

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**
Form #7

Do Not Mark In This Box
Filing Date

FILED

2002 SEP 27 A 9:54

WEST VIRGINIA
SECRETARY OF STATE

Effective Date

October 1, 2002

NOTICE OF AN EMERGENCY RULE

AGENCY: BOC - Division of Natural Resources TITLE NUMBER: 58

CITE AUTHORITY: W. Va. Code 20-1-7(30). 20-2-11. 20-2-13

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: Commercial Sale Of Wildlife

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:


Authorized Signature

Use additional sheets if necessary

SCANNED

54.40



DIVISION OF NATURAL RESOURCES
Wildlife Resources Section
Capitol Complex, Building 3, Room 812
1900 Kanawha Boulevard, East
Charleston WV 25305-0664
Telephone (304) 558-2771
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TDD 1-800-354-6087

Bob Wise
Governor

Ed Hamrick
Director

September 25, 2002

The Honorable Joe Manchin, III
West Virginia Secretary of State
The State Capitol, Suite 157 K
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0770

Dear Mr. Manchin:

Attached, please find documentation associated with an emergency rule that I have approved which would specifically prohibit the importation of cervids, including deer and elk, into the State of West Virginia. This emergency 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.

Thank you for your attention to the filing of this emergency rule. Should you have any questions or require additional information in this regard, please contact me.

Sincerely,


Ed Hamrick
Director

Attachments



EMERGENCY RULE QUESTIONNAIRE

DATE: 9/25/02

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Division of Natural Resources
Room 812, Building 3, Capitol Complex
Charleston, West Virginia 25305
Telephone Number 304/558-2771

EMERGENCY RULE TITLE: Commercial Sale of Wildlife

1. Date of filing _____

2. Statutory authority for promulgating emergency rule:
West Virginia Code Chapter 20-1-7(30), 20-2-11, 20-2-13

3. Date of filing of proposed legislative rule: _____

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? _____
Amends 58CSR63

5. Has the same or similar emergency rule previously been filed and expired?
No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.

Chronic Wasting Disease has spread to several states and a Canadian province. There is no known test for live animals. This disease would cause serious biological and economic problems in managing the state's wildlife resources. Transportation of cervids between states is believed to be a primary factor in spreading the disease. A ban on the importation of cervids into West Virginia is necessary to reduce this risk.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

Not Applicable

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

Chronic Wasting Disease presents a serious threat to the state's wildlife resources and there is no live animal test currently available to diagnose this disease. Current West Virginia law does not prevent the importation of cervids into W. Va., a primary means of transmission of this disease. This proposed change would ban the importation of cervids and allow effective monitoring of existing captive cervid herds in the state.

TITLE 58
LEGISLATIVE RULE
DIVISION OF NATURAL RESOURCES

SERIES 63
COMMERCIAL SALE OF WILDLIFE

CIRCUMSTANCES

The recent discovery of chronic wasting disease (CWD) in deer and elk in new locations in a number of states has led to USDA issuing a declaration of emergency regarding CWD and development of a national management plan. This disease is especially serious in that there is no known test for live animals. Chronic wasting disease is a progressive fatal disease of the nervous system in cervids. Although there has been no known cases in humans, the consumption of deer meat infected with the disease is considered a risk.

The recreational hunting and wildlife viewing associated with the deer herd and associated economic benefits would drastically decrease should CWD become established in the West Virginia deer herd. Millions of dollars have been spent and dedicated to the elimination and control of CWD in states where it has occurred. Prevention of the introduction of CWD into West Virginia is the most economically prudent course of action. Recent surveys of hunters in Wisconsin where the disease occurs indicates that 36% of hunters may not participate in deer hunting this fall because of their concern for CWD. A 36% decline in deer hunting in West Virginia would result in a loss of a minimum of \$2.6 million in license sales and a total loss of \$89 million from deer hunting to the state's economy.

A primary method of spreading the disease has been through the interstate transfer of deer and elk into captive pens. Immediate action must be taken to change West Virginia's laws to prevent the importation of cervids into the state and decrease the risks associated with CWD and other wildlife associated diseases from becoming established in our native wildlife.

■
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Commercial Sale of Wildlife

Type of Rule: Legislative Interpretive Procedural

Agency: Division of Natural Resources

Address: Room 812, Building 3, Capitol Complex

Charleston, West Virginia 25305

Telephone Number 304/558-2771

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:
Costs to implement this rule are negligible.

3. Objectives of These Rules:
This emergency rule is being filed to stop the importation of cervids into West Virginia to minimize the risk of spreading chronic wasting disease into the native deer herd.

Rule Title: 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:

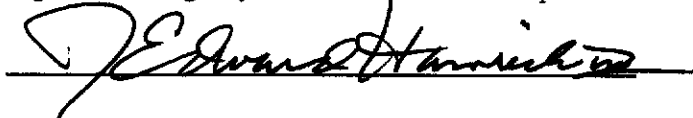
Chronic wasting disease could significantly decrease the recreational opportunities associated with the deer herd in West Virginia.

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. There would be a minimal increase in operational costs for operators of commercial game farms.

Date: 9/25/02

Signature of Agency Head or Authorized Representative:

A handwritten signature in black ink, appearing to read "Edward Hamrick", is written over a horizontal line.

**TITLE 58
LEGISLATIVE RULES
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES**

**SERIES 63
COMMERCIAL SALE OF WILDLIFE**

FILED
2002 SEP 27 A 9:54
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§ 58-63-1. General.

1.1. Scope. -- This legislative rule establishes regulations to govern 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 and 20-2-48, 20-2-51, and 20-2-52.

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

1.3. Filing Date. -- May 10, 1996.

1.4. Effective Date. -- May 10, 1996.

§ 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 Section 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); and

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.

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 such species as 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.

~~2.8.2.9.~~ 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, 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 and 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 under terms and conditions of the license.

3.2. If a licensee acquires wildlife in the manner specified in Section 3.1.1 of this rule, a bill of sale from the supplying vendor must be retained by the licensee as proof of legal acquisition and be carried while transporting the wildlife to and from the facility.

3.3. If a licensee acquires wildlife in the manner specified in Section 3.1.2 of this rule, the importation permit issued by the Division, health certificate from the state of origin, and a bill of sale from the supplying vendor must be retained by the licensee as proof of legal acquisition and be carried while transporting the wildlife to and from the facility.

3.4. If a licensee acquires wildlife in the manner specified in Section 3.1.1, 3.1.2, and 3.1.3 of this rule, a record must be kept by the licensee in accordance with the provisions of Section 5 of this rule.

3.5. If a licensee acquires wildlife in the manner specified in Section 3.1.4 of this rule the foxes and raccoons must be ear tagged by the licensee 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 a record must be kept by the licensee in accordance with the provisions of Section 5 of this rule.

3.6. If a legal trapper acquires live foxes and raccoons under provisions of W. Va. Code § 20-2-11 for the purpose of sale or any other form of possession transfer, the live foxes and raccoons shall only be possessed by the trapper 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 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 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 wildlife will be tattooed in the ear and a metal tag affixed with a unique identification number.

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

4.1. The licensee and 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 bill of sale or document shall be maintained with the wildlife while transporting and 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 which 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 Section 2.2.1.b. and 2.2.1.c. of this rule shall not transfer possession or resell any foxes or raccoons acquired under Section 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 shall prohibit the importation of cervids into West Virginia to protect the public health and the welfare of native wildlife. Provided that, the Division of Natural Resources retains the ability to import all wildlife during the normal course of it's mission.

4.7 The Director shall prohibit the sale and relocation of cervids within West Virginia to protect the health and public welfare of native wildlife.

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

§ 58-63-5. Record Keeping.

5.1. Accurate and current records of all wildlife acquisitions and sales or possession transfers shall be maintained by the licensee. Records on all wildlife born at the licensee's facility shall also be maintained. Records of all cervids and other wildlife escaping from the facility shall be maintained and escapes shall be reported to 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 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 Section 3.1.4. of this rule. All records shall be maintained by the licensee 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 the licensee to submit appropriate samples for testing and/or 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 persons possessing a license or permit issued for such purpose 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.

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.