

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #7

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FILED

2006 JUN 22 A 9:32

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: Natural Resources
BOC, DNR, Wildlife Resources Section TITLE NUMBER: 58

CITE AUTHORITY: 20-1-7(30)

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 69

TITLE OF RULE BEING PROPOSED: Wildlife Disease Management

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:

Use additional sheets if necessary

L. Thomas Della
Authorized Signature

#3.80

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

**SERIES 69
WILDLIFE DISEASE MANGEMENT**

CIRCUMSTANCES

The recent discovery of chronic wasting disease (CWD) in deer in West Virginia represents an emergency situation in management of the state's wildlife resources. This is an especially serious disease in that it is always fatal and there is no known live animal test for the disease. Recreational hunting and viewing of deer by wildlife enthusiasts is at serious risk due to this disease. In order to protect the state's deer herd and its associated \$233 million in economic benefits, the West Virginia Division of Natural Resources is proposing the following disease management guidelines: 1) No baiting or feeding in the CWD containment area to reduce transmission of the disease 2) A ban on the exportation of high risk deer tissues (spinal column and brain tissue) from the CWD containment area.

The West Virginia Division of Natural Resources appears to have detected this disease at an early stage, and to date infected deer have been found in a small area of Hampshire County. The West Virginia Division of Natural Resources is taking an aggressive management approach in an attempt to eliminate or control this disease before it spreads through the deer herd. Other states with CWD are spending millions of dollars in efforts to control this disease. The West Virginia Division of Natural Resources believes that prompt wildlife disease management is essential and may preserve millions of dollars in economic benefits from hunting in the future.

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

**SERIES 69
WILDLIFE DISEASE MANAGEMENT**

SUMMARY

Title 58, Series 69, Wildlife Disease Management establishes procedures concerning the management of emerging and significant diseases facing wildlife in West Virginia. Hunting rules are established to minimize the spread of the disease.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Wildlife Disease Management

Type of Rule: 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

Phone Number: 558-2771 Email: billieshearer@wvdnr.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

A ban on baiting and feeding would have minimal impacts on hunting and thus revenues derived through hunting. A ban on exporting whole carcasses from the containment area is likely to be revenue neutral the first year of the regulation and may increase nonresident license sales in subsequent years. Resident hunters should be able to continue to hunt under this regulation while nonresident hunters are already subject to bans on importing deer carcasses from West Virginia. Other state game and fish agencies have bans on bringing whole carcasses from states that have Chronic Wasting Disease. By implementing this rule, the importation of possibly infectious tissue from West Virginia deer into their states is unlikely to occur. Neighboring states are more apt to allow their hunters to import whole deer carcasses from West Virginia killed deer outside the containment area; thus, increasing nonresident hunting participation and economic gains from nonresident hunters in the State.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost		6,000.00	6,000.00
Personal Services		5,000.00	5,000.00
Current Expenses		1,000.00	1,000.00
Repairs & Alterations		0.00	0.00
Assets		0.00	0.00
Other		0.00	0.00
2. Estimated Total Revenues		50,000.00	50,000.00

Rule Title: Wildlife Disease Management

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

The total costs represent an estimate of the Division of Natural Resources' annual expenditure, for manpower, vehicle operation and materials associated with the implementation of this rule. Most costs are associated with administrative, informational and material expenses to possibly assist with carcass disposal sites.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

None

Date: 6-21-06

Signature of Agency Head or Authorized Representative

H. Thomas Balle

EMERGENCY RULE QUESTIONNAIRE

DATE: June 21, 2006

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Division of Natural Resources, Wildlife Resources Section
1900 Kanawha Blvd., E., Bldg. 3, Room 842, Charleston, WV 25305

EMERGENCY RULE TITLE: Wildlife Disease Management

1. Date of filing June 21, 2006

2. Statutory authority for promulgating emergency rule:
WV Code Chapter 20-1-7(30)

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? yes

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 been detected in Hampshire County. This disease is likely to cause significant biological and sociological problems to the state's deer herd and to deer hunting. Transportation of carcasses may cause the spread of the disease. High risk, non-edible portions of the carcass are proposed to be banned from export out of the containment area (currently a portion of Hampshire County). Nose to nose contact of deer due to baiting and feeding is also believed to be a significant risk for accelerating the spread of the disease. This activity is proposed to be banned in the containment area.

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. This disease is believed to currently be confined to a small area of the State. Several states that have Chronic Wasting Disease are spending millions of dollars in an effort to control the disease. Implementing these prompt wildlife disease management actions could potentially stop this disease or slow its transmission. Effective and immediate action now could save millions of dollars in the future.

TITLE 58
LEGISLATIVE RULE
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES

SERIES 69
WILDLIFE DISEASE MANAGEMENT

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

§58-69-1. General

1.1. Scope and Purpose – The purpose of this rule is to establish rules and procedures to manage, prevent, suppress, control and/or eradicate communicable diseases of wildlife.

1.2. Authority – West Virginia Code §20-1-7(30).

1.3. Filing Date –

1.4. Effective Date –

§58-69-2. Definitions.

2.1. "Feeding" means the direct or indirect placing, exposing, depositing, distributing, or scattering of bait so as to constitute for wildlife a lure, attraction, or enticement to or on any areas where hunters are attempting to take them.

2.2. "Cervids" mean deer, elk and other species of the family Cervidae.

2.3. "Containment Area" means an area designated by the Director where wildlife has been found to be infected with a contagious or infectious disease. The purpose of a containment area is to manage, control, eradicate and/or prevent the spread of the disease.

2.4. "Chronic Wasting Disease" (CWD) is an infectious neurological disease of cervids. The disease belongs to the family of diseases known as transmissible spongiform encephalopathies (TSEs) and is caused by an abnormal form of a protein called a prion.

2.5. "Bovine Tuberculosis" means an infectious disease caused by *Mycobacterium bovis*, commonly known as tubercle bacillus.

2.6. "Avian Influenza" (AI) is a type A influenza virus that is naturally found in certain species of waterfowl and shorebirds.

2.7. "Director" means the Director of the Division of Natural Resources.

2.8. "Chronic Wasting Disease Positive Area" means an area in which Chronic Wasting Disease has been diagnosed and the boundaries of which are delineated by the appropriate state or provincial wildlife agency.

2.9. Other terms have the meaning prescribed to them in the Rule Defining the Terms To Be Used Concerning All Hunting and Trapping Rules 58 CSR 46 and Prohibitions When Hunting and Trapping 58 CSR 47.

§58-69-3. Carcass Transport Regulations.

3.1. It is unlawful to transport dead cervids or their parts beyond the boundary of a chronic wasting disease containment area except for the following portions of the carcass: (1) meat that has been boned out, (2) quarters or other portions of meat with no part of the spinal column or head attached, (3) cleaned hide with no head attached, (4) clean skull plate (no meat or tissue attached) with antlers attached, (5) antlers with no meat or tissue attached, and (6) finished taxidermy mounts.

3.1.1. State or county agencies and licensed solid waste disposal vendors may transport cervid carcasses or parts thereof to an approved sanitary landfill.

3.1.2. Hunters may transport cervid carcasses that were not killed inside the containment area through the containment area.

3.2. It is unlawful to import into West Virginia dead cervids or their parts from any state or province which has had free roaming deer, elk, moose or other cervids diagnosed with chronic wasting disease, except the following portions of the carcass: (1) meat that has been boned out, (2) quarters or other portions of meat with no part of the spinal column or head attached, (3) cleaned hide with no head attached, (4) clean skull plate (no meat or tissue attached) with antlers attached, (5) antlers with no meat or tissue attached, (6) finished taxidermy mounts, and (7) upper canine teeth, also known as buglers, whistlers or ivories with no meat or tissue attached. Provided, that if the state or province has designated a chronic wasting disease positive area and if the Director approves the boundaries of this area then these importation restrictions apply only to the chronic wasting disease positive area. The Director has the authority for the purpose of this section to alter the chronic wasting disease positive area.

§58-69-4. Baiting and Feeding Regulations

4.1. It is illegal to bait or feed cervids or other wildlife in a containment area as determined by the Director and established for the management, control or eradication of chronic wasting disease, bovine tuberculosis, avian influenza or other wildlife diseases. Provided, that song and insectivorous birds may be fed within 100 feet of an occupied dwelling. Provided further, that captive cervids may be fed inside cervid facilities permitted by the Division of Natural Resources.