

**TITLE 58
LEGISLATIVE RULE
DIVISION OF NATUAL RESOURCES**

**SERIES 64
MISCELLANEOUS PERMITS AND LICENSES**

SUMMARY

Title 58, Series 64, Miscellaneous Permits and Licenses establishes procedures concerning the application for and renewal of certain permits and licenses issued by the Division and the keeping of records, submission of reports and other terms and conditions associated with such permits and licenses.

**TITLE 58
LEGISLATIVE RULE
DIVISION OF NATURAL RESOURCES**

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CIRCUMSTANCES

The recent discovery of chronic wasting disease (CWD) in a captive Cervid pen and in wild white-tailed deer in New York has reemphasized the importance of preventive management of our captive Cervid facilities in West Virginia. The disease is especially serious in that there is no live animal test for the facilities and that there is an extended incubation period of up to five years. CWD is a transmissible spongiform encephalopathy of the nervous system which is always fatal in Cervids. Although there have been no known cases of CWD in humans, the consumption of deer meat infected with the disease is considered a risk.

The recreational hunting and wildlife viewing associated with the deer herd and its economic benefits would be drastically reduced should CWD be discovered in West Virginia. Millions of dollars have been spent and dedicated to the elimination and control of CWD in states where it has occurred. Prevention of the introduction of CWD into West Virginia is the most economically prudent course of action. A recent survey of hunters in Wisconsin where the disease occurs indicated that 36% of hunters may not participate in deer hunting because of their concerns of CWD. A 36% decline in deer hunting in West Virginia would result in a loss of a minimum of \$2.6 million in license sales and a total economic loss of \$89 million to the state. In Colorado all Cervids killed in the endemic area of CWD are tested.

The primary method of spreading CWD has been through the interstate transfer of deer and elk into captive pens. Since live Cervids can not be tested, the disease could already be in West Virginia. Immediate action must be taken to mark all Cervids, inventory herds, provide higher standards for facilities, test dead Cervids, and monitor and control movements of captive Cervids to reduce the risks associated with this potential crisis in wildlife management.

This rule also addresses the problems associated with Bovine Tuberculosis in white-tailed deer.

APPENDIX B
FISCAL NOTE FOR PROPOSED RULES

Rule Title: Series 64, Miscellaneous Permits and Licenses

Type of Rule: Legislative Interpretive Procedural

Agency: Division of Natural Resources

Address: Room 812, Building 3, Captiol Complex, Charleston, West Virginia, 25305

Phone Number: 304/558-2771 Email: billieshearer@wvdnr.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This rule will increase the agency cost of monitoring and sampling captive cervid facilities from approximately \$20,000 per year to approximately \$40,000 per year in man days and current expense.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	15,000.00	17,000.00	20,000.00
Personal Services	14,000.00	16,000.00	18,000.00
Current Expenses	1,000.00	1,000.00	2,000.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Equipment	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: Series 64, Miscellaneous Permits and Licenses

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

Increased inspections and sampling will increase agency man days from about 130 days currently to an estimated 230 days when fully implemented plus an increase in associated vehicle mileage and expenses.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

None

Date: 8/8/05

Signature of Agency Head or Authorized Representative

Brian Helmick



EMERGENCY RULE QUESTIONNAIRE

DATE: 6/28/05

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Division of Natural Resources

Room 812, Building 3, Capitol Complex

Charleston, West Virginia 25305

Telephone Number 304/558-2771

EMERGENCY RULE TITLE: Series 64, Miscellaneous Permits and Licenses

1. Date of filing 6/28/05

2. Statutory authority for promulgating emergency rule:
West Virginia Code Chapter 20-1-7(20) and 20-1-7(30)

3. Date of filing of proposed legislative rule: _____

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? Amends 58CSR64

5. Has the same or similar emergency rule previously been filed and expired?
No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.

Chronic Wasting Disease has spread from the west eastward to several states and has now been found in New York. This disease is a serious threat to the state's deer herd and to the associated outdoor recreation. The movement of this disease is associated with the movement of captive Cervids between captive Cervid facilities. Since there is no live animal test for Chronic Wasting Disease, regulations of captive cervid facilities must be modified to mandate higher standards of fencing, Cervid inventory, disease testing, restricting movements, monitoring and protection of wild white-tailed deer.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

~~Not applicable.~~

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

~~Chronic Wasting Disease presents a serious threat to the state's wildlife resources and there is no live animal test currently available to diagnose this disease. The disease could already be in our captive cervid facilities or could be brought into the state through the illegal movement of captive Cervids. Strict monitoring and upgrading of captive Cervid facilities is necessary to protect the state's wildlife and associated recreational and economic resources. The rule also addresses the prevention of Bovine Tuberculosis and other diseases.~~

FILED

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TITLE 58
LEGISLATIVE RULE
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 64
MISCELLANEOUS PERMITS AND LICENSES

§58-64-1. General.

1.1. Scope and Purpose. -- This rule establishes procedures concerning the application for and renewal of certain permits and licenses issued by the Division and the keeping of records, submission of reports and other terms and conditions associated with such permits and licenses.

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

1.3. Filing Date. -- ~~May 10, 1996.~~

1.4. Effective Date. -- ~~May 10, 1996.~~

1.5. Repeal of Former Rule. -- This rule repeals and replaces 47 CSR 48A "Miscellaneous Permits and Licenses" which was filed on July 28, 1989 and became effective on September 1, 1989.

§58-64-2. Definitions.

2.1. "Applicant" means a person of at least eighteen (18) years of age who is applying for any one of the following permits and licenses issued by the Division under the provisions of W. Va. Code 20-2 et seq.

2.1.1. 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). ~~Three~~ Four categories of this license will be issued by the Division:

2.1.1.a. Commercial game farm license. This license authorizes the holder to breed or raise such animals and birds as specified by the license, to sell the same dead or alive, or to sell the eggs of birds in accordance with the provisions of Division rules governing the commercial sale of wildlife (58 CSR 63). This license does not include the acquisition or holding of foxes or raccoons trapped from the wild by a legal trapper under provisions of W. Va. Code §20-2-11.

2.1.1.b. Hound coursing/training pen game farm license. This license authorizes the holder 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 and raccoons obtained from the wild by a legal trapper under provisions of W. Va. Code §20-2-11 or live wildlife obtained by means specified under 58 CSR 63 Section 3.

2.1.1.c. Incorporated sportsmen club restocking 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 under provisions of W. Va. Code §20-2-11 or other means specified under 58 CSR 63 Section 3 for the purpose of restocking.

2.1.1.d. Captive cervid license. This license authorizes cervids to be held in accordance with provisions of this rule.

2.1.2. 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 holder to breed or raise such species as specified by the license and to buy and sell the same dead or alive or the eggs thereof in accordance with the provisions of Division rules governing the commercial sale of wildlife (58 CSR 63). Two categories of this license will be issued by the Division:

2.1.2.a. A fish pond license to raise and sell fish, frogs, turtles, or other forms of aquatic life.

2.1.2.b. A fish sales license to buy and resell fish, frogs, turtles, or other forms of aquatic life.

2.1.3. A permit to keep and maintain in captivity as a pet a wild animal or wild bird that has been acquired from a commercial dealer or legally taken by the applicant during the ~~legal~~ open hunting or trapping season established under 58 CSR 45 (W. Va. Code §20-2-51).

2.1.4. A permit to keep and maintain in captivity as a roadside menagerie wild animals, wild birds, amphibians, or reptiles (W. Va. Code §20-2-52).

2.1.5. A license for the operation of a privately-owned pond or impoundment to be used as a commercial fishing preserve (W. Va. Code §20-2-53).

2.1.6. A license for the operation of a privately-owned commercial shooting preserve (W. Va. Code §20-2-54).

2.1.7. A license to catch and sell minnows or other bait fish (W. Va. Code §20-2-55).

2.1.8. A permit to any person, group of persons, club, or organization to hold or conduct a field trial, shoot-to-retrieve field trial, water race, or wild hunt (W. Va. Code §20-2-56).

2.2. "Chief" means the chief of the Law Enforcement Section of the West Virginia Division of Natural Resources.

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

2.4. "Director" means the director of the West Virginia Division of Natural Resources.

2.5. "District Office" means the office of the West Virginia Division of Natural Resources that houses Division personnel in a district.

2.6. "Section" means the Law Enforcement Section of the West Virginia Division of Natural Resources.

2.7. "Facility" means the property on which a person engages in an activity of which one of the permits and licenses listed in Section 2.1 of this rule is required by statute and includes, but is not limited to, buildings, enclosures, grounds, impoundments, and ponds.

2.8. "Fiscal Year" means July 1 of one year through June 30 of the following year.

2.9. "Licensee" means a person who has been issued one of the permits and licenses listed in Section 2.1 of this rule.

2.10. "Wild Animals" means all mammals native to West Virginia, except house mice and rats.

2.11. "Wild Birds" means all birds except domestic poultry (chickens, ducks, geese, guinea fowl, peafowls, and turkeys), members of the family Psittacidae (parrots and parakeets), and other foreign cage birds such as the common canary, exotic finches, and ring doves. The term "wild birds" includes both birds that occur in a natural state in West Virginia and imported foreign game birds such as grouse, partridges, pheasants, quail, and waterfowl.

2.12. "Commercial dealer" means a licensee holding a license as defined in Section 2.21.1.a. or an out-of-state person/business licensed to sell and export wildlife.

2.13. "Legal Trapper" means a trapper possessing a valid West Virginia trapping license or equivalent (W. Va. Code 20-2-27, 20-2-28).

2.14. "Hound Coursing/Training Pen" means a permanent enclosure of no less than forty (40) acres from which there is no reasonable expectation of escape of the animals placed within.

2.15. "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 West Virginia Secretary of State for such purpose.

2.16. "Captive Cervid Facility" means a facility which is licensed to hold cervids in a permanent enclosure.

2.17. "Cervid" is any member of the deer family, both native and exotic.

2.18. All other terms shall have the meaning prescribed in W. Va. Code §20-1-2.

§58-64-3. Application Submission and Review.

3.1. Except as provided in Section 3.1.1 of this rule, an applicant must submit the appropriate and completed application form furnished by the Division to the district office which serves the county in which the applicant's facility is located.

3.1.1. An applicant for a commercial shooting preserve license issued under W. Va. Code §20-2-54 must submit the appropriate and completed application form furnished by the Division to the address supplied on that form.

3.2. Application forms may be obtained at any district office or from the West Virginia Division of Natural Resources, Law Enforcement Section, Building 3, State Capitol Complex, Charleston, West Virginia 25305.

3.3. An application will not be considered to be complete unless the specified licensing fee and a copy of the applicant's West Virginia Business Registration Certificate (if applicable) are attached to the submitted application form.

3.4. Licensing fee payments must be made by personal check or money order payable to the West Virginia Division of Natural Resources.

3.5. Any inspection of an applicant's facility and wildlife will be made in accordance with the provisions of Section 6 of this rule.

3.6. A public hearing will be conducted in the appropriate county to solicit public concerns and comments related to any proposed captive cervid facility.

3.7. Upon the completion of application review, Division personnel will recommend to the chief that the permit or license sought by the applicant be either granted or denied.

~~3.6.1.~~ 3.7.1. If the chief accepts a recommendation to deny the granting of a permit or license, he must notify the applicant of the denial and the reasons therefor.

~~3.7.~~ 3.8. All permits and licenses listed in Section 2.1 of this rule will be issued by the chief-, except the captive cervid license which will be issued only after approval of the Chief of Wildlife Resources Section.

~~3.8.~~ 3.9. All licensees must comply with the Temporary or Permanent Cage/Pen/Housing Requirements as set forth in Appendix A.

§58-64-4. Renewal of Issued Permits and Licenses.

4.1. Except as provided in Section 4.1.1 of this rule, all permits and licenses issued under this rule will expire on December 31 of the year of issue.

4.1.1. A commercial shooting preserve license issued under W. Va. Code §20-2-54 will expire on June 30 of the fiscal year of issue.

4.2. A licensee may seek to renew an issued permit or license by submitting an updated application to the Division no later than one month prior to the date upon which his permit or license expires.

4.2.1. A renewal application will be submitted by the licensee and processed by the Division in accordance with the provisions of Section 3 of this rule.

4.2.2. A one-month extension for an issued permit or license may be granted by Division personnel in order to facilitate the review and processing of a licensee's renewal application. No fee will be charged for an extension.

4.3. A permit or license issued under this rule may not be sold or transferred.

§58-64-5. Record Keeping and Reporting.

5.1. Records must be maintained by the licensee in accordance with the terms and conditions of the issued permit or license.

5.2. Reports must be submitted by the licensee to the chief in accordance with the terms and conditions of the issued permit or license.

5.3. Captive cervid facility reports as required in Section 7.4 must be submitted to the Chief of the Wildlife Resources Section.

§58-64-6. Inspections.

6.1. An applicant's facility and wildlife may be inspected by Division personnel, on a case by case basis, prior to the granting of the desired permit or license, except as provided in Section 6.2 of this rule.

6.2. Division personnel will inspect an applicant's facility and wildlife prior to the granting of a game farm license under W. Va. Code §20-2-47, a fish pond license under W. Va. Code §20-2-48, or a roadside menagerie permit under W. Va. Code §20-2-52 to assure compliance with all requirements mandated by statute or rule. A captive deer facility must be inspected by both Division of Natural Resources, Wildlife Resources and Law Enforcement personnel and an inspection form completed.

6.2.1. Prior to the issuance of a game farm license, Division personnel will determine that the game farm is properly enclosed, that the provisions for housing and sanitation are proper and adequate, and that the safety of the public is protected.

6.2.2. Prior to the issuance of a fish pond license, Division personnel will determine that the fish plant or pond will not interfere with the free passage of fish, that any water diverted to such plant or pond does not violate the riparian rights of other landowners, and that such plant, pond, or diversion will not interfere with the public stocking or propagation of fish frequenting such waters.

6.2.3. Prior to the issuance of a roadside menagerie permit, Division personnel will determine that the provisions for housing and care of wildlife to be kept in captivity at the menagerie are proper and adequate and that the safety of the public is protected.

6.3. 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.

§58-64-7. Terms and Conditions.

7.1. Game Farm License. The following terms and conditions apply for this license.

7.1.1 Wildlife enclosures must meet the minimum requirements set forth in Appendix A. In addition, all enclosures must be strong enough to both prevent escape of the captive wildlife and protect them from injury. All enclosures must be equipped with a safety barrier which adequately prevents any physical contact between the captive wildlife and visitors or customers. Cages considered unsafe by Division personnel must be repaired or reconstructed as directed within sixty (60) days.

7.1.2. Each enclosure must be provided with a shelter that is appropriate for the wildlife held captive. Shelters must contain bedding or nesting material as may be required for the comfort of the wildlife and be constructed in a manner that protects them from inclement weather.

7.1.3. Fresh drinking water must be provided daily. Swimming or wading pools must be cleaned as needed to ensure good water quality. Wildlife enclosures must be adequately drained.

7.1.4. Food must be wholesome, palatable, free from contamination, and of sufficient quantity and nutritive value to maintain all animals in good health. The diet must be prepared with consideration for age,

species, condition, size and type of animal. Wildlife must be fed at least once a day, except as dictated by hibernation, veterinary treatment, normal fasts, or other professionally-accepted practice.

7.1.5. Fecal and food waste must be removed from cages daily and stored or disposed of in a manner which prevents noxious odors or insect pests. Food and water containers must be kept clean. Hay, straw, or other bedding or nesting material must be replaced as needed. All waste must be disposed of in a legal manner.

7.1.6. All wildlife must be kept free from parasites, sickness or disease. If sick, wildlife must be given immediate professional medical attention or be humanely destroyed.

7.1.7. Any damage or injury resulting from escape of wildlife held under the authority of this license shall be the sole responsibility of the licensee.

7.1.7.a. Wildlife which escapes and poses no threat to the public shall become the property of the State.

7.1.7.b. Wildlife which escapes and poses a potential threat to the public safety may be disposed of by the Division personnel.

7.1.8. Any condition which results in wildlife escaping from its enclosure, cage, housing, leash or other constraint shall be prima-facie evidence that the escaped wildlife was held in an unsafe manner and shall be a violation of the license.

7.1.9. This license does not authorize the holder to capture wildlife from the woods or fields of this State, or to acquire live trapped raccoons and foxes from trappers in West Virginia to be used as stock at the game farm.

7.1.10. The licensee must obey Division rules governing the commercial sale of wildlife (58 CSR 63).

7.1.11. The licensee must display his license in plain view in the vicinity of his wildlife enclosure(s).

7.1.12. Accurate and current records of all wildlife acquisitions and sales or possession transfer shall be maintained by the licensee on forms provided by the Director. Records on all wildlife born at the licensee's facility shall also be maintained. 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 a wildlife transaction has been conducted. All records shall be maintained by the licensee at the facility for a minimum period of ~~three~~ (3) ten (10) years. In addition the licensee shall provide a bill of sale or document to each person who purchases or receives the licensee's wildlife. The bill of sale or document shall, at a minimum, contain the following information.

7.1.12.a. The seller's name and address.

7.1.12.b. The seller's commercial game farm license number.

7.1.12.c. The date of the sale.

7.1.12.d. The purchaser's name and address

7.1.12.e. A description of the wildlife sold or transferred, including the number of each species sold or transferred.

7.1.13. 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 in this license.

7.2 Hound Coursing/Training Pen Game Farm License. The following terms and conditions will apply for this license.

7.2.1. Hound coursing/training pens and wildlife enclosures must meet the minimum requirements set forth below and in Appendix A. In addition, all wildlife enclosures and hound coursing/training pens must be strong enough to both prevent escape of the captive wildlife and protect them from injury. All enclosures must be equipped with a safety barrier which adequately prevents any physical contact between the captive wildlife and visitors or customers. Cages considered unsafe by Division personnel must be repaired or reconstructed as directed within sixty (60) days.

7.2.2. Each enclosure must be provided with a shelter that is appropriate for the wildlife held captive. Shelters must contain bedding or nesting material as may be required for the comfort of the wildlife and be constructed in a manner that protects them from inclement weather.

7.2.3. Fresh drinking water must be provided daily. Swimming or wading pools must be cleaned as needed to ensure good water quality. Wildlife enclosures must be adequately drained.

7.2.4. Food must be wholesome, palatable, free from contamination, and of sufficient quantity and nutritive value to maintain all animals in good health. The diet must be prepared with consideration for age, species, condition, size and type of animal. Wildlife must be fed at least once a day, except as dictated by hibernation, veterinary treatment, normal fasts, or other professionally-accepted practice.

7.2.5. Fecal and food waste must be removed from cages daily and stored or disposed of in a manner which prevents noxious odors or insect pests. Food and water containers must be kept clean. Hay, straw, or other bedding or nesting material must be replaced as needed. All waste must be disposed of in a legal manner.

7.2.6. All wildlife must be kept free from parasites, sickness or disease. If sick, wildlife must be given immediate professional medical attention or be humanely destroyed.

7.2.7. Any damage or injury resulting from escape of wildlife held under the authority of this license shall be the sole responsibility of the licensee.

7.2.7.a. Wildlife which escapes and poses no threat to the public shall become the property of the State.

7.2.7.b. Wildlife which escapes and poses a potential threat to the public safety may be disposed of by the Division personnel.

7.2.8. Any condition which results in wildlife escaping from its enclosure, cage, housing, leash or other constraint shall be prima-facie evidence that the escaped wildlife was held in an unsafe manner and shall be a violation of the license.

7.2.9. This license does not authorize the holder to capture wildlife from the woods or fields of this State to be used as stock at the game farm or for release into hound coursing/training pens. This license is intended only to allow the licensee to acquire live foxes and raccoons from legal trappers and/or commercial dealers for the purpose of stocking hound coursing/training pens.

7.2.10. The licensee must obey Division rules governing the commercial sale of wildlife (58 CSR 63).

7.2.11. The licensee must display his license in plain view in the vicinity of his wildlife enclosure(s).

7.2.12. Under this license, hound coursing/training pens means a permanent enclosure of no less than forty (40) acres from which there is no reasonable expectation of escape of the animals placed within. In the case of foxes and raccoons, the licensee must meet the requirements of ~~paragraph 19~~ 7.2.19 below.

7.2.13. This license authorizes the holder to purchase, hold, and release into hound coursing/training pens, under terms and conditions of the license, live foxes and raccoons obtained from the wild by a legal trapper (WV Code §20-2-11) or wildlife obtained by means specified under 58 CSR 63 Section 3 for this purpose.

7.2.14. Live raccoons and foxes obtained from a legal trapper under provision of WV Code §20-2-11 must be obtained within the county in which the licensed facility is located or from the counties specified by the Director.

7.2.15. In October of each year the Director will publish a list of counties from which the holder of this license may obtain live foxes or raccoons. In order to protect public health and the welfare of native wildlife, the Director may further suspend and limit the sale and transfer of live raccoons and foxes in any county or portions thereof upon public notice.

7.2.16. Live foxes and raccoons obtained under this license for the purpose of releasing into hound coursing/training pens must be ear tagged by the licensee with a tag supplied by the Division within three (3) days of acquisition and before releasing into hound coursing/training pens.

7.2.17. A record must be kept by the licensee listing all wildlife acquisitions and dispositions. The animal ear tag number, date, county of origin, name address and telephone number of person from which the animal is acquired, and the date of release of all raccoons and foxes must be recorded. The bill of sale or document received at the time of the wildlife possession transfer must be kept as part of the record. All records must be either typed or written in plain and legible English and must be maintained for a period of three (3) years.

7.2.18. This license does not authorize the licensee to transfer possession or resell wildlife.

7.2.19. Fox hound coursing/training pens must have a minimum of one hundred (100) acres. Raccoon hound coursing/training pens must have a minimum of forty (40) acres, at least fifty percent (50%) of which is wooded.

7.2.20. Stocking rates of raccoon and fox shall not exceed one (1) animal per ten (10) acres in hound coursing/training pens.

7.2.21. A maximum of one (1) dog per fifteen (15) acres is permitted in raccoon and fox hound coursing/training pens.

7.2.22. Supplemental food and water must be supplied for wildlife released into hound coursing/training pens if these items are not adequate within the pen.

7.2.23. Artificial cover, in the form of dog proof escape pens, shall be provided if natural escape cover is not adequate.

7.2.24. Raccoons and foxes obtained from a trapper cannot be housed or held in the same facility, or housed or held in the same cage as animals obtained by other means.

7.2.25. Raccoons and foxes held under this license prior to release into a hound coursing/training pen may not be used for the training of hunting dogs or in dog field trials.

7.2.26. 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 in this license.

7.3. Incorporated Sportsmen Club Restocking Game Farm License. The following terms and conditions will apply to this license.

7.3.1. Wildlife enclosures must meet the minimum requirements set forth in Appendix A. In addition, all enclosures must be strong enough to both prevent escape of the captive wildlife and protect them from injury. All enclosures must be equipped with a safety barrier which adequately prevents any physical contact between the captive wildlife and the public. Cages considered unsafe by Division personnel must be repaired or reconstructed as directed within sixty (60) days.

7.3.2. Each enclosure must be provided with a shelter that is appropriate for the wildlife held captive. Shelters must contain bedding or nesting material as may be required for the comfort of the wildlife and be constructed in a manner that protects them from inclement weather.

7.3.3. Fresh drinking water must be provided daily. Swimming or wading pools must be cleaned as needed to ensure good water quality. Wildlife enclosures must be adequately drained.

7.3.4. Food must be wholesome, palatable, free from contamination, and of sufficient quantity and nutritive value to maintain all animals in good health. The diet must be prepared with consideration for age, species, condition, size and type of animal. Wildlife must be fed at least once a day, except as dictated by hibernation, veterinary treatment, normal fasts, or other professionally-accepted practice.

7.3.5. Fecal and food waste must be removed from cages daily and stored or disposed of in a manner which prevents noxious odors or insect pests. Food and water containers must be kept clean. Hay, straw, or other bedding or nesting material must be replaced as needed. All waste must be disposed of in a legal manner.

7.3.6. All wildlife must be kept free from parasites, sickness or disease. If sick, wildlife must be given immediate professional medical attention or be humanely destroyed.

7.3.7. Any damage or injury resulting from the possession, escape or release into the wild of wildlife held under the authority of this license shall be the sole responsibility of the licensee.

7.3.7.a. Wildlife which escapes or is released into the wild and poses no threat to the public shall become the property of the State.

7.3.7.b. Wildlife which escapes or is released into the wild and poses a potential threat to the public safety may be disposed of by the Division personnel.

7.3.8. Any condition which results in wildlife escaping from its enclosure, cage, housing, leash or other constraint shall be prima-facie evidence that the escaped wildlife was held in an unsafe manner and shall be a violation of the license.

7.3.9. This license does not authorize the holder to capture wildlife from the woods or fields of this State to be used as stock at the game farm or any other use.

7.3.10. The licensee must obey Division rules governing the commercial sale of wildlife (58 CSR 63).

7.3.11. The licensee must display his license in plain view in the vicinity of his wildlife enclosure(s) and a copy on their person at the site of release of the wildlife covered under this license.

7.3.12. Under this license an 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 West Virginia Secretary of State for such purpose.

7.3.13. This license authorizes incorporated sportsmens clubs in West Virginia to purchase, hold, and release 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 wildlife obtained by means specified under 58 CSR 63 Section 3 for the purpose of restocking.

7.3.14. Raccoons and foxes obtained from a legal trapper under provision of W. Va. Code §20-2-11 must be obtained within the county in which the licensed facility is located or from the counties specified by the Director.

7.3.15. In October of each year the Director will publish a list of counties from which the holder of this license may obtain live foxes or raccoons. In order to protect public health and the welfare of native wildlife, the Director may further suspend and limit the sale and transfer of live raccoons and foxes in any county or portions thereof upon public notice.

7.3.16. Raccoons and foxes obtained from legal trappers under provision of W. Va. Code §20-2-11 can be held by the licensee for no more than thirty (30) days. Raccoons and foxes obtained from commercial dealers can be held by the licensee for no more than three (3) days. All raccoons and foxes obtained under this license must be held or transported under conditions specified in temporary cage/pen/housing requirements or better.

7.3.17. Live foxes and raccoons obtained under this license for the purpose of restocking must be ear tagged by the licensee with a tag supplied by the Division within three (3) days of acquisition and before releasing into the wild.

7.3.18. A record must be kept by the licensee listing all wildlife acquisitions and dispositions. The animal ear tag number, date, county of origin, name address and telephone number of person from which the animal is acquired, and the date and place of release of all raccoons and foxes must be recorded. The bill of sale or document received at the time of the wildlife possession transfer must be kept as part of the record. All records must be either typed or written in plain and legible English and must be maintained for a period of three (3) years.

7.3.19. This license does not authorize the licensee to transfer possession or resell wildlife.

7.3.20. This license is intended only to allow Incorporated Sportsmen Clubs to acquire live trapped foxes and raccoons from legal trappers and/or commercial dealers for the purpose of restocking.

7.3.21. Raccoon and foxes held under this license prior to release for restocking may not be used for the training of hunting dogs or in dog field trials.

7.3.22. Raccoons and foxes obtained from a trapper cannot be housed or held in the same facility, or housed or held in the same cage as animals obtained by other means.

7.3.23. Foxes and raccoons acquired under this license shall not be released on public lands or the lands of another without written permission of the landowner.

7.4. Captive Cervid Facility License. The following terms and conditions will apply for this license regardless of when the license was issued or whether or not the license is simply being renewed, unless otherwise specified in the rule.

7.4.1. Applications shall be made on forms provided by the Division of Natural Resources and inspections made by both the Law Enforcement Section (LES) and Wildlife Resources Section (WRS) to determine if the facility meets requirements of the license. There shall be a nonrefundable application fee of \$250.00 for each new application for a captive cervid facility license.

7.4.2. A public hearing will be conducted in the appropriate county to solicit public concerns and comments related to the proposed Captive Cervid Facility.

7.4.3. Each licensed Captive Cervid Facility shall be issued a unique and permanent identifying license number.

7.4.4. Wildlife enclosures must meet the minimum requirements set forth in this section and Appendix A, provided that all captive cervid facilities licensed before the effective date of these rules have until January 1, 2008 to comply with the fencing and pen size requirements of this rule.

7.4.5. The facility shall be constructed of such material, strength and design to contain the captive animals within the enclosure, safeguard both the captive animals and the public against injury, prevent the transmission of disease by direct or indirect contact from the captive animals to wild white-tailed deer and the public, prevent escape of captive animals and prevent wild white-tailed deer from entering the enclosure.

7.4.6. Perimeter fencing must be adequate to prevent ingress or egress of Cervids and must be designed and constructed to take into account topography and terrain features and be constructed to withstand commonly expected occurrences that would cause the fence to be breached. Such occurrences shall include, but not be limited to, high winds, ice storms, large snowfall amounts and flooding.

7.4.7. The facility shall be double-fenced with a minimum of three (3) feet and a maximum of six (6) feet of cleared ground between the perimeter fence and the outside fence. Provided that the Director may issue exceptions to the required distance between the fences on a case by case basis to accommodate vegetation control. The distance between the fences must be the minimum practical distance required to accommodate mechanical removal of vegetation. For these exemptions the Director will require mitigating measure to keep cervids from between the fences. The outside fence must be a minimum of six (6) feet in height and

constructed of woven wire or electrified high tensile wire to exclude nose to nose contact between captive animals and wild white-tailed deer.

7.4.8. The perimeter fence shall meet the following requirements or equivalent: Fence material must be New Zealand style deer fence or equivalent; total height of fence must be a minimum of eight (8) feet for elk and ten (10) feet for all other Cervids; a minimum of eight (8) feet of woven wire must be used on the bottom of the ten (10) feet fence; minimum 12.5 gauge high tensile woven wire with locking knots and a maximum six (6) inch spacing must be used; posts must be metal 'T'-posts, treated 4 X 4 posts, 6 inch treated round post or equivalent; corner posts must be properly braced and installed; posts must be spaced at 20 feet maximum for T-post or 30 feet maximum for rigid post; brace posts must be buried at least 4 feet in rocky soil and 6 feet in sandy soil or concrete must be used to provide equal stability; line posts must be buried to 3 feet; rigid posts must be set at lowest points of dips and on crowns or humps; trees or other structures that could threaten the fence must be removed or fencing must be constructed so as to prevent the breach of the fence from the fall of a tree or structure; gates must be of sufficient strength and construction with no gaps; gates must have functional locks; fencing must be properly attached to post; bottom strand of fence must be at ground level and reinforced; and water courses, gullies, ditches, etc. must be properly fenced to prevent escape.

7.4.9. The minimum size for captive Cervid facilities shall be 5,000 square feet for one animal. The enclosure size shall be increased by 25% for each additional animal. Stocking density must allow for ground cover during all seasons. This requirement applies to new captive cervid facilities or for existing facilities after January 1, 2008.

7.4.10. The facility shall provide appropriate shelter and bedding material for the captive animals that protects them from inclement weather.

7.4.11. Fresh drinking water shall be provided daily.

7.4.12. Captive animals shall be fed daily. Food must be wholesome, palatable, free from contamination and of sufficient quantity and nutritive value to maintain all animals in good health. No person shall feed any Cervid with any material that contains protein derived from any mammalian tissues.

7.4.13. Where necessary, fecal and food waste shall be removed from the enclosure daily and stored or disposed of in a manner that prevents noxious odors or insect pests. Food and water containers shall be kept clean. Hay, straw or other bedding material must be replaced as needed. All waste must be disposed of in a legal manner. Food, urine, fecal waste, and soils exposed to these waste materials must not be disposed where it may be exposed to free ranging white-tailed deer.

7.4.14. All cervids must be kept free from parasites, sickness or disease. If sick, cervids must be given immediate professional medical attention or be humanely destroyed. Routine sampling and diagnostics for disease and parasites may be required by the Director. An annual examination of each animal by a state licensed veterinarian shall be performed and a report submitted to the Director. All testing of captive Cervids shall be performed by an accredited veterinarian certified by the USDA to perform testing on Cervids, including CWD, TB and brucellosis testing.

7.4.15. The co-mingling of different Cervid species or Cervid species and livestock will not be permitted in the same pens without written approval of the Director. If different Cervid species are housed at the same facility, they must be separated into different pens that are double-fenced or otherwise prohibit contact between the different species. Food, water and waste material from different Cervid species must not be available to or exposed to other Cervids in separate pens or to free ranging white-tailed deer.

7.4.16. The facility shall not restrict the movement or trap existing free ranging deer inhabiting the land on which the facility is constructed. DNR personnel shall verify the absence of entrapped deer, and such verification may require snow cover for the detection of deer prior to the release of any captive Cervids within the facility.

7.4.17. The captive Cervid facility shall abide by all the requirements in DNR Legislative Rule 58 CSR 63.

7.4.18. Each captive Cervid shall be marked with a unique tattoo in the ear, a metal ear tag with a unique identification number affixed to the ear, or other permanent marker approved by the Director, and a unique marker visible and identifiable from 50 yards. Except that a unique tattoo in the ear shall not be required of Cervids less than six (6) months of age. The Director may exempt cervids currently in existing Commercial Shooting Preserves from this tagging requirement provided that the licensee will provide an annual minimum of 30 cervids or 10 percent of the cervids, whichever is less in the enclosure for biological sampling and provided that all cervids that are handled or added to the enclosure shall be tagged and inventoried. This exemption shall be reviewed and may be revoked after 5 years from date of filing. This does not abrogate requirements of providing cervids for biological sampling described elsewhere in these rules.

7.4.19. An accurate and current inventory of all the animals in the captive Cervid herd will be maintained on forms provided by the DNR. These records shall indicate all wildlife acquisitions, sales, possession transfers, escapes, births, mortalities and appropriate permits. Records shall show names, addresses, dates, sales documentation, tag numbers, and origins or destinations of all transactions concerning captive Cervids.

7.4.20. A copy of the records of all acquisitions, mortalities, births, sales or possession transfers shall be forwarded to the District LES Captain within 15 days. Applications to receive or transfer captive Cervids shall be made on forms provided by the DNR. Prior approval shall be obtained from the Director for the movement of captive cervids, and shall be conditional on negative test results and herd accreditation for TB and brucellosis as defined by the USDA. All such tests must be performed by an accredited veterinarian certified by the USDA to perform such testing. Failure to obtain approval for the transfer of a Cervid prior to the transfer of such Cervid shall result in a \$1000.00 fine per animal levied against both the facility releasing the Cervid for transport and the facility receiving the Cervid and the possible suspension of the game farm license of the facility releasing the Cervid for transport and the facility receiving the Cervid.

7.4.21. For those captive cervid facilities licensed after August 9, 2005, only animals coming from a captive cervid herd within the state with an ongoing and appropriate CWD surveillance record for at least 60 months may be received by such captive cervid facilities. If a captive cervid facility began a monitoring program prior to January 1, 2005, and has continued this program for at least 36 months, that facility may submit its monitoring records to the Director and seek consideration by the Director for requests to move cervids to a captive cervid facility that was licensed after August 9, 2005. Based upon this review the Director has the ability to approve or deny transfer of cervids.

7.4.22. No animals or genetic material may be received by a captive Cervid facility that have originated or been housed with animals originating from any state that has a confirmed CWD or Tuberculosis (TB) positive Cervid in the last 60 months.

7.4.23. All Cervids sold or transferred from a licensed captive Cervid facility shall be tested by an accredited veterinarian for any future approved live animal test for CWD prior to movement.

7.4.24. Fawns under the age of six months may not be moved or transferred.

7.4.25. Every effort will be made to prevent escapes of animals from captive Cervid facilities. All escapes shall be reported within 24 hours to the District LES Captain. Failure to report an escaped Cervid will result in the immediate forfeiture of the captive Cervid license. Any condition which results in captive Cervids escaping shall be prima-facie evidence that the Cervids were held in an unsafe manner and shall be a violation of the license.

7.4.26. Any animal that escapes from a captive Cervid facility shall be killed by DNR personnel. Appropriate samples shall be collected from the animal by DNR personnel, and these samples shall be submitted for testing for CWD and other transmissible diseases. All costs for killing the escaped animal, collecting the samples and testing shall be the responsibility of the licensee. Any damage or injury resulting from the escape of captive Cervids held under this license shall be the sole responsibility of the licensee.

7.4.27. Under no circumstances shall captive Cervids be intentionally released into the wild.

7.4.28. The captive Cervid facility, records and animals shall be periodically inspected by an authorized representative of the Director, on a case by case basis, to assure compliance with all requirements mandated by statute, rule or terms and conditions of the license.

7.4.29. The Director shall require the licensee to submit appropriate samples for testing and enroll in federal government national disease prevention programs such as, but not limited to, tuberculosis herd accreditation status as defined by the USDA as a term and condition of the captive Cervid license.

7.4.30. Any captive Cervids that die of unknown causes and/or are slaughtered shall be reported to the District LES Captain within 24 hours. Unless otherwise instructed by the District WRS Game Biologist or WRS Deer Project Leader, the licensee shall submit the animals to a licensed veterinarian to determine cause of death or condition and report these findings to the District WRS Game Biologist.

7.4.31. Appropriate samples, as determined and directed by the DNR, from all captive Cervids over six months of age that die and/or are slaughtered must be submitted for CWD testing to a USDA approved laboratory. Testing for other transmissible diseases may also be required. All costs for this disease testing and surveillance shall be the responsibility of the licensee unless federal funds become available.

7.4.32. It shall be the licensee's responsibility to ensure that the DNR is notified in writing of the CWD test results within five (5) days of completing the test. Should any sample test positive for CWD, the licensee shall immediately notify, by the most expedient means possible, the District LES Captain, District WRS Game Biologist and WRS Deer Project Leader of the test results.

7.4.33. Should any animal test positive for CWD within the captive Cervid facility, the facility shall be immediately quarantined and the captive herd shall be immediately depopulated under guidelines established collaboratively by the DNR, USDA and West Virginia Department of Agriculture. Epidemiological investigations shall be conducted to identify any captive Cervid herds linked by animal movements and appropriate actions, possibly including quarantine and testing of linked animals, shall be taken. All costs associated with the quarantine and depopulation shall be the responsibility of the licensee unless federal funds become available. In addition, the DNR will immediately initiate active and aggressive CWD surveillance of wild white-tailed deer outside the infected captive Cervid facility. All costs associated with the surveillance of wild white-tailed deer outside the captive Cervid facility shall be the responsibility of the licensee unless federal funds become available.

7.4.34. Captive Cervid facilities shall be required to enroll their herds in the USDA-APHIS CWD herd certification program, when the program becomes effective. In addition, a herd plan shall be developed that minimally includes actions described in the USDA-APHIS final rule, or if not available the proposed rule, that apply to the positive herd, epidemiologically linked herds, and the facility.

7.4.35. Failure to comply with these rules will result in the revocation of the Captive Cervid Facility License. Revocation shall count as a lapsed license requiring a new application to be completed and requiring that all rules and regulations applying to new captive Cervid facilities be followed to obtain a new Captive Cervid License.

~~7.4.~~ 7.5. Fish Pond License. The following terms and conditions will apply for this license.

~~7.4.1.~~ 7.5.1. The licensee must assure that his plant or pond does not interfere with the free passage of fish.

~~7.4.2.~~ 7.5.2. The licensee must assure that any water diverted to his plant or pond does not violate the riparian rights of other landowners.

~~7.4.3.~~ 7.5.3. The licensee must assure that his plant, pond, or diversion will not interfere with the public stocking or propagation of fish frequenting neighboring waters.

~~7.4.4.~~ 7.5.4. If the licensee's plant or pond is supplied by waters diverted from a natural stream, the diverted waters must be adequately screened in order to prevent the movement of fish to or from public waters.

~~7.4.5.~~ 7.5.5. The licensee must obey Division rules governing the commercial sale of wildlife (58 CSR 63).

~~7.4.6.~~ 7.5.6. The licensee must display his license in plain view in the vicinity of his fish pond(s).

~~7.5.~~ 7.6. Fish Sales License. The following terms and conditions will apply for this license.

~~7.5.1.~~ 7.6.1. The licensee must obey Division rules governing the commercial sale of wildlife (58 CSR 63).

~~7.5.2.~~ 7.6.2. The licensee must display his license in plain view at his place of business.

~~7.6.~~ 7.7. Pet Permit. The following terms and conditions will apply for this permit.

~~7.6.1.~~ 7.7.1. Cages, pens, or other enclosures housing wild pets must meet the minimum requirements set forth in Appendix A.

~~7.6.2.~~ 7.7.2. Food of sufficient quantity and nutritional value must be provided daily to maintain the wild pet in a healthy state. Fresh drinking water must be provided daily.

~~7.6.3.~~ 7.7.3. Fecal and food waste must be removed from cages daily and stored or disposed of in a manner which prevents noxious odors or insect pests. Food and water containers must be washed weekly. Hay, straw, or other bedding or nesting material must be replaced as needed. All waste must be disposed of in a legal manner.

~~7.6.4.~~ 7.7.4. Pets must be kept free from parasites, sickness, or disease. If sick, pets must be given immediate professional medical attention or be humanely destroyed.

~~7.6.5.~~ 7.7.5. The permittee shall be responsible for insuring his wild pet is maintained in a manner that insures the safety of the public as well as the safety of other wildlife.

~~7.6.6.~~ 7.7.6. Pets must not be tortured, molested, or abused in any manner.

~~7.6.7.~~ 7.7.7. Pets must not be used in the training of hunting dogs.

~~7.6.8.~~ 7.7.8. Pets must have been either lawfully taken by the applicant in this State during an open hunting or trapping season or purchased from a commercial dealer licensed by the Division under W. Va. Code §20-2-47.

~~7.6.8.a.~~ 7.7.8.a. Pets lawfully taken by the applicant in West Virginia during an open hunting or trapping season must be checked and recorded by a conservation officer.

~~7.6.8.b.~~ 7.7.8.b. If the pet was purchased, the permittee must have in his possession a bill of sale showing that the pet was legally obtained from a licensed commercial dealer.

~~7.6.9.~~ 7.7.9. This permit does not convey the right to trade, barter, sell, or offer to trade, barter, or sell any wildlife. Wildlife acquired under this permit may not be sold or bred without first obtaining a license from the Division under W. Va. Code §20-2-47.

7.7.10. Cervids can not be held under this permit.

~~7.7.~~ 7.8. Roadside Menagerie Permit. The following terms and conditions will apply for this permit.

~~7.7.1.~~ 7.8.1. Wildlife enclosures must meet the minimum requirements set forth in Appendix A. In addition, all enclosures must be strong enough to both prevent escape of the captive wildlife and protect them from injury. All enclosures must be equipped with a safety barrier which adequately prevents any physical contact between the captive wildlife and visitors or customers. Cages considered unsafe by Division personnel must be repaired or reconstructed as directed within sixty (60) days.

~~7.7.2.~~ 7.8.2. Each enclosure must be provided with a shelter that is appropriate for the wildlife held captive. Shelters must contain bedding or nesting material as may be required for the comfort of the wildlife and be constructed in a manner that protects them from inclement weather.

~~7.7.3.~~ 7.8.3. Fresh drinking water must be provided daily. Swimming or wading pools must be cleaned as needed to ensure good water quality. Wildlife enclosures must be adequately drained.

~~7.7.4.~~ 7.8.4. Food must be wholesome, palatable, free from contamination, and of sufficient quantity and nutritive value to maintain all animals in good health. The diet must be prepared with consideration for age, species, condition, size, and type of animal. Wildlife must be fed at least once a day, except as dictated by hibernation, veterinary treatment, normal fasts, or other professionally-accepted practice.

~~7.7.5.~~ 7.8.5. Fecal and food waste must be removed from cages daily and stored or disposed of in a manner which prevents noxious odors or insect pests. Food and water containers must be kept clean. Hay, straw, or other bedding or nesting material must be replaced as needed. All waste must be disposed of in a legal manner.

~~7.7.6.~~ 7.8.6. All wildlife must be kept free from parasites, sickness, or disease. If sick, wildlife must be given immediate professional medical attention or be humanely destroyed.

~~7.7.7.~~ 7.8.7. Any damage or injury resulting from escape of wildlife held under the authority of this permit shall be the sole responsibility of the permittee.

~~7.7.7.a.~~ 7.8.7.a. Wildlife which escapes and poses no threat to the public shall become the property of the State.

~~7.7.7.b.~~ 7.8.7.b. Wildlife which escapes and poses a potential threat to the public safety may be disposed of by Division personnel.

~~7.7.8.~~ 7.8.8. Any condition which results in wildlife escaping from its enclosure, cage, housing, leash, or other constraint shall be prima-facie evidence that the escaped wildlife was held in an unsafe manner and shall be a violation of the permit.

~~7.7.9.~~ 7.8.9. The permittee must place signs on wildlife enclosures as specified in the requirements outlined below. Additional signs must be conspicuously posted on all enclosures prohibiting the public from feeding or annoying the wildlife. Each enclosure must also have a sign labeled in English with the proper common name of species confined therein.

~~7.7.10.~~ 7.8.10. Except as provided in Condition 11, wildlife must not be removed from their enclosures or directly exposed to the public. Safety barriers such as walls, fences, moats, retaining rails, and other necessary devices must be in place to prevent the public from approaching near enough to the enclosures or areas to make physical contact with wildlife. All enclosures must be key-locked or padlocked.

~~7.7.11.~~ 7.8.11. Visitor contact with the following designated animals may be permitted under the conditions specified:

~~7.7.11.a.~~ 7.8.11.a. Visitor contact with buffalo, deer, or elk may be allowed until the animal is six (6) months of age.

~~7.7.11.b.~~ 7.8.11.b. Wildlife may be removed from cages for exhibition provided the exhibitor displays the wildlife in a manner that precludes any danger to the public.

~~7.7.11.c.~~ 7.8.11.c. Any damage or injury resulting from contact with any wildlife held under authority of this permit shall be the sole responsibility of the permittee.

~~7.7.12.~~ 7.8.12. All wildlife held at a menagerie must have been either lawfully taken by the applicant in this State during an open hunting or trapping season or purchased from a commercial dealer licensed by the Division under W. Va. Code §20-2-47.

~~7.7.12.a.~~ 7.8.12.a. The acquisition of wildlife shall be for the sole purpose of maintaining stock for the menagerie.

~~7.7.12.b.~~ 7.8.12.b. Wildlife lawfully taken by the applicant in West Virginia during an open hunting or trapping season must be checked and recorded by a conservation officer.

~~7.7.12.e.~~ ~~7.8.12.c.~~ If wildlife was purchased, the permittee must have in his possession a bill of sale showing that the wildlife was legally obtained from a licensed commercial dealer. The bill of sale must contain the name, address, and license number of the seller, the date of the sale, the purchaser's name and address, and a description of the wildlife sold, including the number of each species sold.

~~7.7.13.~~ ~~7.8.13.~~ The Division must be notified in writing within fifteen (15) days after receipt of new wildlife that had not been listed on the permittee's application.

~~7.7.14.~~ 7.8.14. The Division must be notified in writing within fifteen (15) days after disposal or death of any wildlife held at the menagerie.

~~7.7.15.~~ 7.8.15. Accurate and current records must be maintained concerning all wildlife acquisitions and disposals. All records must be either typed or written in plain and legible English and must be maintained for a minimum period of three (3) years.

~~7.7.16.~~ 7.8.16. This permit does not convey the right to trade, barter, sell, or offer to trade, barter, or sell any wildlife. Wildlife acquired under this permit may not be sold or bred without first obtaining a license from the Division under W. Va. Code §20-2-47.

~~7.7.17.~~ 7.8.17. This permit does not authorize the holder to keep mammals that are not native to West Virginia.

~~7.7.18.~~ 7.8.18. The permittee must display his permit in plain view at the entrance to the menagerie.

7.8.19. Cervids cannot be held or displayed under a menagerie permit.

~~7.8.~~ 7.9. Commercial Fishing Preserve License. The following terms and conditions will apply for this license.

~~7.8.1.~~ 7.9.1. If a commercial fishing preserve pond or impoundment is supplied by waters diverted from a natural stream, the diverted waters must be adequately screened in order to prevent the movement of fish to or from public waters. The riparian rights of other landowners must not be adversely affected as a result of such a diversion.

~~7.8.2.~~ 7.9.2. All fish to be stocked in a fishing preserve must be either obtained from a commercial dealer licensed by the Division under W. Va. Code §20-2-48, imported under a permit issued by the Division under W. Va. Code §20-2-12 or lawfully caught from the waters of this State during a legal open fishing season.

~~7.8.3.~~ 7.9.3. If fish are purchased for stocking, the licensee must have in his possession a bill of sale showing that the fish were legally obtained from a licensed commercial dealer. The bill of sale must contain the name, address, and license number of the supplier, the date of the sale, the purchaser's name and address, and a description of the fish sold, including the number and pounds sold for each species.

~~7.8.4.~~ 7.9.4. Accurate and current records pertaining to the acquisition of fish to be stocked at the fishing preserve and the removal of fish from the preserve must be maintained by the licensee. All records must be either typed or written in plain and legible English and must be maintained for a minimum period of three (3) years.

~~7.8.5.~~ 7.9.5. A bill of sale must be given to each person removing fish from the fishing preserve. Each bill of sale must contain the following information:

~~7.8.5.a.~~ 7.9.5.a. The name and license number of the preserve owner.

~~7.8.5.b.~~ 7.9.5.b. The address of the fishing preserve.

~~7.8.5.c.~~ 7.9.5.c. The number and species of fish taken.

~~7.8.5.d.~~ 7.9.5.d. The date the fish were taken.

~~7.8.5.e.~~ 7.9.5.e. The name and address of the customer.

~~7.8.6.~~ 7.9.6. The licensee must display his license in plain view at the entrance to the fishing preserve.

~~7.9.~~ 7.10. Commercial Shooting Preserve License. The following terms and conditions will apply for this license.

~~7.9.1.~~ 7.10.1. Preserve Size and Boundaries.

~~7.9.1.a.~~ 7.10.1.a. The commercial shooting preserve must contain a minimum of three hundred (300) acres in one tract of leased or owned land (including water area, if any), except that a preserve confined to the releasing of ducks only may operate with a minimum of fifty (50) contiguous acres (including water area). The shooting preserve may be no larger than three thousand (3,000) contiguous acres (including water area, if any).

~~7.9.1.b.~~ 7.10.1.b. The exterior boundaries of the shooting preserve shall be clearly defined and posted with signs erected around the extremity at intervals of one hundred fifty (150) yards or less. The signs must have the words "LICENSED SHOOTING PRESERVE" on them and must be signed by the licensee.

~~7.9.1.c.~~ 7.10.1.c. Unless operated solely for the releasing of wild birds, the shooting preserve must be enclosed by fencing to prevent the ingress of native wildlife or egress of stocked wildlife species. The fencing must be of sufficient strength and height to prevent the escape of the stocked wildlife.

~~7.9.1.d.~~ 7.10.1.d. The licensee must display his license in plain view at the entrance to the shooting preserve.

~~7.9.2.~~ 7.10.2. Preserve Wildlife.

~~7.9.2.a.~~ 7.10.2.a. Native wildlife means game animals and game birds found in a wild and natural state within the boundaries of the shooting preserve.

~~7.9.2.b.~~ 7.10.2.b. Stocked wildlife means those animals and birds that were either obtained from a licensed commercial dealer and released at the shooting preserve, imported into this State under a valid wildlife importation permit and released at the shooting preserve, or raised at the shooting preserve under a valid game farm license and released.

~~7.9.2.c.~~ 7.10.2.c. Stocked wildlife may include any of the following: game birds (except wild turkey), non-native game birds (such as chukar partridges), rabbits, or the hooved stock of the families Cervidae (deer and elk), Suidae (boar), and Bovidae (buffalo). Shooting preserves which have Cervids must also operate under Captive Cervid Facility Regulations (Section 7.4).

~~7.9.2.d.~~ 7.10.2.d. This license does not authorize the holder to capture game animals or game birds from the woods or fields of this State to be used as stock at the shooting preserve.

~~7.9.2.e.~~ 7.10.2.e. This license does not authorize the holder to breed or raise wild animals or wild birds to be used as stock at the shooting preserve. In order to raise wild animals or wild birds, the licensee must first obtain a game farm license issued by the Division under W. Va. Code §20-2-47.

~~7.9.2.f.~~ 7.10.2.f. This license does not authorize the holder to import wildlife into this State to be used as stock at the shooting preserve. In order to import wildlife, the licensee must first obtain a wildlife importation permit issued by the Division under W. Va. Code §20-2-12.

~~7.9.3.~~ 7.10.3. Hunting License Requirements.

~~7.9.3.a.~~ 7.10.3.a. A West Virginia resident must possess a valid Class A license to hunt for small game and one deer with a firearm and a Class BG stamp to hunt additional big game species, Class AB, or a Class X, Class XJ, Class A-L, Class AB-L, Class A-L-I or Class AB-L-I license while hunting on the shooting preserve unless he is exempt from licensing requirements under W. Va. Code §§20-2-27, 20-2-28, or 20-2-62.

~~7.9.3.b.~~ 7.10.3.b. A nonresident must possess a valid Class E license to hunt native wildlife or stocked wildlife on the shooting preserve and or a valid Class M J shooting preserve license to hunt stocked small game species wildlife.

~~7.9.4.~~ 7.10.4. Hunting Seasons and Bag Limits.

~~7.9.4.a.~~ 7.10.4.a. Native wildlife may be hunted only during the season set therefor and in the manner and numbers authorized by Division rules governing hunting and trapping in West Virginia (58 CSR 45). There shall be no open season for wild waterfowl.

~~7.9.4.b.~~ 7.10.4.b. The licensee may establish a liberal hunting season for any species of stocked wildlife. Such season may begin no earlier than September 1 and end no later than April 30 of the following year. There shall be no hunting or shooting on a Sunday.

~~7.9.4.c.~~ 7.10.4.c. Bag limits for each species of stocked wildlife may be set by the licensee provided that the licensee and his guests or customers may recover not more than eighty percent (80%) of the total number of each species of game bird released on the premises each year, except that a one-hundred percent (100%) recovery may be allowed on mallard, black duck, ringnecked pheasant, chukar partridge, and other non-native game species.

~~7.9.4.d.~~ 7.10.4.d. Except for the required compliance with the restriction on the maximum number of released birds that may be recovered from each preserve each year, the licensee may establish shooting limitations and restrictions on the age, sex, and number of stocked wildlife that each person may take.

~~7.9.5.~~ 7.10.5. Tagging of Harvested Game.

~~7.9.5.a.~~ 7.10.5.a. All harvested game, including native wildlife, must be tagged prior to being either consumed on the premises or removed therefrom, such tags to remain affixed until the game is actually delivered to the point of consumption.

~~7.9.5.b.~~ 7.10.5.b. The numbered tagging system approved by the Director must be used by the licensee.

~~7.9.6.~~ 7.10.6. Care of Stocked Wildlife.

~~7.9.6.a.~~ 7.10.6.a. Wildlife enclosures must meet the minimum requirements set forth below. In addition, all enclosures must be strong enough to both prevent escape of the captive wildlife and protect them from injury. All enclosures must be equipped with a safety barrier which adequately prevents any physical

contact between the captive wildlife and visitors or customers. Cages considered unsafe by Division personnel must be repaired or reconstructed as directed within sixty (60) days.

~~7.9.6.b.~~ 7.10.6.b. Each enclosure must be provided with a shelter that is appropriate for the wildlife held captive. Shelters must contain bedding or nesting material as may be required for the comfort of the wildlife and be constructed in a manner that protects them from inclement weather.

~~7.9.6.c.~~ 7.10.6.c. Fresh drinking water must be provided daily. Swimming or wading pools must be cleaned as needed to ensure good water quality. Wildlife enclosures must be adequately drained.

~~7.9.6.d.~~ 7.10.6.d. Food must be wholesome, palatable, free from contamination, and of sufficient quantity and nutritive value to maintain all animals in good health. The diet must be prepared with consideration for age, species, condition, size, and type of animal. Wildlife must be fed at least once a day, except as dictated by hibernation, veterinary treatment, normal fasts, or other professionally-accepted practice.

~~7.9.6.e.~~ 7.10.6.e. Fecal and food waste must be removed from cages daily and stored or disposed of in a manner which prevents noxious odors or insect pests. Food and water containers must be kept clean. Hay, straw, or other bedding or nesting material must be replaced as needed. All waste must be disposed of in a legal manner.

~~7.9.6.f.~~ 7.10.6.f. All wildlife must be kept free from parasites, sickness, or disease. If sick, wildlife must be given immediate professional medical attention or be humanely destroyed.

~~7.9.6.g.~~ 7.10.6.g. Any damage or injury resulting from escape of wildlife from the preserve shall be the sole responsibility of the licensee.

~~7.9.6.g.i.~~ 7.10.6.g.i. Wildlife which escapes and poses no threat to the public shall become the property of the State.

~~7.9.6.g.ii.~~ 7.10.6.g.ii. Wildlife which escapes and poses a potential threat to the public safety may be disposed of by Division personnel.

~~7.9.7.~~ 7.10.7. Record Keeping.

~~7.9.7.a.~~ 7.10.7.a. The licensee must maintain accurate and current records of all wildlife purchased for, imported to, or raised at the shooting preserve.

~~7.9.7.a.i.~~ 7.10.7.a.i. Records of wildlife purchased for the shooting preserve must include a bill of sale for all wildlife acquired.

~~7.9.7.a.ii.~~ 7.10.7.a.ii. Records of wildlife imported for the shooting preserve must include the importation permit issued by the Division, the date of importation, the number of each species that were imported, and the sex of each animal that is imported.

~~7.9.7.a.iii.~~ 7.10.7.a.iii. Records of wildlife raised at the shooting preserve must include the game farm license issued by the Division, the date of birth and the number born or hatched for each species, and the sex of each animal that is born.

~~7.9.7.b.~~ 7.10.7.b. The licensee must also maintain accurate and current records of all wildlife releases made at the shooting preserve. Records of wildlife released at the preserve must include the date of release, the number of each species released, and the sex of each animal released.

~~7.9.7.c.~~ 7.10.7.c. The licensee must also maintain a registration book listing the name, address, and hunting license numbers of each customer or guest, the date on which he hunted, the number and species of game taken, and the number of the tag affixed to each carcass.

~~7.9.7.d.~~ 7.10.7.d. All records must be either typed or written in plain and legible English and must be maintained by the licensee for a minimum period of three (3) years.

~~7.9.8.~~ 7.10.8. Shooting Preserve Reports.

~~7.9.8.a.~~ 7.10.8.a. Within ten (10) days of the close of each fiscal year (i.e., by July 10), the licensee must submit a shooting preserve report to the Chief on the form provided by the Division.

~~7.10.~~ 7.11. Catch and Sell Bait Fish License. The following terms and conditions will apply to this license.

~~7.10.1.~~ 7.11.1. The licensee must obey Division rules governing the catching and selling of bait fish (58 CSR 62).

~~7.11.~~ 7.12. Field Trial Permit.

~~7.11.1.~~ 7.12.1. The following terms and conditions will apply to all field trial permits except for a Shoot-to-Retrieve Field Trial Permit.

~~7.11.1.a.~~ 7.12.1.a. Wildlife may not be taken under this permit.

~~7.11.1.b.~~ 7.12.1.b. The permit conveys no right to trespass.

~~7.11.1.c.~~ 7.12.1.c. The permit shall be valid in no more than two (2) counties and for no more than three (3) days.

~~7.11.1.d.~~ 7.12.1.d. The permit shall not be valid in areas set aside as bear sanctuaries.

~~7.11.1.e.~~ 7.12.1.e. A field trial or a wild hunt may be held on a Sunday; a water race may be held on a Sunday.

~~7.11.1.f.~~ 7.12.1.f. No person participating in the trial, race, or hunt may have a firearm or bow in his possession.

~~7.11.1.g.~~ 7.12.1.g. Each person participating must be registered for the trial, race, or hunt. The register must include the name, address, and telephone number of each participant and must be maintained for a minimum period of one (1) year. The register must be posted during the trial, race, or hunt at the address given on the permit application for inspection by Division personnel.

7.12.2. The following terms and conditions will apply for a Shoot-to-Retrieve Field Trial.

7.12.2.a. Only stocked game birds may be pursued and taken during the trial.

7.12.2.b. The permit conveys no right to trespass.

7.12.2.c. The permit shall be valid in one county only and for no more than three (3) days.

7.12.2.d. The permit is not valid in areas set aside as bear sanctuaries.

7.12.2.e. A shoot-to-retrieve field trial may not be held on a Sunday.

7.12.2.f. Each person participating must be registered for the trial. The register must include the name, address, and telephone number of each participant and must be maintained for a minimum period of one (1) year. The register must be posted during the trial at the address given on the permit application for inspection by Division personnel.

§58-64-8. Penalties.

8.1. **Penalty for Failure to Obtain a Permit or License.** A person who engages in an activity for which one of the permits and licenses listed in Section 2.1 of this rule is required by statute, but fails to obtain the necessary permit or license from the Division, is subject under W. Va. Code §20-2-2 to the penalties prescribed in W. Va. Code §20-7-9.

8.2. **Penalty for Permit or License Violation.** A licensee who violates any term or condition of his permit or license is subject to the penalties prescribed in W. Va. Code §20-7-9.

§58-64-9. Appeals to the Director.

9.1. Any condition set forth in a permit or license may be appealed to the director for reconsideration.

9.1.1. A licensee may submit a written request to the director for an informal hearing to consider the modification of any condition of an issued permit or license. Such request must be submitted to the director within thirty (30) days of the date of permit or license issuance.

9.1.2. The condition being appealed will remain in effect until the director decides to grant the requested modification and so informs the licensee.

9.1.3. If, after considering the licensee's appeal, the director decides not to grant the requested modification, he will issue and furnish to the licensee a written decision, and the reasons therefor, concerning the denial.

PERMANENT CAGE/PEN/HOUSING REQUIREMENTS

When wildlife is kept for more than thirty (30) consecutive days at the same location, such wildlife shall be placed in enclosures meeting, at a minimum, the requirements below:

1. White-Tailed Deer

- a. Cage size for one deer
 - 1) 5000 square foot enclosure.
- b. Cage size for each additional deer
 - 1) Increase enclosure area by 25%
- c. Accessories
 - 1) Roofed shelter
 - 2) DANGEROUS – DO NOT MOLEST signs

2. Black Bears

- a. Cage size for one bear
 - 1) 25'L by 12'W by 8'H
- b. Cage size for pair
 - 1) 30'L by 15'W by 8'H
- c. Accessories
 - 1) Roofed shelter
 - 2) EXTREMELY DANGEROUS - DO NOT MOLEST signs

3. Elk or Buffalo

- a. Cage size for one animal
 - 1) 5,000 square foot enclosure.
- b. Cage size for each additional animal
 - 1) Increase enclosure area by 25%
- c. Accessories

- 1) Roofed shelter
- 2) DANGEROUS - DO NOT MOLEST signs

4. Bobcats

a. Cage size for one bobcat

- 1) 8'L by 4'W by 6'H

b. Cage size for each additional animal

- 1) Add 2'L

c. Accessories

- 1) Roofed shelter
- 2) 4'L by 14"W by 36"h resting shelf
- 3) At least two claw logs
- 4) EXTREMELY DANGEROUS - DO NOT MOLEST signs

5. Foxes

a. Cage size for one fox

- 1) 5'L by 30"W by 30"H
- 2) 18" above ground level
- 3) A wire cage bottom with openings of a size which allows droppings, but not the fox's feet, to fall through
- 4) Cage sizes for ranch fox may conform to acceptable and reasonable industry standards.

b. Accessories

- 1) 2'L by 30"W by 30"H roofed shelter
- 2) DANGEROUS - DO NOT MOLEST signs

6. Raccoons

a. Cage size for one raccoon

- 1) 6'L by 5'W by 6'H

b. Cage size for two or three raccoons

- 1) 8'L by 5'W by 6'H

c. Cage size for each additional animal

- 1) Add 2'L

d. Accessories

- 1) Roofed shelter or nest box
- 2) One resting shelf per animal
- 3) At least two limbs for climbing

7. Opossum or Skunks

- a. Cage size for one animal
 - 1) 4'L by 4'W by 6'H
- b. Cage size for pair
 - 1) 6'L by 4'W by 6'H
- c. Cage size for each additional animal
 - 1) Add 1'L
- d. Accessories
 - 1) Roofed shelter or nest box
 - 2) At least three limbs for climbing

8. Woodchucks

- a. Cage size for one animal
 - 1) 8'L by 6'W by 4'H
- b. Cage size for each additional animal
 - 1) Add 3'L
- c. Accessories
 - 1) Roofed shelter or nest box

9. River Otters, Fishers, Minks or Weasels

- a. Cage size for one pair
 - 1) 10'L by 6'W by 6'H
 - 2) Cage size for ranch mink may conform to acceptable and reasonable industry standards.
- b. Cage size for each additional animal
 - 1) Increase cage and pool size by 25%
- c. Accessories

- 1) Dry sleeping retreat
- 2) 6'L by 4'W pool 3'D at one end
- 3) EXTREMELY DANGEROUS - DO NOT MOLEST signs

10. Beavers and Muskrats

- a. Cage size for one to three animals
 - 1) 8'L by 4'W by 5'H
- b. Cage size for each additional animal
 - 1) Add 2'L
- c. Accessories
 - 1) Roofed shelter or nest box
 - 2) 4'L by 4'W by 24"D pool
 - 3) Two or more gnawing logs

11. Squirrels and Chipmunks

- a. Cage size for one to two animals
 - 1) 3'L by 2'W by 4'H
- b. Cage size for each additional animal
 - 1) Add 6"L
- c. Accessories
 - 1) Nest box
 - 2) At least three limbs for climbing

12. Rabbits and Hares

- a. Cage size for one animal
 - 1) 6'L by 3'W by 3'H
- b. Cage size for each additional animal
 - 1) Add 1'L
- c. Accessories
 - 1) Nest box
 - 2) Gnawing log

13. Grouse, Pheasants, Quail or Doves

- a. Cage size for one to five birds
 - 1) 100 square foot enclosure with 6'H fence
 - 2) Cage sizes for the propagation and raising of game birds may conform to acceptable and reasonable industry standards.
- b. Cage size for each additional bird
 - 1) Increase enclosure area by 20 square feet
- c. Accessories
 - 1) Dusting area

14. Waterfowl

- a. Cage size for two pairs or one pair with off-springs of the year
 - 1) 100 square foot area
 - 2) Water area = 25% of total area
- b. Cage size for each additional bird
 - 1) Increase cage/water area by 20%

15. Other Flying Birds

- a. Enclosures for flying birds must either be small enough to inhibit flying altogether or large enough to permit aerial maneuvering within the enclosure.

16. Reptiles

- a. Indoor diorama-type cages
 - 1) Cages must be fronted with one-quarter inch mesh hardware cloth or plate glass of at least one-quarter inch in thickness.
 - 2) Cages may be built of waterproof plywood of at least one-quarter inch in thickness, concrete plastered-over wire, sheet metal, one-quarter inch mesh hardware cloth, or interlocking lumber of at least three-quarter inch in thickness.
 - 3) Cages are to be tightly closed at the top and all doors are to be tight fitting. The doors of all cages must be key-locked.
- b. Outdoor cages or pits

- 1) The floors of outdoor cages or pits must be of concrete or masonry construction that is at least two inches in thickness. Cage sides must be of similar construction and at least six inches in thickness, with a minimum eight of four feet above the floor of the enclosures unless completely roofed over by close-meshed wire. The corners of all open-topped pits must be designed or guarded so as to prevent the escape of reptiles by climbing. Entrance doors must be key-locked.

Enclosures for wildlife not listed above must be approved by the Chief or his authorized representative prior to its construction.

**SUMMARY OF COMMENTS AND ANSWERS ON EMERGENCY
RULE 58CSR64**

FILED

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The following questions and comments are from the comment period on Emergency Rule 58CSR64. There were 21 letters of support for the Emergency Rule including sportsmen, the West Virginia Wildlife Federation, the National Wildlife Federation and two Natural Resources Commissioners. Fifteen deer farmers gave comments and criticism of the legislation. They included 9 in-state deer farmers; Oglebay Good Zoo; four out-of-state deer farmers and deer farm associations including comments from Pennsylvania, Ohio, Iowa and Wisconsin; and one deer farmer of unknown residence.

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**QUESTIONS AND ANSWERS BY SECTION OF THE CODE TO WHICH THEY
ADDRESS WITH ANSWERS IN ITALICS**

7.4.2 There were objections to a public hearing before a new captive cervid license can be issued. Comments were that the U.S.D.A. could better make the decision and the facility was privately owned; therefore, a public hearing was not warranted.

Captive cervid facilities are documented to have caused the spread of diseases such as CWD to free-ranging deer populations. Since wildlife in West Virginia is the property of the state, held in trust for the people; a public hearing is appropriate.

7.4.7 There were objections to double fencing including; No other state requires double fencing. It is too expensive. The space between fences doesn't allow room for mowing. There is no evidence that nose to nose contact transmits chronic wasting disease (CWD). Who will pay for double fencing? Typar on fences will prevent nose to nose contact.

Studies have shown that wild deer often have nose to nose contact with captive cervids. Nose to nose contact is a suspected method of transmitting CWD from animal to animal. Fencing of these facilities is a small price compared to the cost of CWD management in the deer herd. DNR will work with landowners concerning mowing requirements between fences. A part of the rule was amended to allow the Director to issue exceptions to the required distance between the fences.

7.4.8 There were objection to the size of cervid pens that no fence size is mandated for domestic livestock. Oglebay Zoo would like exemptions for different pen sizes for cervids other than those that have been documented to be susceptible to CWD. There were generally objections to a 10 foot fence as being too expensive to build. A deer could not jump it anyway. Deer go through and under fences more than over them. An 8 foot fence should be grandfathered.

A ten foot fence is recommended by model legislation prepared by the Southeastern Association of Fish and Wildlife Agencies. White-tailed deer and elk are not domestic livestock. They are defined in West Virginia law as wildlife. The West Virginia Division of Natural Resources (DNR) cautions that susceptibility tests have not been made for

many species. Recently a hunter killed moose in Colorado diagnosed with CWD. White-tailed deer have been documented jumping even a 10 foot fence.

7.4.13 General comments on waste disposal were that incineration and landfills were adequate for disposal. Wastes would better be disposed inside of the pen. Daily removal of waste is not necessary.

High temperature incineration units are acceptable to dispose of deer carcasses and wastes as are properly engineered landfills. While daily removal of wastes is necessary in small pens it would not be necessary in larger pens. Short term disposal of wastes inside a large pen would be acceptable, provided the proposal is reviewed by the DNR.

7.4.14 One farmer observed that co-mingling of deer and bison occurred at the W.V. Wildlife Center.

This will be corrected in the near future.

7.4.17 The general ban on importation of cervids in 58CSR63 received several comments. Kentucky elk have moved into West Virginia, but we can't import deer. Another farmer stated that no cervids have been imported by West Virginia deer farmers since CWD was discovered. There were concerns of restricting commerce between states. One comment was that DNR has failed to educate the taxidermist regarding importation of carcasses from CWD states. There were several people citing the NY case as being caused by taxidermist importing CWD infected cervids. West Virginia has not done anything about bringing hunter carcasses from CWD cervids. CWD is spread by hunter killed cervids and not captive cervid pens. Oglebay Zoo would like to import other cervids that are not susceptible to CWD.

West Virginia has no authority or control over elk entering the state from Kentucky. We are, however, closely monitoring the situation. Kentucky is currently testing mortalities for CWD. Most if not all captive cervid facilities in West Virginia were established after the discovery of CWD in Colorado. The DNR is not restricting commerce between states. West Virginia is clearly legally obligated to protect the wildlife and associated recreation of this state by restricting imports of other wildlife. West Virginia has enacted carcass importation restrictions from CWD positive states. Hunter killed cervids are just one of the possible methods of spreading CWD. Wildlife disease specialists believe that CWD is likely spread by urine, feces, nasal discharges, saliva, or other body fluids.

7.4.18 There were several comments concerning marking of animals. Tattoos of fawns would not be visible as adults. Tattoos require tranquilizing the animal. There are no tags made visible from 50 yards. You might as well paint the animal orange. Tags should conform to the National Animal Identification System (NAIS). A computer chip in the ear and an ear tag would be sufficient.

West Virginia DNR recognizes that fawn marking may be difficult. This is a primary reason for the proposal to ban moving fawns. Fawns and other cervids could be marked with ear tags and radio frequency identification tags as described in the US Animal Identification Plan for domestic livestock. Livestock ear tags or radio tags could readily be identifiable at 50 yards.

7.4.20 There were objections to prior approval to transfer cervids. One comment was that it is not necessary since the District Captain must be notified within 15 days of the transfer.

Prior approval to transfer cervids is necessary since the West Virginia DNR must be able to determine if the transfer demonstrates an acceptable risk of transferring disease, and be able to track the cervids for an effective herd monitoring program.

7.4.21 There were objections to a 60 month CWD free status of the herds because: the incubation period is 3 years and not 5 years; the DNR doesn't have a monitoring program, therefore, it is unrealistic to shut down movement. WV Deer Farmers provided information to DNR over 3 years ago and they still don't have a monitoring program. There were objections to the Director having the right to deny the transfer of cervids.

The incubation period of CWD is at least 5 years and may be more. The DNR is proposing a monitoring program with this regulation that would likely meet the national standards of herd monitoring. The Director must have the authority to deny the transfer of cervids to have a viable program of wildlife disease prevention. This only applies to facilities permitted after January 1, 2005.

7.4.22 Comments received on the ban of genetic material from a CWD positive state included a request to allow semen and the banning of cover scents and deer urine and that this ban would be devastating to hunters.

Since the exact methods of transmitting the prion which causes CWD are not known at the present time, the transportation of semen and cover scents made from deer urine represent a risk to transmitting CWD. Since this ban is on CWD positive states only, the effect on hunters is likely to be minimal.

7.4.23 There was an objection to the testing of all transferred cervids since DNR biologist were removing samples and they are not veterinarians.

West Virginia DNR has trained many of its employees and several veterinarians to take CWD samples. DNR employees in general are better trained to take CWD samples than veterinarians who have not dealt with the disease. West Virginia DNR has received advice and training from Southeastern Cooperative Wildlife Disease Study personnel on CWD sampling techniques and other disease related matters.

7.4.24 There were several comments objecting to the ban on moving fawns less than 6 months old, saying that this would be devastating to their business, it is the majority of their business, and that fawns are easier to move when they are young.

Although fawns are easier to move than adult deer, fawns are difficult to mark, monitor and track. Therefore, the movement of fawns has been proposed to be restricted.

7.4.26 There were several objections to liability of pen owners if CWD was discovered in their facility or liability to take care of escaped animals.

Liability concerns were included in the regulations because of the huge sums of money necessary for wildlife agencies to control the disease. West Virginia DNR is largely funded by hunting and fishing license monies and this monetary burden should not be at the expense of other wildlife and fishery programs.

7.4.29 The testing of cervids under 7.4.29 to 7.4.33 received several comments. Only animals that are sick need to be tested. Most cervid farmers test any dead animals. There is no approved live animal test for CWD; therefore, there is no need to test animals before transferring them.

Since the incubation period of CWD is known to be up to five years, apparently healthy animals can have CWD. All CWD positive cases in West Virginia to date have been from apparently healthy animals. West Virginia DNR has very few records of tests from cervid pens. West Virginia DNR is proposing testing of all dead animals and not those that are being moved. These tests are necessary to establish that CWD does not occur in individual herds and would be the basis for movement of animals from certified herds. Five years of testing of all mortalities in a herd is necessary to confirm a disease free herd.

7.8.19 There were comments on the ban of holding captive cervids under menagerie permits. The West Virginia Wildlife Center allows viewing of cervids so why not under a menagerie permit. It would be too expensive to build separate facilities to hold deer away from other animals in a menagerie.

The West Virginia DNR proposed a ban on holding cervids under a menagerie permit since these animals are frequently moved in exhibits and represent a significant risk. Menagerie permits with cervids may apply for and hold cervids under a Captive Cervid License with appropriate guideline and regulations. The West Virginia Wildlife Center is monitoring their captive cervid population under strict guidelines and CWD management protocols. The holding of deer in the same pen as other wild animals is considered a risk because of the potential to introduce exotic disease into the captive deer from the other animals and as a potential to introduce new risks into free-ranging deer through escaped captive deer.

**OTHER COMMENTS AND ANSWERS NOT SPECIFIC TO THE REGULATION
WITH ANSWERS IN ITALICS**

1. Regulations should be by the Department of Agriculture since they have qualified disease people and captive cervids are livestock and not wild animals.

West Virginia DNR is the regulatory agency for all wildlife in the state. White-tailed deer and elk are clearly defined as wildlife. West Virginia DNR has more expertise in wildlife diseases and the management of deer and elk than any other agency.

2. We do not know if CWD is always fatal since there is no live animal test for it.

There is no known case of an animal having CWD that recovered from the disease even though there is considerable experience with this disease in captive facilities.

3. CWD is not a devastating disease as was once thought.

CWD is clearly a devastating disease. The possible effects of the disease in high density eastern deer herds have not been determined, but scientific modeling suggests that there will be at least significant declines in deer populations as well as associated effects on deer hunters and wildlife viewers.

4. CWD is an inconsequential part of a natural process.

CWD is clearly an introduced disease. Its discovery and possible origin was in deer pens in Colorado and Wyoming.

5. CWD has not devastated the deer and elk in Colorado and Wyoming.

Elk appear to be less susceptible to the disease than deer. About 1-2% of the elk herd is infected in the endemic regions of Colorado and Wyoming. The percentage is higher in mule deer (1-9%). CWD prevalence in some winter ranges has been as high as 40%. There is much concern over the possibility of introduction of CWD into the wintering grounds of elk in Wyoming. As the disease has moved eastward into white-tailed deer the infection rate in some areas has been as high as 20% in a short time period. Over a period of many years it is projected that deer populations will be more seriously effected. Wisconsin studies indicate that if left unchecked CWD will substantially increase in prevalence to more than 40% of the herd statewide.

6. West Virginia would not be drastically affected if CWD was found in the state.

CWD has now been found in the State, and a significant amount of resources have already been delegated to combat the disease. The Wisconsin DNR stated that they have spent \$20 million on controlling the disease since 2002. Only time will tell if we are successful in stopping the spread of the disease. As we have anticipated hunters are gravely concerned over the possible consequences of the disease to the deer herd

and the possible risks of eating the meat from infected animals. Human dimension studies also indicate that the perceived value of the remaining animals would be diminished because of the risks associated with the disease.

7. CWD infection rate in Wisconsin is .02% and evidence shows that the normal harvest rate would keep CWD under control.

This is certainly not true in the endemic area. CWD infection in the core area of the endemic area in Wisconsin is 5% and in the center of the endemic area it is 8-12%.

8. DNR has imported deer into WV.

DNR imported deer into West Virginia before CWD was discovered and probably before the disease evolved.

9. CWD could be in WV already.

This statement has been found to be true. We do not know at this time the source of the disease in the state.

10. Costs associated with implementing these regulations are prohibitive and would put many deer farmers out of business. Costs will have a devastating effect on the cervid industry. The costs of sampling each dead deer are devastating to the small business man.

The regulations on captive cervid pens are well founded. Costs of the deer farmers as related to the total economic benefit of the free-ranging deer are only a minor costs. In West Virginia deer hunting generates over \$145 million in retail sales, \$233 million in economic benefits, \$8.5 million in sales and fuel taxes, and \$4.5 million in federal taxes. The losses to the state economy, not to mention the recreational benefits, of the deer herd clearly far exceed the expenditures of deer farmers.

11. West Virginia does little testing of CWD in wild deer.

West Virginia DNR has systematically tested free-ranging white-tailed deer for three years for CWD.

12. The purpose of the rule is to eliminate deer farming in West Virginia.

The purpose of the rule is to lower the risks of introducing CWD and other potentially devastating diseases such as TB to the free-ranging deer herd, and to provide common sense guidelines for managing captive cervid pens.

13. It has never been proven that CWD is transmitted from captive cervids to the wild.

Since the exact method of transmitting this disease has not been discovered, this is true. However, since the disease was first discovered in a captive cervid pen and later found in the wild, strong circumstantial evidence certainly exists. It has also been clearly demonstrated that CWD in the wild in other states and Canada have been associated with CWD in captive cervid pens.

14. Wisconsin did not have a decline in hunters other than the natural decline in hunting. At the current level of infection only 2% of Wisconsin hunters said they would not hunt. In Illinois there was a 10% decline in hunting, but half of that was the natural decline in hunting.

Declines in hunting following the discovery of CWD in deer herds have been documented in several states. In Wisconsin hunting declined 6% the first year following discovery of the disease. Short term hunting declines are probably not as relevant to the threat of CWD as compared to the possible long term consequences of the disease to the deer herd and its associated recreational benefits.

15. There is no known cases of TB in captive white-tailed deer.

White-tailed deer in captive pens in Michigan were documented to have TB. TB is currently in free-ranging white tailed deer in Michigan. There are no white-tailed deer facilities in West Virginia that meet TB Herd Accreditation Status.

16. Disputes that there is no known live animal test for CWD and cites tonsil biopsy.

A tonsil biopsy can be taken from a live deer and may reveal the presence of CWD. The biopsy is not as accurate as testing of brain stems and lymph nodes and is also not a practical alternative.

17. The consumption of meat is not a risk for CWD and only the nerve and lymph tissue carry the disease.

At the present time there is no evidence that CWD can be transmitted to humans. Hunters in CWD endemic areas are advised to avoid eating deer that appear to be sick, and avoid contact with brain, spinal cord, eyes, tonsils, lymph nodes, and spleen from carcasses of healthy appearing deer. Hunters should bone out deer meat to prevent contamination with spinal cord tissue and remove lymph nodes by removing the fat surrounding and between the muscles. Protective rubber or latex gloves should be worn while butchering deer.

18. The requirements of these regulations are not based on science.

These regulations are based on the best science currently available and have been closely coordinated with the Southeastern Cooperative Wildlife Disease Study, the most prestigious wildlife disease group in the Eastern United States.

19. Where is the emergency since the importation of deer have been banned since 2002.

Emergency regulations were necessary because of the discovery of chronic wasting disease in New York and the steady movement of the disease eastward in the last several years. Most states have banned imports of cervids but effective regulations must be in place to monitor the status and movement of cervids to insure that these bans are obeyed.

TEMPORARY CAGE/PEN/HOUSING REQUIREMENTS

When wildlife is transported or is kept for less than thirty (30) consecutive days at the same location, such wildlife must be placed in cages meeting, at a minimum, the requirements outlined below:

1. Cage requirements for each animal or bird
 - a. Cage length must be at least double the animal or bird's body length (excluding its tail).
 - b. Cage width must at least equal body length.
 - c. Cage height must be at least 1' higher than the animal or bird's head when standing.
2. Cage requirements for each additional animal or bird
 - a. Cage length must be increased by 33%.
3. Animals and birds should be transported in air-conditioned or well-ventilated vehicles that can be adjusted to weather conditions. All animals must be provided with fresh water twice and fed at least once in any twenty-four (24) hour period while in transit.

Wildlife may not be housed for a period of more than thirty (30) consecutive days at the same location in cages meeting these temporary cage requirements.