

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

Form #3

Do Not Mark In This Box

FILED

2015 JUL 30 A 11:52

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: DOC, DNR Wildlife Resources Section TITLE NUMBER: 58

CITE AUTHORITY: 20-1-7(30) and 20-2-5j

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: 74

TITLE OF RULE BEING PROPOSED: Elk Restoration and Management Rule

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

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: 7/30/2015

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) DOC, DNR, Wildlife Resources Section
324 4th Avenue
So. Charleston, WV 25303

LEGISLATIVE RULE TITLE: ~~Elk Restoration and Management Rule~~

1. Authorizing statute(s) citation 20-1-7(30) and 20-2-5h

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 23, 2015

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 the State Journal and a statewide News Release.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 22, 2015

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

n/a

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Paul R. Johansen, Chief
DNR Wildlife Resources Section
324 4th Avenue
So. Charleston, WV 25303

- 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)

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

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
DEPARTMENT OF COMMERCE
DIVISION OF NATURAL RESOURCES**

**SERIES 74
ELK RESTORATION AND MANAGEMENT RULE**

SUMMARY:

Series 74 is a new legislative rule which establishes the guidelines and protocols relating to the West Virginia Division of Natural Resource's elk management program. The rule addresses three parameters of the elk management program as authorized under W.Va. Code 20-2-5h: development of an Elk Management Plan; management of elk outside of the elk management zone; and disease testing and monitoring protocol.

CIRCUMSTANCES:

The purpose of this rule is to establish guidelines and protocols relating to the West Virginia Division of Natural Resource's elk management program.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

58CSR74. Elk Restoration and Management Rule

Rule Title: _____

Type of Rule: Legislative Interpretive Procedural

Agency: Dept. of Commerce, Division of Natural Resources, Wildlife Resources Section

Address: 324 Fourth Avenue
South Charleston, WV 25303

Phone Number: 304-558-2771 Email: Billie.J.Shearer@wv.gov

Fiscal Note Summary

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

The estimated program cost for an active elk restoration program in West Virginia (as listed in the Fiscal Note Detail) is based upon Virginia's estimated cost during the "release" phase of their program which was recently completed. Program costs do not include long-term expenditures (post-release) and anticipated revenues associated with the recreational use of the resource.

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			500,000.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			0.00

58CSR74. Elk Restoration and Management Rule

Rule Title: _____

Rule Title: _____

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

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

The estimated total cost as outlined in the Fiscal Note Detail is the approximate cost of Virginia's active elk restoration program during the release phase portion of the project. A significant portion of the expenditures were covered by the Rocky Mountain Elk Foundation (RMEF) and other sponsors. To-date, RMEF has committed \$50,000 of "seed" money toward West Virginia Division of Natural Resources' elk restoration efforts.

This fiscal note does not include anticipated future revenues associated with elk hunting permits, applications, etc. Legislation and/or legislative rules will be filed at the appropriate time to address permits and application costs and procedures.

The total restoration cost (during initial phases of project) may vary based upon the availability of source animals and the overall number of elk to be trapped and relocated.

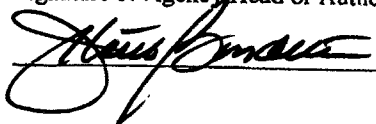
MEMORANDUM

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.

[Empty box for memorandum content]

Date: 7/29/15

Signature of Agency Head or Authorized Representative

 _____

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

**SERIES 74
ELK RESTORATION AND MANAGEMENT RULE**

FILED
2015 JUL 30 A 11:52
OFFICE WEST VIRGINIA
SECRETARY OF STATE

§58-74-1. General.

- 1.1. Scope and Purpose. -- This rule establishes guidelines and protocols relating to the West Virginia Division of Natural Resource's elk management program.
- 1.2. Authority. -- W. Va. Code §20-1-7(30) and 20-2-5h.
- 1.3. Filing Date. --
- 1.4. Effective Date. --

§58-74-2. Definitions.

- 2.1. "Accredited Veterinarian" means any veterinarian accredited by APHIS and approved by the Animal Health Official of the state where the veterinarian is doing business.
- 2.2. "APHIS" means the Animal and Plant Health Inspection Service or its successor agency of the United States Department of Agriculture.
- 2.3. "Certificate of Veterinary Inspection (CVI)" means an official form issued by an accredited veterinarian in the state of origin and approved by the Animal Health Official of the state of origin listing all animals (with an accurate description and official identification) covered by the certificate and the findings of the health of the animals covered by the certificate. In addition, the CVI shall contain the names and address of the consignor and the consignee of the animals, the vaccinations that the animals may have received and the dates the vaccinations occurred. The CVI is void thirty (30) days after issuance.
- 2.4. "Division" means the West Virginia Division of Natural Resources.
- 2.5. "Elk Management Zone or EMZ" means a designated area in which the West Virginia Division of Natural Resources plans to establish and manage a wild free-ranging elk population. The specific EMZ boundaries are identified in the Division's Elk Management Plan. The Division may not expand the EMZ without statutory authorization (W.Va. Code 20-2-5h).

§58-74-3. Elk Management Plan.

3.1. An Elk Management Plan has been developed by the Division which will guide the Division's management decisions as it relates to the state's active elk restoration project.

3.1.a. The elk management plan will follow an adaptive management approach and the plan will be updated on a 5-year basis.

3.1.b. The Division shall solicit public comments on the draft elk management plan and will take public input under consideration prior to finalizing the plan.

3.1.c. The elk management plan will include, but is not limited to, the following plan components.

- 3.1.c.1. Elk biology and life history
- 3.1.c.2. Overview of elk reintroduction feasibility studies
- 3.1.c.3. Designation of a EMZ
- 3.1.c.4. Setting of elk population objectives
- 3.1.c.5. Habitat and large landowner GIS-based analysis
- 3.1.c.7. Selection of elk release areas
- 3.1.c.8. Development of disease testing and health monitoring protocols
- 3.1.c.9. Information and educational efforts – promoting public awareness
- 3.1.c.10. Population monitoring protocols and research
- 3.1.c.11. Habitat management efforts
- 3.1.c.12. Strategies to increase public access to EMZ
- 3.1.c.13. Approaches to minimize elk/human sociological conflicts

§58-74-4. Management of Elk Outside of the Elk Management Zone.

4.1. The Division shall address elk which move outside of the EMZ on a case by case basis to minimize adverse impacts to landowners and loss of individual elk that are essential to elk restoration success. Furthermore, as the active elk restoration program develops, the Division will develop appropriate procedures to address elk located outside of the EMZ.

§58-74-5. Disease Testing and Monitoring.

5.1. The Division shall not import any elk from a population known to be infected with and/or not routinely post mortem tested for the abnormal prion associated with chronic wasting disease of deer and elk.

5.2. The Division shall not import any elk into the state without a valid CVI issued by an accredited veterinarian.

5.2.a. The CVI shall indicate that the animal has had a negative tuberculosis test within 2 months prior to the importation.

5.2.b. The CVI shall indicate that the animal has had a negative brucellosis test within 1 month prior to the importation of the animal.

5.2.c. The Division shall consider the requirement of negative test results in 5.2.a. and 5.2.b. as minimum requirements for importation of elk captured from the wild from the Kentucky or Virginia Elk Management Zones, but shall require additional disease testing for any elk imported from outside of the Kentucky and Virginia Elk Management Zones on a case by case basis.

5.3. For purposes of this section, the tuberculosis test shall use the single cervical test as prescribed by the United States Department of Agriculture on December 31, 1990 or equivalent approved test (DPP Test Dual Path Platform Test, April 2014), approved by USDA APHIS Veterinary Services and all elk captured from the wild and confined with the elk to be imported shall have a negative tuberculosis test or negative post mortem culture.

5.4. The Division shall notify the Commissioner of the West Virginia Department of Agriculture (WVDA) of its intent to import elk into the state a minimum of one (1) week prior to transporting animals into the state.