



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: 58-69
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 58-69 Wildlife Disease Management

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: §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:

The

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:

The purpose of this rule is to establish procedures and regulations to manage, prevent, suppress, control, and/or eradicate communicable diseases of wildlife.

Revisions to this rule include clarification to the baiting and feeding, and carcass and live wildlife transportation regulations. Additional definitions have been included to provide additional clarification to the rule.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This rule is necessary to establish procedures and regulations to manage, prevent, suppress, control and/or eradicate communicable diseases of wildlife.

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 economic 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 RULE
DEPARTMENT OF COMMERCE
DIVISION OF NATURAL RESOURCES

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 and regulations to manage, prevent, suppress, control and/or eradicate communicable diseases of wildlife.

1.2. Authority. -- W. Va. Code §20-1-7~~(30)~~ (31).

1.3. Filing Date. -- ~~April 9, 2007.~~

1.4. Effective Date. -- ~~April 9, 2007.~~

1.5. Sunset Provision. – this rule shall terminate and have no further force or effect on August 1, 2027.

§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. Food plots and/or crops left standing in the field do not constitute feeding.~~

~~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. The establishment of a containment area by the Director will be based upon the most currently available information relating to wildlife disease epidemiology, wildlife disease surveillance information (i.e., geographic distribution and prevalence) and the need to establish boundaries associated with clearly defined features on the landscape. The Director shall, at least annually after the establishment of a containment area, review and evaluate any and all new information relating to wildlife disease epidemiology and surveillance to determine whether any such designation of a containment area should be modified or rescinded and shall report these findings to the Natural Resources Commission. Prior to the establishment of a containment area, the Director shall consult with:~~

~~2.3.a. wildlife biologists within the Wildlife Resources Section that are knowledgeable of wildlife diseases;~~

~~2.3.b. a Department of Agriculture veterinarian knowledgeable of wildlife diseases;~~

~~2.3.c. conservation officers familiar with local and regional landscape features; and~~

~~2.3.d. the Natural Resources Commission.~~

~~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 Division's rule, 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.~~

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

2.2. "Baiting" means the placing, exposing, distributing, or scattering of natural or artificial foods, minerals, consumable attractants, or any other edible enticement that may lure wildlife into a specific area where hunters are attempting to take them, where observers are attempting to view them, or for any other purpose; or hunting wildlife with the use of bait as defined herein. Food plots, crops left standing in the field, and fruit that has naturally fallen from established fruit trees, shrubs, or vines do not constitute baits.

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

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

2.5. "Chronic Wasting Disease" (CWD) is a transmissible, fatal, neurodegenerative 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.

2.6. "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.

2.7. "Containment Area" means an area designated by the Director where wildlife has been found to be infected, or due to proximity of confirmed disease cases is at reasonable risk of becoming infected due to potential spread, with a contagious or infectious disease and special regulations are implemented

and enforced to prevent further disease spread. The purpose of a containment area is to manage, control, eradicate and/or prevent the spread of the disease. Disease containment areas as established by the Director will be reported annually in the West Virginia Hunting and Trapping Regulations Summary available free of charge in print from the Division and from authorized license agents, and online via the Division's official website. The establishment of a containment area by the Director will be based upon the most current available information relating to wildlife disease epidemiology, wildlife disease surveillance information (i.e., geographic distribution and prevalence), and the need to establish boundaries associated with clearly defined features on the landscape. The Director shall, at least annually after the establishment of a containment area, review and evaluate any and all new information relating to wildlife disease epidemiology and surveillance to determine whether any such designation of a containment area should be modified or rescinded and shall report these findings to the Natural Resources Commission. Prior to the establishment of a containment area, the Director shall consult with:

2.7.1. Wildlife biologists within the Wildlife Resources Section that are knowledgeable of wildlife diseases;

2.7.2. West Virginia Department of Agriculture veterinarian knowledgeable of wildlife diseases;

2.7.3. West Virginia Natural Resources Police familiar with local and regional landscape features;
and

2.7.4. The Natural Resources Commission.

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

2.9. "Division" means the West Virginia Division of Natural Resources.

2.10. "Emerging Animal Disease" may be any terrestrial animal, aquatic animal, or zoonotic disease not yet known or characterized, or any known characterized terrestrial animal or aquatic animal disease in the United States or its territories, that changes or mutates in pathogenicity, communicability, or zoonotic potential to become a threat to terrestrial animals, aquatic animals or humans.

2.11. "Feeding" means the direct or indirect placing, exposing, depositing, distributing, or scattering of natural or artificial foods, minerals, consumable attractants, or any other edible enticement that may attract and/or cause congregation of wildlife. Food plots and/or crops left standing in the field do not constitute feeding.

2.12. "Foreign Animal Disease" (FAD) is a terrestrial animal disease or pest or an aquatic animal disease or pest, not known to exist in the United States or its territories.

2.13. "Possess" means taking, obtaining, purchasing, holding in captivity, or in any way placing under the control of a person any live wildlife.

2.14. Other terms not defined above have the meaning prescribed to them in W. Va. Code of State Rules, Title 58 Series 46 Rule Defining the Terms to Be Used Concerning All Hunting and Trapping, and Title 58 Series 47 Prohibitions When Hunting and Trapping.

§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.

3.1.3. The West Virginia CWD Containment Area where carcass transport restrictions are in effect include Berkeley, Hampshire, Hardy, Mineral, and Morgan Counties and any other county designated by the Director following review and evaluation and reported in the annual West Virginia Hunting and Trapping Regulations Summary. Pursuant to section 2.7 of this rule, counties may be added or rescinded by the Director in consultation with all necessary personages and entities specified in the aforementioned section.

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 or originating from any fenced enclosure, 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 of free roaming cervids. The Director may for the purpose of this section alter the chronic wasting disease positive area.

§58-69-4. Baiting and Feeding Regulations.

4.1. It is illegal to feed and/or bait 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, foreign animal disease, an emerging animal disease, or other wildlife diseases. Provided, the Director may allow exceptions for research and necessary sample collection, and that song and insectivorous birds may be fed so long as the person or persons feeding the same shall not do so in a manner that causes a congregation of cervids or other wildlife or in a manner that said person or persons reasonably should have known would cause a congregation of cervids or other wildlife. Bird feed and/or seed may not be placed directly on the ground where it will be easily accessible by cervids or other wildlife inside a containment area. Bird and squirrel feeders must be removed if they serve a congregating or attracting role for wildlife other than song or insectivorous birds or squirrels. Provided further, that captive cervids may be fed inside cervid facilities permitted by the Division of Natural Resources West Virginia Department of Agriculture.

4.2. The West Virginia CWD Containment Area where feeding and baiting restrictions are in effect include Berkeley, Grant, Hampshire, Hardy, Jefferson, Mineral, and Morgan Counties and any other

county designated by the Director following review and evaluation, as reported in the annual West Virginia Hunting and Trapping Regulations Summary. Pursuant to Section 2.7 of this rule, counties may be added or rescinded by the Director in consultation with all necessary personages and entities specified in the aforementioned section.

§58-69-5. Prohibited possession and relocation.

5.1. Except as provided in W.Va. Code §20-2-11, no person may possess live wildlife for any purpose pursuant to W. Va. Code §20-2-4.

5.2. No person may move any species of live wildlife under special regulation for disease management from within a containment area to any other area of the state inside or outside of the designated containment area for any purpose.

5.3. No person may possess any species of live wildlife under special regulation for disease management that has been moved from the designated containment area to any other area of the state for any purpose.

5.4. A captive cervid facility lawfully permitted by the West Virginia Department of Agriculture pursuant to W. Va. Code §19-2H-1 et seq. is exempt from the provisions of section 5 of this rule.

§58-69-6. Penalties.

6.1. Any person violating the provisions of this rule is guilty of a misdemeanor and, upon conviction thereof, shall be punished in accordance with W. Va. Code §20-7-9.