

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #7

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Filing Date

FILED

2015 JUN 10 A 9:46

OFFICE WEST VIRGINIA  
SECRETARY OF STATE  
Effective Date

**NOTICE OF AN EMERGENCY RULE**

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

CITE AUTHORITY: WV Code 19-29-1 and 4

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 23D

TITLE OF RULE BEING AMENDED: Inspection of Nontraditional, Domesticated Animals

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:

The passage of SB 237 in the 2015 Legislative Session mandates rules be promulgated to cover the sale and slaughtering of captive cervids for venison. A change in the Code was also made to enable the slaughter of rabbits outside of licensed facilities which has been requested by numerous farmers within the state to enable the sale of rabbit meat which will have a great impact on the economic income of some individuals. An independent survey which was conducted by one of the state's rabbit producers collected evidence that many WV small farmers are raising meat rabbits but not able to sell the meat because they were hindered by the regulations before the change in the Code. If they are permitted to sell rabbit meat under the proposed rule, it is estimated that producers expect to produce almost 25,000 pounds of rabbit meat with a substantial consumer market. Prices for rabbit meat range from \$3.50 per pound and up. This could lead to a significant boost for small farmers with average WV rabbit meat sales between \$80,000 to \$150,000 annually.

Use additional sheets if necessary



Authorized Signature

**EMERGENCY RULE QUESTIONNAIRE**

DATE: June 8, 2015

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Department of Agriculture  
Robert E. Pitts, DVM 1900 Kanawha Blvd., E, Charleston, WV 35305  
304-558-2206

EMERGENCY RULE TITLE: Inspection of Nontraditional, Domesticated Animals

1. Date of filing June 10, 2015

2. Statutory authority for promulgating emergency rule:  
WV Code 19-29-1 and 4

3. Date of filing of proposed legislative rule: June 10, 2015

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? Amend current legislative rule.

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.

This rule enables the use of current rules to regulate the slaughter of cervids and sale of venison as instructed in Senate Bill 237. It also allows the slaughter and sale of rabbits by producers in a sanitary manner which will benefit their annual income to allow the continued small farm operations to be profitable and able to meet the consumer requests with minimal risk to public health.

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.

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Senate Bill No. 237 Section 19-2H-12 ..... "Any rules promulgated by the commissioner before September 1, 2015, may be emergency rules.

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

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It would allow current rules to be used for captive cervids. There has been a huge demand from both producers and consumers to make available methods to allow limited sales of rabbit meat for both the benefit of the producers and at the requests of consumers to make this product available legally. There has been no interest by packers to provide this service even though a limited number of rabbits could be done outside of inspection under the previous code and regulations.

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## **Brief Summary**

After passage of Senate Bill No. 237, Captive Cervid Farming Act, during the 2015 legislative session which permits the sale of venison, the decision was made to use the regulations in the Inspection of Nontraditional, Domesticated Animals to regulate how the venison was to be addressed. In order to use these regulations the exemption in §61-23D-6 should be eliminated from the regulations.

A change was also made in Chapter 19, Section 29 of the Code this past legislative session that allowed for the slaughter of rabbits outside an inspected meat processing facility and sections were added to allow the limited exemption and sales of rabbits outside of inspection.

## Statement of Circumstances

The passage of SB 237 in the 2015 Legislative Session mandates rules be promulgated to cover the sale and slaughtering of captive cervids for venison. A change in the Code was also made to enable the slaughter of rabbits outside of licensed facilities which has been requested by numerous farmers within the state to enable the sale of rabbit meat which will have a great impact on the economic income of some individuals. An independent survey which was conducted by one of the state's rabbit producers collected evidence that many WV small farmers are raising meat rabbits but not able to sell the meat because they are hindered by the regulations before the change in the Code. If they are permitted to sell rabbit meat under the proposed rule it is estimated that producers expect to produce almost 25,000 pounds of rabbit meat with a substantial consumer market. Prices for rabbit meat range from \$3.50 per pound to as high as \$6.00 per pound. This could lead to a significant boost for small farmers. Average WV rabbit meat sales are expected to range between \$86,838 and \$148,866 annually.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Inspection of Nontraditional, Domesticated Animals

Type of Rule:  Legislative  Interpretive  Procedural

Agency: West Virginia Department of Agriculture

Address: 1900 Kanawha Blvd., East, Charleston, WV 25305

Phone Number: 304-558-2206 Email: rpitts@wvda.us

**Fiscal Note Summary**

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

None - No registration fee is anticipated or asked for.

**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	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: Inspection of Nontraditional, Domesticated Animals

Rule Title: \_\_\_\_\_

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

No fees will be charged.

**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.

This is to provide for regulations pertaining to the sale of venison. This would also allow the slaughter and sale of rabbits exempt from inspection up to 1000 rabbits per calendar year to assist small producers in having a market for their rabbits.

Date: June 17, 2015

Signature of Agency Head or Authorized Representative



TITLE 61  
LEGISLATIVE RULE  
DEPARTMENT OF AGRICULTURE

SERIES 23D  
INSPECTION OF NONTRADITIONAL, DOMESTICATED ANIMALS

FILED  
2015 JUN 10 A 9:46  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§61-23D-1. General.**

1.1. Scope. -- Rules governing inspection of nontraditional domesticated animals such as antelope, bison, buffalo, deer, elk, reindeer, and rabbit and edible products derived from these animals are established in order to implement the requirements of W. Va. Code §19-29-1 et seq. "Production of Nontraditional Agriculture Products". W. Va. Code §19-29-4 authorizes the Commissioner of Agriculture to promulgate regulations to provide inspection of such animals, meat, and meat products.

1.2. Authority. -- W. Va. Code §§19-29-1 and 4.

1.3. Filing Date. -- ~~April 17, 1995.~~

1.4. Effective Date. -- ~~July 1, 1995.~~

**§61-23D-2. Incorporation by Reference of Federal Regulations on Inspection of Exotic Animals and Rabbits.**

2.1 The Regulations on Inspection of Exotic Animals (9 CFR, Part 352) and Inspection of Rabbits and Edible Products Thereof (9 CFR, Part 354) of the United States Department of Agriculture are hereby incorporated by reference in this rule with the exception of sections 352.5; 352.7 (a) and (b); 354.1 (n) and (u); 354.2 (a), (b), and (c); 354.20 through 354.33; 354.63 (c); 354.64; 354.65; 354.100 through 354.110; 354.143; 354.160; 364.161; 352.162; and 354.248 of the regulations which are not incorporated.

**§61-23D-3. Definitions.**

3.1. Definitions in the incorporated parts of the Federal regulations (9 CFR, Parts 352 and 354) are amended to read as follows:

3.1.1. "The Act" means the W. Va. Code §19-29-1 et seq.

3.1.2. "The United States Department of Agriculture" means the West Virginia Department of Agriculture.

3.1.3. "Secretary" means the Commissioner of Agriculture.

3.1.4. "Administrator", "Regional Director", and "Area Supervisor" mean the Director of the Meat Inspection Division of the West Virginia Department of Agriculture.

3.1.5. "The Food Safety and Inspection Service", "Service", and "Program" mean the Meat Inspection Division of the West Virginia Department of Agriculture.

3.1.6. "Official Plant" means an establishment licensed by the Commissioner of Agriculture.

3.1.7. "Exotic Animal" means a nontraditional animal domesticated from wild stock, either native or nonnative, including rabbits.

3.1.8. "U. S. Inspected" means West Virginia Department of Agriculture Inspected.

3.1.9. "U. S. Suspect" means West Virginia Department of Agriculture Suspect.

**§61-23D-4. The Place of Slaughter and Processing of Nontraditional, Domesticated Animals.**

4.1. The slaughter and processing of nontraditional, domesticated animals may take place at any commercial establishment licensed by the Commissioner of Agriculture pursuant to the W. Va. Code §19-2B-1 et seq.

4.2. The slaughter and processing of rabbits intended for sale in commercial outlets shall take place in rabbit slaughterhouses and/or rabbit meat processing establishments constructed according to the technical and sanitary provisions of the incorporated Federal regulations (9 CFR, Part 354).

4.3. The slaughter of rabbits exempt from inspection as provided by section 6.3 of this rule may take place at any commercial or custom slaughter establishment licensed by the Commissioner of Agriculture pursuant to the W. Va. Code §19-2B-1 et seq.

4.4. The slaughter and processing of nontraditional domesticated animals may be conducted at licensed establishments provided that the slaughter and processing operations are separated in time or space from the slaughter and processing of cattle, swine, sheep, and goats. The carcasses of nontraditional, domesticated animals and products derived from these animals shall be kept physically separated and properly identified to avoid any possibility of commingling products.

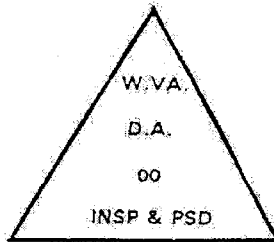
4.5 The slaughter of rabbits exempt from inspection as provided by section 6.3 of this rule may take place at the same premises where they were raised if the premises is registered with the Commissioner and the slaughter and/or processing is performed in a sanitary manner.

**§61-23D-5. Official Inspection Marks.**

5.1. Official Inspection Marks for Nontraditional, Domesticated Animals, Carcasses and Products Derived Therefrom, Except for Rabbits.

5.1.1. The official inspection mark shall be applied to inspected and passed carcasses and parts of carcasses by the authorized employee of the West Virginia Department of Agriculture or a plant employee working under his or her direct supervision.

5.1.2. The official inspection mark shall be in the form of a triangle and arrangement as shown in the example in this subdivision. The triangle side shall be approximately 2-1/2 inches (6.4 cm) long. It shall follow the wording: "West Virginia Department of Agriculture, Inspected and Passed", or its abbreviations as approved by the Director of the Meat Inspection Division. The number of the establishment where the animal was slaughtered and/or prepared, shall be used in lieu of "00".



5.2. Official Inspection Marks for Rabbits.

5.2.1. The official inspection mark approved for use on inspected and passed rabbit products shall be in the form of a circle and arranged as indicated in the example in this subdivision. The circle shall be 1-3/4 inches (4.5 cm) in diameter. It shall include the following wording: "Inspected for Wholesomeness by WV Department of Agriculture." The number of the establishment where the rabbits were slaughtered and/or prepared shall be used in lieu of "00".



5.3. Official Inspection Marks on Labels.

5.3.1. The inspection mark to be shown on labels need not be of the size illustrated above, provided that it is a sufficient size and of such color as to be conspicuously displayed and readily legible. The same proportions of letter size and boldness shall be maintained.

5.3.2. This inspection mark shall be applied by the licensed establishment using mechanical means and shall not be applied by a hand stamp.

5.3.3. The official inspection mark described in subsections 5.1 and 5.2 of this rule shall also be used on shipping containers, bond labels, artificial casings, and other articles with the approval of the Director of the Meat Inspection Division.

**§61-23D-6. Exemptions.**

~~6.1. This rule shall not apply to white-tailed deer (*Odocoileus virginianus*) and all its subspecies.~~

6.21. This rule shall not apply to nontraditional, domesticated animals which are slaughtered and/or processed and are not intended for sale in commercial outlets.

6.32. Up to one thousand (1,000) rabbits per calendar year at one establishment shall be exempt from antemortem, postmortem, and processing inspection, provided that the rabbits are slaughtered and/or processed at an establishment licensed by the Commissioner of Agriculture, and approved for rabbit slaughter operations.

6.3 Up to one thousand (1000) rabbits per calendar year at one premises shall be exempt from antemortem, postmortem, and processing inspection, and are are eligible for sale to individuals, at farmers' markets, or through consignment markets, provided that the rabbits are slaughtered and/or processed using WVDA approved procedures at the premises where they were raised and the premises is registered with the Commissioner of Agriculture.

**§61-23D-7. Overtime and Holiday Inspection Service.**

7.1. The management of a licensed establishment shall reimburse the Department for the cost of inspection service furnished on any holiday as specified in subsection 7.3 of this Section, or for providing more than forty (40) hours in any administrative workweek Saturday through Friday.

7.2. When a licensed establishment requires inspection service on a holiday or for more than eight (8) hours on any other day, it shall request the veterinary supervisor to furnish inspection during such period. The request shall be made at least seven (7) days before the holiday and at least two (2) days in advance of planned overtime.

7.3. Holidays shall be those specified in W. Va. Code §2-2-1 et seq.

7.4. The Commissioner shall determine from time to time the rate for overtime and holiday services.

### **List of Interested Parties**

The following groups may have an interest or be affected by the proposed Emergency rule Title 61 Series 23D Inspection of Nontraditional, Domesticated Animals filed by the West Virginia Department of Agriculture.

West Virginia Deer Farmer's Association

Food and Farm Coalition's Meat Processing Working Group

West Virginia Farm Bureau