

JANUARY 8

Sunday, January 8, 2006

2:00 p.m. to 4:00 p.m.

Legislative Rule-Making
Review Committee
(Code §29A-3-10)

Earl Ray Tomblin
ex officio nonvoting member

Robert "Bob" Kiss
ex officio nonvoting member

Senate

House

Minard, Chairman
Fanning, Vice Chair
Prezioso
Unger
Boley
Minear

Absent

Mahan, Chairman
Palumbo, Vice Chair
Cann
Pino
Armstead
Overington

The meeting was called to order by Ms. Mahan, Co-Chairman.

The minutes of the December 12 and 13, 2005, meeting were approved.

Mr. Prezioso moved that the Committee reconsider its action taken on the rule proposed by the Division of Natural Resources, Miscellaneous Permits and Licenses, 58CSR64. The motion was adopted.

Mr. Fanning moved that the rule proposed by the Division of Natural Resources, Miscellaneous Permits and Licenses, 58CSR64, be moved to the foot of the agenda. The motion was adopted.

Rita Pauley, Associate Counsel, reviewed her abstract on the rule proposed by the **Racing Commission, Greyhound Racing, 178CSR2**, stated that the Commission has agreed to technical modifications and responded to question from the Committee.

Jeff Blades, Counsel for the Racing Commission, responded to questions from the Committee.

Sam Burdett with the West Virginia Breeders Association addressed the Committee and responded to questions.

Mr. Minard moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained her abstract on the rule proposed by the **Bureau for Public Health - Office of Health Facilities Licensure and Certification, Hospital Licensure Rule, 64CSR12**, stated that

the Bureau has agreed to technical modifications and responded to questions from the Committee.

Mr. Minard moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Pauley reviewed her abstract on the rule proposed by the **WV Ethics Commission, West Virginia Ethics Commission, 158CSR1**, stated that the Commission has agreed to technical modifications and responded to questions from the Committee.

Theresa Kirk, Legal Counsel for the Ethics Commission, responded to questions from the Committee.

Mr. Fanning moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Pauley explained her abstract on the rule proposed by the **WV Ethics Commission, Complaints, Investigations and Hearings, 158CSR3**.

Mr. Minard moved that the proposed rule be approved. The motion was adopted.

Ms. Pauley reviewed her abstract on the rule proposed by the **WV Ethics Commission, Lobbying, 158CSR12** and responded to questions from the Committee.

Steve Haid with the WV Professional Lobbyist Association, addressed the Committee, suggested modifications and responded to questions.

Ms. Kirk responded to questions from the Committee.

Mr. Minard moved to amend the proposed rule. The motion was adopted.

Mr. Minard moved that the proposed rule be approved as modified and amended. The motion was adopted.

Mr. Armstead and Mr. Overington requested to be recorded as voting No.

Ms. Pauley explained her abstract on the rule proposed by the **WV Ethics Commission, Code of Conduct for Administrative Law Judges, 158CSR13**.

Mr. Minard moved that the proposed rule be approved. The motion was adopted.

Ms. Pauley reviewed her abstract on the rule proposed by the **WV Ethics Commission, Filing of Verified Time Records, 158CSR14.**

Mr. Minard moved that the proposed rule be approved. The motion was adopted.

Ms. Pauley explained her abstract on the rule proposed by the **WV Ethics Commission, Compliance Audits, 158CSR15,** and stated that the Commission has agreed to technical modifications.

Mr. Minard moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Pauley reviewed her abstract on the rule proposed by the **WV Ethics Commission, Ethics Training Requirements for Designated Public Officials, 158CSR18,** stated that the Commission has agreed to technical modifications and responded to questions from the Committee.

Mr. Minard moved that the proposed rule be approved as modified. The motion was adopted.

Debra Graham, Chief Counsel, explained her abstract on the rule proposed by the **WV State Fire Commission, State Building Code, 87CSR4,** and stated that the Commission has agreed to technical modifications.

Mr. Minard moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the **WV State Fire Commission, Certification of Home Inspectors, 87CSR5,** stated that the Commission has agreed to technical modifications and responded to questions from the Committee.

Dorren Burrell, Counsel for the WV State Fire Commission, addressed the Committee and responded to questions.

Mr. Minard moved that the proposed rule be approved as modified. The motion was adopted.

Joe Altizer, Associate Counsel, explained his abstract on the rule proposed by the **Department of Environmental Protection, Community Infrastructure Investment Program, 47CSR61,** and responded to questions from the Committee.

Mr. Minard moved that the proposed rule be approved. The motion was adopted.

Mr. Altizer reviewed his abstract on the rule proposed by the **Department of Environmental Protection - Office of Water Resources, Requirements Governing Water Quality Standards, 47CSR2.**

Karen Watson, Assistant Counsel for the Department of Environmental Protection, responded questions from the Committee.

Mr. Minard moved that the proposed rule be approved. The motion was adopted.

Mr. Altizer explained his abstract on the rule proposed by the **Department of Environmental Protection - Office of Waste Management, Solid Waste Management Rule, 33CSR1,** and responded to questions from the Committee.

Mike Zito, Coordinator for the Department of Environmental Protection, responded to questions from the Committee.

Mr. Minard moved that the proposed rule be approved. The motion was adopted.

Ms. Pauley reviewed her abstract on the rule proposed by the **Secretary of State, Loan Program for Purchase of Voting Equipment, Software and Services, 153CSR10,** and stated that the Agency has agreed to technical modifications.

Mr. Minard moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Pauley explained her abstract on the rule proposed by the **Secretary of State, Public Testing of Ballot-Marking Voting Systems & Precinct Ballot-Scanning Devices, 153CSR11,** and stated that the Agency has agreed to technical modifications.

Mr. Minard moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Pauley reviewed her abstract on the rule proposed by the **Secretary of State, Use of Digital Signatures, State Certificate Authority and State Repository, 153CSR30,** and stated that the Agency has agreed to technical modifications.

Mr. Minard moved that the proposed rule be approved as modified. The motion was adopted.

The meeting was adjourned.

JANUARY INTERIM ATTENDANCE
Legislative Interim Meetings
January 8, 9 and 10, 2006

Sunday, January 8, 2006

2:00 - 4:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member

Robert S. Kiss, ex
officio nonvoting member

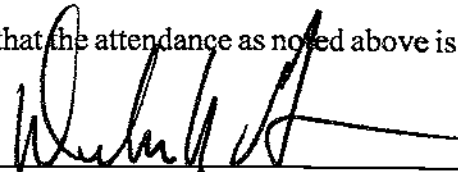
Senate

Minard, Chair
Fanning, Vice Chair
Prezioso
Unger
Boley
Minear

House

Mahan, Chair
Palumbo, Vice Chair
Cann
Pino
Armstead
Overington

I certify that the attendance as noted above is correct.



Staff Person

Debra Graham

Please return to Brenda in Room 132-E or Fax to 347-4819 ASAP, due to payroll deadline.

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Sunday, January 8, 2006
2:00 p.m. and 4:00 p.m.
House Government Organization Committee Room

1. **Approval of Minutes** - Meetings of December 12 and 13, 2005
2. **Review of Legislative Rules:**
 - a. **Racing Commission**
Greyhound Racing
178CSR2
 - Laid Over
 - b. **Bureau for Public Health - Office of Health Facilities**
Licensure and Certification
Hospital Licensure Rule
64CSR12
 - c. **Ethics Commission**
West Virginia Ethics Commission
158CSR1
 - d. **Ethics Commission**
Complaints, Investigations and Hearings
158CSR3
 - e. **Ethics Commission**
Lobbying
162CSR12
 - f. **Ethics Commission**
Code of Conduct for Administrative Law Judges
162CSR13
 - g. **Ethics Commission**
Filing of Verified Time Records
162CSR14
 - h. **Ethics Commission**
Compliance Audits
162CSR15
 - i. **Ethics Commission**
Ethics Training Requirements for Designated Public Officials
91CSR18

- j. **WV State Fire Commission**
State Building Code
87CSR4
- k. **WV State Fire Commission**
Certification of Home Inspectors
87CSR5
- l. **Office of Water Resources - DEP**
Community Infrastructure Investment Program
47CSR61
- m. **Office of Water Resources - DEP**
Requirements Governing Water Quality Standards
47CSR2
- n. **Office of Waste Management - DEP**
Solid Waste Management Rule
33CSR1
- o. **Secretary of State**
Loan Program for Purchase of Voting Equipment, Software and Services
153CSR10
- p. **Secretary of State**
Public Testing of Ballot-Marking Voting Systems & Precinct Ballot-Scanning Devices
153CSR11
- q. **Secretary of State**
Use of Digital Signatures, State Certificate Authority and State Repository
153CSR30

3. Other Business

JANUARY INTERIM ATTENDANCE
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Legislative Rule-Making Review Committee

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 officio nonvoting member

Robert "Bob" Kiss, ex
 officio nonvoting member

Senate

House

Minard, Chair ✓
 Fanning, Vice Chair ✓
 Prezioso ✓
 Unger ✓
 Boley ✓
 Minear ✓

Mahan, Chair ✓
 Palumbo, Vice Chair ✓
 Cann ✓
 Pino ✓
 Armstead ✓
 Overington ✓

Minutes
 approved

Mahan called to order
 Prezioso - reconsider action on DVR - does rule →
 adopted Fanning - foot of agenda

Racing Commission

Rita explained proposed modifications on pups &
 responded to questions. Jeff Blades, Counsel Racing
 Commission responded to questions.

Sam Pardette, Pres WI Greyhound Breeders Ass →
 Assn voted 8-1 against it. Will put some breeders
 out of business. others would have to cut production
 in half.

Minard
 approved

Approve as modified

Health - Hospitals

Minard
 adopted

I explained rule & proposed mod S
 Approve as modified

Ethics - 158 CSR 1

Rita explained & responded to questions

Teresa Kirk, Counsel Ethics C responded to questions

Fanning

Approve as mod

Ethics 158 CSR 3

Rita explained

Minard

Approve

Ethics 158 ~~158~~ CSR 12

Rita explained & responded to questions

Steve Haid, WU Prof Lobbyists Act suggested

proposed modifications

Minard

Approve as modified and amended

Minard

Amend (Haid)

Ethics 158 CSR 13

Rita explained

Minard

Approve

Ethics 158 CSR 14

Rita explained

Minard

Approve

Ethics 158 CSR 15

Rita explained

Minard

Approve as mod

Ethics 158 CSR 18

Rita explained & responded to questions

Minard

Approve as mod

Commission
Fire Marshall

I explained

Minard

Approve as mod

Fire Commission - Home Inspectors

E explained and responded to questions

Daren Bwell responded to questions - wants to remove provisions on hearings

Minard

Approve as mod. And

DEP - Community Infrastructure

Joe explained & responded to questions

Minard

Approve

DEP - Water Quality Stds

Joe explained

Karen Watson, Asst Gen Counsel DEP responded to questions

Minard

Approve

DEP - Solid Waste Mgt

Joe explained & responded to questions

Mike Zeto, Chief Insp . . .

Minard

Approve

SOS - Loan Program

Rita explained

Minard

Approve as mod

SOS - Public Testing

Rita explained

Minard

Approve as mod.

SOS - Digital

Rita explained

Minard

Approve as mod

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1. **Approval of Minutes** - Meetings of December 12 and 13, 2005
2. **Review of Legislative Rules:**

Approved
as modified ✓

Racing Commission
Greyhound Racing
178CSR2

- Laid Over
- Approve as Modified

Approved as
modified ✓

Bureau for Public Health - Office of Health Facilities
Licensure and Certification
Hospital Licensure Rule
64CSR12

- Approve as Modified

Approved ✓
as modified

Ethics Commission
West Virginia Ethics Commission
158CSR1

- Approve as Modified

Approved ✓

Ethics Commission
Complaints, Investigations and Hearings
158CSR3

- ~~Repeated~~
Approved

Approved ✓
as modified
and amended

Ethics Commission
Lobbying
~~162~~CSR12
158

- Approve as Modified

Approved ✓

Ethics Commission
Code of Conduct for Administrative Law Judges
~~162~~CSR13
158

- Approve

✓
Approved

g. **Ethics Commission**
Filing of Verified Time Records
162CSR14
158

- Approve

✓
Approved
as modified

h. **Ethics Commission**
Compliance Audits
162CSR15
158

- Approve as Modified

✓
Approved
as modified

i. **Ethics Commission**
Ethics Training Requirements for Designated Public Officials
91CSR18

- Approve as Modified

✓
Approved as
modified

WV State Fire Commission
State Building Code
87CSR4

- Approve as Modified

✓
Approved
as modified

WV State Fire Commission
Certification of Home Inspectors
87CSR5

- Approve as Modified

✓
Approved

Office of Water Resources - DEP
Community Infrastructure Investment Program
47CSR61

- Approve

✓
Approved

Office of Water Resources - DEP
Requirements Governing Water Quality Standards
47CSR2

- Approve

✓
Approved

Office of Waste Management - DEP
Solid Waste Management Rule
33CSR1

- Approve

✓
Approved
as modified

Secretary of State
Loan Program for Purchase of Voting Equipment, Software and Services
153CSR10

- Approve as Modified

to.
Approved
as modified

Secretary of State

*Public Testing of Ballot-Marking Voting Systems & Precinct
Ballot-Scanning Devices*
153CSR11

- Approved as Modified

q. **Secretary of State**

*Use of Digital Signatures, State Certificate Authority and
State Repository*
153CSR30

- Approve as Modified

→

DNR

3. **Other Business**

JANUARY INTERIM ATTENDANCE

Legislative Interim Meetings

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Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member

Robert "Bob" Kiss, ex
officio nonvoting member

Senate

House

Minard, Chair

Fanning, Vice Chair

Prezioso

Unger

Boley

Miner

✓
✓
✓

✓
✓
✓

Mahan, Chair

Palumbo, Vice Chair

Cam

Pino

Armstead

Overington

✓
✓
✓
✓
✓
✓
✓

meeting called to order by Mahan
- Approval of minutes

- Prezioso motion to reconsider 58CSR12 motion adopted
Fanning motion to lay over changed to
motion to ^{move to} foot of the agenda
motion adopted

- ~~64CSR2~~ Racing 178CSR12
Rita explained and responded to ?'s
Jeff Blades, Counsel for Racing Commission answered ?
Sam Burdett, Bredders ass. addressed answered ?
Minard moved as modified
motion adopted

- Health 64CSR2
Debra explained and responded to ?'s
move rule ^{of 64CSR2} Minard
motion adopted

• Ethics 158CSR1

Rita explained & responded to ?'s
Theresa Kirk, Legal Counsel for Ethics Comm, answered ?'s
Fanning move rules modified
motion adopted

• Ethics 158CSR3

Rita Explained
Minard moved
motion adopted

• Ethics 158CSR12

Rita explained & responded to ?'s
Minard approve as modified
Mr. ^{Steve} Naigh ^{lobbyist} addressed committee & suggested
↓ w/prof Lab ASS modifications

Ms. Kirk responded to ?'s
Minard motion to approve as modified & amended - motion adopted
Minard motion for amendment - motion adopted
Delegate J. Overington voted NO

• Ethics 158CSR13

Rita Explained
Minard moved
motion adopted

• Ethics 158CSR14

Rita Explained
Minard moved
motion adopted

• Cynthia 158CSR15

Rita explained

Munard moved as modified
motion adopted

• Ethica 158CSR18

Nita explained & responded to 7'a

Munard move as modified
motion adopted

• Fire 87CSR4

Debra explained

Munard approve as modified
motion adopted

• Fire 89CSR5

Debra explained & responded to 7'a

Doreen Burrell, counsel for Fire Company, responded to 7'a

would like to make appeal - precalendar

Munard approve as modified
motion adopted

• Water 47CSR1

Jive explained & responded to 7'a

Munard move

motion adopted

- Water 47CSR2

Joe Explained
handout

Raren Watson, Assist Counsel to DEP, answered 7's

Minard moved

motion adopted

- Waste 33CSR1

Joe explained & responded to 7's

Mike Jits, Coordinator w/DEP answered 7's

Minard moved

motion adopted

- Sec. of State 153CSR10

Rita explained

Minard moved as modified

motion adopted

- Sec. of State 153CSR11

Rita explained

Minard moved as modified

motion adopted

- Sec. of State 153CSR30

Rita explained

Minard moved as modified

motion adopted

Member motion to adjourn
motion to
withdraw motion to reconsider

caused explained
meeting adjourned

TENTATIVE AGENDA
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Sunday, January 8, 2006
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House Government Organization Committee Room

1. **Approval of Minutes** - Meetings of December 12 and 13, 2005

2. **Review of Legislative Rules:**

a. **Racing Commission**

handout
Greyhound Racing
178CSR2

- Laid Over
- Approve as Modified

b. **Bureau for Public Health - Office of Health Facilities**
Licensure and Certification

handout
Hospital Licensure Rule
64CSR12

- Approve as Modified

c. **Ethics Commission**

West Virginia Ethics Commission
158CSR1

- Approve as Modified

d. **Ethics Commission**

Complaints, Investigations and Hearings
158CSR3

- Repealed Approve

handout
e. **Ethics Commission**

Lobbying
~~162~~CSR12
158

- Approve as Modified & amended

f. **Ethics Commission**

Code of Conduct for Administrative Law Judges
162CSR13
158

- Approve

- g. **Ethics Commission**
Filing of Verified Time Records
162CSR14
158
• Approve
- h. **Ethics Commission**
Compliance Audits
162CSR15
158
• Approve as Modified
- i. **Ethics Commission**
Ethics Training Requirements for Designated Public Officials
91CSR18
158
• Approve as Modified
- j. **WV State Fire Commission**
State Building Code
87CSR4
• Approve as Modified
- k. **WV State Fire Commission**
Certification of Home Inspectors
87CSR5
• Approve as Modified
- l. **Office of Water Resources - DEP**
Community Infrastructure Investment Program
47CSR61
• Approve
- m. **Office of Water Resources - DEP**
Requirements Governing Water Quality Standards
47CSR2
• Approve
- n. **Office of Waste Management - DEP**
Solid Waste Management Rule
33CSR1
• Approve
- o. **Secretary of State**
Loan Program for Purchase of Voting Equipment, Software and Services
153CSR10
• Approve as Modified

handout

p. **Secretary of State**

*Public Testing of Ballot-Marking Voting Systems & Precinct
Ballot-Scanning Devices*
153CSR11

- Approved as Modified

q. **Secretary of State**

*Use of Digital Signatures, State Certificate Authority and
State Repository*
153CSR30

- Approve as Modified

- r. *Natural Resources 58CSR64*
3. **Other Business**
- *Reconsider*

178CSR2 Racing Commission

WEST VIRGINIA GREYHOUND OWNERS AND BREEDERS ASSOCIATION

PO Box 7167
Cross Lanes, WV 25356

January 06, 2006

The Honorable Joseph M. Minard
Chairman
Senate Rule-Making Review Committee
West Virginia Senate
Room 204W, Building 1
State Capitol Complex
Charleston, WV 25305

RE: Rules Of Racing Under West Virginia Racing Commission
**Opposition To Proposed Change Requiring West Virginia Whelped
Greyhounds To Remain In West Virginia For 12 Months**

Senator Minard:

We write to vigorously oppose a recent proposed change by individuals to the Rules Of Racing administrated by the West Virginia Racing Commission. These individuals proposed that greyhound puppies whelped in West Virginia be required to stay domiciled within the borders of West Virginia for 12 months in order for the West Virginia breeder to be eligible to be paid supplemental purse awards from the West Virginia Greyhound Development Fund (WVGDF). The overwhelming majority of membership in our West Virginia Greyhound Owners And Breeders Association and therefore an overwhelming majority of every single greyhound owner/breeder in West Virginia pleads **no, no, no!** In our meeting of January 05, 2006 our Executive Committee voted **against** the proposed change by a vote of 8 to 1. Only one member voted for the change and he is the principal proponent of the rule change.

The majority of WV greyhound breeders feel the change is not necessary, it is not beneficial, and in many cases it is not workable. Attached please find a letter we recently presented to the West Virginia Racing Commission on this subject. We ask you take time to read it. One consequence of the change is that large breeders (which include the proponents of the change) would unduly profit from the elimination of competition. This reduced competition would result from the demise of, or reduced production of, smaller breeders that suffer negative effects from the proposed change. The argument of the proponents that the change is needed to eliminate or reduce "deals" between out-of-state breeders and in-state breeders is skeptical and not logical. The proponents story that some out-of-state breeders have built "million dollar dog farms" from "deals" with West Virginia greyhound breeders is simply misinformation. Even if a small part of these allegations were true, we should not harm a majority of West Virginia breeders to address an inconsequential problem.

Thank you,

Sam R. Burdette
President
West Virginia Greyhound Owners And Breeders Association

Cc: State Senator John Pat Fanning
State Senator Donna J. Boley
State Senator Sarah M. Minear
State Senator Roman W. Prezioso
State Senator John Unger II

422 Little Sandy Rd.
Elkview, WV 25071
304-965-1491

December 19, 2005

West Virginia Racing Commission
106 Dee Drive
Charleston, WV 25311

Re: Response To Proposed Rule Change
Requiring WV Whelped Greyhounds To Remain In WV For 12 Months

Gentlemen:

We write to **oppose** a proposed rule change requiring West Virginia whelped greyhounds to remain in West Virginia for 12 months. We feel that this change is not necessary, that it is not beneficial, and in many cases that it is not workable.

The proposed rule change is not necessary. This past year the monthly earnings of WV whelped greyhounds has increased from about \$220,000 per month to about \$400,000+ per month according to Racing Commission reports. This increase occurred under the present 6 month rule. The program is working and growing. We should not try to fix something that is not broke.

The proposed rule change is not beneficial. In fact it will be detrimental. The change would do nothing to better the quality of WV whelped greyhounds. The change would do nothing to increase income for WV breeders. However, for several WV breeders the change will cause an increase in expenses. For example, at times it is cheaper to board a small quantity of pups out of state than to expand one's own facilities and pay the fixed and variable cost of keeping the pups in state.

The proposed rule change is not workable. Many WV breeders have invested in facilities based on the present 6 month rule. West Virginia terrain is not amenable to building long dog runs and training facilities. Flooding is a problem on suitable land. Most WV breeders have built facilities to accommodate young pups. This means shorter and more narrow dog runs. We put 3 to 4 pups in a smaller run for the first 6 months. But beyond 6 months as the pups grow older, bigger, and more aggressive (with dominant pups picking on less dominant pups), we put only two pups per run; under the proposed change this would tie up our facilities for an additional 6 months (from the present 6 month rule to the proposed 12 month rule). During these additional 6 months we would not have our facilities to breed for new puppies. Also, greyhound pups at 6 months of age need to be placed in longer and wider runs in order to stretch out their strides and to maneuver; most of these type runs are only available at out of state boarding/training facilities. Therefore a proposed 12 month rule would severely cut the present production capacity of many, and I mean many, WV breeders. There are other reasons a 12 month domicile rule may not be workable.

Practically all greyhound trainers of young pups start training at or before 12 months of age. Please consider the combined effect of a 12 month domicile rule, with a 12 month training age, with winter weather conditions and with quarantines. For example, if a breeders' pups were 12 months old in December or January and his pups had to stay in West Virginia until exactly the day they were 12 months old, a boarding/training facility may not be able to start consistently training his pups until March because of frozen training tracks or bad weather; this could put his pups 2-3 months behind schedule. And we are familiar with the back-up effect of quarantines and the difficulty to move pups to a boarding/training facility during a quarantine; this could also severally put a breeders pups behind schedule. However when a boarding/training facility has pups before 12 months old, the trainer has more flexibility to overcome these problems. Also please consider that several greyhound owners prefer to start training their pups on a limited schedule at an earlier age; this writer prefers limited training at 8 months of age. Most WV


breeders do not feel the proposed 12 month rule would be workable.

The proposed rule change would have a detrimental effect on the distribution of development fund monies. As previously discussed several smaller to medium sized breeders would have to cut the number of pups they produce. Some small breeders would be forced out of business. This would eliminate a significant portion of competition for the few large breeders in West Virginia. The few large breeders would realize proportionally more income and the smaller to medium size breeders would realize proportionally less income. It seems this would be a detrimental effect contrary to the intent of the law.

Having talked with the new Executive Committee Elect of the West Virginia Greyhound Owner's and Breeders Association, I can say that 10 of 11 members oppose this proposed rule change. Obviously the newly elected Executive Committee cannot vote on this issue until we take office in January, 2006.

Because this proposed rule change requiring West Virginia whelped greyhounds to remain in West Virginia for 12 months is not necessary, because it is not beneficial and in fact will be detrimental, because it is not a workable change, and because it will cause an effect contrary to the intent of the law, we ask the WV Racing Commission to recommend this proposed rule change not be considered.

Thank you,



Sam R. Burdette
WVGOBA President-Elect

Hospital Licensure Rule Excerpt
64 CSR 12.8.7

8.7. Anesthesia Department

8.7.a. There will be an organized anesthesia department under the supervision of a physician specializing in anesthesiology licensed by the West Virginia Board of Medicine or West Virginia Board of Osteopathy in West Virginia who will be responsible for all anesthesia administered in the hospital.

8.7.b. Anesthesia may be administered only by a licensed practitioner permitted by State law to administer anesthesia, a certified registered nurse anesthetist as permitted by state law or other professionals as permitted by the medical staff and state law.

8.7.c. A pre-anesthesia evaluation will be performed no more than forty-eight (48) hours prior to surgery by a practitioner qualified for the administration of anesthesia.

8.7.d. An intra-operative anesthesia record will be completed for all surgical patients.

8.7.e. A post-anesthesia evaluation will be performed within forty-eight (48) hours of surgery for all inpatients by a practitioner qualified for the administration of anesthesia.

8.7.f. Content and format of the pre-anesthesia evaluation, intra-operative anesthesia record, and the post-anesthesia evaluation will be determined by hospital policy.

8.7.g. Safeguards in the use of various types of anesthetics will be established by written policies in accordance with the National Fire Protection Association.

8.7.h. All equipment and medications utilized in administration of anesthesia will be stored in a secure, safe, and readily accessible location according to current professional standards. All equipment will be serviced and maintained by qualified technicians.

6.8.a If the Commission receives a late report that is not accompanied by the appropriate late fee payment, it shall notify the lobbyist in writing of the late fee which is due and payable within ten (10) working days of the date the notice is mailed.

6.8.b. Lobbyists who fail to pay the appropriate late fee within the required time limit shall be subject to suspension under the same conditions that apply to filing their original periodic lobbyist reports.

6.8.c Upon written request, the Commission, in its discretion, may waive or reduce late fees based upon a showing of extenuating circumstances including, but not limited to, a death in the immediate family, severe illness, and other compelling circumstances beyond the lobbyist's control which may constitute just cause.

AMENDMENTS TO ETHICS RULES ON LOBBYISTS

1. Amend Title 158 Series 12, Section 3.8 by adding the words for professional services" after the word "contracts."

RATIONALE: This clarifies which services are included and is consistent with the "professional services" language in 158-12-9.1

2. Strike out the entire sub-section 3.8.c.9 of Title 158, Series 12.

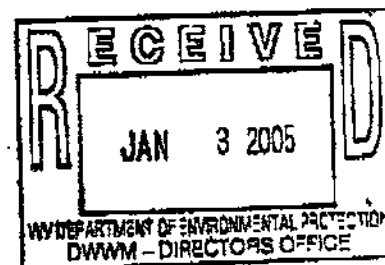
RATIONALE: This language was originally meant to protect lawyers who draft legislation or give opinions as to the same. It is unnecessary, since lawyers are excluded from Consumer Sales Tax by a separate statute. If lobbyists are granted professional status, this subsection would negate the entire purpose of the rules. If the subsection remained, lobbyists who draft legislation and give opinions on the same would be rendering professional services, but would be excluded from the definition of lobbyists.

Steve Haid or Jason Webb could
explain the amendment.

Water Resources 47CSR2



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION III
 1650 Arch Street
 Philadelphia, Pennsylvania 19103-2029



December 29, 2005

Lisa A. McChung, Director
 Division of Water and Waste Management
 West Virginia Department of Environmental Protection
 601 57th Street, S.E.
 Charleston, WV 25304

Felisha -
 Please pass these
 out when we get
 to 47CSR2
 Thanks Joe

Dear Ms. McChung:

This letter is in response to the West Virginia Department of Environmental Protection (WVDEP) letter dated August 10, 2005, submitted for the Environmental Protection Agency's (EPA) consideration and review of a proposed amendment to West Virginia "Requirements Governing Water Quality Standards" (WV rule) that establishes a variance for chloride criterion in Ward Hollow. Included in the letter is a legislative history of the proposed amendment and transcripts of the public hearing. Under separate cover, Union Carbide Corporation (UCC) sent to EPA a copy of a document entitled "Clarification of Application for Variance from Selected Numeric Water Quality Criteria for Chlorides in Ward Hollow" (UCC report). We appreciate the opportunity to review this amendment prior to it being finalized with the West Virginia Legislature.

A variance could be an acceptable approach for providing UCC a short-term exemption for meeting the chloride criteria in Ward Hollow; however, we have questions and comments regarding the bases for the variance. The added language to Section 7.2.d.19.2 of the WV rule, specifically states that the variance is "based on naturally occurring pollutant concentrations." As such EPA assumes, the WVDEP is proposing this variance because, under 40 CFR 131.10(g)(2), it can be demonstrated that attaining the designated use is not feasible due to "the naturally occurring pollutant concentration prevent the attainment of the use." EPA also assumes that West Virginia is relying on the information in the UCC report to justify the natural conditions factor.

Background

Under the Clean Water Act, EPA has approved variances as part of a State's water quality standards. Variances are used by some States to provide a short-term exemption from meeting certain otherwise applicable water quality standards. Agency guidance on variances identifies



what the Agency believes to be the essential elements of a variance.¹ Generally, EPA approves a variance where the State:

- ▶ demonstrates that one of the use removal factors (40 CFR 131.10(g)) has been satisfied;
- ▶ identifies and justifies the variance numerical criteria that will apply during the existence of the variance;
- ▶ establishes the variance as close to the underlying numerical criteria as is possible;
- ▶ does not otherwise modify the underlying numerical criteria and its application to other dischargers;
- ▶ demonstrates that the existing uses will still be protected;
- ▶ does not exempt the discharger from compliance with applicable technology or other water quality-based limits;
- ▶ demonstrates that alternative control strategies were evaluated as part of the showing that standards were not attainable;
- ▶ upon expiration of the variance, applies the underlying numerical criteria to have full regulatory effect; and
- ▶ reviews the variance every three years, at a minimum, and extends it only where the conditions for granting the variance still apply.

As with any other change in water quality standards, a variance is subject to public review through the State procedures. With respect to any of the six factors in 40 CFR 131.10(g) that a State wishes to use to demonstrate that attaining the use is not feasible, EPA expects to see justifications that are scientifically credible and environmentally protective. Each justification should be well documented and should use information that is adequate in both quality and quantity. See 40 CFR 131.6(f). Listed below are some preliminary questions and comments on the documents submitted to support the UCC variance.

Questions & Comments

The UCC report states that "naturally occurring pollutant concentration render the existing numeric water quality criteria unattainable." Specifically the UCC report points to the historic use of [four historic and one current] salt steeps and springs, drilling for salt brine for

¹See 48 FR 51400, 51403 (Nov. 8, 1983); 63 FR 36742, 36759 (July 7, 1998) Water Quality Standards (WQS) Handbook at 5-12; Memorandum from EPA's Office of Water, "Variances in Water Quality Standards," March 15, 1985; and Decision of the General Counsel No. 58, In Re Bethlehem Steel Corporation, March 29, 1977.

food and chemical production, and salt brine encountered during the drilling of oil and gas wells, to support using the naturally occurring pollutant concentration factor.

- Salt wells (historic or current) are the result of human impacts, not natural conditions.
- Documentation in support of the variance should describe the natural condition in terms of the quality of surface water (not outfall data) that exists (or would exist) in the absence of human-caused pollution or disturbance (salt wells etc.). In other words, the WVDEP should demonstrate how the natural processes alone explain the observed exceedance of the chloride criteria in Ward Hollow.
- The UCC report only provided chloride data for outlet 008. However, in order to explain the "natural condition" of Ward Hollow and how it exceeds the chloride criteria, supporting documentation should provide in-stream water quality data and the boundaries where the natural condition will apply.

Also the UCC report notes "that although salt based de-icing agents are use in the winter months, the data confirms that this source is not responsible for the consistently elevated chlorides in the 008 outfall."

- It is not clear to EPA that the given data confirms that the de-icing is not contributing to the chloride elevation in outlet 008. Some of the highest chloride levels in the given data set occur in the spring, winter and fall, and could correspond to early or late snowfalls. Lastly, given the numerous flows into outlet 008 (Ward Hollow impoundment, storm water from the parking lots, the incidental steam condensate, leachate etc.), the WVDEP should evaluate the data and determine if indeed the chlorides in outlet 008 are not coming from the UCC's de-icing.

The State must demonstrate that alternative control strategies were evaluated as part of the showing that standards were not attainable. The UCC report states that "[a]lternative effluent control strategies cannot be used because outlet 008 is overwhelming storm water and cannot be manipulated."


- The primary method to control storm water discharges is through the use of best management practices. Please clarify what the UCC report means by "cannot be manipulated" and explain what if any best management practices are present.

Finally, note that these questions are meant to help us evaluate whether chlorides are naturally occurring pollutants in Ward Hollow. West Virginia could consider applying another of the other 40 CFR 131.10(g) feasibility factors, in order to support the variance. Other questions may be applicable depending on the feasibility factor applied. For example, if WVDEP deemed the irremediable human-caused conditions factor (40 CFR 131.10(g)(3)) to be applicable in this case, WVDEP should consider differing levels of remedial control measures to demonstrate that the sources of chloride cannot be remedied. It should also consider the permanence of the damage, the feasibility of abating the chloride, or the additional environmental damage that may

result from eliminating the discharge. Similarly, the application of a different 131.10(g) factor may require other relevant considerations.

Your response to these preliminary questions will assist us with our continued review of the Ward Hollow chloride criterion variance. Again, we thank you for the opportunity to comment. If you have any questions please call Cheryl Atkinson at (215) 814 3392.

Sincerely,


Evelyn S. MacKnight, Chief
WV PA DE Branch
Water Protection Division

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

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

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

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

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

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

7.4.1. Applications shall be made on forms provided by the Division of Natural Resources and inspections made by both the Law Enforcement Section (LES) and Wildlife Resources Section (WRS) to determine if the facility meets requirements of the license. There shall be a nonrefundable application fee of \$250.00 for each new application for a captive cervid facility license. The fee for the renewal of a Captive Cervid Facility License shall be \$10.00.

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

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

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

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

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

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

cervids from between the fences. The outside fence must be a minimum of six (6) feet in height and constructed of woven wire or electrified high tensile wire to exclude nose to nose contact between captive animals and wild white-tailed deer. The requirement for double-fencing shall apply to all new captive cervid facilities. Existing captive cervid facilities shall be required to meet these double-fencing requirements by January 1, 2011, and existing captive cervid facilities shall be required to demonstrate substantial progress toward meeting these requirements by annually completing double-fencing construction on at least 20% of their facility.

7.4.8. The perimeter fence shall meet the following requirements or equivalent: Fence material must be New Zealand style deer fence or equivalent; total height of fence must be a minimum of eight (8) feet for elk and ten (10) feet for all other Cervids; a minimum of eight (8) feet of woven wire must be used on the bottom of the ten (10) 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.

Deleted: posts must be spaced at 20 feet maximum for T-post or 30 feet maximum for rigid post; fence posts must be buried at least 4 feet in rocky soil and 6 feet in sandy soil or concrete must be used to provide equal stability; line posts must be buried to 3 feet.

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

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

7.4.11. Fresh drinking water shall be provided daily.

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

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

7.4.14. All cervids must be kept free from parasites, sickness or disease. If sick, cervids must be given immediate professional medical attention or be humanely destroyed. Routine sampling and diagnostics for disease and parasites may be required by the Director. An annual examination of each animal by a state licensed veterinarian shall be performed and a report submitted to the Director. All testing of captive Cervids shall be performed by an accredited veterinarian certified by the USDA to perform testing on Cervids, including CWD, TB and brucellosis testing. The collection of samples for CWD testing shall be performed by trained personnel within the West Virginia Division of Natural Resources. The West Virginia Division of Natural Resources, at its discretion, may share samples with the captive cervid facility licensee.

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7.4.14. All cervids must be kept free from parasites, sickness or disease. If sick, cervids must be given immediate professional medical attention or be humanely destroyed. Routine sampling and diagnostics for disease and parasites may be required by the Director. An annual examination of each animal by a state licensed veterinarian shall be performed and a report submitted to the Director. All testing of captive Cervids shall be performed by an accredited veterinarian certified by the USDA to perform testing on Cervids, including CWD, TB and brucellosis testing. The collection of samples for CWD testing shall be performed by trained personnel within the West Virginia Division of Natural Resources. For the purpose of collecting tissue for CWD testing, the captive cervid facility licensee has three options: (1) the licensee shall deliver to a West Virginia Division of Natural Resource District Office the head of the cervid; (2) the licensee shall deliver to a West Virginia Division of Natural Resource District Office the entire cervid with the head intact; or (3) the licensee shall contact the West Virginia Division of Natural Resources' District Office regarding the cervid to be tested and the West Virginia Division of Natural Resources shall go to the facility and obtain the tissue samples. After the West Virginia Division of Natural Resources has obtained sufficient and necessary tissue samples, the remaining tissue may be shared with the captive cervid facility licensee.

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

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

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

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

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

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

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

7.4.22. No animals or genetic material may be received by a captive Cervid facility that have originated or been housed with animals originating from any state that has a confirmed CWD or Tuberculosis

(TB) positive Cervid in the last 60 months: Provided, That intra-state movement of captive cervids may be approved by the Director on a case by case basis.

Deleted: .

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

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

Deleted: .

7.4.25. Every effort will be made to prevent escapes of animals from captive Cervid facilities. All escapes shall be reported within 24 hours to the District LES Captain. Failure to report an escaped Cervid will result in the immediate forfeiture of the captive Cervid license. Any negligent act that results in captive Cervids escaping shall be a violation of the license.

Deleted: condition which

Deleted: prima-facie evidence that the Cervids were held in an unsafe manner and shall be

7.4.26. Any animal that escapes from a captive Cervid facility shall be killed by DNR personnel. Appropriate samples shall be collected from the animal by DNR personnel, and these samples shall be submitted for testing for CWD and other transmissible diseases. All costs for killing an animal that escapes due to a negligent act, including collecting the samples and testing shall be the responsibility of the licensee.

Deleted: the escaped

Deleted: Any damage or injury resulting from the escape of captive Cervids held under this license shall be the sole responsibility of the licensee.

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

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

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

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

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

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

7.4.33. Should any animal test positive for CWD within the captive Cervid facility, the facility shall be immediately quarantined and the captive herd shall be immediately depopulated under guidelines established collaboratively by the DNR, USDA and West Virginia Department of Agriculture. Epidemiological investigations shall be conducted to identify any captive Cervid herds linked by animal movements and appropriate actions, possibly including quarantine and testing of linked animals, shall be taken.

All costs associated with the quarantine and depopulation shall be the responsibility of the licensee unless federal funds become available. In addition, the DNR will immediately initiate active and aggressive CWD surveillance of wild white-tailed deer outside the infected captive Cervid facility.

Deleted: All costs associated with the surveillance of wild white-tailed deer outside the captive Cervid facility shall be the responsibility of the licensee unless federal funds become available.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~7.6.3.~~ 7.7.3. Fecal and food waste must be removed from cages daily and stored or disposed of in a manner which prevents noxious odors or insect pests. Food and water containers must be washed weekly.

58CSR64 DNR



DIVISION OF NATURAL RESOURCES

Capitol Complex, Building 3, Room 669

1900 Kanawha Boulevard, East

Charleston WV 25305-0660

TDD (304) 558-1439

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Fax (304) 558-2768

Telephone (304) 558-2754

Joe Manchin III
Governor

Frank Jezloro
Director

January 6, 2006

VIA HAND DELIVERY

Lindsey K. Griffith
Jackson Kelly
Attorneys at Law
1600 Laidley Tower
P.O. Box 553
Charleston, WV 25322

Re: *Response to January 4, 2006 correspondence*

Dear Ms. Griffith:

I received a copy of the January 5, 2006 letter that you sent to the Division of Natural Resources' counsel, Kelley M. Goes. I was disappointed by the tone and gratuitous accusations regarding the DNR's management of cervids. Further, based on representations to Senator Facemyer at the December 20, 2005 meeting, I had expected to receive draft revisions to the 58 CSR 64 that reflect the expectations of the captive cervid facility owners. Finally, I believe that all parties left the meeting anticipating that the Deer Farmers Association would report back regarding whether or not its Board of Directors had accepted the compromises that were hammered out at that meeting. The resubmission of the November 29, 2005 letter was not helpful as it implies that no accord was reached on December 20, 2005, and that was not my belief after that meeting.

After review of your letter and in the spirit of cooperation that I believe Senator Facemyer expected from all parties, the Division of Natural Resources is submitting the attached revisions to 58 CSR 64 as further compromise to the concerns of the deer farmers. The compromises address all four of the main points raised in your January 5, 2006 letter and all of the issues that I believed were resolved after the December 20, 2005 meeting.

Specifically, the revisions allow for the intrastate movement of cervids with my approval (7.4.22) although I cannot allow, at this time, interstate movement of cervids. The rules have always outlined a monitoring program that incorporates all elements of a

Lindsey K. Griffith
January 6, 2006
Page 2 of 3

program. As was discussed at length at the meeting, there is also a grandfather provision in the rules. (7.4.18, 7.4.19, 7.4.20, 7.4.21, 7.4.28, 7.4.29). The revisions also offer a compromise on the double fencing and other fencing issues. (7.4.7 and 7.4.8). Finally, regarding protocol, the Division of Natural Resources has redrafted 7.4.14 to address the concerns raised by the deer farmers.

Sincerely,



Frank Jezioro
Director

Enc.

FJ:kg1
cc:

The Honorable Karen Facemyer
1900 Kanwha Blvd., East
Charleston, WV 25305
(Home address: Rt. 1, Box 142, Ripley, WV 25271)

Debra Graham
Legislative Services
West Virginia
1900 Kanawha Blvd., East
Capitol Complex, Bldg 1, Room MB-49
Charleston, WV 25305

Brian Helmick, Deputy Secretary
West Virginia Department of Commerce
Capitol Complex, Bldg. 6, Room 525
Charleston, WV 25305

Joseph M. Minard, Chair
Legislative Rule-Making Review Committee
West Virginia Senate
State Capitol Complex, Bldg. 1, Room 204W
Charleston, WV 25305

Lindsey K. Griffith
January 6, 2006
Page 3 of 3

Virginia Mahan, Chair
Legislative Rule-Making Review Committee
West Virginia House of Delegates
State Capitol Complex, Bldg. 1, Room 215E
Charleston, WV 25305

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Sunday, January 08, 2006

I move to reconsider action taken at the December interims on
58CSR64, Miscellaneous Permits and Licenses.



EMILY J. FLEMING
Assistant to the Director

West Virginia
Division of Natural Resources

State Capitol Complex
Building 3, Room 600
1900 Kanawha Blvd., East
Charleston, WV 25305-0600

Office: (304) 558-2754
Fax: (304) 558-2788
E-mail: emilyfleming@wvdnr.gov

Cell-550 0758

JANUARY 9

Monday, January 9, 2006

6:00 p.m. to 8:00 p.m.

Legislative Rule-Making
Review Committee
(Code §29A-3-10)

Earl Ray Tomblin
ex officio nonvoting member

Robert "Bob" Kiss
ex officio nonvoting member

Senate

House

Minard, Chairman
Fanning, Vice Chair Absent
Prezioso
Unger
Boley
Minear

Mahan, Chairman
Palumbo, Vice Chair
Cann Absent
Pino
Armstead
Overington

The meeting was called to order by Mr. Minard, Co-Chairman.

Debra Graham, Chief Counsel, reviewed her abstract on the rule proposed by the **Department of Natural Resources, Miscellaneous Permits and Licenses, 58CSR64**, stated that the Department has agreed to technical modifications and responded to questions from the Committee.

Ms. Mahan moved that the proposed rule be approved as modified.

Mr. Minard moved that the Board be requested to withdraw the proposed rule. The motion was adopted.

Frank Jeslow, Director of the Department of Natural Resources addressed the Committee and responded to questions.

The motion to request withdraw was adopted.

Connie Bowling, Associate Counsel, explained her abstract on the rule proposed by the **Division of Highways, Miscellaneous Permits and Licenses, 157CSR6**, and responded to questions from the Committee.

Kathy Holts with the Division of Highways responded to questions from the Committee.

Dan Hapney with the United Mine Workers responded to questions from the Committee.

Ms. Mahan moved that the proposed rule be approved. The motion was adopted.

Brian Skinner, Associate Counsel, reviewed his abstract on the rule proposed by the **Department of Agriculture, Voluntary Farmland Protection Program, 61CSR26**, stated that the Department has agreed to technical modifications and responded to questions from the Committee.

Les Shoemaker with the Farm Bureau responded to questions from the Committee.

Ms. Mahan moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Boley requested to be recorded as voting No.

Ms. Mahan moved to direct counsel to draft legislation to clarify statute. The motion was adopted.

Ms. Bowling explained her abstract on the rule proposed by the **Division of Highways, Transportation of Hazardous Wastes Upon the Roads and Highways, 157CSR7**.

Ms. Mahan moved that the proposed rule be approved. The motion was adopted.

Mr. Skinner reviewed his abstract on the rule proposed by the **Department of Administration - Purchasing Division, Rules for Selecting Design-Builders under the Design-Build Procurement Act, 148CSR11**, stated that the Department has agreed to technical modifications and responded to questions from the Committee.

Ms. Mahan moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Bowling explained her abstract on the rule proposed by the **West Virginia State Police, West Virginia State Police Grievance Procedure, 81CSR8**, and responded to questions from the Committee.

Ms. Mahan moved that the proposed rule be approved. The motion was adopted.

Ms. Bowling reviewed her abstract on the rule proposed by the **Governor's Committee on Crime Delinquency and Correction, Motor Vehicle Stop Data Collection Standards for the Study of Racial Profiling, 149CSR5**, and stated that the Board has agreed to technical modifications.

Dr. Norbert Federspiel addressed the Committee and responded to questions.

Captain David Skeen with the West Virginia State Police responded to questions from the Committee.

Ms. Mahan moved that the proposed rule be approved as modified. The motion was adopted.

Joe Altizer, Associate Counsel, explained his abstract on the rule proposed by the **Office of Mining and Reclamation - Department of Environmental Protection, West Virginia Surface Mining Rule, 38CSR2.**

Ms. Mahan moved that the proposed rule be approved. The motion was adopted.

Mr. Altizer reviewed his abstract on the rule proposed by the **Office of Oil and Gas - Department of Environmental Protection, Coalbed Methane Wells Rule, 35CSR3.**

Ms. Mahan moved that the proposed rule be approved. The motion was adopted.

Mr. Skinner explained his abstract on the rule proposed by the **WV Real Estate Appraiser Licensing & Certification Board, Requirements for Licensure and Certification, 190CSR2,** and stated that the Board has agreed to technical modifications.

Ms. Mahan moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Skinner explained his abstract on the rule proposed by the **Division of Tourism, Direct Advertising Grants Program, 144CSR2,** and stated that the Division has agreed to technical modifications.

Ms. Mahan moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Bowling reviewed her abstract on the rule proposed by the **Insurance Commission, Licensing and Conduct of Individual Insurance Producers, Agencies and Solicitors, 114CSR2,** and stated that the Commission has agreed to technical modifications.

Ms. Mahan moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Bowling reviewed her abstract on the rule proposed by the **Insurance Commission, Replacement of Life Insurance Policies and Annuity Contracts, 114CSR8,** and stated that the Commission has agreed to technical modifications.

Ms. Mahan moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Bowling reviewed her abstract on the rule proposed by the **Insurance Commission, Unfair Trade Practices, 114CSR14**, stated that the Commission has agreed to technical modifications and responded to questions from the Committee.

Mr. Cann moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Bowling reviewed her abstract on the rule proposed by the **Insurance Commission, West Virginia Essential Property Insurance Association, 114CSR21**.

Ms. Mahan moved that the proposed rule be approved. The motion was adopted.

Ms. Bowling reviewed her abstract on the rule proposed by the **Insurance Commission, West Virginia Essential Property Insurance Association, 114CSR24**.

Jane Cline, Insurance Commissioner, responded to questions from the Committee.

Ms. Mahan moved that the proposed rule be approved. The motion was adopted.

Ms. Bowling reviewed her abstract on the rule proposed by the **Insurance Commission, Nonrenewal of Property Insurance Policies, 114CSR74**.

Ms. Mahan moved that the proposed rule be approved. The motion was adopted.

Ms. Bowling reviewed her abstract on the rule proposed by the **Insurance Commission, Private Passenger Automobile and Property Insurance - Biannual Rate Filing Requirements, 114CSR75**.

Ms. Mahan moved that the proposed rule be approved. The motion was adopted.

Mr. Altizer reviewed her abstract on the rule proposed by the **Secretary's Office - Department of Environmental Protection, Environmental Excellence Program Rule, 60CSR8**, stated that the Department has agreed to technical modifications.

Ms. Mahan moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the **WV Division of Labor, Nurse Overtime Complaints, 42CSR30**, stated that the Division has agreed to technical modifications and responded to questions.

Cheri Heflin with the West Virginia Nurses Association addressed the Committee and responded to questions.

Tony Gregory, Lobbyist for the West Virginia Hospital Association responded to questions from the Committee.

Mr. Mahan moved that the proposed rule be modified by striking out subsection 4.7 in its entirety.

Andrew A. Brown, Assistant to the Commissioner, with the Division of Labor agreed to the modification and responded to questions from the Committee.

The motion was adopted.

Ms. Mahan moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Mahan moved that staff be directed to prepare the report and bills of authorization for introduction. The motion was adopted.

The meeting was adjourned.

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Monday, January 9, 2006
6:00 p.m. and 8:00 p.m.
Senate Finance Committee Room

1. Review of Legislative Rules:

- a. **Division of Natural Resources**
Miscellaneous Permits and Licenses
58CSR64
- b. **Division of Highways**
Use of State Road Rights of Way Adjacent Areas
157CSR6
- c. **Department of Highways**
Transportation of Hazardous Wastes Upon the Roads and Highways
157CSR7
- d. **Department of Administration - Purchasing Division**
Rules for Selecting Design-Builders under the Design Build Procurement Act
148CSR11
- e. **WV State Police**
West Virginia State Police Grievance Procedure
81CSR8
- f. **Governor's Committee on Crime Delinquency and Correction**
Motor Vehicle Stop Data Collection Standards for the Study of Racial Profiling
149CSR5
- g. **Office of Mining and Reclamation - DEP**
West Virginia Surface Mining Rule
38CSR2
- h. **Office of Oil and Gas - DEP**
Coalbed Methane Wells Rule
35CSR3
- i. **WV Real Estate Appraiser Licensing & Certification Board**
Requirements for Licensure and Certification
190CSR2

- j. **Division of Tourism**
Direct Advertising Grants Program
144CSR1
- k. **Insurance Commission**
*Licensing and Conduct of Individual Insurance Producers,
Agencies and Solicitors*
114CSR2
- l. **Insurance Commission**
Replacement of Life Insurance Policies and Annuity Contracts
114CSR8
- m. **Insurance Commissioner**
Unfair Trade Practices
114CSR14
- n. **Insurance Commission**
West Virginia Essential Property insurance Association
114CSR21
- o. **Insurance Commission**
Medicare Supplemental Insurance
114CSR24
- p. **Insurance Commission**
Nonrenewal of Property Insurance Policies
114CSR74
- q. **Insurance Commission**
*Private Passenger Automobile and Property Insurance -
Biannual Rate Filing Requirements*
114CSR75
- r. **Secretary's Office - DEP**
Environmental Excellence Program Rule
60CSR8
- s. **Division of Labor**
Nurse Overtime Complaints
42CSR30
- t. **Department of Agriculture**
Voluntary Farmland Protection Program
61CSR26

2. **Other Business**

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Monday, January 9, 2006
6:00 p.m. and 8:00 p.m.
Senate Finance Committee Room

1. Review of Legislative Rules:

- a. **Division of Natural Resources**
Miscellaneous Permits and Licenses
58CSR6
 - Approve as Modified

- b. **Division of Highways**
Use of State Road Rights of Way Adjacent Areas
157CSR6
 - Laid Over
 - Approve

- c. **Department of Highways**
Transportation of Hazardous Wastes Upon the Roads and Highways
157CSR7
 - Approve

- d. **Department of Administration - Purchasing Division**
Rules for Selecting Design-Builders under the Design Build Procurement Act
148CSR11
 - Approve as Modified

- e. **WV State Police**
West Virginia State Police Grievance Procedure
81CSR8
 - Approve

- f. **Governor's Committee on Crime Delinquency and Correction**
Motor Vehicle Stop Data Collection Standards for the Study of Racial Profiling
149CSR5
 - Approve as Modified

- g. **Office of Mining and Reclamation - DEP**
West Virginia Surface Mining Rule
38CSR2
- Approve
- h. **Office of Oil and Gas - DEP**
Coalbed Methane Wells Rule
35CSR3
- Approve
- i. **WV Real Estate Appraiser Licensing & Certification Board**
Requirements for Licensure and Certification
190CSR2
- Approve as Modified
- j. **Division of Tourism**
Direct Advertising Grants Program
144CSR1
- Approve as Modified
- k. **Insurance Commission**
*Licensing and Conduct of Individual Insurance Producers,
Agencies and Solicitors*
114CSR2
- Approve as Modified
- l. **Insurance Commission**
Replacement of Life Insurance Policies and Annuity Contracts
114CSR8
- Approve as Modified
- m. **Insurance Commissioner**
Unfair Trade Practices
114CSR14
- Approve as Modified
- n. **Insurance Commission**
West Virginia Essential Property insurance Association
114CSR21
- Approve

- o. **Insurance Commission**
Medicare Supplemental Insurance
114CSR24
 - Approve

- p. **Insurance Commission**
Nonrenewal of Property Insurance Policies
114CSR74
 - Approve

- q. **Insurance Commission**
*Private Passenger Automobile and Property Insurance -
Biannual Rate Filing Requirements*
114CSR75
 - Approve

- r. **Secretary's Office - DEP**
Environmental Excellence Program Rule
60CSR8
 - Approve as Modified

- s. **Division of Labor**
Nurse Overtime Complaints
42CSR30
 - Approve as Modified

- t. **Department of Agriculture**
Voluntary Farmland Protection Program
61CSR26
 - Approve as Modified

3. **Other Business**

JANUARY INTERIM ATTENDANCE
Legislative Interim Meetings
January 8, 9 and 10, 2006

Monday, January 9, 2006

6:00 - 8:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member

Robert S. Kiss, ex
officio nonvoting member

Senate

Minard, Chair
Fanning, Vice Chair
Prezioso
Unger
Boley
Minear

✓

✓

✓

✓

✓

House

Mahan, Chair
Palumbo, Vice Chair
Cann
Pino
Armstead
Overington

✓

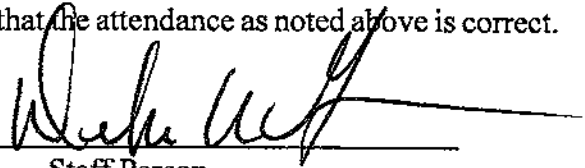
✓

✓

✓

✓

I certify that the attendance as noted above is correct.



Staff Person

Debra Graham

Please return to Brenda in Room 132-E or Fax to 347-4819 ASAP, due to payroll deadline.

JANUARY INTERIM ATTENDANCE

Legislative Interim Meetings

January 8, 9 and 10, 2006

Monday, January 9, 2006

6:00 p.m. - 8:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex officio nonvoting member

Robert "Bob" Kiss, ex officio nonvoting member

Senate

House

Minard, Chair	✓
Fanning, Vice Chair	✓
Prezioso	✓
Unger	✓
Boley	✓
Minear	✓

Mahan, Chair	✓
Palumbo, Vice Chair	✓
Cann	✓
Pino	✓
Armstead	✓
Overington	✓

Minutes approved

DNR - Misc Permits

~~Mahan~~

Moves table

Minear adopted

Rece w/draw

Frank Jezero - responded to questions - won't w/draw.

DOT - State Rd Rts of Way

Connie explained & responded to questions

Kathy Holzelaw (?) responded to questions

Text ? UMW responded to questions

Hapney?

Mahan

Approve

DOT - Farm lands

Brian explained & responded to questions

Les Shumaker, Farm Bureau responded to questions

Mahan

Approve as mod
Staff directed to draft legislation clarifying statute

Mahan

DOT - Transp. Haz. Waste
Connie explained
Approve

Mahan

DA - Design-Build
Ronan explained & responded to questions
Approve as mod

Mahan

WSP - Exercise
Connie explained
Approve

Mahan

Gov's Committee - Racial Profiling
Connie explained
Norbert Fedespici responded to questions
Captain David Sker
Approve as modified (Suggested version)

Mahan

DEP - Surface Mining
Joe explained
Approve

Mahan

DEP - Coalbed
Joe explained
Approve

WR Real Estate Appraiser

Brian

Mahan

Approve as mod

Div. of Tourism

Brian explained

Mahan

Approve as mod

Ins Commissioner - Licensing

Connie explained

Mahan

Approve as mod

Ins C - Replacement

Connie explained

Mahan

Approve as mod

Ins C - Unfair Trade

Connie explained & responded to questions

Cunn

Approve as mod

Ins C - Essential

Connie explained

Mahan

Approve

Ins C - Medicare

Mahan

Connie explained
Jane Clire responded to q
Approve

Ins C - Non-renewal

Mahan

Connie explained
Approve

Ins C - Private passenger

Mahan

Connie explained
Approve

DKP - Environmental Excellence

Mahan

Joe explained
Approve as md

labor - Nurse Overtime Complaints

Joe explained & responded to questions

Sherry ?

Tony Gregory made a statement in support of the
modified rule and responded to questions

Mahan

Strike 4.7 mod.

Andy Brown

Mahan

Approve as mod

Report @ bills

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Monday, January 9, 2006
6:00 p.m. and 8:00 p.m.
Senate Finance Committee Room

1. Review of Legislative Rules:

Re-scanned ✓
w/drawn

Division of Natural Resources
Miscellaneous Permits and Licenses
58CSR64

- Approve as Modified

Approved b.

Division of Highways
Use of State Road Rights of Way Adjacent Areas
157CSR6

- Laid Over
- Approve

Approved ✓

Department of Highways
Transportation of Hazardous Wastes Upon the Roads and Highways
157CSR7

- Approve

Approved ✓
as modified

Department of Administration - Purchasing Division
Rules for Selecting Design-Builders under the Design Build Procurement Act
148CSR11

- Approve as Modified

Approved ✓

WV State Police
West Virginia State Police Grievance Procedure
81CSR8

- Approve

Approved ✓
as modified

Governor's Committee on Crime Delinquency and Correction
Motor Vehicle Stop Data Collection Standards for the Study of Racial Profiling
149CSR5

- Approve as Modified

Approved ✓

Office of Mining and Reclamation - DEP
West Virginia Surface Mining Rule
38CSR2

- Approve

Approved ✓

Office of Oil and Gas - DEP
Coalbed Methane Wells Rule
35CSR3

- Approve

Approved as modified ✓

1. WV Real Estate Appraiser Licensing & Certification Board
Requirements for Licensure and Certification
190CSR2

- Approve as Modified

Approved as modified ✓

Division of Tourism
Direct Advertising Grants Program
144CSR1

- Approve as Modified

Approved as modified ✓

Insurance Commission
Licensing and Conduct of Individual Insurance Producers,
Agencies and Solicitors
114CSR2

- Approve as Modified

Approved as modified ✓

Insurance Commission
Replacement of Life Insurance Policies and Annuity Contracts
114CSR8

- Approve as Modified

Approved as modified ✓

Insurance Commissioner
Unfair Trade Practices
114CSR14

- Approve as Modified

Approved ✓

Insurance Commission
West Virginia Essential Property Insurance Association
114CSR21

- Approve

Approved ✓

Insurance Commission
Medicare Supplemental Insurance
114CSR24

- Approve

Approved ✓

Insurance Commission
Nonrenewal of Property Insurance Policies
114CSR74

- Approve

Approved ✓

Insurance Commission
Private Passenger Automobile and Property Insurance -
Biannual Rate Filing Requirements
114CSR75

- Approve

Approved ✓
as modified

Secretary's Office - DEP
Environmental Excellence Program Rule
60CSR8

- Approve as Modified

✓

Division of Labor
Nurse Overtime Complaints
42CSR30

- Approve as Modified

Approved ✓
as modified

Department of Agriculture
Voluntary Farmland Protection Program
61CSR26

- Approve as Modified

3. Other Business

JANUARY INTERIM ATTENDANCE
Legislative Interim Meetings
January 8, 9 and 10, 2006

Monday, January 9, 2006

6:00 p.m. - 8:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
 officio nonvoting member

Robert "Bob" Kiss, ex
 officio nonvoting member

Senate

House

Minard, Chair	✓
Fanning, Vice Chair	_____
Prezioso	✓
Unger	✓
Boley	✓
Minear	✓

Mahan, Chair	✓
Palumbo, Vice Chair	✓
Cann	_____
Pino	✓
Armstead	✓
Overington	✓

meeting called to order

- DNR 58CSR64

- Mahan moved the rule
 Minear motion to ^{recommend} withdraw ? ASK agency to withdraw
 Frank Jeserow refused to withdraw
 motion adopted

- Highways 157CSR6

- Connie explained & responded to ?'s
- Kathy Holts w/ Dott responded to ?'s
- Dan ~~Hepney~~, United Mine Workers, responded to ?'s
- Mahan moved
- motion adopted

Boley as voting
no

- Agriculture 61CSR26

- Brian explained ? responded to ?'s
- Les Shoemaker, Farm Bureau, responded to ?'s
- Mahan moved as modified ^{motion to direct counsel to draft statute to clarify}
 motion adopted

- Highways 157CSR7
Connie explained
Maham moved ~~amended~~
motion adopted

- Admin 148CSR11
Brian explained & responded to ?'s
Maham moved as modified
motion adopted

- State Police 81CSR8
Connie explained & responded to ?'s
Maham moved
motion adopted

- Gov. Comm. on Crime 149CSR5
Connie explained
Dr. Norman Foderpiel, ^{addressed the Committee} ~~and~~ responded to ?'s
Captain David Skeen, responded to ?'s
moved rule as modified in version of 6.76 ^{SP}
^{suggested version}
motion adopted

- Mining & Reclamation 38CSR2
Jae explained
Maham moved
motion adopted

- Oil & Gas 35CSR3

Joe explained

Mahan moved

motion adopted

- Real estate app. 190CSR2

Brian explained

Mahan moved as modified

motion adopted

- Tourism 144CSR1

Brian explained

Mahan moved as modified

motion adopted

- Insurance 114CSR2

Connie explained

Mahan moved as modified

motion adopted

- Insurance 114CSR8

Connie explained

Mahan moved as modified

motion adopted

- Insurance 114CSR14

Connie explained & responded to ?'s

Conn moved as modified

motion adopted

- Insurance 114CSR21
Connie explained
Mahaw moved
motion adopted

- Insurance 114CSR24
Connie explained
Mahaw moved →
motion adopted

Jane Clark
Insurance Commissioner
respected to 7/2

- Insurance 114CSR74
Connie explained
Mahaw moved
motion adopted

- Insurance 114CSR75
Connie explained
Mahaw moved
motion adopted

- Sec Office - DEP 66CSR8
Joe explained
handout
Mahaw moved as modified
motion adopted

• Labor 42 CSR 30

Joe explained & responded to ?'s
handout

~~Sherry~~ ^{Cheri} Heflin, WU Nurse Assoc, responded to ?'s

Tony Gregory, ^{WU} Hospital Assoc, responded to ?'s

Maham moved as modified

Maham amendment to strike 4.7

Andrew Brown responded to ?'s & agreed to strike 4.7
~~motion~~ ~~was~~ ~~approved~~ ~~as~~ ~~modified~~ ~~and~~ ~~amended~~

motion approved as modified & amended

- Motion to draft bills & report
motion adopted

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Monday, January 9, 2006
6:00 p.m. and 8:00 p.m.
Senate Finance Committee Room

1. Review of Legislative Rules:

- a. **Division of Natural Resources**
Miscellaneous Permits and Licenses
58CSR64
- ~~Approve as Modified~~
 - *Withdraw*
- b. **Division of Highways**
Use of State Road Rights of Way Adjacent Areas
157CSR6
- Laid Over
 - Approve
- c. **Department of Highways**
Transportation of Hazardous Wastes Upon the Roads and Highways
157CSR7
- Approve
- d. **Department of Administration - Purchasing Division**
Rules for Selecting Design-Builders under the Design Build Procurement Act
148CSR11
- Approve as Modified
- e. **WV State Police**
West Virginia State Police Grievance Procedure
81CSR8
- Approve
- f. **Governor's Committee on Crime Delinquency and Correction**
Motor Vehicle Stop Data Collection Standards for the Study of Racial Profiling
149CSR5
- Approve as Modified *suggested version*

- g. **Office of Mining and Reclamation - DEP**
West Virginia Surface Mining Rule
38CSR2
- Approve
- h. **Office of Oil and Gas - DEP**
Coalbed Methane Wells Rule
35CSR3
- Approve
- i. **WV Real Estate Appraiser Licensing & Certification Board**
Requirements for Licensure and Certification
190CSR2
- Approve as Modified
- j. **Division of Tourism**
Direct Advertising Grants Program
144CSR1
- Approve as Modified
- k. **Insurance Commission**
*Licensing and Conduct of Individual Insurance Producers,
Agencies and Solicitors*
114CSR2
- Approve as Modified
- l. **Insurance Commission**
Replacement of Life Insurance Policies and Annuity Contracts
114CSR8
- Approve as Modified
- m. **Insurance Commissioner**
Unfair Trade Practices
114CSR14
- Approve as Modified
- n. **Insurance Commission**
West Virginia Essential Property insurance Association
114CSR21
- Approve

- o. **Insurance Commission**
Medicare Supplemental Insurance
114CSR24
 - Approve
- p. **Insurance Commission**
Nonrenewal of Property Insurance Policies
114CSR74
 - Approve
- q. **Insurance Commission**
*Private Passenger Automobile and Property Insurance -
Biannual Rate Filing Requirements*
114CSR75
 - Approve
- r. **Secretary's Office - DEP**
Environmental Excellence Program Rule
60CSR8
 - Approve as Modified
- s. **Division of Labor**
Nurse Overtime Complaints
42CSR30
 - Approve as Modified
- t. **Department of Agriculture**
Voluntary Farmland Protection Program
61CSR26
 - Approve as Modified

3. **Other Business**

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: LRMRC

Date 1.9.06

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
✓ Jan Riffe	Rt. 2 Box 148 Dawson, WV 24910	WV DNR Commissioner	X
✓ JOE GALVERT	Crab Orchard, WV	WV Wildlife Federation	X
✓ Rena Grendle	PO Box 3 Frazar's Bottom WV	WV Deer-Farmers	X
✓ Cheri Hefflin	17 Lindy Rd 25314	WV Nurses Assoc	X Labor (S)
✓ Scott Robruck	90 MacCorkle Ave	DIVISION OF TOURISM	X
✓ ANNA PLANTZ	90 MacCorkle Ave	DIVISION OF TOURISM	X

(S)

(P)

(P)

TITLE 42

West Virginia Division of Labor Legislative Rule

Nurse Overtime Complaints

Series 30

§42-30-1. General.

1.1. Scope. This legislative rule governs the procedures for the handling of nurse overtime complaints against hospitals in accordance with W.Va. Code §21-5F-4 and W.Va. Code §29A-5-1 et seq.

1.2. Authority. W.Va. Code §21-5F-4.

1.3. Filing Date.

1.4. Effective Date.

§42-30-2. Application and Enforcement.

2.1. Application. This legislative rule applies to the West Virginia Division of Labor and all persons, firms or corporations governed or otherwise defined under the coverage of the West Virginia Code §21-5F-1 et seq.

2.2. Enforcement. The enforcement of this rule is vested with the West Virginia Division of Labor in accordance with West Virginia Code §21-1-3 et seq.

§42-30-3. Definitions.

3.1. The "Act" means the Nurse Overtime and Patient Safety Act, W.Va. Code §21-5F-1 et seq., and this rule.

3.2. "Commissioner" means the commissioner of the West Virginia Division of Labor.

3.3. "Complaint" means the filing of allegations which indicate a violation of the Act or this rule and which requires an investigation by the division.

3.4. "Division" means the West Virginia Division of Labor.

3.5. "Hospital" means a facility licensed under the provisions of article five-v, chapter sixteen of this code, but does not include hospitals operated by state or federal agencies.

3.6. "Nurse" means a certified or licensed practical nurse or a registered nurse who is providing nursing services and is involved in direct patient care activities or clinical services, but does not include certified nurse anesthetists. Nurse managers are included with respect to their delivery of in-hospital patient care.

3.7. ~~"On-call time" means time when the employee is off the clock and away from the employer's premises but the employer maintains certain restrictions as to the employee's use of that time. On call time may exist while on the employer's premises but is always regarded as on the clock.~~ time an employee is required to remain on call on the employer's premises is working while "on call". An employee who is required to remain on call at home, or who is allowed to leave a message where he/she can be reached, is not working on call except where the employees' discretionary use of that time is met with constraints.

3.8. "Overtime" means, for the purpose of this rule, the hours worked in excess of an agreed upon, predetermined, regularly scheduled shift.

3.9. ~~"Shift" "Regularly scheduled shift" means a routinely scheduled work period which is predetermined and does not distinguish between full-time or part-time. not to exceed twelve consecutive hours.~~

3.10. "Taking action against" means discharging; disciplining; threatening; reporting to the board of nursing; discriminating against; or penalizing regarding compensation, terms, conditions, location or privileges of employment.

3.11. "Twenty-four hour period" means the twenty-four hours immediately following a break of at least eight hours.

3.12. ~~"Unforeseen emergent situation" means an unpreventable situation or circumstances which presents a clear and imminent risk to patient and employee safety. It includes, but is not limited to, acts of terrorism, disease outbreaks, natural disasters and catastrophic events (i.e. plane crash). Emergent situation does not include prescheduled vacation time, routine sick leave scheduled or unscheduled, family emergencies or other permissible personal time and any personnel shortage situation which could have been prevented through alternate management strategies.~~ Unusual, unpredictable or unforeseen circumstance such as, but not limited to, an act of terrorism, a disease outbreak, adverse weather conditions or natural disasters. An unforeseen emergent situation does not include situations in which the hospital has reasonable knowledge of increased patient volume or decreased staffing, including, but not limited to, scheduled vacations and scheduled health care worker medical leave.

§42-30-4. Overtime Restrictions.

4.1. No nurse may be required to work beyond their regularly scheduled shift except in unforeseen emergent situations that jeopardizes patient safety, when required to fulfill prescheduled on-call time, or when required to complete a single patient care procedure already in progress.

4.2. No nurse may be permitted to work in excess of sixteen consecutive hours in a twenty-four hour period, including voluntary overtime except in unforeseen emergent situations that jeopardizes patient safety, when required to fulfill prescheduled on-call time, or when required to complete a single patient care procedure already in progress.

4.3. On-call time which is off premises and compensation is not required by federal or state law shall not be considered as time worked when calculating the maximum permissible hours to be worked.

4.4. On-call hours which are on the employer's premises or for which law required the employee to be paid compensation shall be considered as work time when calculating the maximum permissible hours to be worked.

4.5. A nurse shall be given a break of at least eight hours after working twelve consecutive hours. If the twelve hour maximum is reached during a scheduled shift, the break may be delayed until the end of the shift or the sixteen hour maximum as required by W.Va. Code §21-5F and this rule.

4.6. An employer is prohibited from taking action against a nurse who refuses an assignment of overtime in violation of W.Va. Code §21-5F or for any action by a nurse relative to his or her rights to refuse overtime assignments. The filing of a complaint is considered a nurse's right under the provisions of W.Va. Code §21-5F and this rule.

4.7. A nurse, as a condition of refusal to work over-time, must assert that in his or her judgement to work the over-time would jeopardize patient or employee safety. If the nurse is directed to work overtime and does not feel that there may be a hazard to patient or employee safety, then he or she can be required to work overtime.

~~4.7. Every employer subject to the provisions of the Act and this rule shall develop and maintain an overtime scheduling plan which may be subject to review and approval by the commissioner.~~

~~§42-30-5. Filing of Complaints.~~

~~5.1. The Division may accept complaints alleging that a hospital has violated the Nurse Overtime and Patient Safety Act by requiring overtime work contrary to the provisions of W.Va. Code §21-5F-3.~~

~~5.2. All complaints to the Division shall be in writing. The Division may provide forms for the filing of complaints, however, complaints submitted in other forms shall be accepted by the Division. The Division, on its own initiative, may file complaints. The Division shall review each complaint to determine its merit and whether it should be dismissed, or subjected to any other action specified by this rule. A complaint without merit shall be dismissed with no further action.~~

~~5.3. Within three (3) days of the determination that a complaint has merit, the Division shall notify the hospital named in the complaint that the complaint has been filed. Upon receipt of the notification, the hospital named in the complaint has ten (10) days in which to respond to the complaint in writing. If, upon consideration of the complaint and the response, the Division determines that no violation of any applicable state law has occurred, the Division may dismiss the complaint through the issuance of a written order setting forth the basis for the dismissal. If, however, the Division determines that further review or other action is necessary, the Division may proceed as set forth in this rule.~~

~~§42-30-6. Investigations.~~

~~6.1. The Division and its authorized agents, employees, or authorized inspectors may independently investigate the basis for any complaint filed with the Division. During the course of an investigation, the Division or its authorized representatives may conduct a physical inspection of the hospital personnel records and payroll records to assess the merits of the complaint. If at any time during the course of an investigation it becomes apparent that no violation of any applicable state law has occurred, the Division may dismiss the complaint in the manner set forth in Section 5.3 of this rule.~~

~~6.2. The Division or authorized inspector shall file a written report with the commissioner as to his or her findings during the course of the inspection.~~

~~§42-30-7. Hearings.~~

~~7.1. The commissioner may, at any time after the receipt of a complaint, issue a written notice of his or her intent to conduct a hearing. The notice of intent shall be provided to all interested persons by certified mail at least twenty (20) days in advance of the hearing date. The notice shall include:~~

- ~~(a) a statement of the time, place and nature of the proceeding; and~~
- ~~(b) a statement of the subject matter of the proceeding including the issues in question.~~

~~7.2. All hearings shall be conducted in Charleston, West Virginia and in accordance with the provisions of W. Va. Code §29A-5 et seq., The Administrative Procedures Act Contested Cases.~~

~~7.3 The commissioner may employ the services of an independent hearing examiner to conduct hearings. The examiner shall conduct all hearings in accordance with the provisions of this rule. The examiner shall submit proposed findings of fact and conclusions of law to the commissioner. The report may contain the examiner's recommendations for the final disposition of the complaint.~~

~~7.4. After the commissioner has received the hearing examiner's report, the commissioner may adopt, modify or reject the hearing examiner's findings, conclusions and recommendations. The commissioner shall issue a written order within thirty (30) days of the receipt of the hearing examiner's report. The order shall include a brief statement of its findings and conclusions, with specific references to principal supporting items of evidence as well as the reasons or basis for the order.~~

~~7.5. (a) The commissioner may order the resolution of the complaint by its dismissal or by the issuance of one of the following penalties:~~

- ~~1. For a first offense, a written public reprimand and an order to cease the unlawful practice;~~
- ~~2. For a second offense, a fine not to exceed five hundred dollars; and~~
- ~~3. For a third or subsequent offense, a fine of not less than two thousand five hundred dollars and not more than five thousand dollars for each violation.~~

~~(b). To be eligible to be charged with a second offense or third offense under the Act, the subsequent offense must have occurred within twelve months of the prior offense.~~

~~7.6. Any person adversely affected by any action of the commissioner may appeal the action to the Circuit Court of Kanawha county, West Virginia or in the circuit court of the county in which the petitioner or any one of the petitioners resides or does business.~~

~~§42-30-8~~ §42-30-5. Confidentiality of Records.

8.1. All investigations, complaints, reports, records, proceedings and other information received by the Division and related to complaints pursuant to this rule, including the identity of the complainant or respondent, are confidential and shall not be knowingly and improperly disclosed by any person, the commissioner or Division staff, except as follows:

- (a) Upon a finding that probable cause exists to believe that a respondent has violated

the provisions of the act, the complaint and all reports, records, non-privileged and non-deliberative materials introduced at any probable cause hearing held pursuant to the complaint are thereafter not confidential: Provided, that the confidentiality of the information shall remain in full force and effect until the respondent has been served with a copy of the statement of charges;

(b) Any subsequent hearing held in the matter for the purpose of receiving evidence or the arguments of the parties or their representatives shall be open to the public and all reports, records and non-deliberative materials introduced into evidence at the subsequent hearing, as well as the commissioner's orders, are not confidential;

(c) The complaint as well as the identity of the complainant shall be disclosed to a person named as respondent in any complaint filed immediately upon the respondent's request; or

(d) Where the commissioner or the Division is otherwise required by the provisions of the Act to disclose the information or to proceed in a manner that disclosure is necessary and required to fulfill the requirements.

8.2. If, in a specific case, the commissioner or Division finds that there is a reasonable likelihood that the dissemination of information or opinion in connection with a pending or imminent proceeding will interfere with a fair hearing or otherwise prejudice the due administration of justice, the commissioner or Division shall order that all or a portion of the information communicated to the commissioner or the Division to cause an investigation and all allegations of violations or misconduct contained in a complaint is confidential, and the person providing the information or filing a complaint is bound to confidentiality until further order of the commissioner.

Division of
**CRIMINAL
JUSTICE
SERVICES**
Department of Military Affairs
& Public Safety

MEMORANDUM

TO: The Honorable Carrie Webster, Chair
Select Committee D – Minority Issues
West Virginia House of Delegates

FROM: Dr. Stephen M. Haas, Director *SA*
Criminal Justice Statistical Analysis Center

J. Norbert Federspiel, Director *JNF*
Division of Criminal Justice Services

DATE: January 3, 2006

RE: W. Va. Code §17G-1-2 (Racial Profiling Data Collection)
W. Va. Code §17G-2-3 (Analysis of Traffic Stop Data and Annual Report)

States and individual law enforcement agencies in hundreds of jurisdictions around the country have either begun to collect, or have collected, information on traffic stops and searches. As a result, several studies have been completed that provide considerable guidance on the data and analytical requirements necessary for the proper analysis of police vehicle stops. In doing so, studies in other states also illustrates the inherent limitations of research for answering questions of racial "bias" in relation to motor vehicle stops and searches.

This memo is intended to provide members of the West Virginia House of Delegates, Select Committee D, on minority issues, with a description of various challenges related to the collection and analysis of traffic stop data. An overview of the methodology involved in the collection and analysis of motor vehicle stop data as well as the requirements for completing a study in West Virginia which corresponds to scientific standards applied by researchers in other states is presented. This memo further discusses the capacity of W. Va. Codes §17G-1-2 and §17G-2-3 (and Senate Bill 676) to result in a study that will measure up to common scientific standards and provide the definitive answers to questions sought by stakeholders in the state. The discussion begins with a brief overview of the processes involved in the development of West Virginia's Motor Vehicle Stop Form (MVSF) and the legislative rules authorized by W. Va. Code §17G-2-3.



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Development of WV's Motor Vehicle Stop Form (MVSF) and Legislative Rules

W. Va. Code §17G-2-3 charged the director of the Governor's Committee on Crime, Delinquency and Correction, in consultation with the Division of Motor Vehicles, to propose emergency and legislative rules for the collection, reporting, compilation and issuance of racial profiling data. Under this authority, the director of the Governor's Committee on Crime, Delinquency and Correction convened an advisory committee to develop the rules. The advisory committee was comprised of representatives from the WV Division of Motor Vehicles, the WV Sheriff's Association, the WV Chiefs of Police Association, the WV Fraternal Order of Police, the WV State Police, the WV chapter of the American Civil Liberties Union (ACLU), and the National Association for the Advancement of Colored People (NAACP) in WV. After extensive review and consultation, the advisory committee adopted and approved 149CSR5 – Racial Profiling Data Collection Standards.

W. Va. Code §17G-2-3 served as the sole basis for the development of legislative rule 149CSR5. The Governor's Committee on Crime, Delinquency, and Correction was given the task of proposing rules that included, in addition to other components, "methodology for the collection of gross data by law enforcement agencies and the analysis of the data" [§17G-2-3(8)] and "...the population of minorities in the areas where the stops occurred; estimates of the number of all vehicles traveling on the public highways where the stops occurred; factors to be included in any evaluation that the data may indicate racial profiling, racial stereotyping or other race-based discrimination or selective enforcement; and other data deemed appropriate by the governor's committee on crime, delinquency, and correction for the analysis of the protection of constitutional rights...[§17G-2-3(9)]. In addition, W. Va. Code §17G-1-2 identified specific elements to be collected by law enforcement officers during a traffic stop, including any information which the law enforcement agency considers appropriate [§17G-1-2(j)].

Against this backdrop, members of the advisory committee conducted a review of police traffic stop studies in other states, research conducted by academicians in the field, and consulted with nationally recognized researchers and organizations, including the Police Executive Research Forum (PERF) and the Institute on Race and Justice at Northeastern University. This process generated a great deal of information on not only what information should be collected, but how police stop data should be analyzed. This review also uncovered a number of challenges that the committee would face in the development of the methodology to study police vehicle stops on a statewide basis while seeking to fulfill the legislative intent of the Racial Profiling Data Collection Act in WV.

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Some of the most notable challenges included: 1) the establishment of a data collection process that could be applied across the entire state and for all law enforcement agencies (that is, state police detachments, county sheriff agencies, and municipal police departments); 2) the development of a machine-readable data collection form that would capture all of the information necessary for meeting the minimum requirements of §17G-1-2 as well as allow for a scientifically sound study without undue burden on law enforcement officers/agencies; 3) the collection of data that would be useful for both chief executives of individual law enforcement agencies to monitor traffic stop activities in their own departments and at the same time provide data amenable to state level analyses for multiple jurisdictions and departments; and 4) the measurement of information necessary for properly benchmarking traffic stops across the state.

Fundamentals in the Collection and Analysis of Vehicle Stop Data

For a data collection effort to be successful, regardless of the magnitude, it is essential that a protocol or program for monitoring and auditing the data collection be established at the outset. This typically involves the establishment of a unique identifying number to track the data record as it goes into the field and as it is returned for analysis. Once a system for auditing and monitoring the reporting of stop data is established, two primary sources of data are required when conducting a study on police traffic stops. These include the data gathered from law enforcement officers (typically on a motor vehicle stop form) and the data necessary for benchmarking the vehicle stop information collected from officers.

The first source of data is the traffic stop information recorded by law enforcement officers at the time of the stop. A comprehensive motor vehicle stop form is needed for three primary reasons: 1) to account for legitimate contextual factors that are known to influence police decisions to stop and search vehicles; 2) to separate high and low discretionary stops and searches for analysis; and 3) to establish an appropriate benchmark for analysis.

Essentially, a properly developed data collection form will account for all of the legitimate factors identified by law enforcement that may explain the presence of disparity in police stops by the race. Such a form will allow for the consideration of legitimate factors known, and routinely identified by law enforcement officers across the country, that impact patrol activities, officer assignments, and decision-making in highly discretionary situations. These factors include *circumstantial and/or contextual aspects of the stop* such as the location as well as the date and time of the stop. These factors can later be ruled-out as plausible explanations for observed disparity and, in turn,

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produce more scientifically valid results by limiting the number of false-positives in an analysis (that is, saying that disparity is present, when in fact it is not present).

A good data collection form will also allow for the separation of high discretionary stops from low discretionary stops and assist in establishing a means for the proper benchmarking of traffic stops. For decades, studies of disparity on law enforcement activities have shown that the presence of disparity in decision-making is greatest when officer discretion is high. Thus, a proper analysis should separate high discretionary stops and searches from low discretionary stops and searches.

Finally, an adequate data collection form will assist in appropriately benchmarking of traffic stops. Benchmarking is necessary to develop a racial/ethnic profile of the people who should be at risk of being stopped by police, assuming no bias. The benchmark established by researchers serves a comparison group for the stop information collected on motor vehicle stop forms. An "effective" or appropriate benchmark is one that seeks to incorporate as many of the factors as possible that influence the decision-making of police officers when deciding whether to stop or not stop vehicle. Geographic location is known to influence many police practices. Other common characteristics that constitute a good benchmark include the quality and quantity of drivers. The ultimate purpose is to get a more proximate estimate of "Who is actually on the road?" at a given time and place. The motor vehicle stop form can help establish a proper benchmark by identifying a specific location of stop and other contextual factors such as the time and day of the stop.

The second source of data used in a proper analysis of police traffic stops is that which is used to construct the benchmark itself. As noted above, the benchmark should account for such factors as driving quality, quantity, and location. A common approach to analyzing this data is to compare vehicle stops data against census data. The census data is valuable because it is easily accessible (given the resources of most departments) and can be broken down by small geographic units within a jurisdiction. this method begins with census data for each location/jurisdiction. Census data are then adjusted in an effort to better characterize the driving population rather than the residential population. Often this includes adjusting census data by such factors as vehicle ownership and driving age for each racial group. Efforts also include adjusting census data to reflect only the resident population of a given area or state.

Lastly, these data are further adjusted by information gathered from rolling and/or stationary observations in the field. The purpose of observations is two-fold: 1) to validate the accuracy of adjusted census data and 2) to further refine the census data to reflect who is actually on the road and who is at risk of being stopped. Rolling or

stationary observations specify the racial distribution of drivers on the road as well as the quantity and quality of the driving population by race and location. In the case of rolling observations, researchers would travel on the roads in different locations of the state at varied times, days, and seasons to record the traffic violations by the racial characteristics of drivers to establish a measure of quantity and quality of driving. Previous studies have suggested that traffic violations or driving quality does in fact vary across racial groups.

Data Collection and the Analysis of Traffic Stop Data in WV

As described above, there is a great deal of guidance on how to conduct valid research to identify disparity in police vehicle stops. A study that conforms to the current methodological approaches used by researchers in other states will require an extensive data collection effort and a great deal of time and resources for complete a proper analysis. To identify the presence of disparity in police vehicle stops and be reasonably confident that the disparity cannot be explained by legitimate criteria commonly used by law enforcement to make such stops, it is necessary to collect information on the circumstance and context of vehicle stops in WV. A scientifically valid study of racial profiling in WV would require the collection of factors known to influence police decision-making (particularly in high discretion situations) and a benchmarking technique that accurately captures the quantity, quality, and location of drivers by race.

A recently proposed bill (Senate Bill No. 676 -- 2005) to amend reenact W. Va. Codes §17G-1-2 and §17G-2-3 **diminishes the capacity of a study in WV to yield scientifically valid results by restricting the information to be collected on the WV Motor Vehicles Stop Form. Specifically, the proposed amendment does not provide a mechanism for ensuring data quality reported by law enforcement officers, reduces the capacity of analysts to separate high-low discretionary stops and searches and to account for the context of vehicle stops.** In addition, the proposed amendment impairs the establishment of an appropriate benchmark using census data for which motor vehicle stops will be compared. The following provides an illustration of how a selection of items chosen for deletion or modification in the recently proposed amendment to W. Va. Codes §17G-1-2 and §17G-2-3 may impact the collection and analysis of traffic stop data in WV:

Unique MVSF Identifier: The first step in data auditing is the necessity that each data record has a unique identification number on each form. Any traffic stop study is severely undermined without a strong belief by both police officials and the community that the data can be effectively audited. A system or protocol for ensuring the accuracy or quality of the data reported and gathered should be established at the outset that

includes routine auditing activities and spot analysis of the data. The identification number will be used to track the data record as it goes into the field and as it is returned for analysis. Without such a number and established protocol, there is no way to determine compliance and noncompliance or simply whether a single stop is being analyzed multiple times. Senate Bill 676 removes this important identifier.

Location of stop: Failure to adequately collect the location of the stop limits the capacity of the study to explore and rule out alternative explanations for the presence of disparity and jeopardizes the capacity of the study to establish accurate benchmarks for comparison. The collection of county and the ORI number of the agency is not sufficient for establishing a location for each vehicle stop. Since both minority representation and law enforcement practices vary by location within cities (and to a greater extent within counties), a more specific indicator of stop location such as "patrol area" or "census tract" will allow a department to adjust the census data to reflect the area in which the stop was made. This, in turn, will allow departments to use the vehicle stop data to conduct comparisons within and across geographic units that are similar. Given a racial profiling study in WV is likely to use an adjusted census benchmarking technique combined with rolling or stationary observations, location of stop should be recorded in a manner that approximates the geographic units commonly collected in the U.S. Census.

Type of roadways: Similar to location of stop, this item provides a basis for appropriate benchmarking and will assist in accounting for alternative explanations for the presence of disparity. The combined use of this item with stop location narrows the general location of the stop, particularly for state police. Given that the racial distribution of drivers and violation patterns will likely vary by type of roadway (that is, city versus state highway and interstate driving) as determined by rolling or stationary observations, this item will further assist in the development of an appropriate benchmark for each jurisdiction.

Stop directed by: This item relates to the discretion level of the stop by differentiating between reactive and self-initiated stops. Combined with the reason for the stop, this information can be used to isolate stops with greater and lesser discretion levels.

Disposition: The collection of citation and warning does not capture the most likely outcomes of a vehicle stop. This purpose of this measure is to examine the variation in traffic violations by race and assist in the evaluation of stop effectiveness. The proposed measure does not account for stops that result in an arrest. The Institute on Race and Justice at Northeastern University currently recommends the following options: oral warning, written warning, arrest made, arrest by warrant, criminal citation, traffic

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citation- hazardous, traffic citation – non-hazardous, courtesy service/citizen request, no action taken.

Zip Code: This measure relates to the establishment of appropriate benchmarks and the simple determination of base rates and relative risk of stops as a resident and nonresident of the state or a jurisdiction. Zip Code allows for the development of a sub-sample of incidents involving only residents of the state or a given area for the purposes of benchmarking those data against residential census data. Base rates provide a simple basis for comparing the likelihood of being stopped and of being searched and allow for more accurate comparisons among jurisdictions in the rates at which their law enforcement agencies make traffic stops and search drivers.

Consent requested to search: This item measures a highly discretionary decision-making aspect of police stops and can be useful for deriving an outcome test (that is, success versus failure) for police searches by race. Prior research tells us that success rates for searches are lowest for searchers based solely on consent and Blacks and Hispanics are more likely be searched solely on the basis of consent. This item will allow for the assessment of who is asked for consent, who gives consent, and who gets searched after consent refusal.

Persons/Items Searched: Since searches are high discretion, low visibility and pertain to the potential intrusiveness of police stops, this item provides a measure for the scope of the search. This item also serves as an important measure in outcome tests for searches.

Lastly, W. Va. Code §17G-2-3 as well as the recently proposed amendment (Senate Bill No. 676) do not provide sufficient time to the Governor's Committee to complete the data collection activities and detail of analysis necessary for producing a report consistent with nationally recognized standards. Both the current legislation and amended bill specify that "on or before the first day of February, two thousand six, and each year thereafter, the director of the Governor's Committee on Crime, Delinquency, and Correction shall publish a public report of the data collected and provide a copy thereof to all law enforcement agencies subject to this chapter...[§17G-2-3(10b)]". This would allow only one month from the end of a full-year of data collection to complete a report for public distribution.

Most statewide vehicle stop investigations include a descriptive exploratory component and a more detailed sub-analysis of selected jurisdictions that, based on the exploratory analysis, appear to have a high level of disparity in stop activity and searches. From the formation of the study to the completion of the report, this is often a two to three year

process. Two phases of analysis are most often seen in well-designed studies conducted in other states: 1) an exploratory analysis of all jurisdictions/departments to identify "areas of high disparity" using limited data elements and 2) a more detailed, sub-analysis of areas that includes a range of legitimate factors that influence police decision-making to rule out alternative explanations for the disparity. A statewide study that relies solely on aggregate, exploratory analyses is likely to yield a high rate of false positives indicating widespread disparity when, in fact, the disparity may not be present. In addition, such a study would generate a great deal of criticism from law enforcement, the minority community, and the general public due to its methodological limitations.

Given a research design that includes adjusted census benchmarking in conjunction with stationary/rolling observations, this proposed legislation will require a great deal of time and resources. The basic procedure involved producing a study in WV include: 1) establishing procedures for ensuring data quality; 2) training law enforcement officers to complete forms; 3) working with law enforcement agencies to define "patrol areas" or identify census areas; 4) conducting stationary or rolling observations to identify the driving population and violators by race; 5) gathering census data for all jurisdictions/departments; 6) adjusting data with census variables and results of rolling or stationary observations for proper benchmarking; 7) providing technical assistance to law enforcement agencies and the DMV during data collection phase; 8) conducting routine audits of submitted data and reporting back to the DMV/agencies; 9) cleaning data files for analysis; 10) constructing variables and final benchmarks; 11) conducting exploratory analysis for all jurisdictions; 12) identifying "areas of concern" based on levels of disparity; 13) conducting sub-analysis where disparity is most present for multiple jurisdictions; and 14) preparing a final written report and executive summary for dissemination.

Finally, expectations are very high regarding what vehicle stop data can tell us and there is often a lack of understanding of what information is necessary to properly analyze these data. W. Va. Code §17G-2-3(8-9) calls for the development of methodology for the collection and analysis of traffic stop data and "...factors to be included in any evaluation that the data may indicate racial profiling, racial stereotyping or other race-based discrimination or select enforcement, and other data deemed appropriate by the governor's committee on crime, delinquency, and correction..." The bottom line is that data collection and analysis, even complete and thorough data collection as included in the original rule, cannot provide the definitive answers that many stakeholders seek. The collection of less data, as proposed by Senate Bill 676, may only provoke even more questions and at the same time limit the capacity for a scientific inquiry to uncover reasonable explanations.

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While a well-developed and implemented research plan can make a good effort to identify and/or measure disparity, it cannot determine whether the disparity is due to racial profiling, racial stereotyping, or other race-based discrimination. Disparity does not equal bias. A determination of the presence of bias requires an understanding of individual officers' cognitive motivations. A study of police stops in WV conducted under the original legislative rule or Senate Bill 676 will **not** ascertain whether the observed disparities are due to bias on the part of law enforcement officers. Moreover, a study conducted under the restrictions of Senate Bill 676 will further restrict the capacity for a study to conduct meaningful sub-analyses; thereby, reducing the capacity to take into account legitimate factors associated with traffic stops and rule out explanations for observed disparities. Such a study would be limited to an exploratory analysis at a jurisdictional/department level making reasonable efforts to rule out plausible explanations for the disparity in those jurisdictions/departments in which the initial analysis finds the presence of "high disparity" in vehicle stops by race an impossible task.

JNF:SH/bjw
c: James W. Spears, Cabinet Secretary
Department of Military Affairs & Public Safety

JOINT LRMR COMMITTEE

DATE: January 9, 2006

COUNSEL: Connie A. Bowling

ABSTRACT

HJUD AM to SENATE BILL 676 (2005RS)

SHORT TITLE: Relating to racial profiling

DATE INTRODUCED: March 21, 2005

CODE REFERENCE:§17G-1-2 & §17G-1-2 (amend and reenact)

PROPOSED LAW:

This bill would have changed the type of racial profiling information to be collected by law-enforcement officers during traffic stops as summarized below:

§17G-1-1 <i>et seq.</i> (current)	SB676 (as amended)
- the officer's law enforcement agency;	- the officer's law enforcement agency;
- the duration of the stop;	- ID of the officer making the stop;
- the location of the stop;	- the duration of the stop;
	- the date & time of the stop;
	- the patrol area in which the stop was made;
	- the county in which the stop was made;
- the violation warranting the stop;	
- whether a citation was issued;	- whether a citation was issued;
- the nature of the citation;	
- the perceived race, ethnicity or national origin, and gender of the driver;	- the perceived race, ethnicity or national origin, and gender of the driver;
- the perceived age of the driver;	
- the perceived race, ethnicity or national origin, and gender of any passengers;	
- the perceived age of any passengers;	
- whether a search was performed of the driver, vehicle or passengers;	- whether a search was performed;
- the authority for the search;	
- the nature of any contraband seized	- the authority for the search;
	- the nature of any contraband seized
- the mode of the search;	

Chapter 17G permitted the Governor's Committee to add such additional matters as it deemed necessary. The House Judiciary amendment to SB676 makes it clear that the only information officers may be required to collect is that listed in the bill.

1 Adopted by House 4-8-2005

2 SB676 HJUD AM 4-7

3 That §17G-1-1 and §17G-1-2 of the Code of West Virginia, 1931,
4 as amended, be amended and reenacted; that said Code be further
5 amended by adding thereto a new section, designated §17G-1-1a; and
6 that §17G-2-3 of said code be amended and reenacted, all to read as
7 follows:

8 **ARTICLE 1. RACIAL PROFILING DATA COLLECTION.**

9 **§17G-1-1. Definitions.**

10 The following words and phrases, when used in this chapter,
11 shall, for the purposes of this chapter, have the meanings
12 respectively ascribed to them in this article:

13 (1) "Composition of a patrol area" means the composition of a
14 patrol area based on the ethnicity, national origin, gender and age
15 of the population of the patrol area.

16 ~~(a)~~ (2) "Gross data" means aggregate data regarding the
17 information obtained under section two of this article.

18 ~~(b)~~ (3) "Law-enforcement agency" means every state, county or
19 municipal agency with officers who are authorized to direct or
20 regulate traffic or to make arrests or issue citations or warnings
21 for violations of traffic laws and ordinances.

22 ~~(c)~~ (4) "Minority group" means individuals of any ethnic
23 descent, including, but not limited to, African-American, Hispanic,
24 Native American, Middle Eastern, Asian or Pacific Islander.

25 (5) "Patrol area" means a clearly defined geographic area,

1 identified by number, that is established for the general purpose
2 of providing a visible law enforcement presence in the area, in
3 order to (1) secure property and to protect the public from the
4 risks of damage or injury arising from criminal activity, (2)
5 respond to emergency and non-emergency demands of citizens in a
6 timely manner, (3) conduct prevention and other proactive patrol
7 tasks effectively; and, (4) conduct all other patrol tasks
8 effectively, including traffic control and special missions work.
9 Law enforcement patrol areas must be defined so that
10 population-based data on the composition of a patrol area, as well
11 as data on the perceived ethnicity, national origin, gender and age
12 of those committing acts justifying a traffic or pedestrian stop,
13 can be utilized to reliably and validly observe the absence or
14 presence of bias-based profiling associated with pedestrian and car
15 stops in a statistically meaningful way.

16 **§17G-1-2. Information obtained by law-enforcement officers during**
17 **a traffic stop.**

18 Each time a law-enforcement officer stops a driver of a motor
19 vehicle for a violation of any motor vehicle statute or ordinance,
20 other than for a nonviolation stop, including, but not limited to,
21 a checkpoint for driving under the influence, license, registration
22 or seat belts, the officer shall obtain and prepare a brief report
23 based on the officer's visual observation and perception of basic
24 information about the nature, duration and outcome of the stop,
25 including, but not limited to, information relating to the
26 perceived racial characteristics of each operator stopped. The

1 report is to be provided to the West Virginia law-enforcement
2 agency which employs the law-enforcement officer: *Provided, That*
3 the failure of the law-enforcement officer to obtain and report
4 racial profiling data shall not affect the validity of the
5 underlying traffic citation or warning.

6 The information to be collected shall only include:

7 ~~(a) The identifying characteristics of the operator stopped,~~
8 ~~including perceived race, ethnicity or national origin, gender and~~
9 ~~age;~~

10 ~~(b) The location and duration of the stop;~~

11 ~~(c) The traffic violation or violations alleged to have been~~
12 ~~committed that led to the stop;~~

13 ~~(d) Whether or not a warning or citation was issued as a~~
14 ~~result of the stop and if so, the specific violation, if any,~~
15 ~~charged or warning given;~~

16 ~~(e) Whether a search was performed as a result of the stop;~~

17 ~~(f) If a search was performed, whether the person consented to~~
18 ~~the search, the probable cause or reasonable suspicion for the~~
19 ~~search, whether the person was searched, whether the person's~~
20 ~~property was searched and the duration of the search;~~

21 ~~(g) If a search was of a passenger in the motor vehicle, the~~
22 ~~perceived age, gender and race or minority group of the passenger;~~

23 ~~(h) Whether any contraband was discovered or seized in the~~
24 ~~course of the search and the type of any contraband discovered or~~
25 ~~seized;~~

26 ~~(i) Identify whether the search involved canine units or~~

1 ~~advanced technology; and~~

2 ~~(j) Any additional information which the law enforcement~~
3 ~~agency considers appropriate.~~

4 (a) The perceived race, ethnicity or national origin, gender
5 and residential zip code of the operator stopped;

6 (b) The reason for the stop;

7 (c) The county and duration of the stop;

8 (d) An identification number for the officer's patrol area to
9 be established by the head of the officer's law-enforcement agency;

10 (e) Whether or not a warning or citation was issued as a
11 result of the stop;

12 (f) The law-enforcement agency conducting the stop;

13 (g) The date and time of the stop;

14 (h) Officer's permanent i.d. number;

15 (i) Whether a search was performed as a result of the stop

16 (j) Search authority; and

17 (k) Whether any contraband was discovered or seized in the
18 course of the search and the type of any contraband discovered or
19 seized.

20 **§17G-1-1a. Legislative findings and intent.**

21 (a) The Legislature finds as follows:

22 (1) That police patrol plays a central role in policing;

23 (2) That functions of patrol are to deter crime, to enhance
24 feelings of public safety, and to make law enforcement personnel
25 available for service;

26 (3) That the majority of law enforcement officers assigned to

1 patrol duties deliver the bulk of law enforcement services;

2 (4) That, importantly, patrol is a visible symbol of the
3 police.

4 (5) That patrol officers are "gatekeepers" of the criminal
5 justice system; they are the most important decision-makers in
6 policing;

7 (6) That because of the importance and high visibility of law
8 enforcement officers when performing patrol duty, it is imperative
9 that they be perceived by the public as being fair and unbiased in
10 the context of performing their duties.

11 In enacting this chapter and recognizing the importance of
12 patrol areas, the Legislature only intends to create a database of
13 information which law enforcement agencies can use to measure the
14 absence or presence of bias on the part of their patrol officers as
15 they interact with the various segments of the public. It is not
16 the intent of the Legislature to mandate use of a particular
17 formula or standard, nor is it the intent of the Legislature to
18 require that any single formula or standard be applicable to all
19 agencies without regard to the size of an agency or its designated
20 patrol areas.

21 **ARTICLE 2. ANALYSIS OF TRAFFIC STOPS STUDY AND ANNUAL REPORT BY**
22 **DIRECTOR OF THE GOVERNOR'S COMMITTEE ON CRIME,**
23 **DELINQUENCY AND CORRECTION.**

24 **§17G-2-3. Analysis of traffic stop statistics, annual report and**
25 **legislative rules.**

1 (a) To facilitate the commencement of data collection on the
2 first day of January, two thousand ~~five~~ six, the Commissioner of
3 the Division of Motor Vehicles, in consultation with the Director
4 of the Governor's Committee on Crime, Delinquency and Corrections
5 ~~in consultation with the division of motor vehicles~~ shall propose
6 emergency and legislative rules in accordance with article three,
7 chapter twenty-nine-a of this code. These rules shall include, but
8 are not limited to:

9 (1) The manner of reporting the information to the Division of
10 Motor Vehicles;

11 (2) Promulgation of a form or forms for reporting purposes by
12 various law-enforcement agencies;

13 (3) A means of reporting the information required in section
14 two, article one of this chapter on warning citations to the
15 Division of Motor Vehicles;

16 (4) In consultation with the Fraternal Order of Police, the
17 Sheriff's Association, the Trooper's Association, the Deputy
18 Sheriff's Association, the Chiefs of Police Association and
19 representatives of law-enforcement agencies, a means of providing
20 training to law-enforcement officers on completion and submission
21 of the data on the proposed form;

22 (5) A means of reporting back to individual law-enforcement
23 agencies, from time to time, at the request of a law-enforcement
24 agency on findings specific to that agency in an agreed-upon format
25 to allow the agency to evaluate independently the data provided;

26 (6) A limitation that the data is to be used solely for the

purposes of this chapter;

2 (7) Safeguards to protect the identity of individual
3 law-enforcement officers collecting data required by section two,
4 article one of this chapter when no citation or warning is issued;

5 (8) Methodology for collection of gross data by
6 law-enforcement agencies and the analysis of the data;

7 (9) The number of motor vehicle stops and searches of motor
8 vehicles occupied by members of a perceived minority group; the
9 number of motor vehicle stops and searches of motor vehicles
10 occupied by persons who are not members of a minority group; the
11 population of minorities in the areas where the stops occurred;
12 estimates of the number of all vehicles traveling on the public
13 highways where the stops occurred; factors to be included in any
14 evaluation that the data may indicate racial profiling, racial
15 stereotyping or other race-based discrimination or selective
16 enforcement; and other data deemed appropriate by the Governor's
17 Committee on Crime, Delinquency and Correction for the analysis of
18 the protection of constitutional rights; and

19 (10) Protocols for reporting collected data by the Division of
20 Motor Vehicles to the Governor's Committee on Crime, Delinquency
21 and Correction and the analysis thereof.

22 (b) On or before the first day of February, two thousand six,
23 and each year thereafter, the Director of the Governor's Committee
24 on Crime, Delinquency and Correction shall publish a public report
25 of the data collected and provide a copy thereof to all
26 law-enforcement agencies subject to this chapter and provide a copy

1 of the report and analysis of the data collected to the Governor
2 and to the Joint Committee on Government and Finance.

3 (c) The provisions of sections two and three, article one of
4 this chapter and section two of this article shall become effective
5 after the thirty-first day of December, ~~two thousand four~~ two
6 thousand five.

7 (d) The provisions of this chapter shall be of no force or
8 effect after the thirty-first day of December, two thousand seven.

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ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Governor's Committee on Crime Delinquency and Correction
Subject: Motor Vehicle Stop Data Collection Standards for the Study of Racial Profiling (149 CSR 5)
Date: January 9, 2005
Staff Counsel: Connie A. Bowling

PERTINENT DATES

Filed for public comment:	October 13, 2004
Public hearing comment period ended:	November 12, 2004
Filed following public comment period:	November 23, 2004
Filed LRMRC:	November 23, 2004
Filed as emergency:	October 13, 2004 (disapproved during 2005 RS)
Fiscal Impact:	None

ABSTRACT

This rule was proposed as a substitute for the rule originally filed by the Governor's Committee on Crime Delinquency and Correction ("Governor's Committee") pursuant to WVC §17G-1-1, *et seq.* During the interim period following the 2005 RS of the Legislature, it was suggested by the interested parties that the rule should conform to SB676 as much as possible. At the direction of counsel the Suggested Rule still contains any provision that is mandated by the current law, as the agency has no authority to change by rule the provisions of the statute.

The Suggested Rule requires the chief law enforcement officer of any law enforcement agency to establish and number "patrol areas" within his or her jurisdiction in conformity with the provisions of SB676.

The components of the Form have changed according to the following chart:

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Original Rule	Suggested Rule
<ul style="list-style-type: none">- the officer's law enforcement Agency- the officer making the stop;- the officer's primary assignment (patrol, task force, traffic, investigation) at the time of the stop;- the date, time and <i>duration of the stop</i>;- the <i>location of the stop</i>- the type of roadway;- <i>the gender, age and perceived race or ethnic group of the driver and of any passengers searched by the officer</i>;- the zip code of the driver;- the number of passengers;- <i>the alleged traffic violation prompting the stop</i>;- <i>the nature of any citation or warning issued as a result of the stop</i>;- whether a license check was conducted;- who initiated the stop;- <i>if a search was performed, the authority for and mode of the search</i>; and- <i>the nature of any contraband found</i>	<ul style="list-style-type: none">- the designation off the law enforcement agency- the officer making the stop;- the date, time and <i>duration of the stop</i>;- the patrol area of the stop;- the county of the stop;- <i>the gender, age and perceived race or ethnic group of the driver and of any passengers searched by the officer</i>;- <i>the alleged traffic violation prompting the stop</i>;- <i>the nature of any citation or warning issued as a result of the stop</i>- <i>if a search was performed, the authority for and mode of the search</i>; and- <i>the nature of any contraband found</i>

[Items in italics are required by §17G-1-1 et seq..]

In most other respects the rule is the same as the Original Rule.

AUTHORITY

Statutory authority:

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W. Va. Code § 17G-2-3:

(a) To facilitate the commencement of data collection on the first day of January, two thousand five, the director of the governor's committee on crime, delinquency and corrections, in consultation with the division of motor vehicles, shall propose emergency and legislative rules in accordance with article three, chapter twenty-nine-a of this code. These rules shall include, but are not limited to:

- (1) The manner of reporting the information to the division of motor vehicles;
- (2) Promulgation of a form or forms for reporting purposes by various law-enforcement agencies;
- (3) A means of reporting the information required in section two, article one of this chapter on warning citations to the division of motor vehicles;
- (4) In consultation with the fraternal order of police, the sheriff's association, the deputy sheriff's association and representatives of law-enforcement agencies, a means of providing training to law-enforcement officers on completion and submission of the data on the proposed form;
- (5) A means of reporting back to individual law-enforcement agencies, from time to time, at the request of a law-enforcement agency on findings specific to that agency in an agreed-upon format to allow the agency to evaluate independently the data provided;
- (6) A limitation that the data is to be used solely for the purposes of this chapter;
- (7) Safeguards to protect the identity of individual law-enforcement officers collecting data required by section two, article one of this chapter when no citation or warning is issued;
- (8) Methodology for collection of gross data by law-enforcement agencies and the analysis of the data;
- (9) The number of motor vehicle stops and searches of motor vehicles occupied by members of a perceived minority group; the number of motor vehicle stops and searches of motor vehicles occupied by persons who are not members of a minority group; the population of minorities in the areas where the stops occurred; estimates of the number of all vehicles traveling on the public highways where the stops occurred; factors to be included in any evaluation that the data may indicate racial profiling, racial stereotyping or other race-based discrimination or selective enforcement; and other data deemed appropriate by the governor's committee on crime, delinquency and correction for the analysis of the protection of constitutional rights; and

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(10) Protocols for reporting collected data by the division of motor vehicles to the governor's committee on crime, delinquency and correction and the analysis thereof.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN

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COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

The enabling statute, W. Va. Code §17G-2-3 anticipated that the emergency rule would go into effect on January 1, 2005 and sunsets on Dec. 31, 2007. An extension of time would need to be effected by statute.

**TITLE 149
LEGISLATIVE RULE
GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY AND CORRECTION**

**SERIES 5
MOTOR VEHICLE STOP DATA COLLECTION STANDARDS
FOR THE STUDY OF RACIAL PROFILING**

§149-5-1. General.

1.1. Scope. —This legislative rule establishes standards for the collection, reporting, compilation and analysis of data, for the purpose of studying the possible practice of racial profiling by law enforcement in West Virginia.

1.2. Authority. — W. Va. Code §17G-2-3.

1.3. Filing Date. --

1.4. Effective Date. —

§149-5-2. Definitions.

2.1. "Chief executive" means the Superintendent of the State Police; the Chief Conservation Officer of the Division of Natural Resources; the sheriff of any West Virginia county; any administrative deputy appointed by the Chief Conservation Officer of Natural Resources; the chief of any West Virginia municipal law enforcement agency; or the duly authorized designee of any chief executive.

2.2. "Composition of patrol area" means the demographic description of the population in the patrol area to include elements of ethnicity, national origin, gender and age.

2.3. "County" means any one of the fifty-five major political subdivisions of the state.

2.4 "Driver" or "operator" means the person who drives or is in actual physical control of a motor vehicle upon a highway, or who is exercising control over or steering a vehicle being towed by a motor vehicle.

2.5. "Governor's Committee on Crime, Delinquency and Correction" or "Governor's Committee" means the committee established as a state planning agency pursuant to W. Va. Code §15-9-1.

2.6. "Gross data" means aggregate data regarding the information obtained pursuant to section 3.0 of this rule.

2.7. "Law enforcement agency" means every West Virginia state, county or municipal agency with officers who are authorized to direct or regulate traffic or to make arrests or issue citations or warnings for violations of traffic laws and ordinances.

2.8. "Law enforcement officer" or "officer" means any duly authorized member of a law enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality of the state,

including persons employed as campus police officers at state institutions of higher education and those persons employed as rangers by the Hatfield-McCoy Regional Recreation Authority.

2.9. "Minority group" means individuals of any ethnic descent, including, but not limited to, African-American, Hispanic, Native American, Middle Eastern, Asian or Pacific Islander.

2.10. "Municipality" means any incorporated town, village or city whose boundaries lie within the geographic boundaries of the state.

2.11. "Originating agency Identifier, or ORI Number" means the standard identification number assigned by the Federal Bureau of Investigations to law enforcement and other agencies that submit data required for criminal justice purposes.

2.12. "Patrol area" means a clearly defined geographic area, identified by a number assigned by the chief law enforcement official, that is established for the general purpose of providing a visible law enforcement presence in the area, in order to (1) secure property and to protect the public from the risks of damage or injury arising from criminal activity, (2) respond to emergency and non-emergency demands of citizens in a timely manner, (3) conduct prevention and other proactive patrol tasks effectively; and (4) conduct all other patrol tasks effectively, including traffic control and special missions work.

2.13. "West Virginia Motor Vehicle Stop Form," or "MVSF," means the form developed by the Division of Motor Vehicles for collecting and reporting data for the study of racial profiling.

§149-5-3. Data Collection.

3.1. Operator Information Collected.

3.1.a. Beginning January 1, 2005, each time a law enforcement officer stops the operator of a motor vehicle for a violation of any motor vehicle statute or ordinance, the officer shall record, on the West Virginia Motor Vehicle Stop Form appended to this rule, the information required to be collected pursuant to subsection 5 of this section. The officer may complete the Motor Vehicle Stop Form during or immediately after the stop, but must file the completed form with his or her law enforcement agency before the officer goes off duty.

3.1.b. A law enforcement officer is required to record the information required to be collected pursuant to subsection 5 of this section only when the operator has been stopped for violating a motor vehicle statute or ordinance. A law enforcement officer is not required to record such information as a result of a non-violation stop, even if the initial non-violation stop results in a citation or arrest.

3.2. Passenger Information Collected.

3.2.a Beginning January 1, 2005, each time a law enforcement officer stops the operator of a motor vehicle for a violation of any motor vehicle statute or ordinance, and as a result,

conducts a search of a passenger in the vehicle, the officer shall record, on the West Virginia Motor Vehicle Stop Form appended to this rule, the information required to be collected pursuant to subsection 5 of this section. The officer may complete the Motor Vehicle Stop Form during or immediately after the stop, but shall file the completed form with his or her law enforcement agency before the officer goes off duty.

3.2.b. A law enforcement officer is required to record the information required to be collected pursuant to subsection 5 of this section with regard to a passenger who has been searched only when the operator of the vehicle has been stopped for violating a motor vehicle statute or ordinance. A law enforcement officer is not required to record such information as a result of a non-violation stop, even if the initial non-violation stop results in a citation or arrest.

3.3. West Virginia Motor Vehicle Stop Form (MVSF). -- The MVSF shall allow for the recording of all of the information required to be collected by subsection 4 of this section and at a minimum be developed in hard copy format; however, nothing in this rule prohibits a law enforcement agency from completing and/or submitting the information required to be collected in an electronic format, if a protocol for electronic filing is developed by the Division of Motor Vehicle. This form shall:

3.4. MVSF Components. -- The MVSF shall allow a law enforcement officer to collect and record the following information.

3.4.a. A unique identifier (i.e. numeric, alphanumeric, barcode, etc.) which will distinguish one from all others.

3.4.b. The law enforcement agency's complete Originating Agency Identifier (ORI number), or an abbreviated version of that identifier singularly unique to that particular law enforcement agency.

3.4.c. The identity of each individual law enforcement officer within his or her law enforcement agency. The chief executive of the law enforcement agency shall assign a unique four (4) digit identifier to each law enforcement officer within his or her agency for this purpose.

3.4.d. The month, day and year of the stop.

3.4.e. The approximate hour and minute of the stop.

3.4.f. The approximate duration of the stop in hours and minutes.

3.4.i. The county in which the stop took place.

3.4.j. The location of stop by patrol area.

3.4.k. The traffic violation that was the primary reason for the stop to be indicated as follows:

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3.4.k.1. Code violations:

- 3.4.k.1.A. Red light/stop sign;
- 3.4.k.1.B. Speeding (<10mph over);
- 3.4.k.1.C. Speeding (>10mph over);
- 3.4.k.1.D. Lane violation/failure to signal;
- 3.4.k.1.E. Other moving violation; or,
- 3.4.k.1.F. Other nonmoving violation.

3.4.k.2. Penal code violations:

- 3.4.k.2.A. Nuisance/vice;
- 3.4.k.2.B. Suspicious circumstances;
- 3.4.k.2.C. Be on the lookout (BOLO)/wanted persons;
- 3.4.k.2.D. Property crime;
- 3.4.k.2.E. Violent crime; or,
- 3.4.k.2.F. Local ordinance.

3.4.l. Disposition. -- One of the following dispositions of the stop:

- 3.4.l.1. Citation
- 3.4.l.2. Warning
- 3.4.l.3. No action

3.4.m. The perceived identifying characteristics of the operator stopped, including:

- 3.4.m.1. The age of the operator
- 3.4.m.2. Whether the operator was male or female.
- 3.4.m.3. Whether the operator was:
 - 3.4.m.3.A. White (W);

3.4.m.3.B. Black/African American (B/AA);

3.4.m.3.C. Asian/Pacific Islander (A/PI);

3.4.m.3.D. Native American (NA);

3.4.m.3.E. Middle Eastern (ME); or,

3.4.m.3.F. Other (Oth).

3.4.m.4. Whether the operator was:

3.4.m.4.A. Hispanic/Latino (H/L); or,

3.4.m.4.B. Non-Hispanic/Latino (NH/L).

3.4.n. Whether a search was performed as a result of the stop and, if so:

3.4.n.1. The authority for the search to be indicated as follows:

3.4.n.1.A. Consent;

3.4.n.1.B. Reasonable Suspicion/Weapon;

3.4.n.1.C. Incident to Arrest;

3.4.n.1.D. Inventory;

3.4.n.1.E. Probable Cause;

3.4.n.1.F. Plain View;

3.4.n.1.G. Probation/Parole Waiver; and,

3.4.n.1.H. Other.

3.4.n.2. Whether the search involved:

3.4.n.2.A. Officer;

3.4.n.2.B. Canine Unit;

3.4.n.2.C. Portable Breath Analyzer;

3.4.n.2.D. Drug Test Kit;

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3.4.n.2.E. Warrant Check; and,

3.4.n.2.F. Other.

3.4.n.3. The persons/items searched, to be indicated as:

3.4.n.3.A. Vehicle;

3.4.n.3.B. Driver;

3.4.n.3.C. Passenger(s);

3.4.n.3.D. Personal Effects; and,

3.4.n.3.E. No Search Conducted.

3.4.n.4. The type of any contraband discovered or seized as a result of the search, to be indicated as follows:

3.4.n.4.A. None;

3.4.n.4.B. Illegal Drugs;

3.4.n.4.C. Drug Paraphernalia;

3.4.n.4.D. Alcohol;

3.4.n.4.E. Firearm(s);

3.4.n.4.F. Other Weapon(s);

3.4.n.4.G. Currency;

3.4.n.4.H. Stolen Property; and,

3.4.n.4.I. Other.

3.4.n.5 If the search was of a passenger in the motor vehicle, the age, gender, and perceived race, and ethnicity of the passenger searched.

3.5. Instructions detailing how an individual law enforcement officer should complete and submit the form may be included on the MVSF itself, or provided to law enforcement agencies or officers as an attachment.

§149-5-4 Designation of Patrol Area.

- 3.1. Patrol area of stop. The chief executive of every law enforcement agency in the state shall establish one or more "Patrol Areas" as defined at section 2.9A of this rule. The boundaries shall be easily recognizable to the law enforcement officer, and the designation of the patrol area shall be identified by up to a three digit number that shall be entered by the officer on the Motor Vehicle Stop Form. The boundaries and designations of patrol areas shall be provided to all officers under the control of the agency and forwarded to the Governor's Committee on Crime Delinquency and Correction for utilization in preparing the report to the legislature required by West Virginia Code.
- 3.2. Requirements for boundaries of patrol areas. The boundaries of the Patrol Areas shall be drawn to allow the determination of population demographics of the Patrol Area as a whole. Patrol areas may include whole or partial census tracts and whole census blocks. The maps provided to officers need not show this specific information, but only the boundaries of the patrol area using natural landmarks such as streets, streams, railroad tracks, or other boundaries as may be generally known to a community. Maps of Patrol Areas shall be forwarded to the Governor's Committee for approval of conformance to this sub-section.
- 3.3. County level law enforcement agencies in counties with a population of 20,000 or fewer may designate the entire county as one patrol area. Law enforcement agencies in cities or towns with a population of 5,000 or fewer may designate the entire city or town as one patrol area. Law enforcement agencies with state wide jurisdiction shall utilize Patrol Areas established by the county of the stop.

§149-5-5 Training.

- 4.1 The chief executive officer of an Law Enforcement Agency shall, prior to _____, provide to each law enforcement officer of his or her agency, appropriate training on the proper completion of the Motor Vehicle Stop Form. All training shall be based on the instructions developed by the Division of Motor Vehicles pursuant to subsection 3 of this rule. Additional and or ongoing training may be required by the law enforcement agency if improper reporting is identified.

§149-5-6. Data Reporting.

- 6.1. Beginning January 1, 20--, each law enforcement agency in this state shall submit completed MVSFs to the Division of Motor Vehicles, via United States Postal Service or by any other reputable mail delivery service, hand-delivery or by electronic means, if authorized by the division of Motor Vehicles. MVSFs must be received by the Division of Motor Vehicles no later than close of business, normal operating hours, on the fifteenth (15th) day following the end of the reporting calendar month during which the information recorded on the form was collected.

6.2. All MVSFs shall be completed correctly, be free of dirt and debris, and be submitted in usable condition for the purposes outlined in this rule. Incomplete or rejected MVSF's will be returned to the law enforcement agency for completion, correction and re-submission.

6.3. In furtherance of his or her responsibility to ensure that the requirements of this section are met, the chief executive shall periodically audit and review MVSFs submitted by law enforcement officers within his or her agency to ensure that the facts surrounding traffic stops are not being intentionally misrepresented.

6.4. Failure to comply with the requirements of this section may subject a law enforcement agency to the sanctions provided in West Virginia code §17G-2-2.

§149-5-6. Receipt and Retention of MVSF.

6.1. MVSF Receiving and Retaining. -- The Division of Motor Vehicles shall establish a written policy designed to address the reasonably foreseeable complications which may arise as a result of receiving and retaining MVSFs submitted by a law enforcement agency, whether in hard copy or electronic format. This policy may change, from time to time and at the discretion of the Division of Motor Vehicles, as necessity dictates. This policy shall include, but not be limited to:

6.1.a. A mechanism for identifying the time, day, date and year the MVSF was received by the Division of Motor Vehicles;

6.1.b. A mechanism for maintaining accurate and easily accessible data regarding the reporting habits of individual law enforcement agencies; and,

6.1.c. The identification of an appropriate and logistically feasible time period to retain MVSFs submitted in hard copy format; as well as any data stored electronically as a result of this rule.

§149-5-7. Data limitations and confidentiality.

7.1. Any and all data collected, reported, compiled and analyzed pursuant to this rule may be used only for the purposes outlined in this rule.

7.2. Except as provided for in section 8 of this rule, no official of the Division of Motor Vehicles, the Governor's committee or a law enforcement agency may release information from an MVSF regarding the identity of any individual law enforcement officer. The Governor's Committee and the chief executive of a law enforcement agency shall make appropriate safeguards to protect the identity of individual law enforcement officers collecting data required by this rule at all times.

§149-5-8. Individual Law Enforcement Agency Data Request and Release.

8.1. The chief executive of a law enforcement agency may request from the Division of Motor Vehicles, release of data regarding his or her law enforcement agency and law enforcement officers. The request must be in writing and must be received by the Division of Motor Vehicles no sooner than thirty (30) days after the end of the calendar month for which the data is being requested.

8.2. At a minimum, the data shall be organized in such a manner as to allow the chief executive to review the information collected from the MVSF by his or her particular agency and officers for a period of at least one calendar month.

§149-5-9. Division of Motor Vehicles responsibilities.

9.1 The Division of Motor Vehicles and the Governor's Committee on Crime Delinquency and Correction have reduced to writing in a memorandum of understanding, the duties required of the DMV pursuant to §17G-2-3. This memorandum contains the protocols by which the Division of Motor vehicles will collect the data required, and by which the data will be conveyed to the Governor's Committee for analysis and preparation of its annual report.

§149-5-10. Governor's Committee on Crime Delinquency and Correction Annual Report.

10.1 The Governor's Committee shall analyze and report its finding pursuant to West Virginia Code §17G-2-3. The Criminal Justice Statistical Analysis Center, a unit of the Governor's Committee, shall use its discretion to determine the methodology necessary to meet the analytic reporting requirements of §17G-2-3a9 consistent with the data made available to it.



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January 4, 2006

Kelley Goes
Office of the Attorney General
1900 Kanawha Blvd. East
Charleston, WV 25305

Re: Inadequacies with DNR's proposed changes to 58 CSR 64

Dear Ms. Goes:

As you know, on December 20, 2005, Senator Facemyer facilitated a meeting between representatives of the DNR and representatives of the West Virginia Deer Farmers Association to attempt a compromise on the issues presented by DNR's proposed amendments to 58 CSR 64. At that meeting, the DNR expressed its concerns that it is not feasible for the DNR to adequately regulate captive cervid facilities. These concerns underscore the point that the DNR is simply not the appropriate agency to regulate an agricultural industry such as deer farming.

The West Virginia Department of Agriculture, on the other hand, is accustomed to implementing and enforcing programs that monitor for other diseases that threaten West Virginia's agricultural industry. Therefore, regulation by the West Virginia Department of Agriculture would be a more effective and more appropriate way to control and monitor for chronic wasting disease ("CWD") in deer farm populations.

The specific provisions of 58 CSR 64 which are problematic for the cervid industry were detailed in pages 10-15 of a letter dated November 29, 2005, addressed to the Legislative Rule Making Review Committee, on which you were copied. I attach a copy of this letter hereto for your reference. **There are four areas in which the amended rule is particularly problematic for deer farming as an agricultural industry:**

- (1) **the rule fails to establish an adequate state-wide CWD monitoring program which grandfathers operations with existing monitoring practices;**
- (2) **the rule eliminates all interstate transport or sales of cervids and practically all intrastate transport or sales of cervids;**

- (3) the rule imposes cost prohibitive double-fencing and increased fence height requirements on deer farmers, which is not required in any other state; and
- (4) the rule does not cure insufficiencies in the DNR's current CWD sampling protocols.

As explained in the November 29, 2005 letter, the West Virginia DNR has been unable to institute a five-year CWD monitoring program based on the proposed federal USDA program, which would allow intra and interstate transport and sales of monitored cervids. When the federal USDA five-year program takes effect, it will grandfather states with existing monitoring programs, allowing deer farmers in those states to conduct intra- and interstate transport of deer crucial for the industry's survival in those states. However, West Virginia will not be able to take advantage of such grandfathering due to lack of a monitoring program, despite the fact that members of the Deer Farmers Association have been proactively conducting their own thorough monitoring program for the past several years to ensure the continued health of their livestock.

Captive cervid facilities under a CWD monitoring program should be able to transfer cervid after filing an application to transfer with the appropriate regulatory agency. The Director of West Virginia's DNR should not have the "absolute right to deny any transfer of cervids" unless there is a justifiable reason.

In addition, the double fencing requirement in 58 CSR 64 is cost prohibitive for West Virginia deer farmers. Double fencing would cost approximately \$10/foot to install. Some farms have over ten miles of fencing, making the cost to install double fencing over \$528,000. Further, due to the proximity to property boundaries, natural barriers such as ponds, etc., it would be physically impossible to double fence all property.

Finally, the DNR's mishandling of sampling for CWD in captive deer populations is only more evidence of the agency's inability to properly regulate this agricultural industry, a problem which is only exacerbated by DNR's proposed changes to 58 CSR 64. Testing for chronic wasting disease ("CWD") is vitally important, and should be imposed both on captive facilities and hunters. However, the DNR's sampling requirements are unnecessarily harsh and lack scientific justification. For instance, the requirement that the head from all dead cervids (over 6 months of age) be removed and "delivered" to the District Game Biologist for subsequent submission of biological samples to a USDA approved laboratory is unjustified for several reasons.

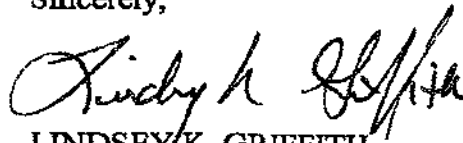
Captive cervid facility owners must retain some control over the samples, be informed of the results, and have the ability to verify the results. USDA certified veterinarians are more qualified to collect samples and oversee the transportation to and testing by USDA certified labs. Requiring captive deer facility owners to decapitate their

deer and personally deliver the heads to DNR game biologists for subsequent delivery to USDA labs is overly burdensome and borders on harassment.

Finally, should DNR receive a "first test" positive result, captive cervid facility owners must be provided with time to perform DNA verification and perform a second test for CWD on their retained sample at a USDA certified laboratory chosen at the farmer's discretion before DNR takes any action which would implicate the property rights of facility owners.

While these are only some of the most significant issues raised in negotiations by deer farmers on December 20, 2005, if the DNR is able to accommodate the above issues in its latest amendments to 58 CSR 64, it will have found some balance which permits both regulation and survival of deer farming as an agricultural industry in West Virginia.

Sincerely,



LINDSEY K. GRIFFITH
*Counsel for the West Virginia
Deer Farmers Association*

LKG

cc: The Honorable Karen Facemyer
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Bldg. 1. Rm. W-218
Charleston, WV 25305
*(Home address: Rt. 1 Box 142
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Brian Helmick, Deputy Secretary
WV Department of Commerce
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Joseph M. Minard, Chair
Legislative Rule-Making Review Committee
West Virginia Senate
State Capitol
Charleston, WV 25305

Virginia Mahan, Chair
Legislative Rule Making Review Committee
West Virginia House of Delegates
State Capitol
Charleston, WV 25305

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

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

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

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

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

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

7.4.1. Applications shall be made on forms provided by the Division of Natural Resources and inspections made by both the Law Enforcement Section (LES) and Wildlife Resources Section (WRS) to determine if the facility meets requirements of the license. There shall be a nonrefundable application fee of \$250.00 for each new application for a captive cervid facility license. The fee for the renewal of a Captive Cervid Facility License shall be \$10.00.

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

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

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

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

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

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

cervids from between the fences. The outside fence must be a minimum of six (6) feet in height and constructed of woven wire or electrified high tensile wire to exclude nose to nose contact between captive animals and wild white-tailed deer. The requirement for double-fencing shall apply to all new captive cervid facilities. Existing captive cervid facilities shall be required to meet these double-fencing requirements by January 1, 2011, and existing captive cervid facilities shall be required to demonstrate substantial progress toward meeting these requirements by annually completing double-fencing construction on at least 20% of their facility.

7.4.8. The perimeter fence shall meet the following requirements or equivalent: Fence material must be New Zealand style deer fence or equivalent; total height of fence must be a minimum of eight (8) feet for elk and ten (10) feet for all other Cervids; a minimum of eight (8) feet of woven wire must be used on the bottom of the ten (10) feet fence; minimum 12.5 gauge high tensile woven wire with locking knots and a maximum six (6) inch spacing must be used; posts must be metal 'T'-posts, treated 4 X 4 posts, 6 inch treated round post or equivalent; corner posts must be properly braced and installed; posts must be 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.

Deleted: posts must be spaced at 20 feet maximum for T-post or 30 feet maximum for rigid post; brace posts must be buried at least 4 feet in rocky soil and 6 feet in sandy soil or concrete must be used to provide equal stability; line posts must be buried to 3 feet.

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

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

7.4.11. Fresh drinking water shall be provided daily.

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

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

7.4.14. All cervids must be kept free from parasites, sickness or disease. If sick, cervids must be given immediate professional medical attention or be humanely destroyed. Routine sampling and diagnostics for disease and parasites may be required by the Director. An annual examination of each animal by a state licensed veterinarian shall be performed and a report submitted to the Director. All testing of captive Cervids shall be performed by an accredited veterinarian certified by the USDA to perform testing on Cervids, including CWD, TB and brucellosis testing. The collection of samples for CWD testing shall be performed by trained personnel within the West Virginia Division of Natural Resources. The West Virginia Division of Natural Resources, at its discretion, may share samples with the captive cervid facility licensee.

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

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

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

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

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

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

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

7.4.22. No animals or genetic material may be received by a captive Cervid facility that have originated or been housed with animals originating from any state that has a confirmed CWD or Tuberculosis

(TB) positive Cervid in the last 60 months: Provided, That intra-state movement of captive cervids may be approved by the Director on a case by case basis.

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

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

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7.4.25. Every effort will be made to prevent escapes of animals from captive Cervid facilities. All escapes shall be reported within 24 hours to the District LES Captain. Failure to report an escaped Cervid will result in the immediate forfeiture of the captive Cervid license. Any negligent act that results in captive Cervids escaping shall be a violation of the license.

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7.4.26. Any animal that escapes from a captive Cervid facility shall be killed by DNR personnel. Appropriate samples shall be collected from the animal by DNR personnel, and these samples shall be submitted for testing for CWD and other transmissible diseases. All costs for killing an animal that escapes due to a negligent act, including collecting the samples and testing shall be the responsibility of the licensee.

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Deleted: Any damage or injury resulting from the escape of captive Cervids held under this license shall be the sole responsibility of the licensee.

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

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

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

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

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

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

7.4.33. Should any animal test positive for CWD within the captive Cervid facility, the facility shall be immediately quarantined and the captive herd shall be immediately depopulated under guidelines established collaboratively by the DNR, USDA and West Virginia Department of Agriculture. Epidemiological investigations shall be conducted to identify any captive Cervid herds linked by animal movements and appropriate actions, possibly including quarantine and testing of linked animals, shall be taken.

All costs associated with the quarantine and depopulation shall be the responsibility of the licensee unless federal funds become available. In addition, the DNR will immediately initiate active and aggressive CWD surveillance of wild white-tailed deer outside the infected captive Cervid facility.

Deleted: All costs associated with the surveillance of wild white-tailed deer outside the captive Cervid facility shall be the responsibility of the licensee unless federal funds become available.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.6.3. 7.7.3. Fecal and food waste must be removed from cages daily and stored or disposed of in a manner which prevents noxious odors or insect pests. Food and water containers must be washed weekly.

JANUARY 10

Tuesday, January 10, 2006

12:00 p.m. to 1:00 p.m.

Legislative Rule-Making
Review Committee
(Code §29A-3-10)

Earl Ray Tomblin
ex officio nonvoting member

Robert "Bob" Kiss
ex officio nonvoting member

Senate

House

Minard, Chairman Absent
Fanning, Vice Chair
Prezioso
Unger Absent
Boley Absent
Minear Absent

Mahan, Chairman
Palumbo, Vice Chair Absent
Cann Absent
Pino Absent
Armstead Absent
Overington

The meeting was called to order by Ms. Mahan, Vice Chair.

Due to a lack of quorum the meeting was adjourned.

JANUARY INTERIM ATTENDANCE
Legislative Interim Meetings
January 8, 9 and 10, 2006

Tuesday, January 10, 2006

12:00 p.m. - 1:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member

Robert "Bob" Kiss, ex
officio nonvoting member

Senate

House

Minard, Chair
Fanning, Vice Chair
Prezioso
Unger
Boley
Minear

Mahan, Chair
Palumbo, Vice Chair
Cann
Pino
Armstead
Overington

I certify that the attendance as noted above is correct


Staff Person

Debra Graham

Please return to Brenda in Room 132-E or Fax to 347-4819 ASAP, due to payroll deadline.

JANUARY INTERIM ATTENDANCE
Legislative Interim Meetings
January 8, 9 and 10, 2006

Tuesday, January 10, 2006

12:00 p.m. - 1:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member _____

Robert "Bob" Kiss, ex
officio nonvoting member _____

Senate

House

Minard, Chair _____
Fanning, Vice Chair ✓
Prezioso ✓
Unger _____
Boley _____
Minear _____

Mahan, Chair ✓
Palumbo, Vice Chair _____
Cann _____
Pino _____
Armstead _____
Overington ✓

*Delegate Mahan called meeting to order
Meeting adjourned to lack of quorum*