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TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule LSA Document #05-261

DIGEST

Amends 312 IAC 9-3-2 and adds 312 IAC 9-3-18.5, concerning the hunting of white-tailed deer possessed under a game breeder license and the taking, possessing, and releasing of exotic mammals, to prohibit the taking and releasing of the exotic mammals described in this rule. Adds 312 IAC 9-10-21 concerning exotic mammals possession permits. Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Estimated Number of Small Businesses Subject to This Rule:

The Indiana Department of Natural Resources (DNR) estimates that small businesses will be affected by the proposed new rules in 312 IAC 9-3-2, 312 IAC 9-3-18.5, and 312 IAC 9-10-21. The DNR has the authority to promulgate rules in accordance with the requirements found in IC 4-22-2-23 and IC 14-22-2-6.

The proposed rule language in 312 IAC 9-3-2 would likely affect an estimated 12 licensed game breeders who allow access to their property where white-tailed deer are possessed under their game breeder's license for the purpose of hunting in contravention of the game breeder's license statute (IC 14-22-20). These 12 game breeders may qualify as a small business under IC 4-22-2.1-4. Indiana Code does not allow the hunting or purposeful killing of white-tailed deer held pursuant to a game breeder's license. The law, however, applies to the owner of the deer and does not cover the person who hunts the deer. The addition in 312 IAC 9-3-2 would clarify that a hunter, a person licensed by the state of Indiana, may not hunt a white-tailed deer possessed under the authority of a game breeder's license. Indiana citizens wishing to possess white-tailed deer for any purpose must obtain a Game Breeder's License issued by the Indiana DNR (IC 14-22-20 and 312 IAC 9-10-4). The scope of the Game Breeder's License is limited to the propagation of an animal in captivity or the possession, purchase, or sale of an animal solely for the purpose of propagation. A Game Breeder's License does not allow the hunting or purposeful killing of deer maintained under that license, but again applies to the holder of the license and not the hunter. The proposed rule language is needed to clarify that hunters in Indiana may not hunt or purposely kill white-tailed deer held pursuant to a game breeder's license.

The new proposed rules in 312 IAC 9-3-18.5 and 312 IAC 9-10-21 would likely affect approximately 233 owners of exotic cervids that are registered with the Indiana State Board of Animal Health (BOAH) and may qualify as a small business under IC 4-22-2.1-4. Indiana citizens wishing to possess exotic cervids for any purpose must currently register with the BOAH. An estimated 11 registered cervidae facilities who operate as small businesses may currently offer exotic cervids such as elk and fallow deer for hunting purposes. Exotic mammals may only be offered to be hunted pursuant to the Licensed Shooting Preserve Statute (IC 14-22-31). This law requires that the DNR adopt rules if exotic mammals are allowed to be hunted on a licensed shooting preserve and that the facility must obtain a license from the DNR before operating a shooting preserve. The DNR does not have an administrative rule identifying any exotic mammals that can be offered to be hunted on a licensed shooting preserve. The proposed rule language is needed to clarify that exotic mammals cannot be hunted in Indiana. These proposed new rules would require approximately 233 small businesses to obtain a permit from the DNR to possess these cervids and comply with the new rules.

Estimated Average Annual Administrative Costs That Small Businesses Will Incur:

The DNR estimates that there will be no annual reports, record keeping, or administrative costs incurred by small businesses to comply with two of the proposed rules, 312 IAC 9-3-2 and 312 IAC 9-3-18.5.

There will be annual reports, record keeping, and administrative costs incurred by small businesses to comply with the new proposed rule in 312 IAC 9-10-21. Small businesses who own cervids will have to keep records of all exotic cervids that are bought, sold, traded, and gifted or are born or die during each calendar year. A small business who owns these exotic cervids would have to obtain a permit from the DNR each year, keep a record of all transactions, and submit an annual report to the DNR each year. The DNR estimates that completing the paperwork to obtain and renew a permit and comply with all record keeping requirements and reporting requirements will amount to approximately \$120 per year for each business (\$10 per hour × 1 hour per month × 12 months).

Estimated Total Annual Economic Impact on Small Businesses:

The DNR estimates that there will be an impact on small businesses as a result of compliance with all of the rule proposals in this package.

- **Justification of Requirements or Costs on Small Businesses Where Rule Is Not Expressly Required by Law:**

An estimated 12 licensed game breeders allow access to their property where white-tailed deer are possessed under their game breeder's license for hunting purposes in contravention of Indiana Code (IC 14-22-20). This rule change clarifies that hunters in Indiana may not hunt or purposely kill white-tailed deer held pursuant to a game breeder's license. The DNR sees no economic impact for small businesses engaged in an activity that is inconsistent with the terms of their license. However, the DNR is aware that white-tailed deer are currently sold for \$1,000 to \$4,000 each for this purpose by licensed game breeders.

Indiana Code provides a prohibition on the hunting or purposeful killing of white-tailed deer held pursuant to a game breeder's license. The law, however, applies to the owner of the deer and does not cover the person who hunts the deer. The addition in 312 IAC 9-3-2 would clarify that a hunter, a person licensed by the state of Indiana, may not hunt a white-tailed deer possessed under the authority of a game breeder license. Several licensed game breeders are allowing access to their property where white-tailed deer are possessed under their game breeder license for the purpose of hunting them behind a high-fence in contravention of the terms of their license and Indiana Code. Indiana citizens wishing to possess white-tailed deer for any purpose must obtain a Game Breeder's License issued by the Indiana DNR (IC 14-22-20 and 312 IAC 9-10-4). The scope of the Game Breeder's License is limited to the propagation of an animal in captivity or the possession, purchase or sale of an animal solely for the purpose of propagation. A Game Breeder's License does not allow the hunting or purposeful killing of deer maintained under that license, but again applies to the holder of the license and not the hunter. The proposed rule language is needed to clarify that hunters in Indiana may not hunt or purposely kill white-tailed deer held pursuant to a game breeder's license.

There are an estimated 11 registered cervidae facilities who operate as small businesses that may currently offer exotic cervids such as elk and fallow deer for hunting purposes. The DNR sees no economic impact for small businesses engaged in an activity not allowed by law. However, the DNR is aware that elk and fallow deer possessed in captivity are currently offered to be hunted at a price of \$2,000 to \$6,000 each.

Any adverse economic impact on businesses engaged in the activities described above will be mitigated by recent legislation (IC 14-22-20.5) governing cervidae and cervidae products. This law allows Cervidae Livestock Operations who own white-tailed deer and exotic cervids (and meet the requirements in the law) to sell their meat and other products. The sale of meat from white-tailed deer in Indiana has not been legal in the past. Therefore, small businesses who own cervids now have a new source of revenue in Indiana, but the animals must be slaughtered in compliance with the Humane Slaughter Act in IC 15-2.1-24. This new source of revenue could amount to thousands of dollars per business.

- **Supporting Data, Studies, or Analyses:** The DNR estimated the number of small business affected from the list of licensed game breeders within the DNR, Division of Fish and Wildlife and also from BOAH's list of registered cervidae facilities. The DNR estimated the price per animal sold for hunting in a high-fenced facility from articles published in the Indianapolis Star, other newspapers, and from research of the Web sites of these facilities.

Regulatory Flexibility Analysis of Alternative Methods:

- **Explanation of Preliminary Determination:**

The DNR did not propose any alternative to the proposed new language in 312 IAC 9-3-2. The only alternative would be to not propose this new language. Without this language, there would be no prohibition placed on a hunter to prevent the hunting of white-tailed deer possessed under a game breeder's license, even during the deer hunting seasons. The only prohibition would be on the holder of the game breeder's license, who could not allow hunting of the white-tailed deer held pursuant to the license.

In 312 IAC 9-3-18.5, the requirement for small businesses could be reduced with one of the following options:

- (1) do not propose this new rule prohibiting the taking (hunting) of exotic mammals;
 - (2) allow the taking (hunting) of exotic mammals under a permit or license with requirements for fair chase and legal weapons;
- or
- (3) allow the taking (hunting) of exotic mammals without any type of permit or license and with no restrictions.

The DNR would not be able to exempt small businesses from this proposed rule because the law needs to be the same for all individuals, businesses, and organizations who possess exotic mammals.

In 312 IAC 9-10-21, the requirement for small businesses could be reduced with one of the following options:

- (1) do not propose this new rule requiring a permit to possess exotic cervids; or
- (2) require a permit but reduce the record keeping and reporting requirements.

The DNR would not be able to exempt small businesses from this proposed rule because the law needs to be the same for all individuals, businesses, and organizations who possess exotic cervids. This proposed rule is needed to help protect Indiana's wild deer herd from possible disease transmission from these captive herds and to provide for enforcement of the permit requirements.

- **Supporting Data, Studies, or Analyses:** The DNR did not rely on any studies in its decision not to employ alternatives to these proposed rules.

312 IAC 9-3-2

312 IAC 9-3-18.5

312 IAC 9-10-21

SECTION 1. 312 IAC 9-3-2, PROPOSED TO BE AMENDED AT 29 IR 619, SECTION 3, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-2 General requirements for deer; exemptions; tagging; tree blinds; maximum taking of antlered deer in a calendar year

Authority: IC 14-22-2-6

Affected: IC 14-22-11-1; IC 14-22-11-11

Sec. 2. (a) This section and sections 3 through 10 of this rule govern the:

- (1) hunting;
 - (2) transportation; and
 - (3) disposal;
- of deer.

(b) Species of deer other than white-tailed deer (*Odocoileus virginianus*) are exempted from the following:

- (1) This section.
- (2) Sections 3 through 9 of this rule.

A person who claims the exemption provided under this subsection must prove the deer is other than a white-tailed deer.

(c) The licenses identified by sections 3 through 8 of this rule are nonexclusive. An individual may apply for one (1) or more of these licenses.

(d) Before September 1, 2007, a person must not take more than one (1) antlered deer during the seasons for an annual deer license.

(e) The use or aid of:

- (1) a food product that is transported and placed for consumption;
- (2) salt;
- (3) mineral blocks;
- (4) prepared solid or liquid intended for ingestion (herein called bait);
- (5) snares;
- (6) dogs; or
- (7) other domesticated animals;

to take deer is prohibited. A person must not hunt by the aid of bait or on or over a baited area. An area is considered baited for ten (10) days after the removal of the bait or the baited soil. Hunting an orchard or another area, which may be attractive to deer as the result of normal agricultural activity, is not prohibited. The use of manufactured scents and lures or similar chemical or natural attractants is not prohibited.

(f) The hunting of white-tailed deer possessed under the authority of a game breeder license under 312 IAC 9-10-4 is prohibited.

~~(g)~~ (g) Except as provided under IC 14-22-11-1 and IC 14-22-11-11, a person must not hunt:

- (1) deer unless the person possesses a completed and signed license bearing the person's name; or
- (2) with a deer license issued to another person.

~~(g)~~ (h) A piece of paper must, immediately upon taking a deer, be attached to a leg of the deer and state the following:

- (1) The name and address of the person.
- (2) The license number (if applicable).
- (3) The sex of the deer.
- (4) The month and day the deer was taken.

A deer leg must be tagged with the piece of paper before leaving the field. A deer that is in the field is not required to be tagged if the person who takes the deer maintains immediate custody of, and constant visual contact with, the deer carcass.

~~(h)~~ (i) A person who takes a deer must cause delivery of the deer carcass to an official checking station for registration on the

occurrence of the earlier of the following:

- (1) Within forty-eight (48) hours of the taking of the deer.
- (2) Before the deer is removed from this state.

The person who delivers the deer carcass to an official checking station for registration must provide accurate information for the check station logs.

~~(g)~~ **(j)** After the checking station operator records the permanent seal number on the log and collects the piece of paper described in subsection ~~(g)~~, **(h)**, the operator shall give the seal to the person. The person must immediately affix the seal:

- (1) between a tendon and bone;
- (2) through a section of skin or flesh; or
- (3) around a branched antler;

to prevent its removal (without cutting the seal or the body part to which it is affixed). The seal must be maintained until processing of the deer begins.

~~(j)~~ **(k)** The checking station operator must do the following:

- (1) Accurately and legibly complete all forms provided by the department.
- (2) Make those forms available to department personnel upon request.

~~(k)~~ **(l)** A person must not erect, place, or hunt from a permanent tree blind on state-owned lands. A tree blind placed on:

- (1) state-owned or state-leased lands;
- (2) U.S. Forest Service lands;
- (3) the Muscatatuck National Wildlife Refuge; or
- (4) the Big Oaks National Wildlife Refuge;

must be portable and may be left overnight only between September 1 and January 10. A fastener used in conjunction with a tree blind and a tree or pole climber that penetrates a tree more than one-half ($\frac{1}{2}$) inch is prohibited. Each portable tree blind must be legibly marked with the name, address, and telephone number of the owner of the tree blind.

~~(l)~~ **(m)** The head of a deer must remain attached to the carcass until the tag is attached and locked at the deer checking station.

~~(m)~~ **(n)** The use of infrared sensors to locate or take deer is prohibited. ~~It is unlawful to~~ **A person must not** hunt or retrieve deer with the aid of an infrared detector.

~~(n)~~ **(o)** Notwithstanding subsection (e), dogs may be used only while on a leash to track or trail wounded deer.

~~(o)~~ **(p)** Notwithstanding subsection (e):

- (1) donkeys;
- (2) mules; and
- (3) horses;

may be used for transportation to and from a hunt but may not be used while hunting.

~~(p)~~ **(q)** The possession of an electronic deer call is prohibited. A person must not hunt deer with the aid of an electronic deer call. *(Natural Resources Commission; 312 IAC 9-3-2; filed May 12, 1997, 10:00 a.m.: 20 IR 2702; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1528; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Sep 23, 2004, 3:00 p.m.: 28 IR 536)*

SECTION 2. 312 IAC 9-3-18.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 9-3-18.5 Exotic mammals

Authority: IC 14-22-2-6; IC 14-22-32-6

Affected: IC 14-8-2-278; IC 14-22; IC 15-2.1-24

Sec. 18.5. (a) A person must not take, as defined by IC 14-8-2-278, an exotic mammal that is a species from any of the following families of mammals:

- (1) Bradypodidae (tree sloth).**
- (2) Bovidae (gazelle, bighorn sheep, antelope, and wildebeest), except for domestic cattle (genus Bos, including all dairy and beef animals) and buffalo (Bison bison).**

- (3) Camelidae (camel and llama).
- (4) Canidae (jackal, wild dog, and other exotic foxes).
- (5) Cebidae (marmoset).
- (6) Cercopithecidae (baboon and monkey).
- (7) Cervidae (elk, moose, caribou, and other exotic deer).
- (8) Dasypodidae (armadillo).
- (9) Elephantidae (elephant).
- (10) Equidae (wild horse and zebra), except for domestic horses.
- (11) Felidae (mountain lion, lynx, tiger, and other exotic cats).
- (12) Giraffidae (giraffe and okapi).
- (13) Hippopotamidae (hippopotamus).
- (14) Hyaenidae (hyaena).
- (15) Lorisidae (potto and bushbaby).
- (16) Macropodidae (kangaroo and wallaby).
- (17) Manidae (pangolin).
- (18) Mustelidae (otter, weasel, polecat, and badger).
- (19) Myrmecophagidae (anteater).
- (20) Orycteropodidae (aardvark).
- (21) Pongidae (chimpanzee, bonobo, and gorilla).
- (22) Procaviidae (hyrax).
- (23) Procyonidae (ringtail cat and coatimundi).
- (24) Protelidae (aardwolf).
- (25) Rhinocerotidae (rhinoceros).
- (26) Suidae (wild boar and other exotic swine), except for domestic swine.
- (27) Tapiridae (tapir).
- (28) Tayassuidae (javelina and peccary).
- (29) Tragulidae (chevrotain).
- (30) Ursidae (bear).
- (31) Viverridae (civet, genet, and mongoose).
- (32) A hybrid or genetically altered mammal of any of these families.

(b) Notwithstanding subsection (a), a person may take an exotic mammal only if the exotic mammal is:

- (1) taken by a resident landowner or tenant while causing damage to property that is owned or leased by the landowner or tenant; or
- (2) a species from the family:
 - (A) suidae and:
 - (i) has been released or escaped from captivity; or
 - (ii) is a member of a breeding population in the wild; or
 - (B) bovidae, camelidae, or cervidae and slaughtered in accordance with IC 15-2.1-24.

(c) A person may not possess an exotic mammal that is a species from a family listed in subsection (a) except as otherwise provided by statute or this article.

(d) A person:

- (1) may not release an exotic mammal that is a species from a family listed in subsection (a) into the wild in Indiana except as otherwise provided by statute or this article; and
- (2) must report the escape of any exotic mammal listed in subsection (a) to a conservation officer within twenty-four (24) hours.

(e) As used in this rule, “exotic mammal” means a species that is:

- (1) not native to Indiana; or
- (2) extirpated from Indiana and either a:
 - (A) wild animal; or
 - (B) feral animal other than a dog or cat.

(Natural Resources Commission; 312 IAC 9-3-18.5)

SECTION 3. 312 IAC 9-10-21 IS ADDED TO READ AS FOLLOWS:

312 IAC 9-10-21 Exotic mammal possession permit

Authority: IC 14-22-2-4; IC 14-22-2-6; IC 14-22-6-1; IC 14-22-32

Affected: IC 4-21.5; IC 14-22

Sec. 21. (a) Except as provided in subsection (b), this section establishes the requirements that a person must satisfy to possess one (1) or more species of exotic mammals from the cervidae family.

(b) Exempted from this section is an accredited zoological park, circus, carnival, or research facility licensed under 9 CFR Chapter 1, Subchapter A.

(c) An application for an exotic mammal possession permit for one (1) or more of the following species of exotic mammals in the cervidae family (common names are included for public convenience, but the scientific names control) must be made on a departmental form:

- (1) Deer (all species, except white-tailed deer).**
- (2) Elk (*Cervus canadensis*).**
- (3) Caribou (all species, including reindeer).**
- (4) Moose (*Alces alces*).**
- (5) A hybrid or genetically altered mammal of any of the cervidae family.**

(d) Each cage or enclosure will be inspected by a conservation officer before a permit may be issued. An application for a permit under this section must be made within five (5) days after the:

- (1) acquisition of an animal within Indiana; or**
- (2) importation of an animal into Indiana.**

(e) The enclosure must have a perimeter fence consisting of at least a single eight (8) foot fence. Each cage or enclosure used to house animals shall be large enough to provide each animal with ample space for exercise and to avoid overcrowding. All chainlink or welded wire edges shall be smoothly secured to prevent injury to the animals and be kept properly repaired. Night quarters, holding pens, and nesting boxes may not be used as primary housing. The following shall be provided as required for the comfort of the particular species of animal:

- (1) Fresh water.**
- (2) Rainproof dens.**
- (3) Nest boxes.**
- (4) Windbreaks.**
- (5) Shelters.**
- (6) Shade.**
- (7) Bedding.**

Each animal shall be handled, housed, and transported in a sanitary and humane manner. An enclosure used to house the animals must be provided with sufficient drainage to prevent standing water from accumulating. Upon a request by a conservation officer, any cage or other enclosure must be made available for inspection.

(f) Each animal possessed under this section must be lawfully acquired. At least one (1) of the following shall be presented for inspection upon the request of a conservation officer:

- (1) A receipted invoice.**
- (2) A bill of lading.**
- (3) Other satisfactory evidence of lawful acquisition.**

Documentation in the form of a copy of a valid exotic mammal possession permit or valid dated receipt that establishes lawful acquisition or ownership must accompany any transportation of the animals.

(g) A permit holder must report the escape of any mammal possessed under this section to a conservation officer within twenty-four (24) hours. No animals possessed under this section may be released.

(h) A permit holder must comply with all applicable state, local, or other federal laws. An animal possessed under this section may be administered a pharmaceutical product approved by a state or federal agency for the purpose of prevention

or treatment of any of the following:

- (1) Malnutrition.
- (2) Illness.
- (3) Disease.
- (4) Injury.
- (5) Stress.

A licensed veterinarian may administer to an animal an immobilizing agent, tranquilizer, or drug for euthanasia in compliance with all state and federal laws.

(i) A person must not sell a wild animal possessed under this section if the person knows or should know the animal is sick.

(j) A permit holder must do the following:

(1) Record all transactions by which a wild animal possessed under this section is:

- (A) sold;
- (B) traded;
- (C) loaned;
- (D) bartered; or
- (E) given;

to another person on a departmental form or computerized record.

(2) Keep a copy of the transaction record on the premises of the permit holder for at least two (2) years after the transaction and provide a copy to a conservation officer upon request.

(3) Issue a valid, dated receipt for all animals sold, traded, bartered, or gifted and include the following information:

- (A) The exotic mammal possession permit number.
- (B) The buyer's and seller's name and address.
- (C) The number of animals sold.
- (D) The species of the animal sold.

(k) A permit expires on December 31 of the year the permit is issued. The permit holder must provide an annual report to the division by February 15. The annual report shall include for each species possessed under this permit the number:

- (1) bought;
- (2) sold;
- (3) born;
- (4) traded;
- (5) gifted;
- (6) of deaths; and
- (7) on hand.

(l) A conservation officer may enter the premises of the permit holder at all reasonable hours to inspect those premises and any records relative to the permit. The conservation officer shall immediately notify the permit holder if the inspection reveals that the wild animals are being kept under unsanitary or inhumane conditions. The conservation officer may make a second inspection after ten (10) days, and:

- (1) the permit may be suspended or revoked under IC 4-21.5; and
- (2) the wild animals may be confiscated if the permit holder fails to comply with a provision of the permit.

(m) A permit may be suspended, denied, or revoked under IC 4-21.5 if the permit holder fails to comply with any of the following:

- (1) A provision of a permit issued under this section.
- (2) All applicable state, local, or other federal laws.

(Natural Resources Commission; 312 IAC 9-10-21)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on February 27, 2006 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Natural Resources Commission will hold a public hearing on proposed amendments and new rules concerning the hunting of white-tailed deer possessed under a game breeder license,

the taking, possessing, and releasing of exotic mammals, and exotic mammals possession permits.

With respect to IC 4-22-2-24(d)(3), the proposed rule language in 312 IAC 9-3-2 would affect individuals who wish to hunt deer that are possessed and bred under a game breeder license. This rule language clarifies that deer possessed under a game breeder license in captivity could not be hunted under the authority of a deer hunting license. The new proposed rule in 312 IAC 9-3-18.5 would affect individuals who wish to hunt elk, fallow deer, and Russian boar, for example, that are possessed in captivity in Indiana. This rule language clarifies that exotic mammals listed in the proposed rule cannot be hunted in Indiana on a shooting preserve at any time. The new proposed rule language in 312 IAC 9-10-21 would require approximately 350 entities, including individuals and organizations, to obtain a permit from the DNR to possess these cervids. The permit would be free but has administrative requirements including an annual report, submission of an application each year, and records of all cervids that are bought, sold, traded, and gifted or are born or die during each calendar year. The DNR estimated the number of regulated entities affected in 312 IAC 9-10-21 from the Indiana State Board of Animal Health's list of registered cervidae facilities. The DNR did not rely on any other data or studies in its analysis in determining the imposition of the requirements upon other regulated entities.

Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W272 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Rick Cockrum
Chairman
Natural Resources Commission