

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

FILED

2019 JUL 28 P 4:31

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

CITE AUTHORITY: 19-2H-1

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 34

TITLE OF RULE BEING PROPOSED: Captive Cervid Farming

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Captive Cervid Farming

Type of Rule: Legislative Interpretive Procedural

Agency: WV Department of Agriculture

Address: 1900 Kanawha Boulevard, East
Charleston, WV 25305

Phone Number: 304-558-3200 Email: cferro@wvda.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This bill proposes to give responsibility for regulating captive cervid farming to the Department of Agriculture (WVDA). Currently, the WVDA does not have the resources to absorb this additional responsibility. Although some of the activities may be covered by current employees, we will require additional services of a veterinarian that cannot be covered by current staff. These activities would also incur additional expense for equipment, supplies, travel and training. WVDA would require additional funding whether in the form of a General Revenue appropriation or a Special Revenue fee established or both, to cover the cost of the program.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	90,000.00	93,400.00
Personal Services	0.00	60,000.00	66,000.00
Current Expenses	0.00	25,000.00	27,400.00
Repairs & Alterations	0.00		
Assets	0.00	5,000.00	
Other	0.00		
2. Estimated Total Revenues	0.00	15,375.00	0.00

Captive Cervid Farming

Rule Title: _____

Rule Title: _____

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

*Personal Services: A veterinarian at .5 FTE, as well as 5-10% of existing field staff time: \$60,000.
*Current Expenses: Travel and training for veterinarian and field staff, along with additional supplies to support related activities: \$25,000
*Assets: Equipment for initial setup: \$5,000

Increase in costs for subsequent years are anticipated due to normal inflation. Assuming that all cervid farming operations will be licensed in the first year, revenues for year 2, and every other year thereafter, will be zero because the licenses will be issued for a two year period. However, costs associated with on-going regulatory activities, monitoring and recordkeeping will be incurred every year.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

This is an estimate of the impact this proposed legislation may have on the Department of Agriculture. further research is required in order to assess the full impact and develop a comprehensive, more accurate estimate of revenue and expenses associated with the program.

Annual revenue from antemortem/postmortem slaughter inspections for cervids cannot be reasonably estimated. Inspections will be charged at an hourly rate of \$55/per hour, including travel time to inspection site, and total revenue will be dependent on variables such as number of inspections requested and distance from inspector headquarters to each inspection site (and return).

Date: July 28, 2015

Signature of Agency Head or Authorized Representative





West Virginia Department of Agriculture

1900 Kanawha Blvd. E., Charleston, WV 25305
304-558-3550

Walt Helmick
Commissioner

Statement of Circumstances

Enrolled SB 237 Captive Cervid Farming Act, passed on February 13, 2015 and effective from passage requires that captive cervid farming be regulated as an agricultural business. This duty previously was managed by the West Virginia Division of Natural Resources. The West Virginia Department of Agriculture shall regulate the sale of venison, create an application process, issue, renew, modify and transfer licenses, inspect facilities, transition current facilities to new license procedures, and create penalties.

A handwritten signature in black ink, appearing to be "Walt Helmick".



West Virginia Department of Agriculture
1900 Kanawha Blvd. E., Charleston, WV 25305
304-558-3550

Walt Helmick
Commissioner

Brief Summary for Proposed Rule
Captive Cervid Farming
Title 61 Series 34

This proposed rule shall provide for the regulation, protection, promotion of biosecurity, licensing, animal identification, fencing, record keeping, health testing requirements, herd movement, and fees.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 28, 2015

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* West Virginia Department of Agriculture
1900 Kanawha Boulevard, East
Charleston, WV 25305 304-558-3200

LEGISLATIVE RULE TITLE: Captive Cervid Farming

1. Authorizing statute(s) citation 19-2H-1

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
April 28, 2015

b. What other notice, including advertising, did you give of the hearing?

c. Date of Public Hearing(s) *or* Public Comment Period ended:
May 28, 2015

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received 5

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 28, 2015

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Chris Ferro, Chief of Staff
1900 Kanawha Boulevard, East
Charleston, WV 25305
cferro@wvda.us
304-558-3200
304-558-2203

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

April 28, 2015 - May 28, 2015

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

July 28, 2015

d. Attach findings and determinations and reasons:

Attached All comments and responses are attached.



West Virginia Department of Agriculture

1900 Kanawha Blvd. E., Charleston, WV 25305

304-558-3550

Walt Helmick
Commissioner

July 6, 2015

Dear Ms. Hedrick:

Thank you for your recent comments on Title 61CSR34 Captive Cervid Farming.

In response to your comment regarding §61-34-2.10 the rule will be modified in the Agency Approved filing. Class I and Class II licenses will both include the slaughter of venison for personal use, however, to sell venison to the public you must be a Class II licensee.

In response to your comments regarding §61-34-9, CWD, TB, and Brucellosis testing, the WVDA feels that the frequency listed in the rule is necessary to maintain assurance of a disease free herd, and to maintain an accredited herd.

Sincerely,

A handwritten signature in black ink, appearing to read "Ch. F.", written over the printed name "Chief of Staff".

Chief of Staff

Martin, Jodee

From: Ferro, Chris
Sent: Tuesday, May 12, 2015 5:40 PM
To: Martin, Jodee; Plumley, Jewell; Pitts, Robert
Subject: Fw: Ag rules

Deer farm rule comment for eventual reply.
Please provide internal response to the group.

Sent from my LG G2, an AT&T 4G LTE smartphone

----- Original message-----

From: Vickie Hedrick
Date: Tue, May 12, 2015 12:10 PM
To: Ferro, Chris;
Subject: Ag rules

Chris, I'm concerned about the wording in the 2.10 Class 1. the way this reads I will NOT be able to slaughter & sale venison, unless I'm a hunting preserve. is this right ? if so there will be no class 1 every one will need a class two. Also on 61-34-9, not sure we need a 100% CWD test done, if so what is the reason? then for the TB & Brucellosis why do we need this every 3 yrs. on the whole herd ? it is so stressful on the deer & pocketbook, why does Ag think we still need to have this done? thank you so much for your time. Vickie



West Virginia Department of Agriculture

1900 Kanawha Blvd. E., Charleston, WV 25305

304-558-3550

Walt Helmick
Commissioner

July 6, 2015

Mr. Robert A. Fala
Director
West Virginia Division of Natural Resources
324 4th Avenue, Room 342
South Charleston, WV 25303-1228

Dear Mr. Fala:

Thank you for your recent comments regarding Title 61CSR34 Captive Cervid Farming. Listed below are the responses to your comments:

§61-34-2.16. – “Quarantine” this definition will be modified to include the entire facility in accordance with the USDA CWD Program.

§61-34-6. License renewal; modification, sale or transfer of license – the word “timely manner” will be modified to reflect a fifteen (15) day period.

§61-34-7.1. – The word “wildlife” shall be defined under **§61-34-2**, and also changed accordingly throughout the rule as the term may be necessary to regulate shooting preserves.

§61-34-8. Facility, fencing, identification and record keeping – 8.1.m. The WVDA does not feel that co-mingling is an issue, and therefore it will remain as proposed in the rule. **8.1. o. –** The WVDA does not wish to change the tagging requirements, and all cervids prior to reaching twelve (12) months shall be marked with official ID. **8.1.p. –** If cervids are transported to a hunting preserve they are required to be tagged, also, if an animal origin is the hunting preserve it will be tagged at harvest. Records are kept on harvest. **8.1. t. –** Facilities must obtain an import

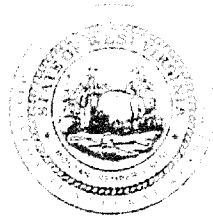
permit for Out of State deer. At this time, there is no scientific evidence that semen or embryos transmit CWD.

§61-34-9. CWD, TB and Brucellosis Standards and Testing – 9.3. The WVDA feels that since these deer are being moved within the state, and the licensee has had a monitoring program for thirty-six (36) months, a risk assessment would be sufficient before making a judgment. **9.6.** The licensee shall report all known escapes to the State Veterinarian or WVDA Animal Health personnel.

Sincerely,

A handwritten signature in black ink, appearing to be "Ch. F.", written over a horizontal line.

Chief of Staff



DIVISION OF NATURAL RESOURCES

324 4th Avenue, Room 342
South Charleston, WV 25303-1228
Telephone (304) 558-2754
Fax (304) 558-2768
TDD (304) 558-1439
TDD (800) 354-6087

Earl Ray Tomblin
Governor

Robert A. Fala
Director

May 27, 2015

Mr. Chris Ferro, Chief of Staff
WV Department of Agriculture
1900 Kanawha Blvd., East
Charleston, WV 25305

Dear Mr. Ferro:

The West Virginia Division of Natural Resources is pleased to provide comments on Legislative Rule 61CSR34 - Captive Cervid Farming. My staff has carefully reviewed the rule and provided the attached comments. The protection of wildlife for the citizens of West Virginia is of great importance for the Division of Natural Resources. Proper monitoring of the captive cervid industry is recognized by the United States Department of Agriculture (USDA) as necessary to minimize the risk of introduction, transmission, and spread of CWD in cervid populations in the United States. As state agencies, we must do our part to ensure the health and welfare of wildlife and agriculture in West Virginia.

Please feel free to contact me with questions regarding our comments on this important legislation.

Sincerely,

A handwritten signature in black ink that reads "Robert A. Fala".

Robert A. Fala
Director

RF/pj/rt

Attachment

cc: Judy Cooper

Comments on Legislative Rule 61 CSR 34
Captive Cervid Farming

This legislative rule is to provide for the regulation, protection, promotion of biosecurity, licensing, animal identification, fencing, record keeping, health testing requirements, herd movement and fees of captive cervids.

The emergency rule provides definitions of terms not provided in the language of Senate Bill No. 237. The bill stipulates that rules (so far as practicable) must be consistent with the rules of the United States Department of Agriculture (USDA). The USDA recognizes State Rules which are more stringent or restrictive than rules passed by the USDA.

The emergency rules submitted by the West Virginia Department of Agriculture (WVDA), for the most part, capture many of the conditions required by the USDA. However, to be effective in protecting native wildlife and the health and safety of West Virginia Citizens, the West Virginia Division of Natural Resources (DNR) recommends the following changes:

61-31-2, Definitions.

2.16 – Quarantine should include the entire facility not just an individual animal.

61-34-6, License renewal; modification, sale or transfer of license.

6.2 – the reference to “timely manner” needs to be defined, we recommend 15 days.

61-34-7, Inspections.

7.1 – the reference to “wildlife” should be changed to “captive cervids”.

61-34-8, Facility, Fencing, Identification and Record Keeping.

8.1.m – Co-mingling of species should be removed due to the diversity of disease susceptibility and transmission among species.

8.1.o – Tagging should be required within 7 days after birth, not 12 months later. WV Code §19-2H-12 section b (2) requires identification of the animal throughout its life. The USDA recognizes individual identification as a keystone requirement for the USDA CWD monitoring program. Tagging at 12 months of age potentially allows escapees to be released into the wild without any way of identifying the animal. All changes to identification should be reported to the Department within 15 days to update inventory status.

8.1.p – WV Code §19-2H-12 does not allow any exceptions to tagging requirement. All animals held under this license should be properly tagged and identified.

8.1.t- All facilities should be required to obtain a captive cervid importation permit prior to receiving animals from out-of-state, same as for shooting preserves. See §61-34-10 section 10.3. This should also apply to any semen imported from out-of-state.

§61-34-9. CWD, TB and Brucellosis Standards and Testing.

9.3 – All intrastate movement should require a minimum of 60 month CWD monitoring, not 36 months. All facilities meet this requirement unless they have been reduced due to violations of rules and have a reduced CWD monitoring status due to noncompliance.

9.6 – For the health and safety of wildlife, any captive cervid escapes shall also be reported to the District Game Biologist and/or District Natural Resources Police Captain within eight (8) hours.

9.23 – Strike reference to DNR for sample collection. By USDA Chronic Wasting Disease guidelines, owners shall not be permitted to collect samples for their facility.

9.24 – Strike all references to DNR for tissue collection/sampling.

§61-34-10. Additional Specifications for Commercial Shooting Preserves.

10.1.c – Reference to “wildlife” should be changed to “captive cervids”. Captive cervids are no longer defined as “wildlife”, “wild animal”, or “game animal”.

10.2 – Same comment as for 10-1.c.

To facilitate the health and safety of West Virginia’s Natural Resources, the Division of Natural Resources, recommends the following additions to the emergency rule:

1. Rules should clearly define conditions for compliance/noncompliance regarding CWD sampling/testing. Rules should also clearly defined penalties and/or monitoring adjustments for noncompliance. The USDA has established guidelines for CWD monitoring but relies upon the State’s rules to properly regulate and enforce rules upon the captive cervid industry.
2. A quarterly report of all interstate and intrastate transfers should be provided to the Division of Natural Resources by the Department identifying the origin and destination of all relocated cervids. A report of all cervid semen imported into the state should also be provided.
3. The Division of Natural Resources should be immediately notified of any change in monitoring status of a facility due to noncompliance.
4. Facilities should be required to provide an exit strategy when surrendering their license to properly close the facility. A final inspection to ensure that no animals are present before a facility is considered closed.
5. All new facilities and their locations should be provided to the DNR when the license is issued. The DNR should be notified when a facility is closed.
6. Penalties should be imposed for intentionally removing permanent identification from any captive cervid.

Martin, Jodee

From: Martin, Jodee
Sent: Tuesday, July 28, 2015 2:58 PM
To: 'shadowvalleydeerfarm@yahoo.com'
Subject: Jack Oliver response July 28, 2015
Attachments: Jack Oliver response July 28, 2015.docx

Mr. Oliver –

Thank you for your comments regarding the proposed Captive Cervid Farming rule. Please see the attached response to your comments.



West Virginia Department of Agriculture

1900 Kanawha Blvd. E., Charleston, WV 25305

304-558-3550

Walt Helmick
Commissioner

July 6, 2015

Mr. Jack Oliver
Shadow Valley Deer Farm

Dear Mr. Oliver:

Thank you for your recent comments on Title 61CSR34 Captive Cervid Farming.

In response to your comments regarding §61-34-8.1.t, it is important to be able to track the movement of animals to prevent the spread of disease not only within the captive cervid population, but also to prevent disease from spreading to other livestock.

In response to your comments regarding §61-34-9.5, this requirement will protect the livestock industry, and is a surveillance tool for early detection of disease. These requirements also apply for other livestock species.

In response to your comments regarding §61-34-9.13, any licensed accredited veterinarian can perform a necropsy. This is also a good management tool to determine disease prevention and best management practices.

In response to your comments regarding §61-34-9.21, the WVDA will not be charging a fee for a staff vet to do a visual exam, however; the licensee may find it more expeditious to have their own veterinarian.

In response to your comments regarding §61-34-9.23, it is required by USDA APHIS that these tests are performed by a licensed accredited veterinarian.

Sincerely,

A handwritten signature in black ink, appearing to read "Ch. F.", written over a horizontal line.

Chief of Staff

Martin, Jodee

From: Ferro, Chris
Sent: Thursday, May 28, 2015 12:57 PM
To: Martin, Jodee
Cc: Fortin, Marcel; Williams, Larry; Plumley, Jewell; Pitts, Robert
Subject: FW: Captive Cervid Comment
Attachments: Dept of AG deer farm comment.wps

Another for input.

From: Jack Oliver [mailto:shadowvalleydeerfarm@yahoo.com]
Sent: Thursday, May 28, 2015 12:51 PM
To: Ferro, Chris
Subject: Captive Cervid Comment

The following are my comments in reply to the Title 61 Legislative rule Department of Agriculture Series 34 Captive Cervif Farming.

8.1.t WHY must a farm request permission to sell its inventory? This was one of the biggest hassles we had as deer farmers with the DNR. I believe there is no other state in the country that requires a permit to move within its own state. YES, I agree with the necessary permit to move across state lines, but not within our own state. This is very hindering to the operations of the farm. MANY times deer are moved on a short notice. A small window of opportunity can be closed quickly with rules like this. Holidays, weekends and vacations have ALL found ways to stop sales because in state permits were not available on a timely manner.

9.5 A live test should not be mandated to a farm or state that has proven to be disease free for many years through mortality testing requirements. These mandated CWD testings for LIVE animals will further restrict the movement process of animals AND greatly increase the COST of doing business. My vet charges \$100 just to show up on my farm plus the service fees and testing fees. How is a farmer suppose to compete with those costs hovering over

us. There is NO MANDATE to test a live animal to move it INTO WV, so why should we be mandated to test animals that move within our own disease free state?

9.13 Basically this is mandating that a necropsy be performed on the animal that died. Why should the ENTIRE animal be presented ? The slaughtered animal should be available for self consumption and not forced to be wasted. Further, many states allow the farmers to remove the CWD testing samples themselves and avoid the added veterinarian costs that go with the loss of the animal and the testing fees.

9.21 WHY should it be mandated that I PAY a licensed veterinarian to do a visual examination of my herd? With all the veterinarians on staff within the Dept of AG, why isn't that a service that falls under our license fees? The WV DNR provided that service for free under our license agreement.

9.23 I think the Dept of AG should offer the proper training to each deer farm to properly collect their own test samples for CWD testing. This service was offered to other states' deer farmers with success.

Some of these mandated fees and testing requirements are extremely detrimental to the operating of a successful deer farm. Continual costs and fees for veterinarian visits are much more severe than we have been enforced in the past.

We are now required to pay 50% more for our cervid farm license and yet we get MUCH LESS from our governing agency. We have heard for MANY YEARS how the Dept of AG will be much better and how all the staff veterinarians will be beneficial to the deer farming industry and growth in WV. HOWEVER, I have seen

NOTHING in the rules as to exactly what our own WV Dept of AG veterinarians will be providing for us. It seems to me that all I have gained as a deer farmer in WV is the added costs of paying more for my license and the added cost of continually paying my local veterinarian to inspect, sample and test my animals. These very same inspections, sampling and testing were all provided **FREE** through the WV DNR. **SO**, why isn't the WV Dept of Agriculture providing these veterinarian necessities free of charge to the very farms that they control?

Martin, Jodee

From: Martin, Jodee
Sent: Tuesday, July 28, 2015 3:01 PM
To: 'jharman12@cebridge.net'
Subject: WV Wildlife Federation response to comments
Attachments: WV Deer Farmer's Association Response July 28 2015.docx

Mr. Harman –

Thank you for your comments regarding the proposed Captive Cervid Farming rule. Please see the attached response to your comments.



West Virginia Department of Agriculture

1900 Kanawha Blvd. E., Charleston, WV 25305

304-558-3550

Walt Helmick
Commissioner

July 6, 2015

Mr. Jerod Harman
President
WV Wildlife Federation

Dear Mr. Harman:

Thank you for your recent comments on Title 61CSR34 Captive Cervid Farming.

In response to your comment regarding the \$55/per hour inspection fee, this fee is to pay for slaughter inspection of deer which is not required by the Federal Meat Inspection Act, either prior to or at the time of slaughter and is not reimbursable under our cooperative agreement. Inspection provided in a federal plant (which is an option) for deer would be higher than the \$55/per hour fee. You may reference the above in accordance with Part 352, Title 9, CFR (Code of Federal Regulations). Otherwise, the Legislature did not appropriate any monies for the specific purpose of operating this program.

In response to your comment regarding protection of the wild white-tailed deer herd, the goal of this rule is to protect both the captive and wildlife deer from disease. Disease in either population does the state potential harm.

In response to your comment regarding Section §61-34-4.2, the application will require inventory to be provided and verified at the facility inspection. DNR has then offered their records to ensure that inventories coincide.

In response to your comment regarding §61-34-6.2 fifteen (15) days shall be a "timely manner" and this will be changed in the Agency Approved filing.

In response to your comment regarding §61-34-8.1.d.3, the previous rule did not require double fencing to prevent nose to nose disease transmission and the WVDA does not believe this is a necessary precaution.

In response to your comment regarding §61-34-8.1.i, the responsible party shall provide fresh drinking water and refer to the Department of Agriculture's rule, Livestock Care Standards 61CSR31.

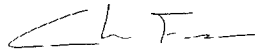
In response to your comment regarding §61-34-8.1.q.1.d, a depopulation and testing of an escape plan are both efficient action plans.

In response to your comment regarding §61-34-9.3, the 36 month approval time is due to the fact that it is "intrastate" transfer and review and risk assessment is needed before movement can be approved.

In response to your comment regarding §61-34-9.24a, and 9.24.b the WVDNR has requested not to be involved with CWD testing.

In response to your comment regarding 61-34-11.4, slaughter records are required to be retained for at least two (2) years which is an industry standard. Record retention for animal health varies according to the issue and the animal.

Sincerely,

A handwritten signature in black ink, appearing to be "C. H. F.", written over a horizontal line.

Chief of Staff

Martin, Jodee

From: Judy Cooper <JCooper@wvsos.com>
Sent: Wednesday, May 27, 2015 3:28 PM
To: Martin, Jodee
Subject: FW: AdLaw Inquiries - Item ID361

Sorry that I didn't forward this in the first email.

From: Secretary of State [mailto:support@wvinteractive.com]
Sent: Tuesday, May 26, 2015 11:10 PM
To: Judy Cooper
Subject: AdLaw Inquiries - Item ID361

[Secretary of State](#)

Item ID361 has been added

[Modify my alert settings](#) | [View Item ID361](#) | [View ContactAdLaw](#)

Topic: Emergency Rules

YourName: West Virginia Wildlife Federation, Jerod Harman, President

EmailAddress: jharman12@cebridge.net

Comments: May 26, 2015 FROM: West Virginia Wildlife Federation SUBJECT: Comments on Emergency Regulation Title 61 Series 34 Captive Cervid Farming 1. Neither the West Virginia Wildlife Federation nor the West Virginia Bowhunters Association were identified as people of interest and notified of the Emergency Rule as listed By Jodee Martin even though we have numerous records of meeting with the West Virginia Legislature concerning this legislation. 2. We note that estimated costs of \$93,400 plus \$55/hour inspection fees were not available to the DNR and were paid by sportsmen's license fees. Ag should have already been prepared to incur this expense before lobbying for Captive Cervids. 3. The Scope of the Rule does not include protection of the wild white-tailed deer herd as an objective even though deer hunting brings \$300 million in economic benefits to the State. 4. Paragraph 4.2 concerning the application for a license does not mention an inventory of tagged animals and their origin nor does it coordinate the existing WV DNR inventory with the new licensing. Failure to do so will allow animals from unknown sources as legal inventory and thus present a significant disease risk. 5. Paragraph 6.2, Define "a timely manner". 6. Paragraph 8.1.d.3, Must require a double fence (the minimum requirement to prevent nose to nose disease transmission between captive and wild deer). 7. Paragraph 8.1.i - How do you regulate contaminated water if the source of water is a permanent or intermittent stream? 8. Paragraph 8.1.q.1.d - Escapes needs a more detailed action plan. Timing is critical and escapes in captive deer farms are common. There are many incidents in the literature documenting the role of escaped and diseased deer in the spread of CWD from Colorado to the east coast. 9. Paragraph 9.3 uses judgment as criteria to approve the transfer of captive cervids monitored for 36 months. This is an inadequate monitoring period as proven in the scientific literature. 10. Paragraphs 9.24a and b, uses DNR as a choice in obtaining CWD samples. The DNR should be involved in this and paid at the \$55 per hour or going rate previously mentioned for DOA sampling. 11. Paragraph 11.4, says that sale of venison records must be retained for 2 years. This is an inadequate time period when investigating the source of disease outbreaks as well as herd inventory. Thank you for the opportunity to comment on these rules. Please keep us informed of this rule and related administrative regulations. Sincerely yours, Jerod Harman, President E-mail: jharman12@cebridge.net

Closed: No

Last Modified 5/26/2015 11:06 PM by (unknown)

Martin, Jodee

From: Martin, Jodee
Sent: Tuesday, July 28, 2015 3:05 PM
To: 'jennefirb4@yahoo.com'
Subject: WV Deer Farmer's Association response to comments
Attachments: WV Deer Farmer's Association Response July 28 2015.docx

WV Deer Farmer's Association –

Thank you for your comments regarding the proposed Captive Cervid Farming rule. Please see the attached response to your comments.



West Virginia Department of Agriculture

1900 Kanawha Blvd. E., Charleston, WV 25305
304-558-3550

Walt Helmick
Commissioner

July 6, 2015

Dear West Virginia Deer Farmer's Association:

Thank you for your recent comments on Title 61CSR34 Captive Cervid Farming.

In response to your comment regarding the definition of "wildlife" used throughout the proposed rule, we understand your concern and this definition will be defined in §61-34-2, and changed accordingly throughout the rule.

In response to your comment regarding §61-34-2 Class I license including the sale of venison to others, Class I license is statutory and has been defined in Senate Bill 237 as a facility to breed and propagate captive cervids, and create cervid byproducts, for sale to others, but sale of venison to others is restricted to Class II licenses.

In response to your comment regarding §61-34-3.3, this will be removed from the rule in the Agency Approved filing.

In response to your comment regarding §61-34-4, the need to clarify the number of species is so that the facility can adequately maintain the number of cervids it has, and does not grow beyond that capacity as well as identifying species types in order to monitor herd health for all cervid species.

In response to your comment regarding §61-34-8.1., the process in place to transport cervids intrastate is necessary for the protection of the industry.

In response to your comment regarding §61-34-9.14., regarding CWD, TB and Brucellosis Standards and Testing, WVDA will make this information available to the DNR upon request and this will be changed in the Agency Approved filing.

In response to your comment regarding §61-34-9.21., veterinarians know the requirements, and are aware that they do not have to perform a physical examination. A visual examination is protocol for any species before a physical examination.

In response to your comment regarding §61-34-10.1.a., the WVDA shall require a minimum of two hundred (200) acres in one tract of leased or owned land, and the shooting preserve shall

be no larger than three thousand (3,000) contiguous acres. Note that this requirement is a reduction from the previous rule.

In response to your comment regarding §61-34-10 10.8., the WVDA feels it is necessary to require clients of a shooting preserve to purchase a hunting license as those license proceeds are used to promote wildlife in West Virginia.

Sincerely,

A handwritten signature in black ink, appearing to be 'L. F.', written over a horizontal line.

Chief of Staff

Of course there are things in here that we are not going to like and we understand that we need to start somewhere and begin to work together to gain mutual trust. Please understand that we "ignored" some of the wording in the past as we were told that no one would take it to the extreme or absolute "literal" meaning. But the DNR did in fact take it to the extreme, so we are skeptical and apprehensive to be so trusting. We are eager to begin working with the WVDA in a partnership that works for both of us. With that being said we would like to submit the following comments for your consideration.

The word "wildlife" when it refers to our animals, should never be used. This can hold us accountable to the Lacey Act. This is one of many reasons why we need to be involved in this wording. The DNR never understood the agricultural side of our business, and AG does not completely understand the natural resources side that we have been put under. We need to completely break free of any natural resources references, such as calling our animals "wildlife". Wildlife is not only regulated by statute in WV by DNR, but also Federally by US Fish & Game. Transporting, selling, owning, etc.. "wildlife" is punishable (federally) under the Lacey Act and other rules/regulations. We need our industry in WV to grow without any opportunity for DNR or US Fish & Game to step in.

On another note. Most of the rules and regulations that we have had in the past and including the newly proposed rules and regulations are made in regards to Whitetail and Elk. This has always been an uphill battle for the cervid producers that do not raise whitetail and elk. We would like to see additions and exemptions for the other common cervid species. I could not put this under a specific section as this would apply to many, if not most of the sections. We need something included about not CWD testing non-susceptible species such as Axis Deer, Fallow Deer, Muntjac & Reindeer. This can be verified by USDA. Fence heights should also be considered. Certainly record keeping and interstate/intrastate transportation of non-CWD susceptible cervids should be less restrictive. The main reason to bring this up is that the common species of cervid used for venison production is Fallow Deer and Red Deer. In order to get enough cervids and cervid facilities established in the state to promote and sustain a venison market these other species will be important.

Title 61 61-34-2. Definitions.

2.10. Class 1 license needs to include the sale of venison to others

Example - average cost per 10 deer processed to sell \$37.50 per deer (extra cost of license from \$375 to \$750)

\$50.00 per deer CWD testing estimate

\$55.00 1 hr inspection (estimate per deer)

\$75.00 for processing (slaughter)

\$30.00 TB/Bruc testing

\$277.50 Total Per Cervid (This cost does not include raising the cervid, transport to slaughter, marketing, etc..)

61-34-3. Transitions to Captive Cervid Facilities.

3.3. Should be removed completely it implies that you can't apply after 60 days applications are made available. Also, the applications are already available.

61-34-⁴~~2~~. Application for License.

4.2.f. Need to clarify number of species. Is this the number that your facility could handle?

61-34-7. Inspections.

7.1. The word "wildlife" needs changed to cervids (Not just here, but everywhere it occurs).

61-34-8. Facility, Fencing, Identification and Record Keeping.

8.1. The process to transport cervids intrastate should be simplified to include less forms and procedures to make it easier to start more cervid farms in the state with new cervid farmers. Especially considering that WV is TB Free and 100% of captive cervid mortalities have been confirmed/tested CWD Free over the last 5+ years.

61-34-9.CWD, TB and Brucellosis Standards and Testing.

9.14. Why are we submitting test results to WVDA and DNR? If DNR needs a copy that should be available from the from WVDA?

9.21. We recommend changing the word "examination" to "inspection" so that the veterinarians realize that they don't actually have to do physical examination of each animal. Does this veterinarian inspection take the place of our annual inspection or does this happen twice a year; once with a veterinarian and once with WVDA? Shouldn't we mail this with the renewal or provide to WVDA during the annual inspection depending upon the timing?

61-34-10. Additional Specifications for Commercial Shooting Preserves.

10.1.a. Note – The average farm size in WV is 157 acres. If the preserve size could be less acreage, for example 1/3 of the farm used for preserve & the rest be used for other farming purposes - 50 acres would be more affordable for people to get started.

10.2. The word "wildlife" should be changed to cervids, farm raised cervids or captive cervids.

10.7. The word "wildlife" should be changed to cervids, farm raised cervids or captive cervids.

10.8. The clients of the shooting preserve should not be required to purchase an in-state or especially not an out-of-state hunting license to harvest a farm raised cervid. But bigger than that is the cost for an out-of-state hunting license in WV. Our clients will not want to spend a few hundred dollars more to travel to WV to harvest a cervid in one of our hunting preserves. Also, the DNR could make the deer taken in one of preserves count toward their "wild" deer tags as well as get them into trouble for taking too many animals, over season limits, etc.. or even Lacey Act violations if they take them across state lines. Furthermore, our hunting preserve clients will not want to be harassed by WVDNR, Wildlife Federation, and other anti-hunting groups.

FILED

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TITLE 61
LEGISLATIVE RULE
WEST VIRGINIA DEPARTMENT OF AGRICULTURE
SERIES 34

OFFICE WEST VIRGINIA
SECRETARY OF STATE

CAPTIVE CERVID FARMING

§61-34-1. General.

1.1. Scope. -- This legislative rule shall provide for the regulation, protection, promotion of bio-security, licensing, animal identification, fencing, record keeping, health testing requirements, herd movement, and fees.

1.2. Authority. -- West Virginia Code §19-2H-1

1.3. Filing Date. --

1.4. Effective Date. --

§61-34-2. Definitions.

2.1. "Accredited veterinarian" means a veterinarian approved and accredited in accordance with 9 C.F.R. §160 (2015).

2.2. "Animal" means any farmed or captive deer, elk, moose or other cervid.

2.3. "Animal and plant health inspection service (APHIS)" means the Animal and Plant Health Inspection Service of the United States.

2.4. "Antemortem inspection" means the observation of live animals by a veterinarian or trained inspector for lameness or abnormal behavior prior to slaughter.

2.5. "Approved state" means a state that APHIS has determined has an Approved State CWD Herd Certification Program.

2.6. "Approved laboratory" means a diagnostic laboratory approved to conduct official tests for CWD in accordance with 9 C.F.R. §55.8 (2015).

2.7. "Captive cervid farming facility" means a facility which is licensed to hold cervids in a permanent enclosure.

2.8. "Cervid" means all members of the family Cervidae and hybrids, including deer, elk, moose, caribou, reindeer, and related species, both native and exotic.

2.9. "Chronic wasting disease" or "CWD" means a transmissible spongiform encephalopathy of cervids.

2.10. "Class One" or "Class I" license means a license to operate a captive cervid facility which shall breed and propagate captive cervids, create cervid byproducts for sale to others, and slaughter for personal use.

- 2.11. "Class Two" or "Class II" license means a license to operate a captive cervid facility which shall breed, propagate, harvest or slaughter, create captive cervid byproducts, permit hunting or sell venison to others.
- 2.12. "Commercial shooting preserve" or "shooting preserve" means a Class II license facility that permits hunting.
- 2.13. "CWD herd certification program" means the Chronic Wasting Disease Herd Certification Program established in 9 C.F.R. §55 (2015). This program includes both herds that are directly enrolled in the CWD Herd Certification Program and herds that are included based on their participation in Approved States CWD Herd Certification Programs.
- 2.14. "DNR" means West Virginia Division of Natural Resources.
- 2.15. "Department" or "WVDA" means the West Virginia Department of Agriculture.
- 2.16. "Quarantine" means a confined area of 200 yards from any animal, and under the direct supervision and control of a State or Federal animal health official, who shall establish procedures for the accounting of all animals entering or leaving the area.
- 2.17. "Tuberculosis" or "TB" means an infectious disease caused by *Mycobacterium bovis*, commonly known as the tubercle bacillus.
- 2.18. "USDA" means the United States Department of Agriculture.
- 2.19. "Wildlife" means wild birds, wild animals, game and fur-bearing animals, fish (including minnows,) reptiles, amphibians, mollusks, crustaceans and all forms of aquatic life used as fish bait, whether dead or alive.
- 2.20. All other terms shall have the meaning proscribed to them in W. Va. Code §19-2H-2.

§61-34-3. Transition of captive cervid facilities.

- 3.1. An existing captive cervid facility shall apply to the Department for a new license within sixty (60) days of application being made available by the Department.
- 3.2. A captive cervid facility in existence on February 13, 2015 may continue operating under the existing authorization until the Department acts on its application.

§61-34-4. Application for license.

- 4.1. A person requesting a license to operate a Captive Cervid Farming Facility shall submit an application to the Department.
- 4.2. The application shall include:
- 4.2.a. The name of the person responsible for the facility;
 - 4.2.b. The mailing address of the proposed facility;
 - 4.2.c. The location of the proposed facility;
 - 4.2.d. The size of the facility;
 - 4.2.e. A legal description of the facility;
 - 4.2.f. The number of species of cervid to be included in the facility, including current inventory;

- 4.2.g. The bio-security measures to be utilized;
 - 4.2.h. The proposed method of flushing wild cervids from the enclosure if applicable;
 - 4.2.i. The proposed record keeping system;
 - 4.2.j. The method of verification that all wild cervids have been removed;
 - 4.2.k. The current zoning of the property proposed for the facility; and
 - 4.2.l. Any other information requested by the Department.
- 4.3. The Department shall approve or reject an application for license within sixty (60) days upon receipt.
- 4.4. The Department may issue a provisional license to a proposed facility that has not yet been constructed, but operations will not begin until the fully-constructed facility has been inspected and approved by the Department.
- 4.5. Each facility that has a deficiency in its license application shall have thirty (30) days upon notice from the Department to correct the deficiency before the license is denied.
- 4.6. Upon approval, the Department shall issue a license containing the following information:
- 4.6.a. Class of the license;
 - 4.6.b. License number;
 - 4.6.c. Expiration date;
 - 4.6.d. Captive cervid species and number of captive cervids approved for the licensed facility (including allowance for births); and
 - 4.6.e. Name, business address and telephone number of the owner and of the captive cervid farming facility.

§61-34-5. Fees.

- 5.1. The Department shall issue one of two licenses for captive cervid facilities.
- 5.1.a. The fee for a Class I license shall be \$375.00.
 - 5.1.b. The fee for a Class II license shall be \$750.00.
- 5.2. Current licenses, including commercial shooting preserves previously licensed by DNR, that expire on or about the June 30, 2015, shall be required to pay the fee in order to receive a new license. Licenses that expire on or about December 31, 2015 will be required to pay one half of the required license fee by December 31, 2015, however, those licensees will not be required to re-apply for a license until June 30, 2016. Thereafter, all licenses shall expire on June 30 of the following year of issue.
- 5.3. Cervid antemortem/postmortem inspection for slaughter at state licensed establishments shall be provided at the rate of \$55/per hour.
- 5.4. Cervids requiring antemortem field inspection shall be inspected at the rate of \$55/per hour.
- 5.5. Time for antemortem inspections will be calculated from the time of leaving department property or assigned location of the department employee until the time of return in fifteen (15) minute intervals.
- 5.6. The Department shall retain the license fee for its services in the event that a license is denied.

§61-34-6. License renewal; modification, sale or transfer of license.

- 6.1. An application for renewal shall be submitted to the Department sixty (60) days prior to the expiration of the current license.
- 6.2. Any owner having proposed changes in class of license, cervid species, number of captive cervids (including births that exceed that permitted by the license) or other requirements necessitating modification, shall apply to the Department for a license modification. Births at the facility shall not be considered to violate an issued license if the owner provides the Department with an updated inventory within fifteen (15) days.
- 6.3. Any person who sells or transfers ownership of a facility shall apply to the Department for a new license so long as the transferee satisfies all license requirements and fees.

§61-34-7. Inspections.

- 7.1. The Department shall have access to a facility, facility records and cervids at all reasonable hours to conduct inspections for the following purpose:
- 7.1.a. To ensure that the facility meets the requirements of this rule prior to the granting of the desired license;
 - 7.1.b. To secure samples and/or specimens; and
 - 7.1.c. To assure that the provisions for containment and care of captive cervids are adequate, that the safety of the public is protected, and to assure compliance with the terms and conditions of this rule and other laws, rules and regulations as applicable.
- 7.2. It is recommended that a facility representative be present during inspections.

§61-34-8. Facility, Fencing, Identification and Record Keeping.

- 8.1. The facility shall be inspected by the Department before license is approved and shall meet the following requirements:
- 8.1.a. The applicant shall have all necessary federal, state and local governmental permits.
 - 8.1.b. The applicant has paid all applicable license fees and all departmental charges for services provided to the facility.
 - 8.1.c. A unique and permanent identifying license number corresponding to the number assigned to the premises by the WVDA Premises Registration Program has been assigned to each licensed captive cervid facility. The applicant shall submit this number with the application for a captive cervid facility license. Licensees or applicants who are without a premise identification may contact the Department for further assistance and instruction.
 - 8.1.d. The facility shall provide fencing and meet specifications to prevent the escape of captive cervids and the infiltration of wild cervids into a captive cervid farming facility as follows:

8.1.d.1. The facility shall be constructed of such material, strength and design to contain the captive animals within the enclosure;

8.1.d.2. To safeguard both the captive animals and the public against injury;

8.1.d.3. To prevent the transmission of disease by indirect contact from the captive animals to wild white-tailed deer and the public;

8.1.d.4. To prevent the escape of captive animals;

8.1.d.5. To prevent wild white-tailed deer from entering the enclosure; and

8.1.d.6. Require a five foot cleared buffer around outer perimeter in order to inspect integrity of fence.

8.1.e. Perimeter fencing shall be adequate to prevent the following:

8.1.e.1. Ingress or egress of cervids;

8.1.e.2. Shall be designed and constructed to take into account topography and terrain features;

8.1.e.3. Shall be constructed to withstand commonly expected occurrences that would cause the fence to be breached. Such occurrences shall include; but not limited to:

8.1.e.3.a. High winds;

8.1.e.3.b. Ice storms;

8.1.e.3.c. Large snowfall amounts; and

8.1.e.3.d. Flooding.

8.1.f. The perimeter fence shall meet the following requirements; or the equivalent thereof:

8.1.f.1. Fence material shall be New Zealand style deer fence or equivalent;

8.1.f.2. Total height of fence shall be a minimum of eight (8) feet;

8.1.f.3. Minimum 12.5 gauge high tensile woven wire with locking knots and a maximum six (6) inch spacing shall be used;

8.1.f.4. Posts shall be metal 'T' posts, treated 4 X 4 posts, 6 inch treated round post or equivalent;

8.1.f.5. Corner posts shall be properly braced and installed;

8.1.f.6. Posts shall be properly spaced and anchored;

8.1.f.7. Rigid posts shall be set at lowest points of dips and on crowns or humps;

8.1.f.8. Trees or other structures that could threaten the fence shall be removed or fencing shall be constructed so as to prevent the breach of the fence from the fall of a tree or structure;

8.1.f.9. Gates shall be of sufficient strength and construction with no gaps;

8.1.f.10. Gates shall have functional locks;

8.1.f.11. Fencing shall be properly attached to post;

8.1.f.12. Bottom strand of fence shall be at ground level and reinforced; and

8.1.f.13. Water courses, gullies, ditches, etc. shall be properly fenced to prevent escape.

8.1.g. The minimum size for captive cervid facilities shall be 5,000 square feet for one animal. The enclosure size shall be increased by 25% for each additional animal.

8.1.h. The owner shall provide appropriate shelter and bedding material for the captive animals that protects them from inclement weather.

8.1.i. Fresh drinking water shall be provided daily.

8.1.j. The owner shall provide captive animals daily with food that is wholesome, palatable, free from contamination and of sufficient quantity and nutritive value to maintain all animals in good health. No person shall feed any cervid with any material that contains protein derived from any mammalian tissues.

8.1.k. Where necessary, fecal and food waste shall be removed from the enclosure and stored or disposed of in a manner that prevents noxious odors or insect pests and is in accordance with best management practices. Food, urine, fecal waste, and soils exposed to these waste materials must not be disposed where it may be exposed to free ranging white tail deer.

8.1.l. The owner shall keep all cervids free from parasites, sickness or disease. If sick, cervids must be given immediate professional medical attention or be humanely destroyed.

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

8.1.n. The facility shall not restrict the movement or trap existing free ranging deer inhabiting the land on which the facility is constructed. Department personnel shall verify the absence of entrapped deer and may require snow cover for the detection of deer prior to the release of any captive cervids within the facility.

8.1.o. Prior to reaching twelve (12) months of age, all captive cervids shall be marked with an official ID as defined by the animal disease traceability rule (840 RFID or metal tag with USDA shield) or a metal ear tag with a unique identification number affixed to the ear. In addition, all captive cervids must be marked a unique marker visible and identifiable.

8.1.p. The Commissioner may exempt cervids currently in existing commercial shooting preserves from this tagging requirement provided that the licensee will provide an annual minimum of 30 cervids or 10 percent of the cervids, whichever is less in the enclosure for CWD sampling and, provided that all cervids that are handled or added to the enclosure shall be tagged and inventoried.

8.1.q. An owner shall maintain an accurate and current inventory of all animals in the captive cervid herd on forms provided by the Department.

8.1.q.1. The inventory shall include the following information:

8.1.q.1.a. All cervid and other animal acquisitions;

8.1.q.1.b. Sales;

8.1.q.1.c. Possession transfer;

8.1.q.1.d. Escapes;

8.1.q.1.e. Births; and

8.1.q.1.f. Mortalities.

8.1.r. A licensee shall maintain all appropriate permits which shall include the following:

8.1.r.1. Names;

8.1.r.2. Addresses;

8.1.r.3. Sales documentation;

8.1.r.4. Tag numbers;

8.1.r.5. Origins and destinations of all transaction concerning captive cervids; and

8.1.r.6. All CWD testing records.

8.1.s. A licensee shall forward a copy of the records of all acquisitions, mortalities, births, sales or possession transfers to the state veterinarian's office within fifteen (15) days. Applications to receive or transfer captive cervids shall be made on forms provided by the Department.

8.1.t. A licensee shall obtain prior approval from the Department to move captive cervids both interstate and intrastate. The Department may grant approval on a case by case basis.

Failure to obtain approval for the transfer of a cervid prior to the transfer of such cervid may result in a \$1,000.00 administrative penalty per animal levied against both the facility releasing the cervid for transport and the facility receiving the cervid along with the possible suspension of the license of the facility releasing the cervid for transport and the facility receiving the cervid.

§61-34-9. CWD, TB and Brucellosis Standards and Testing.

9.1. All captive cervid facilities shall enroll the cervid herds in an accreditation program for TB and certification program for Brucellosis as defined by the USDA.

9.2. Captive cervid facilities shall only accept cervids from TB and Brucellosis accredited herds that meet the CWD monitoring and surveillance program requirements. All such tests for TB and Brucellosis shall be performed by a licensed and accredited veterinarian certified by the USDA to perform such testing.

Failure to obtain approval for the transfer of a cervid prior to the transfer of such cervid may result in a \$1,000.00 administrative penalty per animal levied against both the facility releasing the cervid for transport and the facility receiving the cervid along with the possible suspension of the license of the facility releasing the cervid for transport and the facility receiving the cervid.

9.3. A captive cervid facility may receive animals coming from a herd within the state only if the proposed transfer is from a herd that has an ongoing and appropriate CWD surveillance record for at least sixty (60) months.

If a licensee has a monitoring program which has been in effect for at least thirty-six (36) months, the Department may approve intrastate movement of cervids from the facility's herd on a case by case basis only after reviewing a facility's monitoring records.

9.4. A captive cervid facility in the state shall not receive live captive cervids or any byproduct thereof, or captive cervid genetic materials from a captive cervid facility that has had a confirmed CWD or TB positive cervid in the last sixty (60) months.

9.5. All cervids sold or transferred from a licensed captive cervid facility in this state shall be tested by a West Virginia licensed and accredited veterinarian for any future approved live animal test for CWD prior to movement.

9.6. A licensee shall make every effort to prevent escapes of animals from the captive cervid facility. A licensee shall report all known escapes within eight (8) hours or upon discovery of the escape, whichever is sooner, to the state veterinarian or West Virginia Department of Agriculture Animal Health Division personnel.

Failure to report an escaped cervid may result in the immediate forfeiture of the captive cervid license. Any negligent act that results in captive cervids escaping is a violation of the license.

9.7. Any captive cervid that escapes from the captive cervid facility shall be dispatched by Department or DNR personnel where possible.

9.8. Appropriate samples shall be collected and submitted for CWD and other transmissible diseases.

9.9. All costs for depopulating an animal that escapes due to a negligent act, including sample collection and testing, are the responsibility of the licensee.

9.10. Captive cervids shall not be intentionally released into the wild.

9.11. An authorized representative of the Department shall periodically inspect the captive cervid facility, records and animals to assure compliance with all requirements mandated for this license.

9.12. Licensees are required to submit appropriate samples for testing and enroll in the USDA programs such as, but not limited to, TB and Brucellosis herd accreditation status and CWD programs as defined by the USDA as a term and condition of the captive cervid license.

9.13. The licensee shall report any captive cervids that die of unknown causes and or are slaughtered to the Department within twenty-four (24) hours. Unless otherwise instructed by the state veterinarian, the licensee shall submit the animal to a West Virginia licensed and accredited veterinarian to determine cause of death or condition along with CWD testing.

9.14. The licensee shall submit appropriate samples as determined and directed by the Department from all captive cervids over twelve (12) months of age that die or are slaughtered for CWD testing to a USDA approved laboratory. Testing for other transmissible diseases is also required. Any captive cervid that is fourteen (14) months of age or older that dies or is slaughtered must be tested for TB and Brucellosis by a West Virginia licensed and accredited veterinarian or inspector if a visual inspection of the animal indicates a reasonable likelihood of either disease. Test results shall be made available to the Department. The Department may share test results with the DNR upon request. All costs for this disease testing and surveillance shall be the responsibility of the licensee unless federal funds become available.

9.15. The licensee shall notify the Department with the CWD test report results within five (5) days of receiving test results.

9.15.a. Any sample test that has a positive result for CWD shall be immediately reported, by the most expedient means possible, to the state veterinarian.

9.15.b. Should any animal test positive for CWD within the captive cervid facility, the facility shall be immediately quarantined and the captive herd may be immediately depopulated in accordance with guidelines established collaboratively by the USDA and the Department.

9.16. Epidemiological investigations shall be conducted to identify any captive cervid herds linked by animal movements and appropriate responses shall be taken including quarantine and testing of epidemiological associated animals. All costs associated with the quarantine, depopulation and testing shall be the responsibility of the licensee unless federal funds become available.

9.17. The Department will develop an accreditation program for captive cervids for diseases including TB, Brucellosis and CWD.

9.18. Captive cervid facilities are required to enroll their herds in the West Virginia CWD herd certification program following the USDA CWD herd certification program guidelines.

9.19. A herd plan must be developed following the USDA APHIS program standards for infected or exposed herds.

9.20. Routine sampling and diagnostics for disease and parasites may be required by the Department.

9.21. The owner shall have a West Virginia licensed and accredited veterinarian perform an annual visual examination of each animal and take an inventory to reconcile inventory records submitted with the license application or renewal. Owners shall submit the veterinarian report to the Department within sixty (60) days of receipt and the inventory within thirty (30) days of completion.

9.22. All testing or examinations of captive cervids shall be performed by a West Virginia licensed and accredited veterinarian certified by the USDA to perform testing on cervids, including CWD, TB and Brucellosis testing.

9.23. The collection of samples for CWD testing shall be performed by trained personnel within the Department, DNR, a trained West Virginia licensed and accredited veterinarian or other official authorized by the Department.

9.24. The licensee shall have the following options for the purpose of collecting tissue for CWD testing:

9.24.a. The licensee may deliver to the Department, DNR, a trained West Virginia licensed and accredited veterinarian or other official authorized by the Department the head of the cervid or the entire cervid with head intact; or

9.24.b. The licensee may contact the Department, DNR, a trained West Virginia licensed and accredited veterinarian or other official authorized by the Department to go to the premise to collect and obtain the tissue sample. After sufficient and necessary tissue samples have been collected, the remaining tissue may be shared with the captive cervid facility licensee.

9.25. Failure to comply with this rule, unless otherwise provided, may result in the revocation of the captive cervid facility license. Revocation shall count as a lapsed license requiring a new application to be completed and approved.

§61-34-10. Additional Specifications for Commercial Shooting Preserves.

10.1. The following terms and conditions shall apply for commercial shooting preserve sizes and boundaries:

10.1.a. The commercial shooting preserve shall contain a minimum of two hundred (200) acres in one tract of leased or owned land. The shooting preserve shall be no larger than three thousand (3,000) contiguous acres;

10.1.b. The exterior boundaries of the shooting preserve shall be clearly defined and posted with signs erected around the extremity at intervals of one hundred fifty (150) yards or less. The signs shall have the words "LICENSED SHOOTING PRESERVE" on them and shall be signed by the licensee;

10.1.c. The shooting preserve shall be enclosed by fencing to prevent the ingress of native cervids or egress of stocked cervids species. The fencing shall be of sufficient strength and height to prevent the escape of the stocked cervids; and

10.1.d. The licensee shall display the license in plain view at the entrance to the shooting preserve.

10.2. Stocked cervids means those animals that were either obtained from a licensed commercial dealer and released at the shooting preserve, imported into this state under a valid cervid importation permit and released at the shooting preserve, or raised at the shooting preserve under a valid licensed cervid farm facility.

10.3. Shooting preserves must also operate under the Captive Cervid Farming Rules. In order to import cervids, the licensee must first obtain a cervid importation permit issued by the WVDA.

10.4. The licensee must maintain accurate and current records of all animals purchased for, imported to or raised at the shooting preserve, including official identification.

10.5. Records of animals purchased for the shooting preserve must include a bill of sale for all animals acquired, importation permit issued by the Department, the date of importation, number of each species that were imported and the sex of each animal that is imported and official identification.

10.6. Records of animals raised at the shooting preserve must include the license issued by the Department, the date of birth and the sex of each animal born.

10.7. The licensee must maintain accurate and current records of all cervids releases made at the shooting preserve which must include date of release, number of release, sex and official ID if from a farmed cervid facility.

10.8. The licensee must also maintain a registration book listing the name, address and hunting license numbers of each customer or guest, date of hunt, number of cervids taken, the number of tag affixed to each carcass and official ID, if applicable.

10.9. The licensee must submit a shooting preserve report to the Commissioner on a form provided by the Department by July 10 of each year.

§61-34-11. Slaughter.

11.1. Any animal regulated as a captive cervid under W. Va. Code §19-2H-1 shall be slaughtered and processed under inspection if venison from that animal is to be sold at a commercial outlet or to an individual. Animals slaughtered for personal use are exempt from this section.

11.2. Any animal regulated as a captive cervid under W. Va. Code §19-2H-1 taken as a hunted animal, for a fee, may be processed with the assistance of a facility owner or facility employee at the facility site or a licensed custom or commercial establishment.

11.3. Inspection may be provided at any state or federal licensed commercial facility.

11.4. Records must be kept for a minimum of two (2) years with respect to sales of venison.

