

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

Form #4

Do Not Mark In This Box

FILED

2015 NOV -5 P 3:08

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

CITE AUTHORITY: 19-2H-1, 19-2H-2

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



Authorized Signature

FILED

2015 NOV -5 P 3:08

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 provides for the regulation of 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, §19-2H-2
- 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 any 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 II license" means a license to operate a captive cervid facility which breeds and propagates captive cervids, creates cervid byproducts for sale to others and slaughters 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. "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.
- 2.18. "Tuberculosis" or "TB" means an infectious disease caused by *Mycobacterium bovis*, commonly known as the tubercle bacillus.
- 2.19. "USDA" means the United States Department of Agriculture.
- 2.20. "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.
- 2.21. All other terms have the meaning proscribed to them in W. Va. Code §19-2H-2.

§61-34-3. Application for license.

- 3.1. A person requesting a license to operate a Captive Cervid Farming Facility shall submit an application to the Department.
- 3.2. The application shall include:
- 3.2.a. The name of the person responsible for the facility;
 - 3.2.b. The mailing address of the proposed facility;
 - 3.2.c. The location of the proposed facility;
 - 3.2.d. The size of the facility;
 - 3.2.e. A legal description of the facility;
 - 3.2.f. The number of species of cervid to be included in the facility, including current inventory;
 - 3.2.g. The bio-security measures to be used;
 - 3.2.h. The proposed method of flushing wild cervids from the enclosure, if applicable;

- 3.2.i. The proposed record keeping system;
 - 3.2.j. The method of verification that all wild cervids have been removed;
 - 3.2.k. The current zoning of the property proposed for the facility; and
 - 3.2.l. Any other information requested by the Department.
- 3.3. The Department shall approve or reject an application for license within sixty (60) days upon receipt.
- 3.4. 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.
- 3.5. 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.
- 3.6. Upon the license's approval, the Department shall issue a license containing the following information:
- 3.6.a. The class of the license;
 - 3.6.b. The license number;
 - 3.6.c. The license's expiration date;
 - 3.6.d. The captive cervid species and number of captive cervids approved for the licensed facility (including allowance for births); and
 - 3.6.e. The name, business address and telephone number of the owner and of the captive cervid farming facility.

§61-34-4 Fees.

- 4.1. The Department shall issue one of two licenses for captive cervid facilities.
- 4.1.a. The fee for a Class I license is \$375.00.
 - 4.1.b. The fee for a Class II license is \$750.00.
- 4.2. Current licenses, including commercial shooting preserves previously licensed by DNR, that expire on or about the June 30, 2015, shall 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 expire on June 30 of the year following issue.
- 4.3. Cervid antemortem and postmortem inspection for slaughter at state licensed establishments shall be provided at the rate of \$55/per hour.
- 4.4. Cervids requiring antemortem field inspection shall be inspected at the rate of \$55/per hour.
- 4.5. Time for antemortem inspections will be calculated from the time the inspector leaves the department's property or assigned location until the time of return in fifteen (15) minute intervals.
- 4.6. The Department shall retain the license fee for its services in the event that a license is denied.

§61-34-5. License renewal; modification, sale or transfer of license.

5.1. An application for renewal shall be submitted to the Department sixty (60) days prior to the expiration of the current license.

5.2. 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 to the license, shall apply to the Department for a license modification. Births at the facility do not violate an issued license, if the owner provides the Department with an updated inventory within fifteen (15) days.

5.3. Any person who has acquired ownership of a facility shall apply to the Department for a new license so long as the transferee satisfies all license requirements and fees.

§61-34-6. Inspections.

6.1. The Department shall have access to a facility, facility records and the cervids at all reasonable hours to conduct inspections for the following purposes:

6.1.a. To ensure that the facility meets the requirements of this rule prior to the granting of the desired license;

6.1.b. To secure samples and specimens; and

6.1.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 applicable laws, rules and regulations.

6.2. It is recommended that a facility representative be present during inspections.

§61-34-7. Facility.

7.1. The facility shall be inspected by the Department before license is approved and shall meet the following requirements:

7.1.a. The applicant has all necessary federal, state and local governmental permits.

7.1.b. The applicant has paid all applicable license fees and all departmental charges for services provided to the facility.

7.1.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 the 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 number may contact the Department for further assistance and instruction.

§61-34-8. Fencing.

8.1 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.a. The facility shall be constructed of such material, strength and design:

8.1.a.1. To contain the captive animals within the enclosure;

- 8.1.a.2. To safeguard both the captive animals and the public against injury;
- 8.1.a.3. To prevent the transmission of disease by indirect contact from the captive animals to wild white-tailed deer and the public;
- 8.1.a.4. To prevent the escape of captive animals;
- 8.1.a.5. To prevent wild white-tailed deer from entering the enclosure; and
- 8.1.a.6. Require a five foot cleared buffer around outer perimeter in order to inspect integrity of fence.
- 8.1.b. Perimeter fencing shall be adequate to prevent:
 - 8.1.b.1. The ingress or egress of cervids;
 - 8.1.b.2. Designed and constructed to take into account topography and terrain features;
 - 8.1.b.3. Constructed to withstand commonly expected occurrences that would cause the fence to be breached. These occurrences shall include; but not limited to:
 - 8.1.b.3.a. High winds;
 - 8.1.b.3.b. Ice storms;
 - 8.1.b.3.c. Large snowfall amounts; and
 - 8.1.b.3.d. Flooring.
- 8.1.c. The perimeter fence shall meet the following requirements; or the equivalent thereof:
 - 8.1.c.1. Fence material shall be New Zealand style deer fence or its equivalent;
 - 8.1.c.2. Total height of fence shall be a minimum of eight (8) feet;
 - 8.1.c.3. Minimum 12.5 gauge high tensile woven wire with locking knots and a maximum six (6) inch spacing shall be used;
 - 8.1.c.4. Posts shall be metal 'T' posts, treated 4 X 4 posts, 6 inch treated round post or their equivalent;
 - 8.1.c.5. Corner posts shall be properly braced and installed;
 - 8.1.c.6. Posts shall be properly spaced and anchored;
 - 8.1.c.7. Rigid posts shall be set at lowest points of dips and on crowns or humps;
 - 8.1.c.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.c.9. Gates shall be of sufficient strength and construction with no gaps;
 - 8.1.c.10. Gates shall have functional locks;
 - 8.1.c.11. Fencing shall be properly attached to posts;
 - 8.1.c.12. Bottom strand of fence shall be at ground level and reinforced; and
 - 8.1.c.13. Water courses, gullies, ditches, etc. shall be properly fenced to prevent escape.
- 8.1.d. 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.e. The owner shall provide appropriate shelter and bedding material for the captive animals that protects them from inclement weather.
- 8.1.f. The owner shall provide fresh drinking water daily.
- 8.1.g. 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.h. 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 they may be exposed to free ranging white tail deer.

8.1.i. 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.j. Co-mingling of different cervid species is 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.k. The facility shall not restrict the movement of 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.

§61-34-9. Identification.

9.1 Prior to reaching twelve (12) months of age, a licensee shall mark all captive cervids with an official ID as defined by the USDA APHIS 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 with a unique marker visible and identifiable.

9.2. The Commissioner may exempt cervids currently in existing commercial shooting preserves from the tagging requirement in §61-34-9.9.1 of this rule provided that the licensee shall provide an annual minimum of 30 cervids or 10 percent of the cervids, whichever is less in the enclosure for CWD sampling. The licensee shall tag and inventory all cervids that are handled or added to the enclosure.

§61-34-10. Record keeping.

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

10.1.a. The inventory shall include the following information:

- 10.1.a.1. All cervid and other animal acquisitions;
- 10.1.a.2. Sales;
- 10.1.a.3. Possession transfers;
- 10.1.a.4. Escapes;
- 10.1.a.5. Births; and
- 10.1.a.6. Mortalities.

10.1.b. A licensee shall maintain all appropriate permits which shall include the following:

- 10.1.b.1. Names of;
- 10.1.b.2. Addresses of;
- 10.1.b.3. Sales documentation;
- 10.1.b.4. Tag numbers;
- 10.1.b.5. Origins and destinations of all transaction concerning captive cervids;

and

- 10.1.b.6. All CWD testing records.

10.2. 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.

10.3. 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.

§61-34-11. CWD, TB and Brucellosis standards and testing.

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

11.2. A licensed captive cervid facility shall enroll its herds in the West Virginia CWD herd certification program following the USDA CWD herd certification program guidelines.

11.3. A licensee shall 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.

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

11.5. 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.

11.6. 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.

11.7. 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.

11.8. 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.

11.9. The licensee shall report any captive cervids that die of unknown causes 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.

11.10. 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 is the responsibility of the licensee, unless federal funds become available.

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

11.11.a. A licensee shall immediately report by the most expedient means possible any sample test that has a positive result for CWD, to the state veterinarian.

11.11.b. If any animal test positive for CWD within the captive cervid facility, the state veterinarian shall immediately quarantine the captive herd, and may also be immediately depopulated in accordance with guidelines established collaboratively by the USDA and the Department.

11.12. Epidemiological investigations shall be conducted to identify any captive cervid herds linked by animal movements and appropriate responses shall be taken by the state veterinarian 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.

11.13. A licensee shall develop a herd plan following the USDA APHIS program standards for infected or exposed herds.

11.14. The Department may require routine sampling and diagnostics for disease and parasites. A quarantine of a premises will be placed if any farmed cervid is found to be infected with any contagious or infectious disease. Any farmed cervid that is imported into this state in violation of Chapter 19 of the West Virginia Code importation of farmed cervids or exposed to a communicable disease, shall be cause for the premises quarantine.

11.15. 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. The owner shall submit the veterinarian report to the Department within sixty (60) days of receipt and the inventory within thirty (30) days of completion.

11.16. 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.

11.17. 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.

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

11.18.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

11.18.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.

11.19. A licensee who fails to comply with this rule, unless otherwise provided, may result in the revocation of the captive cervid facility license. A licensee whose license has been revoked shall count as a lapsed license requiring a new application to be completed and approved.

§61-34-12. Escape of cervids.

12.1. 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.

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

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

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

12.5. A licensee shall not intentionally release captive cervids into the wild.

§61-34-13. Additional specifications for commercial shooting preserves.

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

13.1.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;

13.1.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;

13.1.c. The shooting preserve shall be enclosed by fencing as referenced in §61-34-8. 8.1.b and §61-34-8. 8.1.c of this rule 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

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

13.2. Shooting preserves are subject to all of the provisions of this rule. In order to import cervids, the licensee must first obtain a cervid importation permit issued by the WVDA.

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

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

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

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

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

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

§61-34-14. Slaughter.

14.1. Any animal regulated as a captive cervid under W. Va. Code §19-2H-1 shall be slaughtered and processed at a state or federal licensed commercial facility 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.

14.2. 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.

14.3. A licensee shall keep records on venison sales for a minimum of two (2) years.

§61-34-15. Standards for closure.

15.1. A facility may close, or sell out, so long as both facilities are in compliance with CWD, TB and Brucellosis program standards as referenced in §61-34-11 of this rule.

15.2. A facility may process stocked cervids for its own use.

15.3. A facility may process stocked cervids for slaughter as referenced in §61-34-14 of this rule.

15.4. The Department shall inspect the facility upon closure for the following purposes:

15.4.a. To ensure that the facility meets the requirements for closure according to this rule; and

15.4.b. To collect all official identification tags.

15.5. The licensee of the facility shall file with the Department a final inventory and death report of stocked cervids.

§61-34-16. Penalties.

16.1. If a licensee fails to obtain approval for the transfer of a cervid prior to its transfer may result in a \$1,000 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.

16.2. 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.