



**WEST VIRGINIA
SECRETARY OF STATE**

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

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WEST VIRGINIA SECRETARY OF STATE

FORM 4 -- NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY **Natural Resources**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **58-64**
RULE NAME **Miscellaneous Permits and Licenses**

CITE AUTHORITY **§§20-1-7(20), 20-1-7(30)**

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

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

Yes

Joshua L Jarrell -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 58-64



Rule Id: 10256



Document: 33183

TITLE 58
LEGISLATIVE RULE
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES

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. -- ~~April 7, 2006.~~

1.4. Effective Date. -- ~~April 7, 2006.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon the expiration of 5 years from its effective date

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

2.1.a.1. 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.a.2. 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.a.3. 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.a.4. Captive cervid license. This license authorizes cervids to be held in accordance with provisions of this rule.~~

2.1.b. 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.b.1. A fish pond license to raise and sell fish, frogs, turtles, or other forms of aquatic life.

2.1.b.2. A fish sales license to buy and resell fish, frogs, turtles, or other forms of aquatic life.

2.1.c. 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 open hunting or trapping season established under 58 CSR 45 (W. Va. Code §20-2-51).

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

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

2.1.h. 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,~~ means all mammals native to the State of West Virginia occurring either in a natural state or in captivity, except house mice or rats, and includes coyotes and porcupines and all species of cervids. The term wild animals does not include captive cervids owned and possessed by persons licensed pursuant to article two-h, chapter nineteen of this code.

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.~~ all birds other than: (a) Domestic poultry — chickens, ducks, geese, guinea fowl, peafowls and turkeys; (b) psittacidae, commonly called parrots and parakeets; and (c) other foreign cage birds such as the common canary, exotic finches and ring dove. All wild birds, either: (i) Those occurring in a natural state in West Virginia; or (ii) those imported foreign game birds, such as waterfowl, pheasants, partridges, quail and grouse, regardless of how long raised or held in captivity, shall remain wild birds under the meaning of this chapter.

2.12. "Commercial dealer" means a licensee holding a license as defined in Section 2.1.1.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~~16. "Cervid" is any member of the deer family, both native and exotic. For the purposes of this rule, this definition does not include captive cervids owned or possessed pursuant to W. Va. Code §19-2H.

~~2.18~~17. 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.a. 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,~~ 324 Fourth Avenue, South Charleston, West Virginia 25305 25303.

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 cash, 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. The Division of Natural Resources will conduct a public hearing in the appropriate county to solicit public concerns and comments related to any proposed captive cervid facility.~~

3.76. 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. 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.

~~3.87. 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.~~

3.98. 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. A commercial shooting preserve license issued under W. Va. Code §20-2-54 expires on June 30 of the fiscal year of issue. All other permits and licenses issued under this rule expire on December 31 of the 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.a. 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.b. 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 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. ~~Personnel from both the Division of Natural Resources, Wildlife Resources Section and the Division of Natural Resources, Law Enforcement Section will inspect captive cervid facilities and complete an inspection form.~~

6.2.a. 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.b. 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.c. 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.a. 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.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.

7.1.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.

7.1.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.

7.1.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.

7.1.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.

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

7.1.g.1. Wildlife held under the authority of this license which escapes or disperses from the facility and poses no threat to the public or to the State's wildlife shall become the property of the State.

7.1.g.2. Wildlife held under the authority of this license which escapes or disperses from the facility and poses a potential threat to the public safety or to the State's wildlife may be disposed of by the Division personnel.

7.1.h. 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.i. 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.j. The licensee must obey Division rules governing the commercial sale of wildlife (58 CSR 63).

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

7.1.l. 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 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.l.1. The seller's name and address.

7.1.l.2. The seller's commercial game farm license number.

7.1.l.3. The date of the sale.

7.1.l.4. The purchaser's name and address.

7.1.l.5. A description of the wildlife sold or transferred, including the number of each species sold or transferred.

7.1.m. 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.a. 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.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.

7.2.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.

7.2.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.

7.2.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.

7.2.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.

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

7.2.g.1. Wildlife held under the authority of this license which escapes or disperses from the facility and poses no threat to the public or to the State's wildlife shall become the property of the State.

7.2.g.2. Wildlife held under the authority of this license which escapes or disperses from the facility and poses a potential threat to the public safety or to the State's wildlife may be disposed of by the Division personnel.

7.2.h. 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.i. 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.j. The licensee must obey Division rules governing the commercial sale of wildlife (58 CSR 63).

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

7.2.l. 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 7.2.s. below.

7.2.m. 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~~ racoons and foxes 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 this purpose. This license will not be issued for coyote.

7.2.n. 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.o. 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.p. 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.q. 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.r. This license does not authorize the licensee to transfer possession or resell wildlife.

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

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

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

7.2.x. 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.y. 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.z. 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.a. 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.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.

7.3.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.

7.3.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.

7.3.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.

7.3.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.

7.3.g. 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.g.1. 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.g.1. 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.h. 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.i. 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.j. The licensee must obey Division rules governing the commercial sale of wildlife (58 CSR 63).

7.3.k. 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.l. 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.m. 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.n. 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.o. 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.p. 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.q. 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.r. 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.s. This license does not authorize the licensee to transfer possession or resell wildlife.

7.3.t. 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.u. 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.v. 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.w. 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 apply for this license regardless of when the license was issued or whether it is simply being renewed, unless otherwise specified in the rule.~~

~~7.4.a. 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. The nonrefundable application fee is \$250.00 for each new application for a captive cervid facility license. The fee for renewal of a captive cervid facility license is \$250.~~

~~7.4.b. The Division of Natural Resources will conduct a public hearing in the appropriate county to solicit public concerns and comments related to the proposed Captive Cervid Facility.~~

~~7.4.c. A unique and permanent identifying license number, corresponding to the number assigned to the premises by the National Animal Identification System, shall be issued to each licensed captive cervid facility. The applicant must supply this number to the West Virginia Division of Natural Resources with the application for a captive cervid facility license.~~

~~7.4.d. 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.e. 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 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.f. 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.g. 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) foot 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 properly spaced and anchored; 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.h. 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.i. The facility shall provide appropriate shelter and bedding material for the captive animals that protects them from inclement weather.~~

~~7.4.j. Fresh drinking water shall be provided daily.~~

~~7.4.k. 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.l. Where necessary, fecal and food waste shall be removed from the enclosure and stored or disposed of in a manner that prevents noxious odors or insect pests and is in accordance with best management practices. 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.m. 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 West Virginia licensed veterinarian shall be performed and a report submitted to the Director. All testing of captive Cervids shall be performed by a West Virginia licensed veterinarian certified by the USDA to perform testing on Cervids, including CWD, TB and brucellosis testing. The collection of samples for CWD testing shall be performed by trained personnel within the West Virginia Division of Natural Resources or by a trained veterinarian employed by the West Virginia Department of Agriculture. For the purpose of collecting tissue for CWD testing, the captive cervid facility licensee has four options: (1) the licensee may deliver to a West Virginia Division of Natural Resources District Office the head of the cervid; (2) the licensee may deliver to a West Virginia Division of Natural Resources District Office the entire cervid with the head intact; (3) the licensee may contact the West Virginia Division of Natural Resources and a trained representative of the West Virginia Division of Natural Resources and/or a trained veterinarian employed by the West Virginia Department of Agriculture shall go to the facility and obtain the tissue samples; or (4) the licensee may deliver the entire cervid with the head intact to the West Virginia Department of Agriculture lab in Moorefield, West Virginia, and upon delivery of the cervid carcass, the West Virginia Department of Agriculture shall notify the West Virginia Division of Natural Resources of the delivery. After the West Virginia Division of Natural Resources and/or the West Virginia Department of Agriculture have obtained sufficient and necessary tissue samples, the remaining tissue may be shared with the captive cervid facility licensee.~~

~~7.4.n. Co-mingling of different cervid species will be allowed if the population density is at least 20,000 square feet per animal and if all best management practices are followed by the captive cervid facility. Food, water and waste material from captive cervids must not be available to or exposed to free ranging white-tailed deer.~~

~~7.4.o. The facility may 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 may require snow cover for the detection of deer prior to the release of any captive Cervids within the facility.~~

~~7.4.p. The captive Cervid facility shall abide by all the requirements in DNR Legislative Rule 58 CSR 63.~~

~~7.4.q. 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. A unique tattoo in the ear is not be required of Cervids less than six (6) months of age; Provided, That a fawn below the age of six 6 months and originating from a certified tuberculosis free herd may be moved or transferred as long as the fawn is tagged with a unique marker visible from 50 yards. 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.r. A licensee shall maintain an accurate and current inventory of all the animals in the captive Cervid herd on forms provided by the DNR. These records shall indicate all wildlife acquisitions, sales, possession transfers, escapes, births, mortalities and appropriate permits and shall include names, addresses, dates, sales documentation, tag numbers, and origins or destinations of all transactions concerning captive Cervids.~~

~~7.4.s. A licensee shall forward a copy of the records of all acquisitions, mortalities, births, sales or possession transfers to the District LES Captain within 15 days. Applications to receive or transfer captive Cervids shall be made on forms provided by the DNR. A licensee must obtain prior approval from the Director to move captive cervids. The Director may grant approval on a case by case basis. All captive cervid facilities must enroll the cervid herds in accreditation programs for brucellosis and TB as defined by the USDA: *Provided*, That captive cervid facilities licensed after August 9, 2005 may only accept cervids from TB accredited herds that also meet all requirement of CWD monitoring and surveillance programs. All such tests must be performed by a West Virginia licensed 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.t. A captive cervid facility licensed after August 9, 2005, may receive animals coming from a herd within the state only if the proposed transfer is from a herd that has an ongoing and appropriate CWD surveillance record for at least 60 months. If a licensee has a monitoring program which has been in effect for at least 36 months, the Director may, after reviewing the facility's monitoring records, approve intra-state movement of cervids from the facility's herd: *Provided*, That intra-state movement of captive cervids may be approved by the Director on a case by case basis.~~

~~7.4.u. A captive cervid facility in this state may not receive animals that have originated from or been housed with animals originating from any state that has a confirmed CWD or tuberculosis (TB)~~

~~positive cervid in the last 60 months. A captive cervid facility in this state may not receive genetic material that originates from any state that has a confirmed CWD or tuberculosis (TB) positive cervid in the last 60 months.~~

~~7.4.v. All Cervids sold or transferred from a licensed captive Cervid facility shall be tested by a West Virginia licensed veterinarian for any future approved live animal test for CWD prior to movement.~~

~~7.4.w. Fawns under the age of six months may not be moved or transferred: Provided, That fawns below the age of six (6) months may be moved or transferred if the fawn originates from a certified tuberculosis free herd and is tagged with a unique marker visible from 50 yards.~~

~~7.4.x. A licensee will make every effort to prevent escapes of animals from captive Cervid facilities. A licensee shall report all known escapes within 8 hours to the District LES Captain, District WRS Game Biologist or the county conservation officer. Failure to report an escaped Cervid will result in the immediate forfeiture of the captive Cervid license. Any negligent act that results in captive cervids escaping is a violation of the license.~~

~~7.4.y. 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 an animal that escapes due to a negligent act, including collecting samples and testing, are the responsibility of the licensee.~~

~~7.4.z. Under no circumstances may captive Cervids be intentionally released into the wild.~~

~~7.4.aa. An authorized representative of the Director shall periodically inspect the captive Cervid facility, records and animals 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.bb. 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.cc. The licensee shall report any captive Cervids that die of unknown causes and/or are slaughtered 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.dd. The licensee shall submit appropriate samples, as determined and directed by the DNR, from all captive Cervids over six months of age that die and/or are slaughtered for CWD testing to a USDA approved laboratory. Testing for other transmissible diseases is also required. Any captive cervid that is fourteen months of age or older that dies or is slaughtered must be tested for TB and brucellosis by a USDA certified, West Virginia licensed veterinarian if sufficient samples are available. These test results shall be made available to the West Virginia Department of Agriculture and the West Virginia Division of Natural Resources. All costs for this disease testing and surveillance shall be the responsibility of the licensee unless federal funds become available.~~

~~7.4. ee. The licensee shall notify the DNR 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. ff. 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.~~

~~7.4. gg. The West Virginia Department of Agriculture and the West Virginia Division of Natural Resources shall work together to develop accreditation programs for captive cervids for diseases including Tuberculosis (TB), brucellosis, and chronic wasting disease (CWD). Captive cervid facilities are 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. hh. 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.~~

7.54. Fish Pond License. The following terms and conditions will apply for this license.

7.54.a. The licensee must assure that his plant or pond does not interfere with the free passage of fish.

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

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

7.54.d. 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.

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

7.54.f. The licensee must display his license in plain view in the vicinity of his fish pond(s).

7.65. Fish Sales License. The following terms and conditions will apply for this license.

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

7.65.b. The licensee must display his license in plain view at his place of business.

7.76. Pet Permit. The following terms and conditions will apply for this permit.

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

7.76.b. 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.

7.76.c. 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.

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

7.76.e. 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.

7.76.f. Pets must not be tortured, molested, or abused in any manner.

7.76.g. Pets must not be used in the training of hunting dogs.

7.76.h. 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.

7.76.h.1. Pets lawfully taken by the applicant in West Virginia during an open hunting or trapping season must be checked and recorded by a ~~conservation~~ natural resources police officer.

7.76.h.2. 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.

7.76.i. 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.

7.76.j. Cervids can not be held under this permit.

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

7.6.k.1. Wildlife held under the authority of this license which escapes or disperses from the facility and poses no threat to the public or to the State's wildlife shall become the property of the State.

7.6.k.2. Wildlife held under the authority of this license which escapes or disperses from the facility and poses a potential threat to the public safety or to the State's wildlife may be disposed of by the Division personnel.

7.87. Roadside Menagerie Permit. The following terms and conditions will apply for this permit.

7.87.a. 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.

7.87.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.

7.87.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.

7.87.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.

7.87.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.

7.87.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.

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

7.87.g.1. Wildlife held under the authority of this license which escapes or disperses from the facility and poses no threat to the public or to the State's wildlife shall become the property of the State.

7.87.g.2. Wildlife held under the authority of this license which escapes or disperses from the facility and poses a potential threat to the public safety or to the State's wildlife may be disposed of by the Division personnel.

7.87.h. 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.

7.87.i. 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.

7.87.j. 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.

7.87.k. Visitor contact with the following designated animals may be permitted under the conditions specified:

7.87.k.1. Visitor contact with buffalo, ~~deer, or elk~~ may be allowed until the animal is six (6) months of age.

7.87.k.2. Wildlife may be removed from cages for exhibition provided the exhibitor displays the wildlife in a manner that precludes any danger to the public.

7.87.k.3. Any damage or injury resulting from contact with any wildlife held under authority of this permit shall be the sole responsibility of the permittee.

7.87.l. 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.

7.87.l.1. The acquisition of wildlife shall be for the sole purpose of maintaining stock for the menagerie.

7.87.l.2. Wildlife lawfully taken by the applicant in West Virginia during an open hunting or trapping season must be checked and recorded by a ~~conservation~~ natural resources police officer.

7.87.l.3. 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.

7.87.m. 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.

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

7.87.o. Accurate and current records must be maintained concerning all wildlife acquisitions

and disposals. All records must be either typed or written in plain an legible English and must be maintained for a minimum period of three (3) years.

7.87.p. 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.

7.87.q. This permit does not authorize the holder to keep mammals that are not native to West Virginia.

7.87.r. The permittee must display his permit in plain view at the entrance to the menagerie.

7.87.s. Cervids cannot be held or displayed under a menagerie permit.

7.98. Commercial Fishing Preserve License. The following terms and conditions will apply for this license.

7.98.a. 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.

7.98.b. 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, or 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.~~

7.98.c. 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.

7.98.d. 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.

7.98.e. 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:

7.98.e.1. The name and license number of the preserve owner.

7.98.e.2. The address of the fishing preserve.

7.98.e.3. The number and species of fish taken.

7.98.e.4. The date the fish were taken.

7.98.e.5. The name and address of the customer.

7.98.f. The licensee must display his license in plain view at the entrance to the fishing preserve.

7.109. Commercial Shooting Preserve License. The following terms and conditions will apply for this license.

7.109.a. Preserve Size and Boundaries.

7.109.a.1. 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).

7.109.a.2. 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.

7.109.a.3. 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.

7.109.a.4. The licensee must display his license in plain view at the entrance to the shooting preserve.

7.109.b. Preserve Wildlife.

7.109.b.1. Native wildlife means game animals and game birds, as defined in W. Va. Code §20-1-2, found in a wild and natural state within the boundaries of the shooting preserve.

7.109.b.2. 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. Cervids are regulated under the Captive Cervid Farming Act, W. Va. Code §19-2H-1 et. seq.

7.109.b.3. Stocked wildlife may include any of the following: game birds (except wild turkey), non-native game birds (such as chukar partridges), rabbits, or the hoofed 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), the Captive Cervid Farming Act, W. Va. Code §19-2H-1 et. seq.

7.109.b.4. 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.

7.109.b.5. 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.

7.109.b.6. 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.

7.109.c. Hunting License Requirements.

7.109.c.1. A West Virginia resident must possess a valid Class A or AH license to hunt for small game ~~and one deer with a firearm~~ and a Class BG stamp to hunt additional big game species, or a Class X, Class XJ, Class AHJ, 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.

7.109.c.2. A nonresident must possess a valid Class E, AAH, XXJ or AAHJ license to hunt native wildlife or stocked wildlife on the shooting preserve or a valid Class J shooting preserve license to hunt stocked small game species.

7.109.d. Hunting Seasons and Bag Limits.

7.109.d.1. 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.

7.109.d.2. 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.~~ Hunting is prohibited on Sundays except in those counties where Sunday hunting has not been prohibited by local election.

7.109.d.3. 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, ring-necked pheasant, chukar partridge, and other non-native game species.

7.109.d.4. 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.

7.109.e. Tagging of Harvested Game.

7.109.e.1. 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.

7.109.e.2. The numbered tagging system approved by the Director must be used by the licensee.

7.109.f. Care of Stocked Wildlife.

7.109.f.1. 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.

7.109.f.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.

7.109.f.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.

7.109.f.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.

7.109.f.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.

7.109.f.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.

7.109.f.7. Any damage or injury resulting from the escape or dispersal of wildlife held under the authority of this license shall be the sole responsibility of the licensee.

7.109.f.7.A. Wildlife held under the authority of this license which escapes or disperses from the facility and poses no threat to the public or to the State's wildlife shall become the property of the State.

7.109.f.7.B. Wildlife held under the authority of this license which escapes or disperses from the facility and poses a potential threat to the public safety or to the State's wildlife may be disposed of by the Division personnel.

7.109.g. Record Keeping.

7.109.g.1. The licensee must maintain accurate and current records of all wildlife purchased for, imported to, or raised at the shooting preserve.

7.109.g.1.A. Records of wildlife purchased for the shooting preserve must include a bill of sale for all wildlife acquired.

7.109.g.A.1. 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.

7.109.g.A.1.(a). 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.

7.109.g.2. 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.

7.109.g.3. 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.

7.109.g.4. 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.

7.109.h. Shooting Preserve Reports.

7.109.h.1. 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.

7.1110. Catch and Sell Bait Fish License. The following terms and conditions will apply to this license.

7.1110.a. The licensee must obey Division rules governing the catching and selling of bait fish (58 CSR 62).

7.1211. ~~Field Trial Permit~~ Permit to hold a field trial, shoot-to-retrieve field trial, water race or wild hunt.

7.1211.a. The following terms and conditions will apply to all field trial permits except for a Shoot-to-Retrieve Field Trial Permit.

7.1211.a.1. Wildlife may not be taken under this permit.

7.1211.a.2. The permit conveys no right to trespass.

7.1211.a.3. The permit shall be valid in no more than two (2) counties and for no more than three (3) days.

~~7.12.a.4. The permit shall not be valid in areas set aside as bear sanctuaries.~~

7.1211.a.4. A field trial or a wild hunt may be held on a Sunday; a water race may be held on a Sunday.

7.1211.a.5. No person participating in the trial, race, or hunt may have a firearm or bow in his possession.

7.1211.s.6. 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.

7.1211.b. The following terms and conditions will apply for a Shoot-to-Retrieve Field Trial.

7.1211.b.1. Only stocked game birds may be pursued and taken during the trial.

7.1211.b.2. The permit conveys no right to trespass.

7.1211.b.3. The permit shall be valid in one county only and for no more than three (3) days.

~~7.12.b.4. The permit is not valid in areas set aside as bear sanctuaries.~~

7.1211.b.4. A shoot-to-retrieve field trial may ~~not~~ be held on a Sunday in those counties where Sunday hunting has not been prohibited by local election.

7.1211.b.5. 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.a. 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.b. The condition being appealed will remain in effect until the director decides to grant the requested modification and so informs the licensee.

9.1.c. 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.

APPENDIX A

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~~

2.1. 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

3.2. 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

4.3. 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

5.4. 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

~~6.5.~~ 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

~~7.6.~~ 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

~~8.7.~~ 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

9.8. 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

10.9. 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

~~11.10.~~ 11.10. 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

~~12.11.~~ 12.11. 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

~~13.12.~~ 13.12. 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

14.13. 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%

15.14. 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.

16.15. 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.

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.