

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

418 Dept of Natural Resources - Captive Wildlife Exhibits

RULES REVIEW CHECKLIST

DATE RULES RECEIVED ~~5/25~~ 5-2 Temporary Rule _____

Resubmitted and Received 10/5

DUE DATE ~~6/14~~ 5-22 | 10/15

a. Returned to Agency w/o filing w/Secy of State 10/13
b. Approved _____ Date Sent Back to Agency _____

- -

1. Rules as Adopted ✓
2. Rules as Proposed ✓ (4-18-77)
3. Certificate of Board's Authorizing Resolution, where applicable N.A.
4. Order for Hearing Not signed by Com
5. Notice of Hearing ✓
   (i) Sufficiency ✓
6. Secretary of State's List ✓
7. Certificate of Acquisition of Secretary of State's List ✓
8. Affidavit of Mailing ✓
   (i) At least 30 days prior to hearing ✓
9. Statement of Need and Evidence ✓
10. Hearing Examiner's Report ✓
11. Agency's Findings of Fact ✓
12. Certificate of Board's Resolution Adopting Rules, where applicable N.A.
13. Order Adopting ✓
14. Report of Chief Hearing Examiner ✓
    (i) Finding of No Substantial Change ✓ one substa. chg finding - Agency dropped rule
    (ii) Permission to Incorporate by Reference, where applicable N.A.
15. Certificate of Compliance with Rulemaking Procedures ✓
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable ✓
17. Petition by Public, where applicable N.A.

Rules & Juris Documents

① Order For Hearing not signed by Comm. & no delegation notice

② ~~Typo in Chief H.E.'s Report as I find no 500 B. 2.~~ No typo – Agency dropped rule

③ p. 2 Crucial finding needed for B + D(1)

③½ p. 4 F(1) "Know how to care" std. ? Needs Res?

④ p. 5 G(1)(d) – last sentence of (d) is not a rule

⑤ ~~Violation of this rule~~
~~Anyone who violates any ... shall be guilty of a misdeamer~~

⑤ p. 7 (3)(c) last sentence again not a rule

⑥ p. 11 3(d) + 5(a) contains lang. not in final rules

AGENCY FINDINGS INADEQUATE

H.E. Report

① p. 2 #6 – No stat. auth.

② p. 3 – Insuff. Notice

③ Conflict with game farm rules?

④ H.E. Sub Chg finding 9/18

⑤ Agency failure to provide info. promised

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES FOR CAPTIVE WILDLIFE EXHIBITS.

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on May 23, 1977, before Howard L. Kaibel, Jr., a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Department of Natural Resources on July 11, 1977; and

WHEREAS, the Department of Natural Resources has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Department of Natural Resources has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules, with one exception, are not substantially different from those proposed at the public hearing. The rule hereby found to be a substantial change is found in NR 500 B. 2. It is specifically found that the rule goes to a new subject matter of significant substantive effect and makes a major substantive change that was not raised by the original Notice of Hearing in such a way as to invite reaction at the hearing. Other than the foregoing, the Department of Natural Resources has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Department of Natural Resources shall, pursuant to Minn. Rule HE 108, either withdraw Minn. Rule NR 500 B. 2. or reconvene the rule hearing. If the Department of Natural Resources withdraws the

rule, it has the responsibility of submitting the complete hearing record and the rules as adopted by the Department to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 11th day of April, 1978.

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

RULE FOR WILDLIFE EXHIBITS

NR [[400]] 500 WILDLIFE EXHIBITS

A. PURPOSE

The purpose of [[these rules and regulations]] this rule is to establish reasonable standards for the care and treatment of captive wildlife for public exhibition purposes, and a permit system for such display, pursuant to the legislative mandate contained in Minnesota Statutes, section 97.611.

B. JURISDICTION

[[These rules and regulations]] 1. This rule shall apply to the care and treatment of all living captive wildlife for public exhibition in connection with any commercial enterprise, excluding displays owned by any municipality, county, or the State of Minnesota, any publicly owned zoo or wildlife exhibit, any privately owned traveling zoo or circus, or any pet shop.

2. Permittees are advised that animals which are "protected" as that term is defined in Minnesota Statutes, Section 97.40, may be acquired for exhibit from

game farms licensed by the state pursuant to Minnesota Statutes, Section 99.27, or by being procreated at the exhibit if the exhibitor has a game farm license, and in no other way. Animals not protected may be acquired as provided in Minnesota Statutes, Section 100.26.

C. SEVERABILITY

The provisions of [[these rules and regulations]] this rule shall be severable, and the invalidity of any paragraph, subparagraph, or subdivision thereof shall not make void any other paragraph, subparagraph, subdivision or any other part.

D. DEFINITIONS

For the purpose of [[these rules and regulations,]] this rule, the terms defined in this section have the meaning given them below:

1. "Wildlife" means any wild mammal, wild bird, reptile, or amphibian.

2. "Captive" means all forms of human control including but not limited to confinement within physical barriers, limitation of movement through the use of any manner of attachment physically affixed to any wildlife, or limitation of movement of wildlife by restraining in some manner the parent or offspring.

3. "Public exhibition in connection with any commercial enterprise" means any exhibition or display from which monetary gain is procured either directly or indirectly, including but not limited to any display or exhibition, the viewing of which is offered for a fee to the public, any display or exhibition which tends to attract customers to any business operated by the owner of such display or exhibition, or any business operated by a client or relative of the owner of such display or exhibition, or any live display used for advertising purposes.

4. "Pet shop" means any commercial business venture, including a game farm, where animals are displayed only for the purpose of the sale of the animals so displayed.

5. "Traveling zoo or circus" means any display or exhibit of wildlife alone or in combination with domestic animals which does not remain in any one county for more than one month at a time, nor make consecutive engagements at the same location.

6. "Commissioner" is Commissioner of the Department of Natural Resources, State of Minnesota, acting directly or through his authorized agents.

E. PERMIT

1. No person shall display captive wildlife under the jurisdiction of [[these rules,]] <u>this rule,</u> in this state unless such display is pursuant to and in compliance with a

permit acquired from the Commissioner of Natural Resources. Application for such a permit shall be made on forms provided by the Commissioner and shall be mailed or delivered to the Department of Natural Resources, Regional Supervisor, Division of Enforcement.

2. After receipt of the application, the local conservation officer will inspect the premises, and a permit will be issued only after applicant complies with or agrees to comply with standards for wildlife exhibits as described in this [[order.]] rule.

3. No permit issued under [[these rules]] this rule shall be transferable.

F. KNOWLEDGE AND BACKGROUND OF CARETAKERS

1. The applicant must be at least 18 years of age and shall demonstrate that he or his employee who is primarily responsible for the care of the wildlife [[should possess either a Bachelor's degree in animal husbandry or similar wildlife related course of study; or have at least three years of active work experience with wildlife of the nature to be displayed under the permit.]] knows how to care for the involved species properly.

2. [[In lieu of such requirements as are listed in the preceding subdivision,]] If he or his employee does not have such knowledge, the applicant may arrange for a regular [[monthly]] semiannual visit to his display and

housing facility by a licensed veterinarian who shall certify by mail to the Commissioner on forms provided, that to the best of his knowledge, all requirements of the permit are being complied with and that any suggestions that he could make to substantially improve the living conditions within the general limits of said permit are being or have been accomplished.

3. In the event that the knowledge or background of an employee is deemed by the Commissioner to be sufficient to satisfy this requirement for said permit, the applicant shall apply for an amendment to such permit before the termination of the employment of said employee or as soon thereafter as possible, setting forth the qualifications of a new caretaker if neither the permit holder nor another employee has previously been accepted as qualified. If said amendment is not granted by the Commissioner, the permit will terminate concurrently with the denial of said amendment or the termination of the employment of the qualified employee, whichever is later.

G. FACILITIES AND OPERATING STANDARDS

1. Facilities, general

a. Structural strength. The facility must be constructed of such material and of such strength as appropriate for the animals involved. The housing facilities shall be structurally sound and shall be maintained in good repair to protect the animals from injury and to contain the animals.

b. Water and power. Reliable and adequate electric power, if required to comply with other provisions of this permit, and adequate potable water shall be available on the premises.

c. Storage. Supplies of food and bedding shall be stored in facilities which adequately protect such supplies against deterioration, molding, or contamination by vermin. Refrigeration shall be provided for supplies of perishable food.

d. Waste disposal. Provision shall be made for the removal and disposal of animal and food wastes, bedding, dead animals, trash and debris. Disposal facilities shall be so provided and operated as to minimize vermin infestation, odors, and disease hazards. [[The disposal facilities and any disposal of animal and food wastes, bedding, dead animals, trash, and debris shall comply with applicable Federal, State, and local laws and regulations relating to pollution control or the protection of the environment.]] <u>The applicant is reminded of applicable Federal, State, and local laws relating to waste disposal.</u>

2. Facilities, indoor

a. Ambient temperatures. Temperature in indoor housing facilities shall be sufficiently regulated by heating or cooling to protect the animals from the extremes of temperature to provide for their health and to prevent their discomfort. The ambient temperature shall not be allowed to fall below nor rise above temperatures compatible with the health and comfort of the animal.

b. Ventilation. Indoor housing facilities shall be adequately ventilated by natural or mechanical means to provide for the health and to prevent discomfort of the animals at all times. Such facilities shall be provided with fresh air either by means of windows, doors, vents, fans, or air-conditioning and shall be ventilated so as to minimize drafts, odors, and moisture condensation.

c. Lighting. Indoor housing facilities shall have ample lighting, by natural or artificial means, or both, of good quality, distribution, and duration as appropriate for the species involved. Such lighting shall be uniformly distributed and of sufficient intensity to permit routine inspection and cleaning. Lighting of primary enclosures shall be designed to protect the animals from excessive illumination.

d. Drainage. A suitable sanitary method shall be provided to eliminate rapidly, excess water from indoor housing facilities. If drains are used, they shall be properly constructed and kept in good repair to avoid foul odors and installed so as to prevent any backup of sewage. [[The method of drainage shall comply with applicable Federal, State, and local laws and regulations relating to pollution control or the protection of the environment.]] <u>The applicant is reminded of applicable Federal, state, and local laws relating to drainage.</u>

3. Facilities, outdoor

a. Shelter from sunlight. When sunlight is likely to cause overheating or discomfort of the animals, sufficient shade by natural or artificial means shall be provided to allow all animals kept outdoors to protect themselves from direct sunlight.

b. Shelter from inclement weather. Natural or artificial shelter appropriate to local climatic conditions for the species concerned shall be provided for all animals kept outdoors to afford them protection and to prevent discomfort to such animals. Individual animals shall be acclimated before they are exposed to the extremes of the individual climates.

c. Drainage. A suitable method shall be provided to rapidly eliminate excess water. [[The method of drainage shall comply with applicable Federal, State, and local laws and regulations relating to pollution control or the protection of the environment.]] <u>The applicant is reminded of applicable Federal, state, and local laws relating to drainage.</u>

4. Space requirements

Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of

movement. Inadequate space may be indicated by evidence of malnutrition, poor condition, debility, stress, or abnormal behavior patterns. [[As a general standard for mammals, the horizontal dimensions of any cage or other enclosure shall be at least four times the length of the animal to be kept therein, and the vertical dimensions shall be at least twice the height of the animal.]]

H. ANIMAL HEALTH AND HUSBANDRY

1. Feeding

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

b. Food, and food receptacles, if used, shall be sufficient in quantity and located so as to be accessible to all animals in the enclosure and shall be placed so as to minimize contamination. Food receptacles shall be kept clean and sanitary at all times. If self-feeders are used, adequate measures shall be taken to prevent molding, contamination, and deterioration or caking of food.

2. Watering

If potable water is not accessible to the animals at all times, it must be provided as often as necessary for the health and comfort of the animal. Frequency of watering shall consider age, species, condition, size, and type of the animal. All water receptacles shall be kept clean and sanitary.

3. Sanitation

a. Cleaning of enclosures. Excreta shall be removed from primary enclosures as often as necessary to prevent contamination of the animals contained therein and to minimize disease hazards and to reduce odors. When enclosures are cleaned by hosing or flushing, adequate measures shall be taken to protect the animals confined in such enclosures from being directly sprayed with the stream of water or wetter involuntarily.

b. Sanitation of enclosures. Subsequent to the presence of an animal with an infectious or transmissible disease, cages, rooms, and hard-surfaced pens or runs shall be sanitized either by washing them with hot water (180 F. at source) and soap or detergent, as in a mechanical washer, or by washing all soiled surfaces with a detergent solution followed by a safe and effective disinfectant, or by cleaning all soiled surfaces with saturated live steam under pressure.

Pens or runs using gravel, sand, or dirt, shall be sanitized when necessary as directed by the attending veterinarian.

c. Housekeeping. [[Premises (buildings and ground)]] Areas in which animals are kept shall be kept clean and in good repair in order to protect the animals from injury and to facilitate the prescribed husbandry practices set forth in this subpart. Accumulations of trash shall be placed in designated areas and cleared as necessary to protect the health of the animals.

d. Pest control. A safe and effective program for the control of insects, ectoparasites (such as flies, ticks, and fleas), and avian and mammalian pests shall be established and maintained.

4. Separation

Animals housed in the same primary enclosure must be compatible. Animals shall not be housed near animals that interfere with their health or cause them discomfort.

5. Veterinary Care

a. Programs of disease prevention and parasite control, euthanasia, and adequate veterinary care shall be established and maintained under the supervision of a licensed veterinarian. The pest control program shall be reviewed by the veterinarian for the safe use of materials and methods. Animals subject to rabies or distemper (skunks, racoons, and members of the dog and cat families) shall receive vaccinations against these diseases by a licensed veterinarian, and

records of this vaccination program shall be kept on the premises and made available to conservation officers at all reasonable times.

b. Animals shall be observed every day by the person in charge of the care of the animals or by someone working under his direct supervision. Sick or diseased, stressed, injured, or lame animals shall be provided with veterinary care or humanely destroyed.

6. Handling

a. Handling of animals shall be done expeditiously and carefully in a way so as not to cause unnecessary discomfort, behavioral stress, or physical harm to the animal. Care should be exercised also to avoid harm to the handler.

b. Animals [[to which]] <u>within reach of</u> the public [[is afforded direct contact]] shall only be displayed for periods of time and under conditions consistent with the animals' health and not leading to their discomfort.

c. During public display, the animals must be handled so there is minimal risk of harm to the public with sufficient distance allowed between animal acts and the viewing public to assume safety to both the public and the animals.

I. PERMIT FEE

1. The fee for a permit shall be $10 which shall be submitted with the original application and every amendment and annual renewal thereof.

2. Such fee will be returned in the event the permit, or the amendment thereof, applied for is denied or in the event the permittee does not accept the permit as issued with conditions.

3. The permit shall be renewed annually.

[[J. AMENDMENTS

Any permit granted by the Commissioner under these regulations must be amended, to continue the display of wildlife, through the same procedures as the original application, in the event of any substantial increase in the numbers of wildlife, any changes in species, or any substantial change in the facilities.

1. For the purpose of this section a "substantial increase in the numbers of wildlife" is any increase equal to or greater than the following:

a. 10% of the originally permitted number if introduced from outside the displayed wildlife or if introduced into the exhibit by natural birth of offspring occurring as a result of mating among wildlife not kept together pursuant to permit.

b. 25% of the originally permitted number, if introduced into the exhibit by natural birth of offspring occurring as a result of mating among wildlife kept together pursuant to permit.

2. For the purposes of this section a "change in species" is any change in the biological "species" of the wildlife displayed, or any introduction of another of the same "species" that may not be harmonious with the permitted wildlife.

3. For the purposes of this section a substantial change in the facilities involved shall include any change in the confinement area or shelter area, any change in the primary materials used in the construction of the confinement area or shelter, any change not directed by a licensed veterinarian, in the nature or amount of food and water offered to each animal displayed, and any change in the conditions specifically required by the permit.

4. Fur-bearing animals, game birds, and deer may not be propagated except under a valid game farm license.]]

[[K.]] J. REVIEW OF PERMIT DECISIONS

If the permit is granted with conditions, or is denied, the applicant may, within 30 days after mailed notice thereof, file with the Commissioner of Natural Resources a demand for review of the application. The review shall be conducted as a contested case pursuant to Minnesota Statutes, Chapter 15. If no demand for review is made within the 30 days, the permit decision becomes final.

[[L.]] K. REVOCATION

The Commissioner of Natural Resources may at any time revoke all or part of any permit issued under [[these rules]] this rule under the following conditions, whenever, in his opinion, it is necessary to protect the interests of the public, or to protect the wildlife covered by said permit:

1. The permit holder must be informed in writing of the nature of the revocation and of the conditions which in the Commissioner's opinion require such revocation at least 14 days prior to the effective date of the revocation.

2. The permit holder, at any time prior to revocation, shall have the opportunity to apply for an amendment to his permit or to demand a hearing pursuant to Section [[K]] J of this [[chapter]] rule to contest the revocation, support his proposed amendment, or both.

a. Upon receipt of such an application or demand, the revocation is stayed until a determination by the Commissioner can be made on the matter.

b. If no such application or demand be made, the permit shall be revoked on the date stated in the revocation notice.

3. Nothing in this section shall preclude legal action by the Commissioner at any time for injunctive relief from a permit violation pursuant to Minn. Stat. Section 97.611,

Subd. 4. All costs associated with seizures of neglected or mistreated animals shall be borne by the owner thereof [[(permit-holder)]] including the expenses of keeping, disposing of, and treating animals pursuant to Minn. Stat. Section 346.216.

[[M.]] L. DISCLAIMER

Any permit issued under the provisions of [[these rules and regulations]] this rule is permissive only and no liability shall be incurred by the state or by any of its officers, agents, or employees by reason of the issuance of such permit or by reason of any acts or operations of the permittee or any wildlife. At all times, the State of Minnesota, its officers, agents and employees shall be held harmless from any liability for damage or injury arising from the issuance of such permit.

[[N.]] M. PENALTY

Anyone who violates any provision of [[these rules and regulations]] this rule or any provision of a permit issued hereunder shall be guilty of a misdemeanor.

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Proposed Adoption of Rules for Captive Wildlife Exhibits	FINDINGS AND CONCLUSIONS OF THE COMMISSIONER

The Commissioner of Natural Resources concurs with the determination of the hearing examiner that the rule is generally needed and reasonable. The Commissioner also agrees with the changes recommended by the hearing examiner.

The Commissioner cannot agree with finding number 7 of the report of the hearing examiner. Either legal notice requirements were satisfied or they weren't. If they weren't, the agency did not obtain jurisdiction over the subject matter, and the examiner would have written no findings beyond a determination of lack of jurisdiction. If the legal notice requirements were satisfied, then the examiner went overboard in concluding a hearing is required because the notice was neither "proper" nor "fair." The two quoted words comes from clauses (2) and (3) of Minn. Stats. section 15.052, subd. 3. "Fair" applies to the conduct of the hearing, not the notice of it. Only "proper" refers to the notice, and can mean no more than that the requirements of Minn. Stats. section 15.0412, subd. 4 have been met. The Chief Hearing Examiner takes precisely this position in that part of his Statement of Need referring to the currently proposed new Minn. Regs. HE 103. To conclude otherwise would be to make the hearing examiner the determiner of what notice is legally sufficient for each rules hearing.

In spite of the lack of a legal requirement for another hearing, the Commissioner would schedule one if he thought it would have a significant substantive effect on the rule. He believes the rule, as amended in response to the hearing examiner's recommendations, contains the minimum standards that can be adopted and still provide protection to the wild animals.

It is too bad the Department did not let the hearing examiner know that, prior to the hearing, the proposed rule was reviewed at some length with officers of the Minnesota Pheasant and Waterfowl Association. The Association's purpose is to represent the interests of game farms. This group, knowing the content of the rule and knowing the hearing date, did not attend the hearing - perhaps because it found the rule acceptable and perhaps because game farms which conform to the traditional function of game farms are exempted from the rule by the definition of "pet shop."

In specific response to findings #6 and #10, Section F. 1 of the proposed rule should be eased to a general requirement that the caretaker know how to properly care for the animals. Section F. 2 should be changed from monthly veterinarian visits to semiannual.

Section J. of the rule as proposed requires the permittee to report and obtain an amended permit for changes in the number or species of captive animals, or changes in the facilities. Because permits must be renewed annually at any rate, more frequent amendments appear unnecessary. Therefore, Section J. can be deleted.

Dated: _____

WILLIAM B. NYE, Commissioner
Department of Natural Resources

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Proposed Adoption of Rules for Captive Wildlife Exhibits

ORDER ADOPTING RULE

WHEREAS, the public hearing held on May 23, 1977, was properly noticed and fairly conducted; and

WHEREAS, the proposed rule has been modified as recommended in the report of the hearing examiner; and

WHEREAS, the Commissioner of Natural Resources is authorized by law to adopt the rule;

NOW, THEREFORE, I adopt the Rule for Wildlife Exhibits identified as Minnesota Rule NR 500 and attached as Exhibit 1, as a rule of the State of Minnesota, Department of Natural Resources.

This order is effective upon approval of the rule by the Attorney General and five days after the rule is published in the State Register.

Dated: _____

William B. Nye, Commissioner
Department of Natural Resources

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

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In the Matter of the Adoption of Rules for Captive Wildlife Exhibits.

SUPPLEMENTARY FINDINGS OF THE COMMISSIONER

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On May 30, 1978, the Office of the Attorney General identified to this agency shortcomings in the above-entitled proposed rule and accompanying Findings. These Supplementary Findings address the points raised.

1. The Order for Hearing was signed by David Vesall. He obtained the authority to do so from Commissioner's Delegation Order No. 262, which is on file with the Secretary of State, and a copy of which is attached.

2. NR 500 B. and D.1 recite language from the authorizing statute. The two paragraphs can be left out of the rule without changing its legal effect, but to do so would make it impossible for a person to know from reading the rule whether it applied to his or her facility. Such knowledge is crucial to comprehending the meaning and effect of any rule. The language in Minn. Stat. § 15.0412, Subd. 1, regarding duplicated statutory language was added by Laws of Minnesota 1977, Chapter 443, which became effective June 2, 1977. The public hearing on the proposed rule was held May 23, 1977. The issue did not then exist, which is why no record was made on it.

3. The Statement of Need sets forth the need for and reasonableness of each section of the rule, and is incorporated herein by reference. The following additional Findings are made:

a. There is already a licensing system

for "game farms" as specified in Minn. Stat. § 99.27 and Commissioner's Fish and Wildlife Order No. 1871. Definition D.4 includes game farms in the definition of "pet shop", which are excluded from the coverage of this rule by Minn. Stat. § 97.611, Subd. 5. It is unreasonable and unnecessary to require every game farm to get both a game farm license and a captive wildlife exhibit license. However, if a person both breeds and propagates "fur-bearing animals, game birds, or deer" (Minn. Stat. § 99.27, Subd. 1), and exhibits them for a fee or to attract clients to another business or for advertising purposes, then both the license and the permit are required because the facility comes within the purview of both statutes.

b. Permits are made non-transferable by E.3. This will require a new owner to get a new permit which is a reasonable and necessary method of enabling the Commissioner to determine if the new owner will satisfy the provisions of section F.

c. The hearing examiner's statement that the agency failed to document its authority to adopt the rule "as proposed" is founded on the educational requirements of paragraph 1 of the section and the alternative veterinarian coverage allowed by paragraph 2. The final rule adopted simply asks that the applicant show he or some other person who will care for the animals knows how to. The alternative

veterinarian visit is changed from monthly to semiannual. To require any less would be unreasonable. Time will tell if higher educational standards or more frequent veterinarian visits are needed. If so, the rule can then be amended. The hearing examiner gives no other reason for doubting the agency's authority to adopt the rule, which authority is, of course, Minn. Stat. § 97.611, as stated in NR 500 A.

d. Sections G. and H., covering facilities and operating standards, and animal health and husbandry, are modelled after federal rules. As the hearing examiner notes, this is some evidence of necessity and reasonableness and --with the changes made in accordance with hearing examiner's findings 11 through 15-- I so find them.

4. With this Supplementary Findings is an amended final rule, the same as the one already submitted except that the informational material has been removed from G.1.d., G.2.d., and G.3.c., and the inadvertently omitted language is inserted in H.3.d. and H.5.a.

5. I concur with hearing examiner's Finding #18. The staff counsel's proposal for "further revised language" made at the hearing, was subsequently dropped.

6. The record is complete without the items which staff said at the hearing it would supply, but did not:

a. Documents regarding cage size provision were not provided and are not needed for the record because the part of the rule at issue (the last sentence of G.4) has been dropped.

b. Commissioner's Order No. 1871, which contains regulations for game farms (see Minn. Stat. § 99.27), would have added information to the rule, but not substance. Staff was incorrect in stating that the order deals with the disposition of dead animals.

Dated this 1 day of OCT, 1978.

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

Joseph N. Alexander

JOSEPH N. ALEXANDER,
Acting Commissioner

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

COMMISSIONER'S APPOINTMENT AND DELEGATION ORDER NO. 262
SUPERSEDING COMMISSIONER'S ORDERS NOS. 185 and 204.

By virtue of authority conferred upon me as Commissioner of the Department of Natural Resources by M.S.A. Section 84.081, I hereby appoint and designate DAVID B. VESALL Director of the Division of Game and Fish of the Department of Natural Resources, State of Minnesota, to serve at my pleasure as provided in said section. (Pursuant to Commissioner's Order No. 240, the Division of Game and Fish is also known and referred to as the Division of Fish and Wildlife.)

I hereby delegate and authorize him to exercise the following described powers, duties, and responsibilities vested in and imposed upon the Commissioner of Natural Resources by law pertaining to the Division of Game and Fish:

1. The planning, developing, monitoring, and evaluating of policies, programs, and priorities of the Division of Game and Fish;
2. Assisting regional administrators in carrying out the policies, programs, and priorities of the division;
3. Employing the classes and numbers of personnel approved as complement for the division by the Commissioner;
4. The fixing of seasons and limits;
5. The promulgating of Commissioner's orders;
6. The issuing of permits, unless otherwise delegated by Commissioner's order;
7. The contracting for the removal of rough fish;
8. The authority to perform such other duties as the Commissioner may assign from time to time.

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In exercising the powers and duties so delegated, DAVID B. VESALL is hereby further delegated the authority to sign purchase requisitions, personnel forms, contracts, and miscellaneous forms. Commissioner's Order No. 178, as amended, is hereby amended and supplemented to accomplish these purposes. Commissioner's Order No. 178, as amended, is hereby confirmed in all other respects.

Such delegated powers, duties, and responsibilities shall be exercised or performed by the said DAVID B. VESALL in his own name. Such powers, duties, and responsibilities are delegated to him subject to my supervision and control.

Commissioner's Orders Nos. 185 and 204 are hereby superseded.

This order is effective December 3rd, 1976.

Dated at Saint Paul, Minnesota, this 6th day of December, 1976.

ROBERT L. HERBST
Commissioner of Natural Resources

I hereby accept the foregoing appointment and delegation as of December 3rd, 1976.

DAVID B. VESALL

APPROVED AS TO FORM AND EXECUTION

WARREN SPANNAUS
Attorney General

By C. PAUL FARACI
Deputy Attorney General

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC 7 - 1976
Secretary of State

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I, DAVID B. VESALL, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Minnesota, and that I will faithfully discharge the duties of the office of Director of the Division of Game and Fish to the best of my judgment and ability, so help me God.

David B. Vesall
DAVID B. VESALL

Subscribed and sworn to before me
this 6th day of December, 1976.

Dorothy O'Connell
Notary Public

DOROTHY O'CONNELL
Notary Public, Ramsey County, Minn.
My Commission Expires Jan. 11, 1977

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC 7 - 1976
Joan Anderson Growe
Secretary of State

Department of Natural Resources

Adopted Rules Regarding Wildlife Exhibits

The rule is adopted as it was published in Volume 1, State Register 1517, with the following changes.

Rule For Wildlife Exhibits

NR ~~400~~ 500 Wildlife Exhibits

A. Purpose. The purpose of ~~these rules and regulations~~ this rule is to establish reasonable standards for the care and treatment of captive wildlife for public exhibition purposes, and a permit system for such display, pursuant to the legislative mandate contained in Minn. Stat. § 97.611.

B. Jurisdiction. ~~These rules and regulations~~ This rule shall apply to the care and treatment of all living captive wildlife for public exhibition in connection with any commercial enterprise, excluding displays owned by any municipality, county, or the State of Minnesota, any publicly owned zoo or wildlife exhibit, any privately owned traveling zoo or circus, or any pet shop.

C. Severability. The provisions of ~~these rules and regulations~~ this rule shall be severable, and the invalidity of any paragraph, subparagraph, or subdivision thereof shall not make void any other paragraph, subparagraph, subdivision or any other part.

D. Definitions. For the purpose of ~~these rules and regulations,~~ this rule, the terms defined in this section have the meaning given them below:

1. "Wildlife" means any wild mammal, wild bird, reptile, or amphibian.

2. "Captive" means all forms of human control including but not limited to confinement within physical barriers, limitation of movement through the use of any manner of attachment physically affixed to any wildlife, or limitation of movement of wildlife by restraining in some manner the parent or offspring.

3. "Public exhibition in connection with any commercial enterprise" means any exhibition or display from which monetary gain is procured either directly or indirectly, including but not limited to any display or exhibition, the viewing of which is offered for a fee to the public, any display or exhibition which tends to attract customers to any business operated by the owner of such display or exhibition, or any business operated by a client or relative of the owner of such display or exhibition, or any live display used for advertising purposes.

4. "Pet shop" means any commercial business venture, including a game farm, where animals are displayed only for the purpose of the sale of the animals so displayed.

5. "Traveling zoo or circus" means any display or exhibit of wildlife alone or in combination with domestic animals which does not remain in any one county for more than one month at a time, nor make consecutive engagements at the same location.

6. "Commissioner" is Commissioner of the Department of Natural Resources, State of Minnesota, acting directly or through his authorized agents.

E. Permit.

1. No person shall display captive wildlife under the jurisdiction of ~~these rules,~~ this rule, in this state unless such display is pursuant to and in compliance with a permit acquired from the Commissioner of Natural Resources. Application for such a permit shall be made on forms provided by the Commissioner and shall be mailed or delivered to the Department of Natural Resources, Regional Supervisor, Division of Enforcement.

2. After receipt of the application, the local conservation officer will inspect the premises, and a permit will be issued only after applicant complies with or agrees to comply with standards for wildlife exhibits as described in this ~~order.~~ rule.

3. No permit issued under ~~these rules~~ this rule shall be transferable.

F. Knowledge and background of caretakers.

1. The applicant must be at least 18 years of age and shall demonstrate that he or his employee who is primarily responsible for the care of the wildlife ~~should possess either a Bachelor's degree in animal husbandry or similar wildlife related course of study; or have at least three years of active work experience with wildlife of the nature to be displayed under the permit.~~ knows how to care for the involved species properly.

2. ~~In lieu of such requirements as are listed in the preceding subdivision,~~ If he or his employee does not have such knowledge, the applicant may arrange for a regular ~~monthly~~ semiannual visit to his display and housing facility by a licensed veterinarian who shall certify by mail to the Commissioner on forms provided, that to the best of his knowledge, all requirements of the permit are being complied with and that any suggestions that he could make to substantially improve the living conditions within the general limits of said permit are being or have been accomplished.

3. In the event that the knowledge or background of an employee is deemed by the Commissioner to be sufficient to satisfy this requirement for said permit, the applicant shall apply for an amendment to such permit before the termination of the employment of said employee or as soon thereafter

as possible, setting forth the qualifications of a new caretaker if neither the permit holder nor another employee has previously been accepted as qualified. If said amendment is not granted by the Commissioner, the permit will terminate concurrently with the denial of said amendment or the termination of the employment of the qualified employee, whichever is later.

G. Facilities and operating standards.

1. Facilities, general.

~~(a)~~ a. Structural strength. The facility must be constructed of such material and of such strength as appropriate for the animals involved. The housing facilities shall be structurally sound and shall be maintained in good repair to protect the animals from injury and to contain the animals.

~~(b)~~ b. Water and power. Reliable and adequate electric power, if required to comply with other provisions of this permit, and adequate potable water shall be available on the premises.

~~(c)~~ c. Storage. Supplies of food and bedding shall be stored in facilities which adequately protect such supplies against deterioration, molding, or contamination by vermin. Refrigeration shall be provided for supplies of perishable food.

~~(d)~~ d. Waste disposal. Provision shall be made for the removal and disposal of animal and food wastes, bedding, dead animals, trash and debris. Disposal facilities shall be so provided and operated as to minimize vermin infestation, odors, and disease hazards. ~~The disposal facilities and any disposal of animal and food wastes, bedding, dead animals, trash, and debris shall comply with applicable Federal, State, and local laws and regulations relating to pollution control or the protection of the environment.~~

2. Facilities, indoor.

~~(a)~~ a. Ambient temperatures. Temperature in indoor housing facilities shall be sufficiently regulated by heating or cooling to protect the animals from the extremes of temperature to provide for their health and to prevent their discomfort. The ambient temperature shall not be allowed to fall below nor rise above temperatures compatible with the health and comfort of the animal.

~~(b)~~ b. Ventilation. Indoor housing facilities shall be adequately ventilated by natural or mechanical means to provide for the health and to prevent discomfort of the animals at all times. Such facilities shall be provided with fresh air either by means of windows, doors, vents, fans, or air-conditioning and shall be ventilated so as to minimize drafts, odors, and moisture condensation.

~~(c)~~ c. Lighting. Indoor housing facilities shall have ample lighting, by natural or artificial means, or both, of good quality, distribution, and duration as appropriate for the species involved. Such lighting shall be uniformly distributed and of sufficient intensity to permit routine inspection and cleaning. Lighting of primary enclosures shall be designed to protect the animals from excessive illumination.

~~(d)~~ d. Drainage. A suitable sanitary method shall be provided to eliminate rapidly, excess water from indoor housing facilities. If drains are used, they shall be properly constructed and kept in good repair to avoid foul odors and installed so as to prevent any backup of sewage. ~~The method of drainage shall comply with applicable Federal, State, and local laws and regulations relating to pollution control or the protection of the environment.~~

3. Facilities, outdoor.

~~(a)~~ a. Shelter from sunlight. When sunlight is likely to cause overheating or discomfort of the animals, sufficient shade by natural or artificial means shall be provided to allow all animals kept outdoors to protect themselves from direct sunlight.

~~(b)~~ b. Shelter from inclement weather. Natural or artificial shelter appropriate to local climatic conditions for the species concerned shall be provided for all animals kept outdoors to afford them protection and to prevent discomfort to such animals. Individual animals shall be acclimated before they are exposed to the extremes of the individual climates.

~~(c)~~ c. Drainage. A suitable method shall be provided to rapidly eliminate excess water. ~~The method of drainage shall comply with applicable Federal, State, and local laws and regulations relating to pollution control or the protection of the environment.~~

4. Space requirements. Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement. Inadequate space may be indicated by evidence of malnutrition, poor condition, debility, stress, or abnormal behavior patterns. ~~As a general standard for mammals, the horizontal dimensions of any cage or other enclosure shall be at least four times the length of the animal to be kept therein, and the vertical dimensions shall be at least twice the height of the animal.~~

H. Animal health and husbandry.

1. Feeding.

~~(a)~~ a. The food shall be wholesome, palatable, and free from contamination and of sufficient quantity and nutritive value to maintain all animals in good health. The diet shall be prepared with consideration of the age, species, condition, size, and type of the animal. Animals shall be fed at least once a day except as dictated by hibernation, veterinary treatment, normal fasts, or other professionally accepted practices.

~~(b)~~ b. Food, and food receptables, if used, shall be sufficient in quantity and located so as to be accessible to all animals in the enclosure and shall be placed so as to minimize contamination. Food receptacles shall be kept clean and sanitary at all times. If self-feeders are used, adequate measures shall be taken to prevent molding, contamination, and deterioration or caking of food.

2. Watering. If potable water is not accessible to the animals at all times, it must be provided as often as necessary for the health and comfort of the animal. Frequency of watering shall consider age, species, condition, size, and type of the animal. All water receptacles shall be kept clean and sanitary.

3. Sanitation.

~~(a)~~ a. Cleaning of enclosures. Excreta shall be removed from primary enclosures as often as necessary to prevent contamination of the animals contained therein and to minimize disease hazards and to reduce odors. (When enclosures are cleaned by hosing or flushing, adequate measures shall be taken to protect the animals confined in such enclosures from being directly sprayed with the stream of water or wetter involuntarily.)

~~(b)~~ b. Sanitation of enclosures. Subsequent to the presence of an animal with an infectious or transmissible disease, cages, rooms, and hard-surfaced pens or runs shall be sanitized either by washing them with hot water (180 F. at source) and soap or detergent, as in a mechanical washer, or by washing all soiled surfaces with a detergent solution followed by a safe and effective disinfectant, or by cleaning all soiled surfaces with saturated live steam under pressure. Pens or runs using gravel, sand, or dirt, shall be sanitized when necessary as directed by the attending veterinarian.

~~(c)~~ c. Housekeeping. ~~Premises (buildings and ground)~~ Areas in which animals are kept shall be kept clean and in good repair in order to protect the animals from injury and to facilitate the prescribed husbandry practices set forth in this subpart. Accumulations of trash shall be placed in designated areas and cleared as necessary to protect the health of the animals.

~~(d)~~ d. Pest control. A safe and effective program for the control of insects, ectoparasites (such as flies, ticks, and fleas), and avian and mammalian pests shall be established and maintained.

4. Separation. Animals housed in the same primary enclosure must be compatible. Animals shall not be housed near animals that interfere with their health or cause them discomfort.

5. Veterinary care.

~~(a)~~ a. Programs of disease prevention and parasite control, euthanasia, and adequate veterinary care shall be established and maintained under the supervision of a licensed veterinarian. The pest control program shall be reviewed by the veterinarian for the safe use of materials and methods. Animals subject to rabies or distemper (skunks, raccoons, and members of the dog and cat families) shall receive vaccinations against these diseases by a licensed veterinarian, and records of this vaccination program shall be kept on the premises and made available to conservation officers at all reasonable times.

~~(b)~~ b. Animals shall be observed every day by the person in charge of the care of the animals or by someone working under his direct supervision. Sick or diseased, stressed, injured, or lame animals shall be provided with veterinary care or humanely destroyed.

6. Handling.

~~(a)~~ a. Handling of animals shall be done expeditiously and carefully in a way so as not to cause unnecessary discomfort, behavioral stress, or physical harm to the animal. Care should be exercised also to avoid harm to the handler.

~~(b)~~ b. Animals ~~to which~~ within reach of the public ~~is afforded direct contact~~ shall only be displayed for periods of time and under conditions consistent with the animals' health and not leading to their discomfort.

~~(c)~~ c. During public display, the animals must be handled so there is minimal risk of harm to the public with sufficient distance allowed between animal acts and the viewing public to assume safety to both the public and the animals.

I. Permit fee.

1. The fee for a permit shall be $10 which shall be submitted with the original application and every amendment and annual renewal thereof.

2. Such fee will be returned in the event the permit, or the amendment thereof, applied for is denied or in the event the permittee does not accept the permit as issued with conditions.

3. The permit shall be renewed annually.

~~J. Amendments. Any permit granted by the Commissioner under these regulations must be amended, to continue the display of wildlife, through the same procedures as the original application, in the event of any substantial increase in the numbers of wildlife, any changes in species, or any substantial change in the facilities.~~

~~1. For the purpose of this section a "substantial increase in the numbers of wildlife" is any increase equal to or greater than the following:~~

~~(a) a. 10% of the originally permitted number if introduced from outside the displayed wildlife or if introduced into the exhibit by natural birth of offspring occurring as a result of mating among wildlife not kept together pursuant to permit.~~

~~(b) b. 25% of the originally permitted number, if introduced into the exhibit by natural birth of offspring occurring as a result of mating among wildlife kept together pursuant to permit.~~

~~2. For the purposes of this section a "change in species" is any change in the biological "species" of the wildlife displayed, or any introduction of another of the same "species" that may not be harmonious with the permitted wildlife.~~

~~3. For the purposes of this section a substantial change in the facilities involved shall include any change in the confinement area or shelter area, any change in the primary materials used in the construction of the confinement area or shelter, any change not directed by a licensed veterinarian, in the nature or amount of food and water offered to each animal displayed, and any change in the conditions specifically required by the permit.~~

~~4. Fur bearing animals, game birds, and deer may not be propagated except under a valid game farm license.~~

~~K.~~ J. Review of permit decisions. If the permit is granted with conditions, or is denied, the applicant may, within 30 days after mailed notice thereof, file with the Commissioner of Natural Resources a demand for review of the application. The review shall be conducted as a contested case pursuant to Minnesota Statutes, Chapter 15. If no demand for review is made within the 30 days, the permit decision becomes final.

~~L.~~ K. Revocation. The Commissioner of Natural Resources may at any time revoke all or part of any permit issued under ~~these rules~~ this rule under the following conditions, whenever, in his opinion, it is necessary to protect the interests of the public, or to protect the wildlife covered by said permit:

1. The permit holder must be informed in writing of the nature of the revocation and of the conditions which

in the commissioner's opinion require such revocation at least 14 days prior to the effective date of the revocation.

2. The permit holder, at any time prior to revocation, shall have the opportunity to apply for an amendment to his permit or to demand a hearing pursuant to Section ~~K.~~ J. of this ~~chapter~~ rule to contest the revocation, support his proposed amendment, or both.

~~(a)~~ a. Upon receipt of such an application or demand, the revocation is stayed until a determination by the Commissioner can be made on the matter.

~~(b)~~ b. If no such application or demand be made, the permit shall be revoked on the date stated in the revocation notice.

3. Nothing in this section shall preclude legal action by the Commissioner at any time for injunctive relief from a permit violation pursuant to Minn. Stat. § 97.611, Subd. 4. All costs associated with seizures of neglected or mistreated animals shall be borne by the owner thereof ~~(permit holder)~~ including the expenses of keeping, disposing of, and treating animals pursuant to Minn. Stat. § 346.216.

~~M.~~ L. Disclaimer. Any permit issued under the provisions of ~~these rules and regulations~~ this rule is permissive only and no liability shall be incurred by the state or by any of its officers, agents, or employees by reason of the issuance

of such permit or by reason of any acts or operations of the permittee or any wildlife. At all times, the State of Minnesota, its officers, agents and employees shall be held harmless from any liability for damage or injury arising from the issuance of such permit.

~~N.~~ M. Penalty. Anyone who violates any provision ~~these rules and regulations~~ this rule or any provision of a permit issued hereunder shall be guilty of a misdemeanor.

STATE OF MINNESOTA

COUNTY OF RAMSEY

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES FOR CAPTIVE WILDLIFE EXHIBITS.

CERTIFICATION

I hereby certify that the attached 503 labels and 2 sheet(s) constitute the complete list of persons, associations, and other interested groups who as of 10:15 o'clock am, this 8th day of April, 1977, have requested pursuant to Minnesota Statutes 1974, Section 15.0412, Subd. 4, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearings on proposed rules on the subjects captioned above.

Joan Anderson Growe

SECRETARY OF STATE
JOAN ANDERSON GROWE

BY: Ceil Dean

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF THE PROPOSED ADOTION OF RULES FOR CAPTIVE WILDLIFE EXHIBITS

AFFIDAVIT OF MAILING

Betty Thill, being first duly sworn, deposes and says:

That on the April 12-13, 1977, at the City of St. Paul, Ramsey County, Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at St. Paul a true and correct copy thereof, properly enveloped, postage prepaid to all persons and associations at the addresses on the attached list.

Betty Thill

Subscribed and sworn to before me
this 28th day of April, 1977.

Helen A. Alexander
Notary Public

HELEN A. ALEXANDER
NOTARY PUBLIC-MINNESOTA
DAKOTA COUNTY
My Comm. Expires Sept. 8, 1983

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

In the Matter of the
Proposed Adoption of
Rules for Captive
Wildlife Exhibits

STATEMENT OF NEED

The proposed rule, identified as NR 400, is authorized by and required by Minnesota Statutes section 97.611 (1976). It is a new rule, and does not amend or replace any existing rule. The rule is broken into 14 major sections, lettered A through N. This statement gives a general explanation of each section.

A. PURPOSE

The statutory purpose of the rule is to establish "reasonable standards for the care and treatment of captive wildlife for public display purposes, including standards of sanitation." The law is a legislative response to citizen complaints about wild animals being kept in unsanitary, uncomfortable and inhumane conditions. Sometimes these situations involve animals being displayed to attract business to a gas station, curio shop, or other roadside commercial enterprise. Sometimes the conditions appear at Bambiland-type displays, where overcrowding is sometimes an additional condition. Generally, those responsible for caring for the captive wild animals lack training and experience.

B. JURISDICTION

This section repeats the statutory coverage and exemptions. See Minn. Stats. section 97.611,Subds. 2(a) and 5.

C. SEVERABILITY

This is a standard clause in rules.

D. DEFINITIONS

The definitions give some precision to the statutory terms defining the scope of the rules, except that "wildlife" definition is taken directly from subdivision 1 of the statute.

E. PERMIT

The permit is required by subdivision 2(b) of the statute. The process of obtaining one makes it possible for the commissioner to assure himself that the display will be properly managed.

F. KNOWLEDGE AND BACKGROUND OF CARETAKERS

Subdivision 2(b) of the statute establishes the importance of a mature, responsible, knowledgeable caretaker. Note the applicant may substitute for that person, regular inspections and reports by a veterinarian. Since skilled care is important, a change in caretakers must be approved by the commissioner.

G. FACILITIES AND OPERATING STANDARDS

The standards are self-explanatory. They are generalized of necessity, because they deal with everything from frogs to bears. The statute requires the permit application to describe the facilities and the number and species of animals, so that the commissioner can make specific decisions about adequacy.

H. ANIMAL HEALTH AND HUSBANDRY

This section is, like section G, self-explanatory. It provides for proper feeding, watering, and sanitation, for veterinarian-supervised health care and for protection from excessive handling by the public -- all being conditions essential to a humane environment for the captive animal.

I. PERMIT FEE

The amount is set by subdivision 2(b) of the statute. The fee-return provision is included in the rule as a matter of fairness.

J. AMENDMENTS

Since the initial permit was based on a specific understanding of species, numbers of each species and facilities, it is necessary that a significant change in any of those must be reported and approved. The section identifies what changes are significant.

K. REVIEW OF PERMIT DECISIONS

The section identifies the applicant's right to administrative due process review should a permit be denied or be conditioned in a way objectionable to the applicant.

L. REVOCATION

In addition to the injunctive relief from a specific violation provided by subdivision 4 of the statute, it may at times be necessary for the well-being of the wildlife or the public to close a previously-permitted display. The initial administrative action is to revoke the permit, and this section establishes a due process procedure for so doing.

It also establishes that costs to the state of rescuing neglected or mistreated animals are to be borne by the permit holder rather than the public treasury.

M. DISCLAIMER

This is a standard clause, pointing out that the issuing of a permit by the state does not make the state responsible for the actions of the permittee.

N. PENALTY

The criminal penalty is specified in subdivision 3 of the statute.

Dated: April 28, 1977.

Wm. A. Longley

WILLIAM LONGLEY

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Proposed Adoption of Rules for Captive Wildlife Exhibits.	INTERIM REPORT OF HEARING EXAMINER RECOMMENDING ADDITIONAL HEARING

The above-entitled matter came on for hearing before Hearing Examiner Howard L. Kaibel, Jr., of the Minnesota Office of Hearing Examiners on Monday, May 23, 1977, commencing at 9:30 a.m., in Room 300 of the Office of Hearing Examiners, Saint Paul, Minnesota.

William Augustus Clapp, III, Special Assistant Attorney General, represented the Department of Natural Resources. Also appearing on behalf of the Department was William Longley of the Department Staff.

Pursuant to Minn. Stat. § 15.0412, subd. 4 this Report shall be available for review to all affected individuals upon request for at least five days.

The Department shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five days subsequent to the receipt of this Report. This submission shall also clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his report to the Department on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 within ten calendar days. Thereafter, the Department shall be responsible for filing the rules with the Attorney General.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

1. That prior to the issuance of the hearing order, the Department filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules;
(b) A proposed Order for Hearing;
(c) A proposed Notice of Hearing; and
(d) A statement of the estimated length and number of people attending the hearing.

2. That on April 18, 1977, a Notice of Hearing and a copy of the proposed rules were published at 1 State Register 1517.

3. That on "April 12-13", 1977, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. That on April 28, 1977, the Department filed the following documents:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Affidavit of Receipt of the Secretary of State's list;
(d) The Affidavit of Mailing;
(e) The Secretary of State's Certificate and list;
(f) The Statement of Need;
(g) The Statement of Evidence, including the names of witnesses to be called; and
(h) The names of Department personnel who will represent the agency.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. That the record remained open through June 13, 1977, for the receipt of written comments and statements.

6. That the Department has not documented its statutory authority to adopt the rules as proposed, as more specifically hereinafter discussed. Department Staff testified that the purpose of the regulations as proposed and the most likely result of adoption will be to cause persons who would otherwise display wildlife to "forget the whole thing". (22) When asked later whether some of the provisions might make it very difficult to run a profitable exhibit, Mr. Longley indicated:

> That's the idea of the regulations I believe, that they were to suppress the operation actually of this exhibit. I am sure that that

was the--in the back of it if I recall some of the comments of people involved. (37)

The Chairman of the Sierra Club Wildlife Task Force had similar recollections, but properly points out that the authorizing statute as adopted will not support such rules:

> It was my impression at the legislative hearings which were held in 1973 on S.F. 526/H.F. 679 that it was the intent of the legislature to abolish roadside zoos completely but unfortunately the language of the bill as passed did not do that. (Comment A - Emphasis added)

The statute as adopted (Minn. Stat. § 97.611) merely establishes a permitting system (as opposed to a more rigorous licensing program) with a maximum cost of $10 requiring the adoption of "reasonable standards for the care and treatment of captive wildlife".

A number of additional suggestions were advanced at the hearing and afterwards in written comments by "pro-wildlife" groups and persons which would generally make it even more difficult to successfully operate such exhibits. For the sake of brevity, no further reference will be made in this Report to the specifics of those recommendations, other than to note that they generally were not in accord with the clear statutory intent and in many cases, conflicted directly with unambiguous statutory language (such as the suggestion that the permit fee be increased to $1,000).

7. That to issue a final Report recommending adoption of these rules without a further hearing for testimony by the businesses affected, would violate the "duties" imposed on the Hearing Examiner in Minn. Stat. § 15.052, subd. 3, to "conduct only hearings for which proper notice has been given" and to "see to it that all hearings are conducted in a fair and impartial manner". A letter from the Bemidji Area Chamber of Commerce requesting another hearing in northern Minnesota, best summarizes the comments received from these businessmen after the hearing, "The holders of these permits in the northern district feel that they have not had a chance to tell their story or hear yours." The persons most affected by these proposed

rules will be those who derive all or part of their living from "private zoos", such as the "Animal Acres" zoo, north of Wadena, whose owner indicates (Comment E):

> This meeting was held without notification or representation of those affected by the proposed rules. We are licensed, and we should have been notified. As far as we can find out, no one with licenses were notified.

It is unclear in the record how many of these businesses are involved, but the Department has up-to-date, precise information because they are currently required by the DNR to obtain "game farm" licenses. DNR staff could not say for certain how many there are. The representative testified that he personally knew of "six to eight" and that there were probably not over a dozen. (22) An industry representative estimates, on the other hand, (Comment H)

> that there are about 50 operations, all presently covered by game farm licenses, which are singled out to be the special subjects of this set of administrative rules and regulations. I have talked to several operators of such businesses and I have yet to find One who knew about the hearing of May 23, 1977, regarding the proposed regulations. A fair approach would be to send the proposed Regulations IN ADVANCE to all holders of game farm licenses and then hold hearings in each of the six districts where affected operations exist. (Emphasis original)

The failure to notify these private zoos was apparently inadvertent, as the DNR staff (and the public) seemed honestly unsure "whether the law intended to cover" these kinds of operations which are arguably not "in connection with any commercial enterprise" to use the statutory language, but are commercial operations in and of themselves. Even after the Department counsel pointed out that the definition contained in the rules would clearly cover such operations (16), the Staff representative continued to distinguish between "people at whom this law is aimed. . .and the ones that do have a lot of animals that may be covered under this law." It is clear that the language of the rule as proposed would cover such operations and it does not appear that such coverage is contrary to legislative intent (as the statute specifically exempts any "publicly owned

zoo" and any "privately owned traveling zoo" implying coverage for privately owned non-traveling zoos).

The Director of the Division of Fish and Wildlife nonetheless responded to the requests for a further hearing with a letter (Comment B) indicating:

> We feel nothing would be gained and much time would be lost....Since the regulations are based upon the law and what we see as the intent of the legislature, we believe no significant changes could be made as a result of further hearings.

It is specifically noted that it has been more than three years since the law mandating these rules was adopted, and that at least two months additional time will lapse before they can be finally adopted. Within such a time framework, 20 or 30 days for mailed notice to affected businessmen is not a very significant delay.

The notice of hearing in this proceeding must be mailed "to representatives of associations or other interested groups or persons who have registered their names with the secretary of state for that purpose." (Minn. Stat. § 15.0412, subd. 4) It was in fact mailed to the 503 persons on the list which is made up of persons who have little interest in this kind of rule and who would not be substantially affected by it. It was also mailed to DNR enforcement and other staff. It was not mailed to the readily identifiable persons most interested and directly affected. As such, it cannot be found to be "proper" or "fair" pursuant to Minn. Stat. § 15.052. As the Minnesota Supreme Court noted in Monk v. Board of Health, 225 N.W.2d 821 (1975):

> A person dealing with the department is entitled to proper notice of what regulations are being promulgated and are applicable to him. The purpose of the Administrative Procedure Act is to ensure that we have a government of law and not of men. Under that act, administrative officials are not permitted to act on mere whim, nor their own impulse, however well-intentioned they might be, but must follow due process in their official acts and in the promulgation of rules defining their operations.

8. That a new hearing is necessary to properly complete the

record in this proceeding because citations and materials promised by DNR staff on the record have not been forwarded. When the public questioned the basis, for example, for the specific cage dimensions proposed, DNR staff promised to supply specific citations to the "other rules that have been in effect" which served as the basis. Those citations have not been supplied. (47) Similarly, when the public raised the problem of "disposal" of captive wildlife, staff responded that we "already have it in the Commissioner's Order No. 1871." Because Fish and Game Orders and Rules are generally exempt from the Administrative Procedures Act, that Order and the other related rules are not generally available with other published state agency rules. Staff promised to mail these materials, but did not. (101)

9. That except as provided specifically in subsequent Findings, the provisions of the rules appear at this point to be generally needed and reasonable. They are modeled generally after Federal rules for the most part, which is some evidence (though not conclusive) of the need for and reasonableness of the provisions. As the provisions are in the form of subsections to a single rule and because the Administrative Procedures Act has been recently amended to change the redundant "rules and regulations" to simply "rules", the phrase "these rules and regulations" should be changed wherever it appears to simply "this rule". No firm final finding is possible on these general provisions because they have not been adequately tested in a rule hearing process with proper input from affected members of the public.

10. That the Department did not document by an affirmative presentation of any facts either the need for or the reasonableness of the provisions of subsection F requiring a Bachelor's Degree in animal husbandry or three years active work experience with the specific type of wildlife involved or monthly veterinarian visits. The DNR representative testified from personal experience that a monthly veterinarian visit might cost $25, requiring a total annual additional cost of $300 for a permit program with a permit fee established by the legislature of only $10. This is a

specific departure from the Federal rules which require only that the supervisor have a "background in animal care" and "sufficient number of adequately trained employees". (Section 3.107, CFR Title 9, Chapter 1, Subchapter A, Part 3, Subpart E) There is no evidence in this record as to whether any or all of the existing operators and employees would qualify under these proposed provisions and no specific documentation was introduced to show that existing operators who do not meet the qualifications are doing an inadequate job.

11. That no evidence was introduced to document either the need for or the reasonableness of DNR enforcement of Federal, State and local pollution laws as required by proposed subsections (G)(1)(d), (2)(d) and 3(c). The Department concurred in final written comments (I) suggesting that the language be changed to notice of such laws, submitting proposed language which, if adopted, does not appear to be a substantial change.

12. That as indicated in a previous Finding, no evidence is contained in the record to support the "general standard for mammals" space requirements in proposed subsection G(4). The citations promised have not been provided. Space requirements that were provided contained in Florida regulations tends to show a single standard to be arbitrary, inflexible and therefore, unreasonable. This sentence is also a departure from the Federal rules. The Department concedes in final written comments that "probably we should strike" this sentence. The omission would not appear to be a substantial revision.

13. That no documentation was offered to support the statutory authority, need for or reasonableness of utilizing these "animal care" rules to regulate the cleanliness and repair of general business premises in proposed subsection H(3)(c). The Department concurs in their final submission suggesting limitation of the rule to the "area in which animals are kept", which would not appear to be a substantial revision.

14. That the Department staff properly suggests in final comments that the "animals subject to rabies and distemper" in proposed subsection H(5)(a) be specified. The proposed specifi-

cation would not appear on this record to be a substantial change.

15. That the Department similarly properly suggests clarification of animals subject to "direct contact" with the public, indicating they mean "within reach". Such a change in proposed subsection H(6)(b) would not appear to be substantial.

16. That the Department presented very little evidence with which to judge either the need for or the reasonableness of the permit amendment requirement in proposed subsection J(1). Because the proposal would require a $10 amendment to the permit for increases in the number of animals, the likely incidence of such required amendments must also be closely examined from the point of view of statutory authority. No evidence was presented relating to the number of animals involved in various existing establishments or as to the changes in those numbers that occur normally as a result of births or otherwise. This subsection (which is also a departure from the Federal rules) was also generally incomprehensible. A proposed simplification submitted with final comments would not appear to be a substantial revision if the percentage figure used is changed to the maximum 25 percent figure contained in the original rules as proposed. (As with all possible revisions, the likelihood of it being found "substantial" by the Chief Hearing Examiner would be significantly diminished if the possible revision is included in a notice of an additional hearing to affected citizens.)

17. That the Department agreed at the hearing to clarification of subsection J(3) to eliminate a permit amendment requirement for changes in the amount of food and water fed to animals. The change would not be substantial.

18. That if adopted, subsection K should be revised to clearly state, as was indicated at the hearing, that the administrative appeal provided therein is a contested case pursuant to the Administrative Procedures Act. The further revised language suggested at the hearing to eliminate the right of judicial appeal if a person fails to demand administrative review within 30 days, certainly appears to be a substantial departure from the rules as originally proposed, requiring a new hearing. The Hearing Examiner

also questioned whether such a revisions exceeded statutory authority, in that it would conflict with the judical appeal provisions of Chapter 15, asking that the legal question be addressed in final written comments. It was not.

CONCLUSIONS

1. That the Department of Natural Resources duly acquired and now has jurisidiction over the within proceeding.

2. That all relevant legal and procedural requirements of statute and rule have not been complied with.

3. That the Department has not documented its statutory authority to adopt the proposed rules.

4. That the Department has not demonstrated the need for and reasonableness of its proposed rules with an affirmative presentation of facts.

5. That a further hearing is necessary to complete this record and ensure due process to affected citizens.

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Department of Natural Resources conduct a further hearing after new notice mailed to affected licensed operators, after full attention to the matters discussed in the record and these Findings.

Dated: July 11, 1977.

HOWARD L. KAIBEL, JR.
Hearing Examiner

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES FOR CAPTIVE WILDLIFE EXHIBITS.

CERTIFICATE OF COMPLIANCE

I am familiar with the captioned rules and the process that has been followed in promulgating them, and do certify that they have been adopted in conformance with the laws and rules of this state.

A. W. Clapp III

A. W. CLAPP III
Special Assistant Attorney General

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF THE
PROPOSED ADOPTION OF
RULES FOR CAPTIVE WILDLIFE
EXHIBITS.

ORDER FOR HEARING

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IT IS HEREBY ORDERED that a public hearing on the above-captioned proposed rules be held in the hearing room at the Hearing Examiner's Office, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, on May 23, 1977, beginning at 9:30 a.m., and continuing until all persons have had an opportunity to be heard.

The hearing shall be noticed and conducted according to the rule-making provision of Minnesota Statutes, Chapter 15 (1976).

Dated: April 4, 1977

David B. Vesall

DAVID B. VESALL, Director
Division of Fish & Wildlife

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF THE
PROPOSED ADOPTION OF
RULES FOR CAPTIVE WILDLIFE
EXHIBITS.

NOTICE OF HEARING

- - - - - - - - - - -

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in Room 300 at the Hearing Examiner's Office, 1745 University Avenue, Saint Paul, Minnesota on Monday, May 23, 1977, commencing at 9:30 a.m., and continuing until all persons have had an opportunity to be heard. The hearing will be conducted as provided by Minnesota Statutes sections 15.0411 through 15.051 and section 15.052 and as provided by the rules for rule-making of the Office of Hearing Examiners.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to:

Howard Kaibel
1745 University Avenue
Saint Paul, Minnesota 55105
Telephone: (612)-296-8107

either before the hearing or within 20 days after the close of the hearing.

The proposed rules, if adopted, will establish standards for the care and treatment of living wild mammals, birds, reptiles and amphibians held captive for public exhibition in connection with any commercial enterprise, excluding publicly owned displays, exhibits, and zoos, privately owned zoos and circuses and pet shops. Copies of the proposed rules are now available and one free copy may be obtained by writing to the Minnesota Department of Natural Resources, Division of Fish & Wildlife, Centennial Office Building, Saint Paul, Minnesota 55155. Additional copies will be available at the door on the date of the hearing. The agency's authority to promulgate the proposed rules is contained in Minnesota Statutes, section 97.611 (1976). A "statement of need" explaining why the agency feels the proposed rules are necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that Minnesota Statutes, Chapter 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rule making by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends

more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, phone (612)-296-5615.

Date: April 4, 1977

David B. Vesall

DAVID B. VESALL, Director
Division of Fish & Wildlife

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

RULE FOR WILDLIFE EXHIBITS

NR 500 WILDLIFE EXHIBITS

A. PURPOSE

The purpose of this rule is to establish reasonable standards for the care and treatment of captive wildlife for public exhibition purposes, and a permit system for such display, pursuant to the legislative mandate contained in Minnesota Statutes, section 97.611.

B. JURISDICTION

This rule shall apply to the care and treatment of all living captive wildlife for public exhibition in connection with any commercial enterprise, excluding displays owned by any municipality, county, or the State of Minnesota, any publicly owned zoo or wildlife exhibit, any privately owned traveling zoo or circus, or any pet shop.

C. SEVERABILITY

The provisions of this rule shall be severable, and the invalidity of any paragraph, subparagraph, or subdivision thereof shall not make void any other paragraph, subparagraph, subdivision or any other part.

D. DEFINITIONS

For the purpose of this rule, the terms defined in this section have the meaning given them below:

1. "Wildlife" means any wild mammal, wild bird, reptile, or amphibian.

2. "Captive" means all forms of human control including but not limited to confinement within physical barriers, limitation of movement through the use of any manner of attachment physically affixed to any wildlife, or limitation of movement of wildlife by restraining in some manner the parent or offspring.

3. "Public exhibition in connection with any commercial enterprise" means any exhibition or display from which monetary gain is procured either directly or indirectly, including but not limited to any display or exhibition, the viewing of which is offered for a fee to the public, any display or exhibition which tends to attract customers to any business operated by the owner of such display or exhibition, or any business operated by a client or relative of the owner of such display or exhibition, or any live display used for advertising purposes.

4. "Pet shop" means any commercial business venture, including a game farm, where animals are displayed only for the purpose of the sale of the animals so displayed.

5. "Traveling zoo or circus" means any display or exhibit of wildlife alone or in combination with domestic animals which does not remain in any one county for more than one month at a time, nor make consecutive engagements at the same location.

6. "Commissioner" is Commissioner of the Department of Natural Resources, State of Minnesota, acting directly or through his authorized agents.

E. PERMIT

1. No person shall display captive wildlife under the jurisdiction of this rule, in this state unless such display is pursuant to and in compliance with a permit acquired from the Commissioner of Natural Resources. Application for such a permit shall be made on forms provided by the Commissioner and shall be mailed or delivered to the Department of Natural Resources, Regional Supervisor, Division of Enforcement.

2. After receipt of the application, the local conservation officer will inspect the premises, and a permit will be issued only after applicant complies with or agrees to comply with standards for wildlife exhibits as described in this rule.

3. No permit issued under this rule shall be transferable.

F. KNOWLEDGE AND BACKGROUND OF CARETAKERS

1. The applicant must be at least 18 years of age and shall demonstrate that he or his employee who is primarily responsible for the care of the wildlife knows how to care for the involved species properly.

2. If he or his employee does not have such knowledge, the applicant may arrange for a regular semiannual visit to his display and housing facility by a licensed veterinarian who shall certify by mail to the Commissioner on forms provided, that to the best of his knowledge, all requirements of the permit are being complied with and that any suggestions that he could make to substantially improve the living conditions within the general limits of said permit are being or have been accomplished.

3. In the event that the knowledge or background of an employee is deemed by the Commissioner to be sufficient to satisfy this requirement for said permit, the applicant shall apply for an amendment to such permit before the termination of the employment of said employee or as soon thereafter as possible, setting forth the qualifications of a new caretaker if neither the permit holder nor another employee has previously been accepted as qualified. If said amendment is not granted by the Commissioner, the permit will terminate concurrently with the denial of said amendment or the termination of the employment of the qualified employee, whichever is later.

G. FACILITIES AND OPERATING STANDARDS

1. Facilities, general

a. Structural strength. The facility must be constructed of such material and of such strength as appropriate for the animals involved. The housing facilities shall be structurally sound and shall be maintained in good repair to protect the animals from injury and to contain the animals.

b. Water and power. Reliable and adequate electric power, if required to comply with other provisions of this permit, and adequate potable water shall be available on the premises.

c. Storage. Supplies of food and bedding shall be stored in facilities which adequately protect such supplies against deterioration, molding, or contamination by vermin. Refrigeration shall be provided for supplies of perishable food.

d. Waste disposal. Provision shall be made for the removal and disposal of animal and food wastes, bedding, dead animals, trash and debris. Disposal facilities shall be so provided and operated as to minimize vermin infestation, odors, and disease hazards. The applicant is reminded of applicable Federal, State, and local laws relating to waste disposal.

2. Facilities, indoor

a. Ambient temperatures. Temperature in indoor housing facilities shall be sufficiently regulated by heating or cooling to protect the animals from the extremes of temperature to provide for their health and to prevent their discomfort. The ambient temperature shall not be allowed to fall below nor rise above temperatures compatible with the health and comfort of the animal.

b. Ventilation. Indoor housing facilities shall be adequately ventilated by natural or mechanical means to provide for the health and to prevent discomfort of the animals at all times. Such facilities shall be provided with fresh air either by means of windows, doors, vents, fans, or air-conditioning and shall be ventilated so as to minimize drafts, odors, and moisture condensation.

c. Lighting. Indoor housing facilities shall have ample lighting, by natural or artificial means, or both, of good quality, distribution, and duration as appropriate for the species involved. Such lighting shall be uniformly distributed and of sufficient intensity to permit routine inspection and cleaning. Lighting of primary enclosures shall be designed to protect the animals from excessive illumination.

d. Drainage. A suitable sanitary method shall be provided to eliminate rapidly, excess water from indoor housing facilities. If drains are used, they shall be properly constructed and kept in good repair to avoid foul odors and installed so as to prevent any backup of sewage. The applicant is reminded of applicable Federal, state, and local laws relating to drainage.

3. Facilities, outdoor

a. Shelter from sunlight. When sunlight is likely to cause overheating or discomfort of the animals, sufficient shade by natural or artificial means shall be provided to allow all animals kept outdoors to protect themselves from direct sunlight.

b. Shelter from inclement weather. Natural or artificial shelter appropriate to local climatic conditions for the species concerned shall be provided for all animals kept outdoors to afford them protection and to prevent discomfort to such animals. Individual animals shall be acclimated before they are exposed to the extremes of the individual climates.

c. Drainage. A suitable method shall be provided to rapidly eliminate excess water. The applicant is reminded of applicable Federal, state, and local laws relating to drainage.

4. Space requirements

Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement. Inadequate space may be indicated by evidence of malnutrition, poor condition, debility, stress, or abnormal behavior patterns.

H. ANIMAL HEALTH AND HUSBANDRY

1. Feeding

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

b. Food, and food receptacles, if used, shall be sufficient in quantity and located so as to be accessible to all animals in the enclosure and shall be placed so as to minimize contamination. Food receptacles shall be kept clean and sanitary at all times. If self-feeders are used, adequate measures shall be taken to prevent molding, contamination, and deterioration or caking of food.

2. Watering

If potable water is not accessible to the animals at all times, it must be provided as often as necessary for the health and comfort of the animal. Frequency of watering shall consider age, species, condition, size, and type of the animal. All water receptacles shall be kept clean and sanitary.

3. Sanitation

a. Cleaning of enclosures. Excreta shall be removed from primary enclosures as often as necessary to prevent contamination of the animals contained therein and to minimize disease hazards and to reduce odors. When enclosures are cleaned by hosing or flushing, adequate measures shall be taken to protect the animals confined in such enclosures from being directly sprayed with the stream of water or wetter involuntarily.

b. Sanitation of enclosures. Subsequent to the presence of an animal with an infectious or transmissible disease, cages, rooms, and hard-surfaced pens or runs shall be sanitized either by washing them with hot water (180 F. at source) and soap or detergent, as in a mechanical washer, or by washing all soiled surfaces with a detergent solution followed by a safe and effective disinfectant, or by cleaning all soiled surfaces with saturated live steam under pressure. Pens or runs using gravel, sand, or dirt, shall be sanitized when necessary as directed by the attending veterinarian.

c. Housekeeping. Areas in which animals are kept shall be kept clean and in good repair in order to protect the animals from injury and to facilitate the prescribed husbandry practices set forth in this subpart. Accumulations of trash shall be placed in designated areas and cleared as necessary to protect the health of the animals.

d. Pest control. A safe and effective program for the control of insects, ectoparasites (such as flies, ticks, and fleas), and avian and mammalian pests shall be established and maintained.

4. Separation

Animals housed in the same primary enclosure must be compatible. Animals shall not be housed near animals that interfere with their health or cause them discomfort.

5. Veterinary Care

a. Programs of disease prevention and parasite control, euthanasia, and adequate veterinary care shall be established and maintained under the supervision of a licensed veterinarian. The pest control program shall be reviewed by the veterinarian for the safe use of materials and methods. Animals subject to rabies or distemper (skunks, raccoons, and members of the dog and cat families) shall receive vaccinations against these diseases by a licensed veterinarian, and records of this vaccination program shall be kept on the premises and made available to conservation officers at all reasonable times.

b. Animals shall be observed every day by the person in charge of the care of the animals or by someone working under his direct supervision. Sick or diseased, stressed, injured, or lame animals shall be provided with veterinary care or humanely destroyed.

6. Handling

a. Handling of animals shall be done expeditiously and carefully in a way so as not to cause unnecessary discomfort, behavioral stress, or physical harm to the animal. Care should be exercised also to avoid harm to the handler.

b. Animals within reach of the public shall only be displayed for periods of time and under conditions consistent with the animals' health and not leading to their discomfort.

c. During public display, the animals must be handled so there is minimal risk of harm to the public with sufficient distance allowed between animal acts and the viewing public to assume safety to both the public and the animals.

I. PERMIT FEE

1. The fee for a permit shall be $10 which shall be submitted with the original application and every amendment and annual renewal thereof.

2. Such fee will be returned in the event the permit, or the amendment thereof, applied for is denied or in the event the permittee does not accept the permit as issued with conditions.

3. The permit shall be renewed annually.

J. REVIEW OF PERMIT DECISIONS

If the permit is granted with conditions, or is denied, the applicant may, within 30 days after mailed notice thereof, file with the Commissioner of Natural Resources a demand for review of the application. The review shall be conducted as a contested case pursuant to Minnesota Statutes, Chapter 15. If no demand for review is made within the 30 days, the permit decision becomes final.

K. REVOCATION

The Commissioner of Natural Resources may at any time revoke all or part of any permit issued under this rule under the following conditions, whenever, in his opinion, it is necessary to protect the interests of the public, or to protect the wildlife covered by said permit:

1. The permit holder must be informed in writing of the nature of the revocation and of the conditions which in the Commissioner's opinion require such revocation at least 14 days prior to the effective date of the revocation.

2. The permit holder, at any time prior to revocation, shall have the opportunity to apply for an amendment to his permit or to demand a hearing pursuant to Section J of this rule to contest the revocation, support his proposed amendment, or both.

a. Upon receipt of such an application or demand, the revocation is stayed until a determination by the Commissioner can be made on the matter.

b. If no such application or demand be made, the permit shall be revoked on the date stated in the revocation notice.

3. Nothing in this section shall preclude legal action by the Commissioner at any time for injunctive relief from a permit violation pursuant to Minn. Stat. Section 97.611, Subd. 4. All costs associated with seizures of neglected or mistreated animals shall be borne by the owner thereof including the expenses of keeping, disposing of, and treating animals pursuant to Minn. Stat. Section 346.216.

L. DISCLAIMER

Any permit issued under the provisions of this rule is permissive only and no liability shall be incurred by the state or by any of its officers, agents, or employees by reason of the issuance of such permit or by reason of any acts or operations of the permittee or any wildlife. At all times, the State of Minnesota, its officers, agents and employees

shall be held harmless from any liability for damage or injury arising from the issuance of such permit.

M. PENALTY

Anyone who violates any provision of this rule or any provision of a permit issued hereunder shall be guilty of a misdemeanor.

D R A F T (AWC:gvp) 7/25/78

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

- - - - - - - - - - -

In the Matter of the Adoption of Rules for Captive Wildlife Exhibits.

SUPPLEMENTARY FINDINGS OF THE COMMISSIONER

- - - - - - - - - - -

On May 30, 1978, the Office of the Attorney General identified to this agency shortcomings in the above-entitled proposed rule and accompanying Findings. These Supplementary Findings address the points raised.

1. The Order for Hearing was signed by David Vesall. He obtained the authority to do so from Commissioner's Delegation Order No. , which is on file with the Secretary of State, and a copy of which is attached.

2. NR 500 B. and D.1 recite language from the authorizing statute. The two paragraphs can be left out of the rule without changing its legal effect, but to do so would make it impossible for a person to know from reading the rule whether it applied to his or her facility. Such knowledge is crucial to comprehending the meaning and effect of any rule. The language in Minn. Stat. § 15.0412, Subd. 1, regarding duplicated statutory language was added by Laws of Minnesota 1977, Chapter 443, which became effective June 2, 1977. The public hearing on the proposed rule was held May 23, 1977. The issue did not then exist, which is why no record was made on it.

3. The Statement of Need sets forth the need for and reasonableness of each section of the rule, and is incorporated herein by reference. The following additional Findings are made:

a. There is already a licensing system

for "game farms" as specified in Minn. Stat. § 99.27 and Commissioner's Fish and Wildlife Order No. 1871. Definition D.4 includes game farms in the definition of "pet shop", which are excluded from the coverage of this rule by Minn. Stat. § 97.611, Subd. 5. It is unreasonable and unnecessary to require every game farm to get both a game farm license and a captive wildlife exhibit license. However, if a person both breeds and propagates "fur-bearing animals, game birds, or deer" (Minn. Stat. § 99.27, Subd. 1), and exhibits them for a fee or to attract clients to another business or for advertising purposes, then both the license and the permit are required because the facility comes within the purview of both statutes.

b. Permits are made non-transferable by E.3. This will require a new owner to get a new permit which is a reasonable and necessary method of enabling the Commissioner to determine if the new owner will satisfy the provisions of section F.

c. The hearing examiner's statement that the agency failed to document its authority to adopt the rule "as proposed" is founded on the educational requirements of paragraph 1 of the section (F) and the alternative veterinarian coverage allowed by paragraph 2. The final rule adopted simply asks that the applicant show he or some other person who will care for the animals knows how to. The alternative

veterinarian visit is changed from monthly to semiannual. To require any less would be unreasonable. Time will tell if higher educational standards or more frequent veterinarian visits are needed. If so, the rule can then be amended. The hearing examiner gives no other reason for doubting the agency's authority to adopt the rule, which authority is, of course, Minn. Stat. § 97.611, as stated in NR 500 A.

d. Sections G. and H., covering facilities and operating standards, and animal health and husbandry, are modelled after federal rules. As the hearing examiner notes, this is some evidence of necessity and reasonableness and --with the changes made in accordance with hearing examiner's findings 11 through 15-- I so find them.

4. With this Supplementary Findings is an amended final rule, the same as the one already submitted except that the informational material has been removed from G.1.d., G.2.d., and G.3.c., and the inadvertently omitted language is inserted in H.3.d. and H.5.a.

5. I concur with hearing examiner's Finding #18. The staff counsel's proposal for "further revised language" made at the hearing, was subsequently dropped.

6. The record is complete without the items which staff said at the hearing it would supply, but did not:

a. Documents regarding cage size provision were not provided and are not needed for the record because the part of the rule at issue (the last sentence of G.4) has been dropped.

b. Commissioner's Order No. 1871, which contains regulations for game farms (see Minn. Stat. § 99.27), would have added information to the rule, but not substance. Staff was incorrect in stating that the order deals with the disposition of dead animals.

Dated this _____ day of _____, 1978.

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

_____
JOSEPH N. ALEXANDER,
Acting Commissioner

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

PROPOSED RULES AND

REGULATIONS FOR WILDLIFE EXHIBITS

NR 400 WILDLIFE EXHIBITS

A. PURPOSE

The purpose of these rules and regulations is to establish reasonable standards for the care and treatment of captive wildlife for public exhibition purposes, and a permit system for such display, pursuant to the legislative mandate contained in Minnesota Statutes, section 97.611.

B. JURISDICTION

These rules and regulations shall apply to the care and treatment of all living captive wildlife for public exhibition in connection with any commercial enterprise, excluding displays owned by any municipality, county, or the State of Minnesota, any publicly owned zoo or wildlife exhibit, any privately owned traveling zoo or circus, or any pet shop.

C. SEVERABILITY

The provisions of these rules and regulations shall be severable, and the invalidity of any paragraph, subparagraph, or subdivision thereof shall not make void any other paragraph, subparagraph, subdivision or any other part.

D. DEFINITIONS

For the purpose of these rules and regulations, the terms defined in this section have the meaning given them below:

1. "Wildlife" means any wild mammal, wild bird, reptile, or amphibian.

2. "Captive" means all forms of human control including but not limited to confinement within physical barriers, limitation of movement through the use of any manner of attachment physically affixed to any wildlife, or limitation of movement of wildlife by restraining in some manner the parent or offspring.

3. "Public exhibition in connection with any commercial enterprise" means any exhibition or display from which monetary gain is procured either directly or indirectly, including but not limited to any display or exhibition, the viewing of which is offered for a fee to the public, any display or exhibition which tends to attract customers to any business operated by the owner of such display or exhibition, or any business operated by a client or relative of the owner of such display or exhibition, or any live display used for advertising purposes.

4. "Pet shop" means any commercial business venture, including a game farm, where animals are displayed only for the purpose of the sale of the animals so displayed.

5. "Traveling zoo or circus" means any display or exhibit of wildlife alone or in combination with domestic animals which does not remain in any one county for more than one month at a time, nor make consecutive engagements at the same location.

6. "Commissioner" is Commissioner of the Department of Natural Resources, State of Minnesota, acting directly or through his authorized agents.

E. PERMIT

1. No person shall display captive wildlife under the jurisdiction of these rules, in this state unless such display is pursuant to and in compliance with a permit acquired from the Commissioner of Natural Resources. Application for such a permit shall be made on forms provided by the Commissioner and shall be mailed or delivered to the Department of Natural Resources, Regional Supervisor, Division of Enforcement.

2. After receipt of the application, the local conservation officer will inspect the premises, and a permit will be issued only after applicant complies with or agrees to comply with standards for wildlife exhibits as described in this order.

3. No permit issued under these rules shall be transferable.

F. KNOWLEDGE AND BACKGROUND OF CARETAKERS

1. The applicant must be at least 18 years of age and he or his employee who is primarily responsible for the care of the wildlife should possess either a Bachelor's degree in animal husbandry or similar wildlife related course of study; or have at least three years of active work experience with wildlife of the nature to be displayed under the permit.

2. In lieu of such requirements as are listed in the preceding subdivision, the applicant may arrange for a regular monthly visit to his display and housing facility by a licensed veterinarian who shall certify by mail to the Commissioner on forms provided, that to the best of his knowledge, all requirements of the permit are being complied with and that any suggestions that he could make to substantially improve the living conditions within the general limits of said permit are being or have been accomplished.

3. In the event that the knowledge or background of an employee is deemed by the Commissioner to be sufficient to satisfy this requirement for said permit, the applicant shall apply for an amendment to such permit before the termination of the employment of said employee or as soon thereafter as possible, setting forth the qualifications of a new caretaker if neither the permit holder nor another employee has previously been accepted as qualified. If said amendment is not granted by the Commissioner, the permit will terminate concurrently with the denial of said amendment or the termination of the employment of the qualified employee, whichever is later.

G. FACILITIES AND OPERATING STANDARDS

1. Facilities, general

(a) Structural strength. The facility must be constructed of such material and of such strength as appropriate

for the animals involved. The housing facilities shall be structurally sound and shall be maintained in good repair to protect the animals from injury and to contain the animals.

(b) Water and power. Reliable and adequate electric power, if required to comply with other provisions of this permit, and adequate potable water shall be available on the premises.

(c) Storage. Supplies of food and bedding shall be stored in facilities which adequately protect such supplies against deterioration, molding, or contamination by vermin. Refrigeration shall be provided for supplies of perishable food.

(d) Waste disposal. Provision shall be made for the removal and disposal of animal and food wastes, bedding, dead animals, trash and debris. Disposal facilities shall be so provided and operated as to minimize vermin infestation, odors, and disease hazards. The disposal facilities and any disposal of animal and food wastes, bedding, dead animals, trash, and debris shall comply with applicable Federal, State, and local laws and regulations relating to pollution control or the protection of the environment.

2. Facilities, indoor

(a) Ambient temperatures. Temperature in indoor housing facilities shall be sufficiently regulated by heating or cooling to protect the animals from the extremes of temperature to provide for their health and to prevent

their discomfort. The ambient temperature shall not be allowed to fall below nor rise above temperatures compatible with the health and comfort of the animal.

(b) Ventiliation. Indoor housing facilities shall be adequately ventilated by natural or mechanical means to provide for the health and to prevent discomfort of the animals at all times. Such facilities shall be provided with fresh air either by means of windows, doors, vents, fans, or air-conditioning and shall be ventilated so as to minimize drafts, odors, and moisture condensation.

(c) Lighting. Indoor housing facilities shall have ample lighting, by natural or artificial means, or both, of good quality, distribution, and duration as appropriate for the species involved. Such lighting shall be uniformly distributed and of sufficient intensity to permit routine inspection and cleaning. Lighting of primary enclosures shall be designed to protect the animals from excessive illumination.

(d) Drainage. A suitable sanitary method shall be provided to eliminate rapidly, excess water from indoor housing facilities. If drains are used, they shall be properly constructed and kept in good repair to avoid foul odors and installed so as to prevent any backup of sewage. The method of drainage shall comply with applicable Federal,

State, and local laws and regulations relating to pollution control or the protection of the environment.

3. Facilities, outdoor

(a) Shelter from sunlight. When sunlight is likely to cause overheating or discomfort of the animals, sufficient shade by natural or artificial means shall be provided to allow all animals kept outdoors to protect themselves from direct sunlight.

(b) Shelter from inclement weather. Natural or artificial shelter appropriate to local climatic conditions for the species concerned shall be provided for all animals kept outdoors to afford them protection and to prevent discomfort to such animals. Individual animals shall be acclimated before they are exposed to the extremes of the individual climates.

(c) Drainage. A suitable method shall be provided to rapidly eliminate excess water. The method of drainage shall comply with applicable Federal, State, and local laws and regulations relating to pollution control or the protection of the environment.

4. Space requirements

Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of

movement. Inadequate space may be indicated by evidence of malnutrition, poor condition, debility, stress, or abnormal behavior patterns. As a general standard for mammals, the horizontal dimensions of any cage or other enclosure shall be at least four times the length of the animal to be kept therein, and the vertical dimensions shall be at least twice the height of the animal.

H. ANIMAL HEALTH AND HUSBANDRY

1. Feeding

(a) The food shall be wholesome, palatable, and free from contamination and of sufficient quantity and nutritive value to maintain all animals in good health. The diet shall be prepared with consideration of the age, species, condition, size, and type of the animal. Animals shall be fed at least once a day except as dictated by hibernation, veterinary treatment, normal facts, or other professionally accepted practices. Fast

(b) Food, and food receptables, if used, shall be sufficient in quantity and located so as to be accessible to all animals in the enclosure and shall be placed so as to minimize contamination. Food receptacles shall be kept clean and sanitary at all times. If self-feeders are used, adequate measures shall be taken to prevent molding, contamination, and deterioration or caking of food.

2. Watering

If potable water is not accessible to the animals at all times, it must be provided as often as necessary for the health and comfort of the animal. Frequency of watering shall consider age, species, condition, size, and type of the animal. All water receptacles shall be kept clean and sanitary.

3. Sanitation

(a) Cleaning of enclosures. Excreta shall be removed from primary enclosures as often as necessary to prevent contamination of the animals contained therein and to minimize disease hazards and to reduce odors. [When enclosures are cleaned by hosing or flushing, adequate measures shall be taken to protect the animals confined in such enclosures from being directly sprayed with the stream of water or wetter involuntarily.]

(b) Sanitation of enclosures. Subsequent to the presence of an animal with an infectious or transmissible disease, cages, rooms, and hard-surfaced pens or runs shall be sanitized either by washing them with hot water (180 F. at source) and soap or detergent, as in a mechanical washer, or by washing all soiled surfaces with a detergent solution followed by a safe and effective disinfectant, or by cleaning all soiled surfaces with saturadted live steam under pressure.

Pens or runs using gravel, sand, or dirt, shall be sanitized when necessary as directed by the attending veterinarian.

(c) Housekeeping. Premises (buildings and ground) shall be kept clean and in good repair in order to protect the animals from injury and to facilitate the prescribed husbandry practices set forth in this subpart. Accumulations of trash shall be placed in designated areas and cleared as necessary to protect the health of the animals.

(d) Pest control. A safe and effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained.

4. Separation

Animals housed in the same primary enclosure must be compatible. Animals shall not be housed near animals that interfere with their health or cause them discomfort.

5. Veterinary Care

(a) Programs of disease prevention and parasite control euthanasia, and adequate veterinary care shall be established and maintained under the supervision of a licensed veterinarian. The pest control program shall be reviewed by the veterinarian for the safe use of materials and methods. Animals subject to rabies or distemper shall receive vaccinations against these diseases by a licensed veterinarian, and records of this vaccination program shall be kept on the premises and made available to conservation officers at all reasonable times.

(b) Animals shall be observed every day by the person in charge of the care of the animals or by someone working under his direct supervision. Sick or diseased, stressed, injured, or lame animals shall be provided with veterinary care or humanely destroyed.

6. Handling

(a) Handling of animals shall be done as expeditiously and carefully in a way so as not to cause unnecessary discomfort, behavioral stress, or physical harm to the animal. Care should be exercised also to avoid harm to the handler.

(b) Animals to which the public is afforded direct contact shall only be displayed for periods of time and under conditions consistent with the animals' health and not leading to their discomfort.

(c) During public display, the animals must be handled so there is minimal risk of harm to the public with sufficient distance allowed between animal acts and the viewing public to assume safety to both the public and the animals.

I. PERMIT FEE

1. The fee for a permit shall be $10 which shall be submitted with the original application and every amendment and annual renewal thereof.

2. Such fee will be returned in the event the permit, or the amendment thereof, applied for is denied or in the event the permittee does not accept the permit as issued with conditions.

3. The permit shall be renewed annually.

J. AMENDMENTS

Any permit granted by the Commissioner under these regulations must be amended, to continue the display of wildlife, through the same procedures as the original application, in the event of any substantial increase in the numbers of wildlife, any changes in species, or any substantial change in the facilities.

1. For the purpose of this section a "substantial increase in the numbers of wildlife" is any increase equal to or greater than the following:

(a) 10% of the originally permitted number if introduced from outside the displayed wildlife or if introduced into the exhibit by natural birth of offspring occurring as a result of mating among wildlife not kept together pursuant to permit.

(b) 25% of the originally permitted number, if introduced into the exhibit by natural birth of offspring occurring as a result of mating among wildlife kept together pursuant to permit.

2. For the purposes of this section a "change in species" is any change in the biological "species" of the wildlife displayed, or any introduction of another of the same "species" that may not be harmonious with the permitted wildlife.

3. For the purposes of this section a substantial change in the facilities involved shall include any change in the confinement area or shelter area, any change in the primary materials used in the construction of the confinement area or shelter, any change not directed by a licensed veterinarian, in the nature or amount of food and water offered to each animal displayed, and any change in the conditions specifically required by the permit.

4. Fur-bearing animals, game birds, and deer may not be propagated except under a valid game farm license.

K. REVIEW OF PERMIT DECISIONS

If the permit is granted with conditions, or is denied, the applicant may, within 30 days after mailed notice thereof, file with the Commissioner of Natural Resources a demand for review of the application. If no demand for review is made within the 30 days, the permit decision becomes final.

L. REVOCATION

The Commissioner of Natural Resources may at any time revoke all or part of any permit issued under these rules under the following conditions, whenever, in his

opinion, it is necessary to protect the interests of the public, or to protect the wildlife covered by said permit:

1. The permit holder must be informed in writing of the nature of the revocation and of the conditions which in the Commissioner's opinion require such revocation at least 14 days prior to the effective date of the revocation.

2. The permit holder, at any time prior to revocation, shall have the opportunity to apply for an amendment to his permit or to demand a hearing pursuant to Section K of this chapter to contest the revocation, support his proposed amendment, or both.

(a) Upon receipt of such an application or demand, the revocation is stayed until a determination by the Commissioner can be made on the matter.

(b) If no such application or demand be made, the permit shall be revoked on the date stated in the revocation notice.

3. Nothing in this section shall preclude legal action by the Commissioner at any time for injunctive relief from a permit violation pursuant to Minn. Stat. § 97.611, Subd. 4. All costs associated with seizures of neglected or mistreated animals shall be borne by the owner thereof (permit-holder) including the expenses of keeping, disposing of, and treating animals pursuant to Minn. Stat. § 346.216.

M. DISCLAIMER

Any permit issued under the provisions of these rules and regulations is permissive only and no liability shall be incurred by the state or by any of its officers, agents, or employees by reason of the issuance of such permit or by reason of any acts or operations of the permittee or any wildlife. At all times, the State of Minnesota, its officers, agents and employees shall be held harmless from any liability for damage or injury arising from the issuance of such permit.

N. PENALTY

Anyone who violates any provision of these rules and regulations or any provision of a permit issued hereunder shall be guilty of a misdemeanor.