



WEST VIRGINIA SECRETARY OF STATE

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ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Natural Resources

RULE TYPE: Legislative

TITLE-SERIES: 58-69

RULE NAME: Wildlife Disease Management

CITE AUTHORITY: §20-1-7(31)

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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

Yes

Alexis L Kessel -- 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, 2032.

§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/or fruit that has naturally fallen in place from established fruit trees, shrubs, or vines do not constitute baiting.

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 the 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 reduce or prevent further disease spread.

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" means 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 or cause congregation of wildlife. Food plots, crops left standing in the field, or fruit that has naturally fallen in place from established fruit trees, shrubs, or vines do not constitute feeding.

2.12. "Foreign Animal Disease" (FAD) means 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 having custody or control over any live wildlife, whether the wildlife is taken, obtained, purchased, held in captivity, or controlled by other means.

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

§58-69-3. Establishment of Containment Areas.

3.1. The purpose of a containment area is to manage, control, eradicate, and/or prevent the spread of a contagious or infectious disease that has infected, or due to the proximity of confirmed disease cases is at reasonable risk of infecting, wildlife within the area.

3.2. The establishment of a containment area by the Director shall be based upon the most current available information relating to wildlife disease epidemiology, wildlife disease surveillance information (e.g., geographic distribution and prevalence), and the need to establish boundaries associated with clearly defined features on the landscape. Prior to the establishment of a new containment area, the Director shall consult with:

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

3.2.2. West Virginia Department of Agriculture veterinarians knowledgeable of wildlife diseases;

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

3.2.4. The Natural Resources Commission.

3.3. 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. The Director may, in consultation with the persons and entities specified in section 3.2 of this rule, add or remove counties or portions thereof to or from established containment areas.

3.4. The Director shall annually report established containment areas as well as associated feeding and baiting restrictions in the West Virginia Hunting and Trapping Regulations Summary, which is available free of charge in print from the Division of Natural Resources and from authorized license agents, and online via the Division's official website.

§58-69-3.4. Carcass Transport Regulations.

34.1. 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.

34.1.1. State or county agencies and licensed solid waste disposal vendors may transport cervid carcasses or parts thereof to an approved sanitary landfill.

34.1.2. Hunters may transport cervid carcasses that were not killed inside the containment area through the a containment area.

34.2. 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 in any state or province, 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 for free roaming wild cervids and if the Director approves the boundaries of this area, then these importation restrictions apply only to the chronic wasting disease positive area. The Director may for the purpose of this section alter the chronic wasting disease positive area.

4.3. Within a containment area, the Director may implement restrictions on the transportation or disposition of wildlife carcasses or parts thereof in response to an outbreak of avian influenza, bovine tuberculosis, chronic wasting disease, emerging animal disease, foreign animal disease, or any other animal disease or parasite should such restrictions become necessary to protect wildlife, agricultural animals, or public health. Within such a containment area, the Director may also require wildlife carcasses or parts thereof to be presented for inspection, examination, or testing.

§58-69-45. Baiting and Feeding Regulations.

45.1. It is illegal to feed 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, a foreign animal disease, an emerging animal disease, or other wildlife

diseases.

5.2. ~~Provided~~, The Director may allow exceptions to the feeding and baiting prohibition for research and necessary sample collection.

5.3. ~~that~~ Song and insectivorous birds may be fed in a containment area 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 or seed shall 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 shall be removed if they serve a congregating or attracting role for wildlife other than song or insectivorous birds or squirrels.

5.4. ~~Provided further, that~~ Captive cervids may be fed inside cervid facilities permitted by the Division of Natural Resources West Virginia Department of Agriculture.

§58-69-56. Prohibited possession and relocation.

6.1. Except as provided in W.Va. Code §20-2-11, §20-2D-1 et seq., or W. Va. Code of State Rules, Title 58 Series 21, Wildlife Rehabilitation, no person may possess live wildlife for any purpose pursuant to W. Va. Code §20-2-4.

6.2. No person may transport or release any species of live wildlife under special regulation for disease management from within a containment area to any other area of the state, whether inside or outside of a containment area, for any purpose.

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

6.4. 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 6 of this rule.