisions of Section 5 of this rule.

3.5. If a licensee acquires wildlife in the manner specified in Subdivision 3.1.4 of this rule, the licensee shall ear tag the foxes and raccoons with a tag supplied by the Division within three (3) days of purchase and

before release into the wild or a hound coursing/training pen and shall keep a record in accordance with the provisions of Section 5 of this rule.

3.6. If a legal trapper acquires live foxes and raccoons under the provisions of W. Va. Code §20-2-11 for the purpose of sale or any other form of possession transfer, the trapper shall only possess the live foxes and raccoons during the trapping season and sixty (60) days thereafter. Live foxes and raccoons held for thirty (30) days or less shall be held according to temporary or permanent cage/pen/housing requirements as specified under the Division Rule Miscellaneous Permits and Licenses 58 CSR 64 and foxes or raccoons held over thirty (30) days shall be held according to permanent cage/pen/housing requirements as specified under the Division Rule Miscellaneous Permits and Licenses 58 CSR 64.

3.7. If a licensee acquires cervids in a manner specified in this rule after September 1, 2002, the licensee shall tattoo the cervids in the ear and affix a metal tag with a unique identification number.

§ 58-63-4. Wildlife Sales or Transfer.

4.1. A licensee or legal trapper that sells or transfers possession of wildlife shall provide a bill of sale or document to each person who purchases or receives the wildlife. The licensee or legal trapper shall maintain the bill of sale or document with the wildlife while it is being transported and the bill of sale or document shall, at a minimum, contain the following information:

4.1.1. The licensee's or legal trapper's name and address;

4.1.2. The licensee's or legal trapper's license number;

4.1.3. The date of the sale or transfer;

4.1.4. The purchaser's or receiver's name and address; and

4.1.5. A description of the wildlife sold or transferred, including the number of each species sold or transferred and any unique identification.

4.1.5.a. For sales of fish, this description shall include the number of pounds of each species sold.

4.2. Legal trappers who acquire live foxes and raccoons under the provisions of W. Va. Code §20-2-11 shall only sell or transfer possession of live foxes or raccoons to licensed hound coursing/training pens or incorporated sportsmens clubs located within the county from which the fox or raccoon was captured or located in the counties specified by the Director for which inter-county sale or possession transfer may occur.

4.3. The licensee under the provisions of Paragraphs 2.2.1.b. and 2.2.1.c. of this rule shall not transfer possession or resell any foxes or raccoons acquired under Subdivision 3.1.4 of this rule.

4.4. The Director shall in October of each year publish a list of specified counties for which the inter-county sale or possession transfer of live foxes and raccoons obtained under provisions of W. Va. Code §20-2-11 may occur.

4.5. The Director shall suspend the sale or any other form of relocation of live foxes and raccoons acquired under the provisions of W. Va. Code §20-2-11 in any county or portions thereof to protect public health and the welfare of native wildlife.

4.6. The Director may suspend the importation, sale, and relocation of wildlife acquired or held under provisions of the W. Va. Code to protect the public health and the welfare of native wildlife.

4.7. In order to protect the public health and the welfare of native wildlife, a licensee may not import cervids into West Virginia. When the United States Department of Agriculture implements rules and regulations on the interstate transportation and sale of cervids, the interstate movement of cervids into West Virginia will be governed by the United States Department of Agriculture rules and regulations. The Division of Natural Resources, however, may import wildlife during the normal course of its mission.

4.8. A license may sell or relocate cervids within West Virginia until January 15, 2004, or until the United States Department of Agriculture establishes rules and regulations regarding the intrastate transportation and sale of cervids, whichever comes later. When the United States Department of Agriculture implements rules and regulations on the intrastate transportation and sale of cervids, the intrastate movement within West Virginia will be governed by the United States Department of Agriculture rules and regulations.

4.9. The Director may allow red deer or elk, that are consigned to slaughter, to be transported directly to meat processing facilities for slaughter and processing. Provided that, any such movement of red deer or elk shall only be allowed through written authorization of the Director.

4.10. The importation of cervid carcasses and carcass parts into West Virginia from a state or province which has diagnosed chronic wasting disease or from captive cervid facilities in any state or province is prohibited, except for the meat from which all bones have been removed, the cape, the antlers or antlers and skull plate from which all meat or tissue has been removed, cervid canines, and finished taxidermy heads.

§ 58-63-5. Record Keeping.

5.1. A licensee shall maintain accurate and current records of all wildlife acquisitions and sales or possession transfers and shall also maintain records on all wildlife born at the licensee's facility. A licensee shall maintain records of all cervids and other wildlife escaping from the facility and report escapes to the district law enforcement captain within 24 hours of discovery. All records shall be either typed or written in plain and legible English and shall include the full name, address, and telephone number of each person with whom the licensee has conducted a wildlife transaction and a commercial game farm licensee shall maintain these records on forms supplied by the Director. The records shall contain the ear tag number, county of origin, date, and disposition for all live foxes and raccoons acquired in the manner specified in Subdivision 3.1.4 of this rule. A licensee shall maintain all records at his or her facility for a minimum period of three (3) years and a copy of the records of all acquisition, sales, or possession transfers shall be forwarded to the district law enforcement captain within 15 days of the transaction.

§ 58-63-6. Inspections.

6.1. A licensee's facility, records, or wildlife may be inspected by an authorized representative of the director, on a case by case basis, to assure compliance with all requirements mandated by statute or rule or by the terms and conditions of the licensee's permit or license.

6.2. The Director shall require a licensee to submit appropriate samples of the wildlife for testing and enroll in federal government national disease prevention programs such as, but not limited to, tuberculosis free certification and chronic wasting disease free certification, as a term and condition of the wildlife acquisition, sale, or possession transfer to protect public health and the welfare of native wildlife.

§ 58-63-7. Possession For Commercial Purposes Prohibited.

7.1. Except for persons possessing a license or permit or specifically designated by authority of W. Va. Code §20-2-11, it is illegal for any person to take, or attempt to take, from the wild or possess for commercial purposes any species of wildlife native to this State, either dead or alive, or to take or attempt to take by any means, or to sell, trade, barter, expose or offer for sale, trade or barter, or to possess or transport, or to have in

one's possession with the intent to transport into or out of the state any native wildlife, their eggs, or part thereof for commercial purposes.

§ 58-63-8. Penalties.

8.1. A violation of this rule constitutes a misdemeanor for each offense in accordance with W.Va. Code §20-2-11 and for each misdemeanor offense a person is subject to the penalties provided for in W. Va. Code §20-7-9.