

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

Form #3

Do Not Mark In This Box

FILED

2012 NOV 18 P 4: 51

WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: BOC Division of Natural Resources TITLE NUMBER: 58

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

AMENDMENT TO AN EXISTING RULE: YES  NO

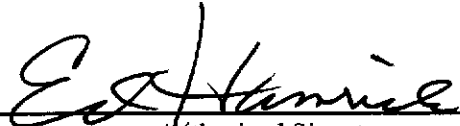
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 63

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

SCANNED

5.40

**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: 11/15/02

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No ) Curtis I. Taylor  
Division of Natural Resources  
Wildlife Resources Section  
Capitol Complex, Bldg. 3, Room 842  
Charleston, WV 25305

LEGISLATIVE RULE TITLE: Commercial Sale of Wildlife

1. Authorizing statute(s) citation West Virginia Code Chapter 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:  
10/4/02

b. What other notice, including advertising, did you give of the hearing?  
No public hearing was held. There was a 30-day comment period which was also  
advertised in a Statewide News Release distributed October 3, 2002.

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
October 30, 2002

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)

n/a

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- 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, Chief

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DNR Wildlife Resources Section

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Capitol Complex, Bldg. 3, Room 842

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Charleston, WV 25305

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- 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)

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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

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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

**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 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.

## FISCAL NOTE FOR PROPOSED RULE

**Rule Title:** Series 63, Commercial Sale of Wildlife

**Type of Rule**      X      **Legislative**                  **Interpretive**                  **Procedural**

**Agency**    Division of Natural Resources, Wildlife Resources Section

**Address**    Capitol Complex

Building 3, Room 842

Charleston, WV 25305

**1. Effect of Proposed Rule**

	ANNUAL			FISCAL YEAR	
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<b>ESTIMATED TOTAL COST</b>	0	0	0	0	0
<b>PERSONAL SERVICES</b>					
<b>CURRENT EXPENSE</b>					
<b>REPAIRS &amp; ALTERATIONS</b>					
<b>EQUIPMENT</b>					
<b>OTHER</b>					

**2. Explanation of above estimates:** Cost to implement this rule are negligible.

**3. Objectives of these rules:** Establishes regulations to govern the sale or transfer of wildlife raised, imported or captured under licenses issued by the Division.

**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.

**Rule Title:** Series 63, Commercial Sale of Wildlife

**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 of operators of commercial game farms.

**Date:** 11/18/02

**Signature of Agency or  
Authorized Representative:**

  
ED HAMRICK, DIRECTOR

FILED

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

2002 NOV 18 P 4:51

WEST VIRGINIA  
SECRETARY OF STATE

**SERIES 63  
COMMERCIAL SALE OF WILDLIFE**

**§ 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.



**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  
Fax (304) 558-3147  
TDD 1-800-354-6087

Bob Wise  
Governor

Ed Hamrick  
Director

November 8, 2002

Dr. Ronn A. Grandia, M.D.  
Board Director, West Virginia Deer Farmers Association  
P.O. Box B  
Fraziers Bottom, West Virginia 25082

Dear Dr. Grandia:

Thank you for providing written comment on the emergency rule recently filed by the West Virginia Division of Natural Resources that prohibits the importation of live cervids into West Virginia and the intrastate movement of live cervids within the state's borders. 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.

The West Virginia Division of Natural Resources welcomes comments from the public on its various management programs. We are pleased to receive your comments as they relate to this emergency rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Curtis I. Taylor".

Curtis I. Taylor, Chief  
Wildlife Resources Section

cc: Billie Shearer (with attachment)



Date Sent: 10/30/02

Number of Pages Including Cover Sheet

4

Sent To: CURTIS TAYLOR

Company:

Fax Phone Number: (304) 558-3147

Sent By: Rona Grandia

Phone Number: (240) 446-5487

(Please call if all pages are not received)

Comments:

Four horizontal lines for comments.

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October 30, 2002

Curtis I. Taylor  
DNR Wildlife Resource Section  
Capitol Complex, Building 3  
Room 842  
Charleston, WV 25305

Board Director, West Virginia Deer Farmers Association  
Ron A. Grandia, M.D.  
P.O. Box B  
Fraziers Bottom, WV 25082

Dear Sirs:

Less than one week ago we became aware of the passage of an emergency amendment to an existing rule via the Division of Natural Resources. This rule banned Intra State and inter state of privately owned cervids in the state of West Virginia. This was passed due to chronic wasting disease (CWD). We have had extremely short time to respond to this and became aware less than 48 hours ago for the need of this letter with the deadline of October 30, 2002. Consideration for an extension for additional information would be greatly appreciated.

Chronic wasting disease is caused by Transmissible Spongiform Encephalopathy (TSE) which is under the same classification as mad cow disease and scrapies in sheep. It is caused by a prion, which is a protein, which invades the brain cells and lymphatic system. It was initially discovered in 1967 by Beth Williams in Fort Collins, Colorado in a state owned research facility. Since then it has been found in other cervids in other states such as Wyoming, Colorado, Nebraska and even Wisconsin. There is tremendous misinformation being given regarding this disease hence I will give a brief summary of the facts. I have been in contact personally, less than one week ago, with Dr. Kenneth Waldrup, who is the head veterinarian for Texas Animal Health Commission. He was one of the leading researchers both nationally and internationally on mad cow disease and is also one of the lead researchers for chronic wasting disease. He last week was at a US Animal Health Association meeting in St. Louis for which chronic waste disease was a major topic. He stated CWD is not mad cow disease in deer. He also stated anthrax is a

far greater human health risk with Bovine with Tuberculosis as a reasonable second place. Others on the list known to infect humans include Q fever, Leptospirosis, Tularemia and Rabies. To date there is no known link to CWD in any human neurological malady. There actually appears to be a barrier on the molecular level, which prevents it from jumping from species to species such as from cervids to humans or cattle. He also stated that there has been absolutely no evidence of spread of the disease from privately owned penned deer to free ranging deer. Dr. Waldrup also stated that it is hard to call CWD an epidemic in his book. Some of the miss information is regarding to captive deer that were captured when 8 foot fence was placed in western states capturing native free ranging deer. These were then classified as captive deer and subsequently misunderstood in the press to be privately owned deer.

There have never been any known cases of CWD in West Virginia or any of the surrounding connecting states. There has not been a tremendous increase in the number of cases of cervids with CWD and given the fact it was initially identified in 1967 this does not appear to be a wide spread epidemic. We do not know whether CWD has been present before 1967 and it was only diagnosed at that time. This perhaps is an epidemic of diagnosis and not an epidemic of disease. We question why this suddenly has been an emergency when no chronic wasting disease has been found in West Virginia or the surrounding states. In Wyoming where CWD has been present for years the elk population is actually increasing, as is the white tail population in many of the eastern states. There has absolutely been no formal risk assessment for this disease performed in West Virginia and no budget has been set aside for either risk assessment or monitoring programs. Several other states including Wisconsin, Michigan and Texas are far ahead of our state in risk assessment and monitoring programs. As a matter of fact, Texas recently opened up its borders for transport of cervid livestock.

There are approximately 50 deer farmers in West Virginia with approximately 1500 cervids. There are several hundred thousand native free ranging white tail deer. No plan has been put in place to stop the intra or inter state transport of either living or harvested free ranging white tail deer in the state of West Virginia. Preons continue to live for several years in soil. These harvested animals are brought from one area in West Virginia to other areas thus posing a threat of spread of other areas of West Virginia should chronic waste disease occur. Hunters go to other states with chronic waste disease and bring their harvest back to the state of West Virginia. I fail to see the reasoning as to why a small number of privately owned cervids regulated while the majority of deer which are free ranging in West Virginia and have a far greater potential risk for spreading disease as their migration is not regulated. This raises a concern for possible conflict of interest.


I am also unaware of the DNR having the authority to issue rules that regulate private property. Cervids are considered alternative livestock and have same herd issues as beef cattle and other domestic livestock.

Earlier this week the West Virginia Deer Farmers Association attended a quarterly meeting in Beckley, West Virginia and we offered our assistance in understanding and

finding out the prevalence of chronic waste disease in West Virginia. The DNR, Agriculture Department and Deer Farmers of West Virginia have a common goal, which is to understand chronic waste disease and put in place ways to control the spread. Our methods however appear to vary. Work on monitoring has been done by other states and we feel these models could easily be utilized in West Virginia. We feel closing the borders is appropriate temporarily, however intra state transport would devastate our industry as deer which are unborn have already been purchased. We cannot continue to pay for food, veterinarian bills, etc without being able to make a profit. This would devastate our industry and as mentioned raises the question of conflict of interest with the DNR

We appreciate your consideration regarding review of the emergency rule pertaining to commercial sale of wild life and offer our assistance to the various government regulatory agencies in setting up monitoring programs for our privately owned cervids.

Sincerely,

  
Ronn Grandia, M.D.