

This legislative rule is filed for technical purposes

by the

Division of Natural Resources Wildlife Resources Section

All changes are shown by strike-throughs for deleted
language and underline for new language

August 1, 1995

TECHNICAL CHANGES TO

TITLE 58 CSR 48A

Miscellaneous Permits and Licenses - 58 CSR 48A

1. On page 1, in the title of the rule the agency name Bureau of Commerce has been added.
2. 58 CSR 48A is changed to 58 CSR 64 and renumbered accordingly throughout the rule.
3. On page 1, subsection 2.1.1, by striking 47 and inserting in lieu thereof 58, and by striking 23 and inserting in lieu thereof 63.
4. On page 1, subsection 2.1.2, by striking 47 and inserting in lieu thereof 58, and by striking 23 and inserting in lieu thereof 63.
5. On page 5, subsection 7.2, by inserting or her.

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TITLE 58
PROCEDURAL RULE
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 48A64
MISCELLANEOUS PERMITS AND LICENSES

§58-48A64-1. General.

1.1. Scope. -- This rule establishes procedures concerning the application for and renewal of certain permits and licenses issued by the Department and the keeping of records and submission of reports 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. -- July 28, 1989

1.4. Effective Date. -- September 1, 1989

§58-48A64-2. 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 Department under the provisions of W. Va. Code §20-2:

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). 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 Department regulations governing the commercial sale of wildlife (4758 CSR 2363).

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 Department regulations governing the commercial sale of wildlife (4758 CSR 2363). Two (2) categories of this license will be issued by the Department:

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 during the legal open hunting or trapping season established under 47 CSR 11 (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 Division of Law Enforcement of the West Virginia Division of Natural Resources.

2.3. "Department" 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 delineated in Appendix A of these regulations.

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

2.7. "Facility" means the property on which a person engages in an activity for 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. All other terms shall have the meaning prescribed in W. Va. Code §20-1-2.

~~§58-48A64~~-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 found in Appendix B of this rule 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 found in Appendix B of these regulations 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, Division of Law Enforcement, 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 is 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. 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. 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. All permits and licenses listed in Section 2.1 of this rule will be issued by the chief.

~~§58-48A~~-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 these regulations will expire on December 31 of the year of issue.

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

4.1.2. 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 these regulations may not be sold or transferred.

~~§58-48A64~~-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.

~~§58-48A64~~-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.

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 regulation or by the terms and conditions of the licensee's permit or license.

~~§58-48A64~~-7. Penalties.

7.1. 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 Department, is subject under W. Va. code §20-2-2 to the penalties prescribed in W. Va. Code §20-7-9.

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

~~§58-48A64~~-8. Appeals to the Director.

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

8.1.1. 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.

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

8.1.3. 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.