

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF PUBLIC HEARING ON
RULES I through III pertaining to the) PROPOSED ADOPTION
use of deer or elk urine to mask)
human odor)

TO: All Concerned Persons

1. On May 13, 2021, at 9:00 a.m., the Fish and Wildlife Commission (commission) will hold a telephonic public hearing via ZOOM meeting platform to consider the proposed adoption and amendment of the above-stated rules. Due to the public health crisis by the novel coronavirus, COVID-19, there will be no in-person hearing. Interested parties may access the remote conferencing in the following way:

(a) Dial by telephone: 1-646-558-8656
Meeting ID: 880 8935 4093
Password: 686533

The hearing will begin with a brief introduction by staff to explain the use of the telephonic platform. All participants will be muted except when it is their time to speak.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on April 30, 2021, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-9785; or e-mail jesssnyder@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I IDENTIFIED STATES AND PROVINCES WITH DOCUMENTED OCCURRENCES OF CHRONIC WASTING DISEASE (1) The commission has determined the following states have documented occurrences of Chronic Wasting Disease:

- (a) Arkansas;
- (b) Colorado;
- (c) Illinois;
- (d) Iowa;
- (e) Kansas;
- (f) Maryland;
- (g) Minnesota;
- (h) Mississippi;

- (i) Missouri;
- (j) Montana;
- (k) Nebraska;
- (l) New Mexico;
- (m) New York;
- (n) North Dakota;
- (o) Ohio;
- (p) Oklahoma;
- (q) Pennsylvania;
- (r) South Dakota;
- (s) Tennessee;
- (t) Texas;
- (u) Utah;
- (v) Virginia;
- (w) West Virginia;
- (x) Wisconsin; and
- (y) Wyoming.

(2) The commission has determined the following Canadian provinces have documented occurrences of Chronic Wasting Disease:

- (a) Alberta;
- (b) Quebec; and
- (c) Saskatchewan.

AUTH: 87-1-301, 87-6-221, MCA

IMP: 87-6-221, MCA

NEW RULE II PROCESS FOR IDENTIFYING FACILITIES IN STATES AND PROVINCES THAT PRODUCE URINE ALLOWED FOR THE PURPOSE OF MASKING HUMAN ODOR (1) The commission recognizes that the criteria in 87-6-221(2), MCA are met by the standards of the Archery Trade Association (ATA) and the Responsible Hunting Scent Association (RHSA). Urine from any approved ATA/RHSA facility is allowed, so long as the ATA/RHSA requirements continue to meet the standard in 87-6-221(2), MCA. Products which meet the ATA/RHSA requirements are designated with an ATA/RHSA marking indicating ATA/RHSA approval on the product packaging for identification by the consumer.

AUTH: 87-1-301, 87-6-221, MCA

IMP: 87-6-221, MCA

NEW RULE III SCENTS APPROVED BY THE COMMISSION FOR ATTRACTING GAME BIRDS AND GAME ANIMALS (1) Pursuant to 87-6-101, MCA, urine-based and natural glandular scents are approved by the commission for the purposes of attracting game animals and game birds if the scents:

- (a) originate from a state or province not listed in [NEW RULE I]; or
- (b) originate from a facility which is approved by the commission under [NEW RULE II] and display the required marks on the product packaging.

(2) Artificial scents and Responsible Hunting Scent Association-approved natural glandular scents may be used by hunters to attract game animals, except black bears, by spraying or pouring the scent on the ground or other objects.

AUTH: 87-1-301, 87-6-101, MCA

IMP: 87-6-101, MCA

REASON: Chronic Wasting Disease (CWD) is a neurological disease (i.e., transmissible spongiform encephalopathy) afflicting cervids (i.e., deer, elk, moose) spread by prions. CWD is always fatal for cervids, although it is not known to affect humans. Prions are present in many tissues and fluids from cervids like urine and glandular scents, which may influence the spread of CWD if infected material is used either for masking scent or bait. The legislature enacted 87-6-221, MCA, which generally prohibits the use or sale of deer or elk urine to mask human odor if the urine originated in a state or province with documented occurrences of CWD, as determined by the commission. That law also provides a process for the commission to allow deer or elk urine which originated in states with documented occurrences of CWD to be used for the purpose of masking human odor if the facility in which they are produced meets certain requirements. Compliance with these criteria dramatically limits risk of spreading CWD. This rule would allow use of urine from facilities which are certified by the Responsible Hunting Scent Association to meet the criteria identified in statute. Similarly, scents are allowed to be used to attract game animals or game birds if approved by the commission. The commission is proposing to allow urine which meets the criteria of 87-6-221, MCA, and urine that does not originate in a state or province with documented cases of CWD, to be used to attract game animals and game birds. The commission is also proposing to allow artificial scents and RHSA-approved natural glandular scents to be used by hunters to attract game animals except black bears. This would be done through spraying or pouring the scent on the ground or other objects. These restrictions will reduce the probability of inadvertent spread of CWD.

4. Concerned persons may submit their data, views, or arguments orally at the telephonic hearing. Written data, views, or arguments may also be submitted to: Wildlife Division, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail fwpwd@mt.gov, and must be received no later than May 14, 2021.

5. Jessica Snyder or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.

6. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to: Fish, Wildlife and Parks, Legal

Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be emailed to jesssnyder@mt.gov.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted directly in person on March 11, 2021.

8. With regard to the requirements of 2-4-111, MCA, the commission has determined that the adoption of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Aimee Hawkaluk
Aimee Hawkaluk
Rule Reviewer

/s/ Lesley Robinson
Lesley Robinson
Chair
Fish and Wildlife Commission

Certified to the Secretary of State April 6, 2021.