

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:083. Holding and intrastate transportation of captive cervids.

RELATES TO: KRS 150.010(41), 150.290, 150.725, 150.740, 164.772

STATUTORY AUTHORITY: KRS 150.025(1), 150.280, 150.720, 150.730, 150.735

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to regulate the buying, selling, or transportation of wildlife. KRS 150.280 authorizes the department to promulgate administrative regulations relating to propagating and holding of wildlife. KRS 150.720 authorizes the department to promulgate administrative regulations pertaining to the importation and holding of cervids, including privately-owned and farm-raised cervids. KRS 150.730 authorizes the department to issue or deny permits to hold captive cervids. KRS 150.735 authorizes the department to promulgate administrative regulations relating to the expansion of captive cervid facilities and the transfer of permits. This administrative regulation establishes the requirements for holding and intrastate transporting cervids in Kentucky.

Section 1. Definitions.

(1) "Approved laboratory" means:

- (a) The National Veterinary Service Laboratory in Ames, Iowa; or
- (b) Any other laboratory approved by the Administrator of the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

(2) "Captive cervid" means a cervid that is privately owned, born, and raised in captivity, and not considered wildlife as established in KRS 150.010.

(3) "Captive cervid permit" means a permit issued by the Kentucky Department of Fish and Wildlife Resources that is required to hold cervids in captivity and does not include shooting preserves as permitted under 301 KAR 2:041.

(4) "Cervid" means a member of the family Cervidae.

(5) "Chronic Wasting Disease" or "CWD" means a transmissible spongiform encephalopathy found in cervids.

(6) "Flop tag" means a commercial plastic ear tag used to identify livestock.

(7) "Line post" means a post in a fence that is not a corner or end post.

(8) "Noncommercial captive cervid permit" means a permit issued prior to March 1, 2016 that allows a person to possess captive cervids that are not intended for sale, offered for sale, traded, or bartered.

Section 2. Fencing and Holding Requirements.

(1)

(a) An exterior fence shall be at least eight (8) feet above ground level for its entire length, and consist of twelve and one-half (12 1/2) gauge woven wire, fourteen and one-half (14 1/2) gauge high-tensile woven wire, wood planks, or chain link.

(b) A single or double strand of barbed wire strung across the top to bring the total fence height to eight (8) feet shall be acceptable.

(c) Strands of barbed wire shall not be more than six (6) inches apart and shall not be more than five (5) inches from the top of the fencing as established in this subsection and subsection (2) of this section.

(d) Spacing between vertical wires shall not exceed six and one-half (6 1/2) inches for captive deer or species whose adult size is less than 400 pounds and twelve (12) inches for captive elk or species whose adult size is 400 pounds or more.

(e) If two (2) woven wire fences are combined, one (1) above the other, the woven wire fences shall be overlapped at least six (6) inches and firmly attached to each other at

intervals no greater than three (3) feet.

(f) The fence bottoms shall be installed to provide not more than three (3) inches of ground clearance.

(2) Right-of-way.

(a) The fence right-of-way shall be cleared for a distance of six (6) feet on each side.

(b) If the fence is a property boundary fence, the fence right-of-way shall be cleared for a distance of six (6) feet on the inside only.

(c) If dead timber with a height greater than the distance of the fence exists on the permittee's property, it shall be felled.

(3)

(a) Fence posts shall extend a minimum of eight (8) feet above the ground and shall be of sufficient strength to maintain the fence integrity.

(b) Pine wood posts shall be treated.

(c) Posts shall be set to a minimum depth of three (3) feet.

(d) T-posts shall be installed according to manufacturers' specifications.

(4) Line posts.

(a) Wooden line posts shall be a minimum of four (4) inches in diameter and shall not be spaced more than twenty-four (24) feet apart.

(b) Steel pipeline posts shall:

1. Be a minimum of two and three-eighths (2 3/8) inches in outside diameter;

2. Weigh a minimum of three (3) pounds per foot; and

3. Not be spaced more than twenty-four (24) feet apart.

(c) Metal "T" posts shall be a minimum of one and one-quarter (1.25) pounds per foot and shall be spaced no more than twenty (20) feet apart.

(d) If the woven wire is not high tensile, there shall be a wooden or steel pipe post every sixty (60) feet.

(5) Corner and end posts.

(a) Wooden corner and end posts shall be a minimum of five (5) inches in diameter.

(b) Steel pipe corner and end posts shall be a minimum of two and seven-eighths (2 7/8) inches in outside diameter.

(c) Corner and end posts of other materials shall be of sufficient strength to maintain the fence integrity.

(6) Gates shall be:

(a) Substantially constructed to meet the specifications of the fence; and

(b) Equipped with at least one (1) latching and one (1) locking device.

(7)

(a) Swinging water gaps and stream crossings shall be constructed to equal or exceed the standards of the fence.

(b) Crossings shall be adequate to prevent ingress and egress during high water.

(c) Permissible water gaps are established in subparagraphs 1. through 4. of this paragraph:

1. Swinging gates constructed to match the contour of the stream supported by cable or hinge (larger water gaps);

2. Pipe with swinging barrier (larger water gaps);

3. Pipe with fixed mesh barrier (smaller water gaps); and

4. Heavy gauge woven barrier contoured to fit the gap (smaller water gaps).

(8) If topographic, natural, or other conditions exist that enable cervids to pass through, under, or over the fence, the permittee shall be required to supplement the fence with additional, stronger or higher fence posts, special grading, additional wire to increase fence height or other measures to prevent escape.

(9) Maintenance. The fence shall continuously be maintained in a game-proof condition.

(10) A noncommercial captive permit holder shall:

- (a) Separate all adult males and females with fencing as established in this section;
- (b) Not allow breeding, either by natural or artificial insemination;
- (c) Not introduce any additional captive cervids to the facility;
- (d) Complete and submit to the department a Captive Cervid Annual Reporting Form by February 28 of each year;
- (e) Report any cervid deaths to the department by telephone at 800-858-1549 within forty-eight (48) hours and;
- (f) Submit tissue specimens of all captive cervids that die in the permit holder's facility to an approved laboratory for CWD testing.

Section 3. Capture and Handling Facilities.

- (1) Except as established in subsection (2) of this section, each captive facility shall have a squeeze chute or crush that facilitates inspection, handling, or capture of an individual animal.
- (2) If a permittee's facility does not have the handling or capture facilities established in subsection (1) of this section, the alternative shall be a dart gun or tranquilizer that immobilizes the animal.

Section 4. Tagging.

- (1) Captive cervids shall be identified in accordance with the Kentucky Department of Agriculture's Chronic Wasting Disease program requirements established in 302 KAR ~~20:066~~22:150.
- (2) Except as established in subsection (3) of this section, captive cervids over six (6) months old shall be uniquely identified with a plastic flop tag in at least one (1) ear that is clearly visible and identifiable.
- (3) The department shall approve one (1) of the alternatives for plastic flop tags established in paragraphs (a) through (c) of this subsection for bona fide zoos, nature centers, or similar educational institutions upon written request:
 - (a) Lip or ear tattoo;
 - (b) Microchip; or
 - (c) Branding.

Section 5. Ingress and Egress.

- (1) The permit holder shall be responsible for immediately capturing or destroying escaped animals upon discovering their escape.
- (2) If the permit holder is unable to capture an escaped animal within forty-eight (48) hours from discovering its escape, the permit holder shall report each escape to the department by telephone at 1-800-858-1549.
- (3) The permit holder shall send a written report to the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, ATTN: Captive Cervid Permits, within ten (10) days, describing what escaped and the reason for the escape.
- (4) The permit holder shall report known ingress of wild cervids into the enclosure by sending a written report to the department at the same address established in subsection (3) of this section.
- (5) The department or any peace officer may seize, capture, or destroy escaped animals or those that have ingressed if necessary.

Section 6. Space Requirements.

- (1) For species whose adult weight is less than 400 pounds, each individual animal shall be allowed at least 1,000 square feet of space.
- (2) One (1) individual animal of a species whose adult weight is 400 pounds or more, shall require at least 1,500 square feet of space, with each additional animal requiring an additional 1,000 square feet of space.

Section 7. Prohibited Species. Except for cervids legally held prior to November 12, 2002, a captive cervid permit shall not be issued for the species established in subsections (1) through (4) of this section:

- (1) Genus *Cervus* spp., except *Cervus elaphus nelsoni*;
- (2) Genus *Axis* spp.;
- (3) Roe deer (*Capreolus capreolus* and *Capreolus pygargus*); or
- (4) Hybrids thereof.

Section 8. Captive Cervid Permits.

- (1) Permit application and issuance. An application for a new or renewed captive cervid permit shall be processed in accordance with the provisions of KRS 150.730.
- (2) A captive cervid permit shall be valid only for the property and facility identified in the application and that is inspected as established in subsection (11) of this section. A cervid shall not be moved into a new or expanded facility until the facility has been issued a captive cervid permit by the department.
- (3) Zoos and other facilities fully accredited by and in good standing with the American Zoo and Aquarium Association shall not be required to obtain or renew a captive cervid permit, but facilities not accredited by the American Zoo and Aquarium Association shall be required to obtain and renew a captive cervid permit.
- (4) A captive cervid permit shall be required for a facility owned or leased by a person wishing to hold captive cervids.
- (5) A new noncommercial captive cervid permit shall not be issued to a facility after February 28, 2016.
- (6) All wild cervids shall be removed from the facility prior to initial inspection.
- (7) A permit shall identify the species and numbers of cervids being held.
- (8) Duration.
 - (a) A captive cervid permit shall be valid for one (1) year beginning March 1 through the last day of February~~[-]~~ and may be renewed annually upon payment of the annual fee and proof of compliance with all applicable statutes and administrative regulations.
 - (b) A noncommercial captive cervid permit shall be valid for three (3) years beginning March 1 through the last day of February~~[-]~~ and may be renewed every third year upon payment of the fee and proof of compliance with all applicable statutes and administrative regulations.
- (9) A holder of a noncommercial captive cervid permit prior to March 1, 2016, shall be allowed to hold captive cervids for the life of the animals, after which the permit shall not be valid.
- (10) Transfers. A captive cervid permit may be transferred if an existing and currently permitted facility is sold or leased to a person or entity who shall maintain and operate the facility pursuant to KRS 150.735(3).
 - (a) The original captive cervid permit holder who is transferring the permit shall be compliant with all provisions of this administrative regulation prior to transfer.
 - (b) Prior to transfer of the permit to a new owner or lessee, the facility shall be inspected for compliance as provided by subsection (11) of this section.
 - (c) The purchaser or lessee of the facility shall:
 1. Apply for transfer of the existing captive cervid permit on a department Captive Cervid Permit Transfer Application form;
 2. Attach a copy of the deed indicating change of ownership or the lease agreement between the parties conducting the transfer; and
 3. Send all application materials to the department at #1 Sportsman's Lane, Frankfort, Kentucky 40601, ATTN: Captive Cervid Permits, within thirty (30) days after the inspection.

- (d) A transferred captive cervid permit may be renewed by the new owner or lessee completing a Captive Cervid Permit Application.
- (e) A noncommercial captive cervid permit shall not be transferred.
- (11) Inspections.
 - (a) Before a captive cervid permit or noncommercial captive cervid permit is issued, renewed, or transferred, each facility or facility expansion shall pass an inspection that certifies it is in compliance with all applicable statutes and administrative regulations.
 - (b) Upon completion of a facility or facility expansion, or if a facility is to be sold or otherwise transferred, the permit applicant or holder shall notify the department to request an inspection that shall be conducted within thirty (30) days of receipt of the request.
 - (c) Each facility shall be inspected annually after issuance of a captive cervid permit or noncommercial captive cervid permit to certify and document that the facility is in compliance with this administrative regulation.
 - (d) A Captive Cervid Facility Inspection Form shall be completed by a department law enforcement captain, who shall then forward the original copy to department headquarters for processing.
- (12) Revocation or suspension.
 - (a) The department shall issue a notice of violation in the form of a certified letter to a person who is not in compliance with this administrative regulation, 302 KAR ~~[20:066]~~22:150, or a Kentucky statute pertaining to the holding of captive cervids.
 - (b) The department shall suspend the permit of a person who has received a notice of violation until the person complies with this administrative regulation and applicable statutes.
 - (c) The department shall issue a citation to a person who has failed to comply with this administrative regulation or applicable statutes within sixty (60) days from the date of the notice of violation.
 - (d) If convicted of a violation of this administrative regulation, the department shall:
 - 1. Revoke the permit; and
 - 2. Seize the captive cervids.
 - (e) A person who has a captive cervid permit revoked or suspended shall not, without the written approval of the department:
 - 1. Transfer or expand the facility; or
 - 2. Sell, offer to sell, trade, transport, hunt, or slaughter captive cervids that are housed in that facility.
- (13) Appeal procedures. An individual whose request for a permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.
- (14) Expansions.
 - (a) A facility may be expanded and shall conform to the fencing specifications established in this administrative regulation.
 - (b) Facility expansions shall be adjacent and connected to the currently permitted facility.
 - (c) Cervids shall not be introduced into the expanded portion of a facility until that expansion has been inspected and approved by the department as established in subsection (11) of this section.

Section 9. Origin and Disposition of Captive Cervids.

- (1) Cervids obtained from the wild shall only be held by a permitted wildlife rehabilitator pursuant to 301 KAR 2:075.
- (2) Captive cervids shall not be released into the wild except for wild-born cervids released by a permitted wildlife rehabilitator pursuant to 301 KAR 2:075.
- (3) Wild-born cervids held in captivity for rehabilitation purposes shall not:

- (a) Be housed in the same pen or otherwise housed in direct physical contact with cervids that were born in captivity; and
- (b) Be housed in a pen that has ever housed cervids that were born in captivity.

Section 10. Intrastate Movement of Cervids.

- (1) Before a person may move a captive cervid within the state, an authorization number shall be obtained from the Kentucky Department of Agriculture pursuant to 302 KAR ~~20:066~~22:150.
- (2) A person transporting cervids shall have the authorization number issued by the Kentucky Department of Agriculture, and if applicable, the required health papers, in possession while transporting cervids.

Section 11. Selling Cervids. A permit holder who holds a captive cervid permit may sell live cervids, parts thereof, or products produced by captive cervids, if those animals were not obtained from the wild in Kentucky.

Section 12. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Captive Cervid Permit Application", 2016 edition;
 - (b) "Captive Cervid Permit Transfer Application", 2016 edition;
 - (c) "Captive Cervid Facility Inspection Form", 2016 edition; and
 - (d) "Captive Cervid Annual Reporting Form", 2017 edition.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Department of Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICH STORM, Commissioner

APPROVED BY AGENCY: August 11, 2023

FILED WITH LRC: August 14, 2023 at 8:30 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 31, 2023, at 9:00 a.m., at KDFWR Administration Building, 1 Sportsman's Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes legal methods of holding and intrastate transportation of captive cervids.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish guidelines for the holding of captive cervids.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to KRS 150.010(41), 150.290, 150.725, 150.740, 164.772 since they establish the legal authority to breed and sale captive cervids, and establish permits for the holding of captive cervids.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This regulation establishes the manner in which captive cervids may be held in captivity or moved within the state.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

This amendment references a new regulation by the Kentucky Department of Agriculture (KDA). 302 KAR 20:066 was repealed and a new regulation, 302 KAR 22:150 was promulgated and is now referenced.

(b) The necessity of the amendment to this administrative regulation:

It is necessary to reference the appropriate cervid regulation for the KDA.

(c) How the amendment conforms to the content of the authorizing statutes:

No change from statutory conformity with updated reference to KDA regulation.

(d) How the amendment will assist in the effective administration of the statutes:

Ensures that KDFWR is referencing the proper KDA regulation within ours.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

No entities/ individuals affected by this amendment.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

N/A

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

No cost associated with this amendment

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

No benefit to entities identified in question 3

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

no cost

(b) On a continuing basis:

no cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

State Fish and Game Fund

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

No fee adjustment necessary

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

No new fees established

(9) TIERING: Is tiering applied?

Tiering is not applied because all individuals are treated the same with this administrative regulation.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

No governmental entities impacted by this amendment

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 150.010(41), 150.290, 150.725, 150.740, 164.772

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

No revenue generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

No revenue generated.

(c) How much will it cost to administer this program for the first year?

No cost to administer.

(d) How much will it cost to administer this program for subsequent years?

No cost to administer.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

No cost savings anticipated.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

No cost saving anticipated.

(c) How much will it cost the regulated entities for the first year?

No additional cost.

(d) How much will it cost the regulated entities for subsequent years?

No additional cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]