



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

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

AGENCY: Natural Resources TITLE-SERIES: 58-63
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 58-63 Commercial Sale of Wildlife

PRIMARY CONTACT

NAME: Wendy L Greene
ADDRESS: 324 4th Avenue
Room 341
South Charleston, WV 25303
EMAIL: wendy.l.greene@wv.gov
PHONE NUMBER: 304-558-2754

CITE STATUTORY AUTHORITY: §20-2-11, §20-2-13 and §20-1-7(31)

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

Legislative rulemaking authority for the Director to implement and make effective the powers and duties vested in him.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/30/2021

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/29/2021

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

press release

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This rule governs the sale or transfer of wildlife raised, imported, or captured under licenses issued by the Division.

Revisions include removal of language related to wildlife disease testing which is no longer needed since the captive cervid regulations are now under the authority of the WV Department of Agriculture.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This rule is necessary to govern the sale and transfer of wildlife raised, imported, or captured under licenses issued by the Division.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

There is no anticipated economic impact on the revenue of the state.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

There is no anticipated impact on special revenue accounts.

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

No economic impact on the state or its residents is anticipated.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

There are no anticipated changes to administrative costs or revenues.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Jack M Rife -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 58
LEGISLATIVE RULES
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES

SERIES 63
COMMERCIAL SALE OF WILDLIFE

§58-63-1. General.

1.1. Scope. -- This legislative rule governs 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, 20-2-14, 20-2-47, 20-2-48, 20-2-51, and 20-2-52.

1.2. Authority. -- W. Va. Code §§20-2-11, 20-1-7(31), and 20-2-13.

1.3. Filing Date. -- ~~May 17, 2017~~.

1.4. Effective Date. -- ~~May 22, 2017~~.

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on ~~May 22, 2022~~; August 1, 2027.

§58-63-2. Definitions.

2.1. "Cervid" means all members of the deer family, native and exotic.

~~2.1.2.2.~~ "Facility" means the property on which a person engages in an activity for which one of the licenses listed in ~~Subsection 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.

~~2.2.2.3.~~ "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.a. 2.3.1.~~ 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.a.1. 2.3.1.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);

~~2.2.a.2. 2.3.1.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.a.3.2.3.1.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.b.2.3.2.~~ 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 the species 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 birds, wild animals, game and fur bearing animals, fish (including minnows), reptiles, amphibians, mollusks, crustaceans and all forms of aquatic life used as fish bait, whether dead or alive. The term "wildlife" does not include captive cervids owned or possessed pursuant to article two h, chapter nineteen of this code.~~

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).~~ "Hound Coursing/Training Pen" means a permanent enclosure of no less than 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 100 acres.

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.~~ "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.

2.6. ~~"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.~~ "Legal Trapper" means a trapper possessing a valid West Virginia trapping license or otherwise exempted from licensing requirements as provided in W. Va. Code §§20-2-27 and 20-2-28.

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.~~ "Wildlife" means wild birds, wild animals, game and fur-bearing animals, fish (including minnows), reptiles, amphibians, mollusks, crustaceans and all forms of aquatic life used as fish bait, whether dead or alive. The term "wildlife" does not include captive cervids owned or possessed pursuant to W. Va. Code §19-2H-1 et seq.

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.a.~~ 3.1.1. Obtained from a person licensed by the Division to sell wildlife in this State;

~~3.1.b.~~ 3.1.2. Imported into this State under the provisions of W. Va. Code §20-2-13;

~~3.1.c.~~ 3.1.3. Born at the licensee's facility as the offspring of wildlife legally held by the licensee;

or

~~3.1.d.~~ 3.1.4. Obtained from a legal trapper under the provisions of W. Va. Code §20-2-11. 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, shall only be acquired under terms and conditions of the license.

3.2. If a licensee acquires wildlife in the manner specified in ~~Subdivision~~ subsection 3.1.1 of this rule, the licensee shall retain a bill of sale from the supplying vendor as proof of legal acquisition and carry it while transporting the wildlife to and from the licensee's facility.

3.3. If a licensee acquires wildlife in the manner specified in ~~Subdivision~~ subsection 3.1.2 of this rule, the licensee shall retain the importation permit issued by the Division, the health certificate from the state of origin, and a bill of sale from the supplying vendor as proof of legal acquisition and carry these documents while transporting the wildlife to and from the licensee's facility.

3.4. If a licensee acquires wildlife in the manner specified in ~~Subdivisions~~ subsections 3.1.1, 3.1.2, and 3.1.3 of this rule, the licensee shall keep a record in accordance with the provisions of Section 5 of this rule.

3.5. If a licensee acquires wildlife in the manner specified in ~~Subdivision~~ subsection 3.1.4 of this rule, the licensee shall ear tag the foxes and raccoons 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 shall keep a record in accordance with the provisions of Section 5 of this rule.

3.6. If a legal trapper acquires live foxes and raccoons under the provisions of W. Va. Code §20-2-11 for the purpose of sale or any other form of possession transfer, the trapper shall only possess the live foxes and raccoons during the trapping season and ~~sixty (60)~~ 60 days thereafter. Live foxes and raccoons held for ~~thirty (30)~~ 30 days or less shall be held according to temporary or permanent cage/pen/housing requirements as specified under ~~the Division Rule Miscellaneous Permits and Licenses 58-CSR-64~~ W. Va. Code of State Rules, Title 58 Series 64, Miscellaneous Permits and Licenses and foxes or raccoons held over ~~thirty (30)~~ 30 days shall be held according to permanent cage/pen/housing requirements as specified under ~~the Division Rule Miscellaneous Permits and Licenses 58-CSR-64~~ W. Va. Code of State Rules, Title 58 Series 64, Miscellaneous Permits and Licenses.

§58-63-4. Wildlife Sales or Transfer.

4.1. A licensee or 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 licensee or legal trapper shall maintain the bill of sale or document with the wildlife while it is being transported and the bill of sale or document shall, at a minimum, contain the following information:

~~4.1.a.~~ 4.1.1. The licensee's or legal trapper's name and address;

~~4.1.b.~~ 4.1.2. The licensee's or legal trapper's license number or DNR ID number if exempt from

licensing requirements;

~~4.1.e.~~ 4.1.3. The date of the sale or transfer;

~~4.1.d.~~ 4.1.4. The purchaser's or receiver's name and address; and

~~4.1.e.~~ 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.e.1.~~ 4.1.5.a. For sales of fish, this description shall include the number of pounds of each species sold.

4.2. Legal trappers who 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 ~~Paragraphs subdivisions~~ subdivisions 2.2.1.b. and 2.2.1.c. of this rule shall not transfer possession or resell any foxes or raccoons ~~acquired under Subdivision subsection~~ subdivision subsection 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 of, 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 may suspend the importation, sale, and relocation of wildlife acquired or held under provisions of the W. Va. Code to protect the public health and the welfare of native wildlife. Any license issued pursuant to W. Va. Code Chapter 20 or this rule for the importation, sale, or relocation of wildlife may be suspended by the Director to protect the public health and welfare of native wildlife.~~

4.7. In order to protect the public health and the welfare of native wildlife, a licensee as defined in this rule, may not possess or maintain cervids in captivity. The Division ~~of Natural Resources~~, however, may import wildlife during the normal course of its mission.

§58-63-5. Record Keeping.

5.1. A licensee shall maintain accurate and current records of all wildlife acquisitions and sales or possession transfers and shall also maintain records on all wildlife born at the licensee's facility. A licensee shall maintain records of all wildlife escaping from the facility and report escapes to the 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 a 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 ~~Subdivision subsection~~ subdivision subsection 3.1.4. of this rule. A licensee shall maintain all records 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~~ may require a licensee to submit appropriate samples of the wildlife for testing ~~and 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 ~~F~~ for Commercial Purposes Prohibited.

7.1. Except for persons possessing a license or permit 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.

8.1. 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.