



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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5/9/2022 2:43:18 PM

Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Natural Resources TITLE-SERIES: 58-63
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: Commercial Sale of Wildlife
CITE STATUTORY AUTHORITY: §20-2-11, §20-1-7(31), and §20-2-13

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) HB 4242

Section §64-10-3(e) Passed On 3/8/2022 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

May 9, 2022

This rule shall terminate and have no further force or effect from the following date:

August 01, 2027

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

Yes

James Bailey -- 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 9, 2022.

1.4. Effective Date. -- May 9, 2022.

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

§58-63-2. Definitions.

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

2.2. "Facility" means the property on which a person engages in an activity for which one of the licenses listed in section 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.

2.3. "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:

2.3.1. 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 categories of this license:

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);

2.3.1.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

2.3.1.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.

2.3.2. 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.

2.4. "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. "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. "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. "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:

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

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

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

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 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 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 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 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 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 60 days thereafter. Live foxes and raccoons held for 30 days or less shall be held according to temporary or permanent cage/pen/housing requirements as specified under W. Va. Code of State Rules, Title 58 Series 64, Miscellaneous Permits and Licenses and foxes or raccoons held over 30 days shall be held according to permanent cage/pen/housing requirements as specified under 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:

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

4.1.2. The licensee's or legal trapper's license number or DNR ID number if exempt from licensing requirements;

4.1.3. The date of the sale or transfer;

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

4.1.5. A description of the wildlife sold or transferred, including the number of each species sold or transferred and any unique identification.

4.1.5.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 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 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. 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, 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 subsection 3.1.4. of this rule. A licensee shall maintain all records at his or her facility for a minimum period of three 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 may require a licensee to submit appropriate samples of the wildlife for testing, 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 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. Any person accused of violating any provision of this rule, may, in the discretion of the Director, be referred to the county prosecutor in the county of the alleged offense for potential prosecution of a misdemeanor or felony. If the county prosecutor determines that a referred violation of this rule meets the act and state of mind requirements for criminal liability under West Virginia law, upon conviction thereof, the violator may be punished by a fine of up to \$500 or up to 30 days of incarceration in the county jail, or a combination of fine and incarceration. As applicable, the violation may, in the discretion of the county prosecutor, be prosecuted pursuant to and sentenced by a court in accordance with W.Va. Code Chapter 61: *Provided*, That convictions for violations of this rule may only be subject to incarceration if the rule violation convicted of posed a substantial risk to life or public safety, or in fact caused actual substantial harm resulting from the violation.