

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

Form #3

Do Not Mark In This Box

FILED

2006 JUL 28 P 4: 30

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 - <sup>Natural Resources</sup> Wildlife Resources Section TITLE NUMBER: 58

CITE AUTHORITY: 20-1-7(30)

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 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

#4.40

**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.

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

**SERIES 69  
WILDLIFE DISEASE MANAGEMENT**

**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.

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.

<b>FISCAL YEAR</b>			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>		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
<b>2. Estimated Total Revenues</b>		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.

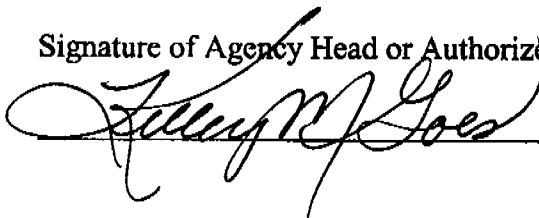
### MEMORANDUM

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: 7/28/06

Signature of Agency Head or Authorized Representative

  
\_\_\_\_\_

**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: July 28, 2006

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* BOC, DNR - Wildlife Resources Section  
1900 Kanawha Blvd., E.  
Capitol Complex, Bldg. 3, Room 812  
Charleston, WV 25305

LEGISLATIVE RULE TITLE: Wildlife Disease Management

1. Authorizing statute(s) citation 20-1-7(30)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 22, 2006

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 June 30, 2006.

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
July 21, 2006

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)

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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  
DNR Wildlife Resources Section  
1900 Kanawha Blvd., E.  
Capitol Complex, Bldg. 3, Room 812  
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.

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b. Date of hearing or comment period:

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

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d. Attach findings and determinations and reasons:

Attached 

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**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 (304) 1-800-354-6087**

**Joe Manchin III  
Governor**

**Frank Jezloro  
Director**

July 25, 2006

Mr. Ron Kenney  
P.O. Box 253  
Fort Ashby, West Virginia 26719

Dear Mr. Kenney:

Thank for you contacting me regarding your concerns associated with Division of Natural Resources (DNR) Legislative Rule 58CSR69 – Wildlife Disease Management which was filed with the Secretary of State's Office on June 22, 2006. Specifically, you have expressed concerns regarding a provision in the rule that prohibits the feeding or baiting of cervids (e.g., white-tailed deer) within a "Containment Area" established by the DNR Director in Hampshire County. The DNR, Wildlife Resources Section welcomes comments from the public on its various wildlife management programs. I am pleased to take your comments specific to Legislative Rule 58CSR69 under advisement and provide the following information relating to this matter.

On September 2, 2005, the first case of Chronic Wasting Disease (CWD) was confirmed in West Virginia. Based upon that confirmation, the DNR immediately initiated its CWD – Incident Response Plan which was designed to accomplish three primary objectives.

- Determine the distribution and prevalence of CWD through enhanced surveillance efforts.
- Communicate and coordinate with the public and other appropriate agencies on issues relating to CWD and the steps being taken to respond to this disease.
- Initiate appropriate management actions necessary to control the spread of this disease, prevent further introduction of the disease, and possibly eliminate the disease from the state.

Analysis of CWD surveillance data collected to date by our agency indicates the disease appears to be found in a relatively small geographical area located near Slanesville, West Virginia. Based upon these CWD surveillance findings, we have taken the steps necessary to implement appropriate disease management actions, including the filing of Legislative Rule 58CSR69. This rule establishes reasonable, responsible and appropriate regulations relating to

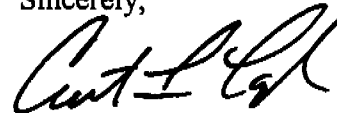
Mr. Ron Kenney  
July 25, 2006  
Page 2 of 2

the feeding and baiting of deer within a containment zone that is designed to reduce the risk of spreading the infectious agent for CWD (i.e., abnormal prions) from deer to deer.

Please be advised our well trained and profession Wildlife Biologists, Wildlife Managers and Conservation Officers are working diligently to fully implement the CWD – Incident Response Plan which has been designed to effectively address this wildlife disease threat. Hunters, landowners and other members of the public should feel confident that we have some of the finest wildlife biologists and veterinarians in the world, including those stationed at the Southeastern Cooperative Wildlife Disease Study in Athens, Georgia, working collaboratively on this situation.

Once again, thank you for providing comments and sharing your thoughts regarding Legislative Rule 58CSR69. Should you have any question or require additional information relating to this matter, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Curtis I. Taylor". The signature is fluid and cursive, with the first name "Curtis" being the most prominent part.

Curtis I. Taylor, Chief  
Wildlife Resources Section

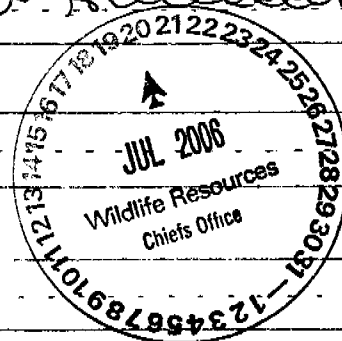
CIT/pj

Mr. Taylor,

Part of the joy of hunting and being a land owner in Hampshire County is feeding and baiting deer. I oppose the rule change. Why do they expand the containment areas to control so much of the county? There seems to be little evidence as to how the disease is transmitted. All of the deer that tested positive come from a very small area. Why not concentrate on that area. Part of my ground joins an orchard, they kill deer every year and let them rot, now I'm not suppose to feed or have food plots. Land owners, farmers and most hunters don't like the proposed change, it isn't necessary.



Ron Kenney  
PO Box 253  
Fort Ashby, WV 26719



Thank You  
Ron Kenney  
304-298-3949

letter & our response

**TITLE 58** **FILED**  
**LEGISLATIVE RULE**  
**BUREAU OF COMMERCE** 2006 JUL 28 P 4: 30  
**DIVISION OF NATURAL RESOURCES**  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE  
**SERIES 69**  
**WILDLIFE DISEASE MANAGEMENT**

**§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.