WEST VIRGINIA SECRETARY OF STATE
KRIS WARNER
ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Agriculture

RULE TYPE: Legislative TITLE-SERIES: 61-34

RULE NAME: Captive Cervid Farming

CITE AUTHORITY: §19-2H-1, 19-2H-2

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.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Amie J Minor -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 61
LEGISLATIVE RULE
WEST VIRGINIA DEPARTMENT OF AGRICULTURE

SERIES 34
CAPTIVE CERVID FARMING

§61-34-1. General.

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

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

1.3. Filing Date. -- ~~April 30, 2020~~

1.4. Effective Date. -- ~~April 30, 2020~~

1.5. Sunset Date. -- This rule shall terminate and have no further force or effect April 30, 203~~0~~2.

1.6. Incorporation by Reference – The Code of Federal Regulations (9 CFR, Part 81) Chronic Wasting Disease in Deer, Elk, and Moose and the CWD Program Standards effective June 13, 2012, defined by the United States Department of Agriculture/Veterinary Services are incorporated by reference.

§61-34-2. Definitions.

2.1. "Accredited ~~v~~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~~2. "Animal and ~~p~~Plant ~~h~~Health ~~i~~Inspection ~~s~~Service (APHIS)" means the Animal and Plant Health Inspection Service of the United States.

2.3. "Animal Identification System" means a process or procedure that allows an individual Cervid to be continuously recognized as a unique animal throughout its lifetime.

2.4. "Antemortem ~~i~~Inspection" means the observation of live animals by a veterinarian or trained inspector for lameness or abnormal behavior prior to ~~s~~Slaughter.

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

2.~~5~~6. "Approved ~~s~~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" or the plural means a member of the Cervidae family and any hybrids of animals including, but not limited to, fallow deer, red deer, white-tailed deer, axis deer, elk, moose, reindeer and caribou which are domesticated animals under the control of the owner of the animal.

~~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, and includes Captive Cervids.

2.9. "Chronic ~~w~~Wasting ~~d~~Disease" or "CWD" means a transmissible spongiform encephalopathy of ~~c~~Cervids.

2.10. "Class One" or "Class I" license" means a license to operate a ~~c~~Captive ~~c~~Cervid ~~f~~Facility which breeds and propagates ~~c~~Captive ~~c~~Cervids, creates ~~c~~Cervid byproducts for sale to others, ~~and~~ ~~s~~Slaughters Cervids for personal use, or Slaughters Cervids for sale to others.

2.11. "Class Two" or "Class II" license means a license to operate a ~~c~~Captive ~~c~~Cervid ~~f~~Facility which ~~shall~~ may breed~~,~~ and propagate Cervids, ~~harvest or slaughter,~~ create ~~c~~Captive ~~c~~Cervid byproducts, permit hunting, Slaughter Cervids for personal use, or Slaughter Cervids for sale ~~sell venison~~ to others.

2.12. "Commercial ~~s~~Shooting ~~p~~Preserve" or "~~s~~Shooting ~~p~~Preserve" means a Class II license ~~f~~Facility that permits hunting.

2.13. "Commissioner" means the Commissioner of Agriculture or his or her designee.

2.14~~3~~. "CWD ~~h~~Herd ~~c~~Certification ~~p~~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.

2.15~~4~~. "Department" or "WVDA" means the West Virginia Department of Agriculture.

2.16. "Depopulation" means the removal by Slaughter, or other means of destruction, of all Captive Cervids from a specific premises.

2.17~~5~~. "DNR" means West Virginia Division of Natural Resources.

2.18. "Facility" means a premises or location where Cervids are held in a permanent enclosure, including Captive Cervid farms, Shooting Preserves, and all other premises licensed or required to be licensed under this rule.

2.19. "Harvest" means to slaughter or take by hunting a Captive Cervid on a Shooting Preserve for meat, processing, CWD sampling, or other products.

2.20. "Postmortem Inspection" means the examination of a dead animal's carcass, organs, and tissues by a veterinarian or trained inspector for disease, abnormality, or contamination.

2.21~~16~~. "Quarantine" means ~~a confined area of 200 yards from any animal, and~~ placing a Facility under the direct supervision and control of a State or Federal animal health official, who shall control and establish procedures for ~~the accounting of~~ all animals and animal byproducts entering or leaving the area and all Facility equipment entering or leaving the area.

2.22. "Slaughter" means the point at which a Captive Cervid is prepared into meat products for human consumption.

2.2317. "Slaughter fFacility" means either a ~~slaughter~~ building, structure, or facility used for the Slaughtering of animals with a valid ~~c~~Captive ~~c~~Cervid license operating under state or federal inspection that may hold ~~c~~Cervids for up to seventy-two (72) hours prior to ~~s~~Slaughtering~~,~~; or a ~~slaughter~~ building, structure, or facility used for the Slaughtering of animals with no ~~c~~Captive ~~c~~Cervid fFacility license operating under state or federal inspection that must ~~s~~Slaughter all ~~c~~Cervids within the operating day of receipt of the animal(s).

2.24. "State Veterinarian" means the veterinarian employed or designated by the West Virginia Department of Agriculture to administer and enforce the animal health laws and regulations of the State of West Virginia.

2.2518. "Tuberculosis" or "TB" means an infectious disease caused by Mycobacterium bovis, commonly known as the tubercle bacillus.

2.2619. "USDA" means the United States Department of Agriculture.

2.270. "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. The term ~~w~~Wildlife does not include ~~c~~Captive ~~c~~Cervids regulated pursuant to §19-2H-2 of the W. Va. Code.

2.281. 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:

3.2.1. The name of the person responsible for the fFacility;

3.2.~~b~~2. The mailing address of the proposed fFacility;

3.2.~~c~~3. The location of the proposed fFacility;

3.2.~~d~~4. The size of the fFacility;

3.2.~~e~~5. A legal description of the fFacility;

3.2.~~f~~6. The number of species of ~~c~~Cervid to be included in the fFacility, including ~~current~~ anticipated inventory;

3.2.~~g~~7. The bio-security measures to be used;

3.2.~~h~~8. The proposed method of flushing wild ~~c~~Cervids from the enclosure, if applicable;

3.2.~~i~~9. The proposed record keeping system;

3.2.~~j~~10. The method of verification that all wild ~~c~~Cervids have been removed;

3.2.~~k~~11. The current zoning of the property proposed for the fFacility; and

3.2.~~l.~~12 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 ~~f~~Facility that has not yet been constructed, but operations ~~will~~ may not begin until the fully-constructed ~~f~~Facility has been inspected and approved by the Department.

3.5. Each ~~f~~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 approval of a license~~'s approval~~ application, the Department shall issue a license containing the following information:

3.6.~~a~~1. The class of the license;

3.6.~~b~~2. The license number;

3.6.~~c~~3. The license's expiration date;

3.6.~~d~~4. Anticipated stocking density including, allowance for projected birth rate~~. The captive Cervid species and number of captive Cervids approved for the licensed facility (including allowance for births)~~; and

3.6.~~e~~5. The name, business address and telephone number of the owner and of the ~~captive Cervid farming~~ ~~f~~Facility.

§61-34-4 Fees.

4.1. The Department shall issue one of two licenses for ~~captive Cervid~~ ~~f~~Facilities.

4.1.~~a~~1. The fee for a Class I license is $375.00.

4.1.~~b~~2. The fee for a Class II license is $750.00.

4.2. ~~Current~~ All licenses~~, including commercial shooting preserves,~~ expire on June 30~~th~~ of the year following issue unless renewed in accordance with Section 5 of this rule.

4.3. ~~c~~Cervid ~~a~~Antemortem and ~~p~~Postmortem ~~i~~Inspection for ~~s~~Slaughter at ~~state licensed establishments~~ Slaughter Facilities ~~shall~~ will be provided at the rate of $55/per hour.

4.4. ~~c~~Cervids requiring ~~a~~Antemortem ~~field~~ ~~i~~Inspection ~~shall~~ will be inspected at the rate of $55/per hour.

4.5. Time for ~~a~~Antemortem ~~i~~Inspections will be calculated from the time the inspector leaves the ~~d~~Department's property or assigned location until the time of return in fifteen (15) minute ~~intervals~~ increments.

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~~,~~ and modification~~,~~; sale or transfer of ~~license~~ ~~f~~Facility.

5.1. An updated inventory record containing all birth records, ~~and~~ death records, and testing results shall be provided by the Licensee with every application for renewal of license ~~biannually: at license renewal on June 30 and by December 31~~.

5.2. Any ~~owner~~ Licensee that requires ~~having proposed~~ changes in class of license, ~~c~~Cervid species, number of ~~c~~Captive ~~c~~Cervids (including births that exceed the number ~~that~~ permitted by the license), or other requirements necessitating modification ~~to~~ of the license, shall apply to the Department for a license modification. Births at the ~~f~~Facility do not violate an issued license if the owner Licensee provides the Department with an updated inventory within fifteen (15) days of the birth and the fawns are identified with visible official identification tags affixed to their ears; provided, that Commercial Shooting Preserve Licensees are not required to affix tags to the ears of fawns born on the Facility.

5.3. An application for renewal of a license shall be submitted on forms provided by the Department no later than 60 days prior to the expiration of the current license. ~~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.~~

5.4. A Licensee must provide at least 30 days advance notice to the Department prior to the sale or transfer of any Facility. If a purchaser or transferee acquires a Facility prior to May 1, the purchaser or licensee shall, before the close of business on May 1, or if May 1 is a Saturday or Sunday, until the end of the next day that is not a Saturday or Sunday: (a) apply for a modification of the license to list the purchaser or transferee as the new licensee and (b) apply for renewal of the license. If a purchaser or transferee acquires a Facility after May 1 but before June 30, the purchaser or transferee shall apply to the Department for a new license to operate the Facility in accordance with Section 3 of this rule.

5.5. The Department shall issue a Quarantine of any premises found to contain Captive Cervids that is unlicensed. The owner of the unlicensed premises shall apply for a license in accordance with Section 3 of this rule within 60 days of when the Quarantine is issued. If the owner of the unlicensed premises fails to comply with this Subsection 5.5, or the Facility is unable to be licensed, the Department may take action to Depopulate the unlicensed premises or take other action the Department deems appropriate under the circumstances.

§61-34-6. Inspections.

6.1. The Department shall have access to a ~~f~~Facility, ~~f~~Facility records, and the Facility ~~c~~Cervids at all reasonable hours, with or without prior notice, to conduct inspections for the following purposes:

6.1.~~a~~1. To ensure that the ~~f~~Facility meets the requirements of this rule prior to the granting of the desired license;

6.1.~~b~~2. To secure samples and specimens; and

6.1.~~c~~3. To ~~assure~~ ensure that the provisions for containment and care of ~~c~~Captive ~~c~~Cervids are adequate, ~~that~~ the safety of the public is protected, and the licensee is in ~~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 ~~f~~Facility representative be present during inspections.

§61-34-7. Facility.

7.1. The ~~f~~Facility ~~shall~~ must be inspected by the Department before a license is approved or renewed and ~~shall~~ must meet the following requirements:

7.1.~~a~~1. The applicant has all necessary federal, state and local governmental permits.

7.1.~~b~~2. The applicant has paid all applicable license fees and all ~~d~~Departmental charges for services provided to the ~~f~~Facility.

7.1.~~c~~3. 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 f~~Facility. The applicant shall submit this number with the application for a ~~captive Cervid f~~Facility license. ~~Licensees or a~~ Applicants who are without a premise identification number may contact the Department for further assistance and instruction.

§61-34-8. Fencing.

8.1. The ~~f~~Facility must be fenced, ~~shall provide fencing~~ and meet specifications to prevent the escape of ~~c~~Captive ~~c~~Cervids and the infiltration of wild ~~c~~Cervids into a ~~captive Cervid farming f~~Facility as follows:

8.1.~~a~~1. The ~~f~~Facility shall be constructed of such material, strength and design:

~~8.1.a.1~~8.1.1.a. To contain the ~~c~~Captive ~~animals~~ Cervids within the enclosure;

~~8.1.a.2~~8.1.1.b. To safeguard both the ~~c~~Captive ~~animals~~ Cervids and the public against injury;

~~8.1.a.3~~8.1.1.c. To prevent the transmission of disease by indirect contact from the ~~c~~Captive ~~animals~~ Cervids to wild ~~c~~Cervids and the public;

~~8.1.a.4~~8.1.1.d. To prevent the escape of ~~c~~Captive ~~animals~~ Cervids;

~~8.1.a.5~~8.1.1.e. To prevent wild ~~c~~Cervids from entering the enclosure; and

~~8.1.a.6~~8.1.1.f. ~~Require~~ Provide a five-foot cleared buffer around outer perimeter in order to inspect integrity of fence.

8.1.~~b~~2. Perimeter fencing shall be adequate to prevent:

~~8.1.b.1~~8.1.2.a. The ingress or egress of ~~c~~Cervids;

~~8.1.b.2~~8.1.2.b. Designed and constructed to take into account topography and terrain features;

~~8.1.b.3~~8.1.2.c. Constructed to withstand commonly expected occurrences that would cause the fence to be breached. These occurrences shall include~~;~~, but not be limited to:

~~8.1.b.3.a~~8.1.2.c.1. High winds;

~~8.1.b.3.b~~8.1.2.c.2. Ice storms;

~~8.1.b.3.c~~8.1.2.c.3. ~~Large~~ Heavy snowfalls ~~amounts~~; and

~~8.1.b.3.d~~8.1.2.c.4. Flooding.

8.1.~~c~~3. The perimeter fence shall meet the following requirements~~;~~, or the equivalent thereof:

~~8.1.c.1.~~8.1.3.a. Fence material shall be New Zealand style deer fence or its equivalent;

~~8.1.c.2~~8.1.3.b. Total height of fence shall be a minimum of eight (8) feet;

~~8.1.c.3~~8.1.3.c. 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~~8.1.3.d. Posts shall be metal 'T' posts, treated 4 X 4 posts, 6-inch treated round post or their equivalent;

~~8.1.c.5~~8.1.3.e. Corner posts shall be properly braced and installed;

~~8.1.c.6~~8.1.3.f. Posts shall be properly spaced and anchored;

~~8.1.c.7~~8.1.3.g. Rigid posts shall be set at lowest points of dips and on crowns or humps;

~~8.1.c.8~~8.1.3.h. 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~~8.1.3.i. Gates shall be of sufficient strength and construction with no gaps;

~~8.1.c.10~~8.1.3.j. Gates shall have functional locks;

~~8.1.c.11~~8.1.3.k. Fencing shall be properly attached to posts;

~~8.1.c.12~~8.1.3.l. Bottom strand of fence shall be at ground level and reinforced; and

~~8.1.c.13~~8.1.3.m. Water courses, gullies, ditches, and other barriers or depressions ~~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.~~ed4.~~ The ~~owner~~ Licensee shall provide appropriate shelter and bedding material for the ~~c~~Captive ~~animals~~ Cervids that protects them from inclement weather.

8.1.~~fe~~5. The ~~owner~~ Licensee shall provide fresh drinking water daily.

8.1.~~gf.~~6. The ~~owner~~ Licensee shall provide ~~c~~Captive ~~animals~~ Cervids daily with food that is wholesome, palatable, free from contamination and of sufficient quantity and nutritive value to maintain all ~~animals~~ Captive Cervids in good health. No person shall feed any ~~c~~Cervid with any material that contains protein derived from any mammalian tissues.

8.1.~~hg~~7. Where necessary, fecal and food waste ~~shall~~ must 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 wild Cervids ~~free ranging white tail deer~~.

8.1.~~ih~~8. ~~The owner shall keep all Cervids free from parasites, sickness or disease.~~ If ~~sick~~ a Captive Cervid becomes sick, ~~Cervids~~ it must be given immediate professional medical attention or be humanely destroyed.

8.1.~~ji~~9. ~~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 ~~c~~Captive ~~c~~Cervids must not be available to or exposed to wild Cervids ~~free ranging white-tailed deer.)~~

8.1.~~kj.~~ 10. The ~~f~~Facility shall not restrict the movement of or trap wild Cervids ~~existing free ranging deer~~ inhabiting the land on which the ~~f~~Facility is constructed. Department personnel shall verify the absence of entrapped wild Cervids ~~deer~~ and may require snow cover for the detection of ~~deer~~ Cervids prior to the release of any ~~c~~Captive ~~c~~Cervids within the ~~f~~Facility.

§61-34-9. Identification.

9.1. ~~Prior to reaching twelve (12) months of age, a~~ lLicensees shall ~~mark~~ identify all ~~c~~Captive ~~c~~Cervids with an official electronic ID as defined by the USDA APHIS Animal Disease Traceability rule ~~(840 RFID or metal tag with USDA shield) or a metal ear tag~~ requiring ~~with~~ a unique identification number affixed to the ear. In addition, all ~~c~~Captive ~~c~~Cervids must be marked with a unique marker that is visible and identifiable.

9.2. Cervids added to Shooting Preserves must have official identification from the originating herd, which must not be removed. Natural additions born on the Shooting Preserve may be exempted if the Cervid is sampled for CWD at Harvest and official identification is applied to the samples for test submission.

~~The Commissioner may exempt Cervids currently in existing in 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 dispatched Cervids, whichever is less in the enclosure have all harvested deer species sampled and submitted for CWD sampling analysis. The licensee shall tag and inventory all Cervids that are handled or added to the enclosure.~~

9.3. If official identification of a Captive Cervid becomes lost, damaged, or illegible, the Licensee shall replace the identification as soon as practicable and maintain records of the original identification number, the replacement identification number, the date of replacement, and the reason for replacement.

§61-34-10. Record keeping.

10.1. A~~n owner~~ Licensee shall maintain an accurate and current inventory of all ~~animals in the~~ ~~c~~Captive ~~c~~Cervids ~~herd~~ in the Facility on forms provided by the Department.

10.1.~~a~~1. The inventory ~~shall~~ must include the following information:

~~10.1.a.1~~10.1.1.a. All ~~c~~Cervid and other animal acquisitions;

~~10.1.a.2~~10.1.1.b. Sales;

~~10.1.a.3~~10.1.1.c. Possession transfers;

~~10.1.a.4~~10.1.1.d. Escapes;

~~10.1.a.5~~10.1.1.e. Births; and

~~10.1.a.6.~~ 10.1.1.f. Mortalities.

10.1.~~b~~2. A licensee shall maintain all ~~appropriate~~ permits, which ~~shall~~ must include the following:

~~10.1.b.1~~10.1.2.a. Names of;

~~10.1.b.2~~10.1.2.b. Addresses of;

~~10.1.b.3~~10.1.2.c. Sales documentation;

~~10.1.b.4~~10.1.2.d. Tag numbers;

~~10.1.b.5~~10.1.2.e. Origins and destinations of all transaction concerning ~~c~~Captive ~~c~~Cervids; and

~~10.1.b.6~~10.1.2.f. All CWD, Brucellosis, and Tuberculosis testing records.

10.2. All licensees shall forward a copy of the records of all acquisitions, mortalities ~~by unknown cause~~, and sales or possession transfers of Captive Cervids to the State Veterinarian's Office within fifteen (15) days of when the acquisition, death, or transfer takes place. Applications to receive or transfer ~~c~~Captive ~~c~~Cervids shall be made on forms provided by the Department.

10.3. A licensee shall obtain prior approval from the Department to move ~~c~~Captive ~~c~~Cervids both interstate and intrastate, including for necropsy services. 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 ~~c~~Captive ~~c~~Cervids for diseases including TB, Brucellosis and CWD.

11.2. A licensed Class I ~~captive Cervid~~ ~~f~~Facility shall enroll its herds in the West Virginia CWD ~~h~~Herd ~~c~~Certification ~~p~~Program following the USDA CWD ~~h~~Herd ~~c~~Certification ~~p~~Program guidelines.

11.3. A Class I 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 ~~c~~Captive ~~c~~Cervid license. All costs for this disease testing and surveillance is the responsibility of the licensee. Class II licensees are not required to conduct Brucellosis and Tuberculosis herd accreditation requirements.

11.4. ~~A~~ Class I and Class II ~~captive Cervid~~ ~~f~~Facility~~y~~ies ~~shall~~ may only accept ~~c~~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.~~ The collection of samples for Brucellosis and Tuberculosis testing shall be performed by a licensed and Accredited Veterinarian designated by the USDA.

11.5. A ~~captive Cervid~~ ~~f~~Facility may receive ~~animals~~ Captive Cervids 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 Captive Cervids to a Class II Shooting Preserve ~~of Cervids~~ from the ~~f~~Facility's herd on a case-by-case basis, only after reviewing ~~a~~ the ~~f~~Facility's monitoring records.

11.6. A ~~captive Cervid~~ ~~f~~Facility in the state ~~shall~~ may not receive, transport, sell, or distribute live ~~c~~Captive ~~c~~Cervids, ~~or~~ any byproduct thereof, or ~~c~~Captive ~~c~~Cervid genetic materials from a ~~captive Cervid~~ ~~f~~Facility that has had a confirmed CWD or TB positive ~~c~~Cervid in the last sixty (60) months, or from any source ~~an out-of-state captive Cervid facility~~ which is located within a fifteen (15) mile radius of a confirmed CWD or TB positive ~~c~~Cervid in the last sixty (60) months.

11.7. All Captive C~~c~~ervids sold or transferred from a licensed ~~captive Cervid~~ ~~f~~Facility in this state shall be tested by a West Virginia licensed and ~~a~~Accredited ~~v~~Veterinarian for any future approved live animal test for CWD prior to movement.

11.8. An authorized representative of the Department shall periodically inspect each ~~the captive Cervid~~ ~~f~~Facility, including all records and ~~animals~~ Captive Cervids, to ~~assure~~ ensure compliance with all requirements mandated for this license.

11.9. ~~The~~ All licensees shall report any ~~c~~Captive ~~c~~Cervids that die ~~of unknown causes or are slaughtered~~ to the Department within one business day ~~twenty-four (24) hours~~ of the death of the Captive Cervid. If the Captive Cervid dies outside of the normal business hours of the Department, the licensee shall report the death of the Captive Cervid immediately upon the commencement of the next business day of the Department. To fulfil the reporting requirement imposed by this Subsection 11.9, licensees shall telephone and speak directly to an employee of the Department and also follow up in writing. ~~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.~~

11.10.~~a~~ Class I and Class II ~~The~~ licensees shall collect samples, as directed by the Department, from all Captive Cervids over 12 months of age that die, and submit ~~appropriate~~ those samples for CWD testing, 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 ~~a~~Approved ~~l~~Laboratory within one week of sample collection. Testing for other transmissible diseases ~~is~~ may also be 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.~~ All licensees, or any vet acting at the direction of a licensee, shall submit all available ~~T~~test results received by the licensee or the Accredited Veterinarian ~~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) calendar days of receiving test results.

11.11.~~a~~1. A licensee shall immediately report by the most expedient means possible any sample test that has a positive result for CWD or other reportable animal diseases, to the ~~s~~State ~~v~~Veterinarian.

11.11.~~b~~2. If any ~~animal~~ Captive Cervid owned by a licensee tests positive for CWD within the ~~captive Cervid~~ ~~f~~Facility, the ~~s~~State ~~v~~Veterinarian shall immediately ~~q~~Quarantine the Facility ~~captive herd,~~ and may also ~~be~~ immediately ~~d~~Depopulate~~d~~ the Facility from which the Captive Cervid originated, and seize all Captive Cervid byproduct, in accordance with guidelines established collaboratively by the USDA and the Department.

11.12. The Department shall ~~Epidemiological investigations shall be~~ conducte~~d~~ epidemiological investigations to identify any ~~c~~Captive ~~c~~Cervid herds linked by animal movements and appropriate responses shall be taken by the ~~s~~State ~~v~~Veterinarian, including ~~q~~Quarantine and testing of epidemiological associated animals. All costs associated with the ~~q~~Quarantine, ~~d~~Depopulation, and testing ~~shall~~ will be the responsibility of the licensee unless federal funds become available.

11.13. A Class I and Class II licensee shall develop a herd plan following the USDA APHIS CWD program standards for infected or exposed herds for CWD or as required for any other program disease finding.

11.14. The Department may require routine sampling and diagnostics for disease and parasites. A ~~q~~Quarantine of a ~~premises~~ Facility will be placed if any ~~farmed~~ ~~c~~Cervid is found to be infected with any contagious or infectious disease. A Quarantine of the Facility may also be imposed if a ~~Any farmed~~ ~~c~~Cervid ~~that~~ is introduced to the Facility without the prior approval of the Department, or it is reasonably suspected that a Cervid on the Facility has been ~~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~~ licensee shall have a West Virginia licensed and ~~a~~Accredited ~~v~~Veterinarian, or that veterinarian's designee, perform an annual visual examination of each ~~animal~~ Cervid on each Facility and take an inventory to reconcile inventory records submitted with the license application or renewal. When the veterinarian, or designee thereof, performs the annual visual examination of each ~~animal~~ Cervid and takes an inventory, the West Virginia licensed and ~~a~~Accredited ~~v~~Veterinarian shall submit the veterinarian report to the Department within sixty (60) days of receipt and the inventory report within thirty (30) days of completion.

11.16. The collection of samples for Brucellosis and Tuberculosis testing must be performed by a West Virginia licensed and Accredited Veterinarian designated by the USDA. Authorized state or federal agents may also conduct sampling for program disease investigations. ~~All testing of captive cervids shall be performed by a West Virginia licensed and accredited veterinarian certified by 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, a trained West Virginia licensed and ~~a~~Accredited ~~v~~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~~1. The licensee may deliver to the Department, a trained West Virginia licensed and ~~a~~Accredited ~~v~~Veterinarian, or other official authorized by the Department the head of the ~~c~~Cervid or the entire ~~c~~Cervid with head intact with that Cervid's official identification attached; or

11.18.~~b~~2. The licensee may contact the Department, a trained West Virginia licensed and ~~a~~Accredited ~~v~~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~~ ~~f~~Facility license. A licensee whose license has been revoked shall ~~count as a lapsed license and~~ require~~ing~~ a new application to be ~~completed~~ submitted ~~and approved~~.

§61-34-12. Escape of Cervids.

12.1. A licensee shall make every effort to prevent escapes of ~~animals~~ Cervids from the ~~captive Cervid~~ ~~f~~Facility. A licensee shall report all known escapes ~~within eight (8) hours or~~ immediately upon discovery of the escape~~, whichever is sooner,~~ to the ~~s~~State ~~v~~Veterinarian or West Virginia Department of Agriculture Animal Health Division personnel. To fulfil the reporting requirement imposed by this Subsection 12.1, licensees shall telephone and speak directly to an employee of the Department and also follow up in writing.

12.2. Any ~~c~~Captive ~~c~~Cervid that escapes from a ~~captive Cervid~~ ~~f~~Facility shall be ~~dispatched~~ destroyed by the Department or DNR personnel, unless after review by the Commissioner ~~of Agriculture~~ and the West Virginia State Veterinarian it is determined that the escaped ~~c~~Captive ~~c~~Cervid, after being secured

and returned to the premise from which it escaped, does not present a health risk to the public, other ~~c~~Captive ~~c~~Cervids, or ~~w~~Wildlife: *Provided,* ~~That~~ all escaped ~~c~~Cervids that are sourced from a known, confirmed TB and CWD containment area will be ~~dispatched~~ destroyed.

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

12.4. All costs for ~~depopulating an animal~~ destroying a Cervid that escapes, including sample collection and testing, are the responsibility of the licensee.

12.5. A licensee shall not intentionally release ~~c~~Captive ~~c~~Cervids into the wild.

§61-34-13. Additional specifications for ~~c~~Commercial ~~s~~Shooting ~~p~~Preserves.

13.1. The following additional terms and conditions apply for ~~c~~Commercial ~~s~~Shooting ~~p~~Preserves sizes and boundaries:

13.1.~~a~~1. The ~~c~~Commercial ~~s~~Shooting ~~p~~Preserve shall contain a minimum of one hundred fifty (150) contiguous acres in one tract of leased or owned land. The ~~s~~Shooting ~~p~~Preserve shall be no larger than three thousand (3,000) contiguous acres;

13.1.~~b~~2. The exterior boundaries of the ~~s~~Shooting ~~p~~Preserve shall be clearly defined and posted with signs erected around the ~~extremity~~ boundary 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~~3. The ~~s~~Shooting ~~p~~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~~ and egress of ~~stocked~~ ~~c~~Cervids ~~species~~. The fencing shall be of sufficient strength and height to prevent the escape of the stocked ~~c~~Cervids; and

13.1.~~d~~4. The licensee shall display the license in plain view at the entrance to the ~~s~~Shooting ~~p~~Preserve.

13.2. Shooting ~~p~~Preserves are subject to all of the provisions of this rule. In order to import ~~c~~Cervids, the licensee must first obtain a ~~c~~Cervid importation permit issued by the WVDA.

13.3. The licensee shall maintain accurate and current records of all ~~animals~~ Captive Cervids purchased for, or imported to, the ~~s~~Shooting ~~p~~Preserve, including official identification.

13.4. Records of ~~animals~~ all Captive Cervids purchased for the ~~s~~Shooting ~~p~~Preserve shall include a bill of sale for all ~~animals~~ Captive Cervids 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~~ Captive Cervid that is imported and official identification.

13.5. Records of Cervids ~~animals~~ born ~~raised~~ at the ~~s~~Shooting ~~p~~Preserve ~~may include under the license issued by the Department, may~~ must indicate the date of birth and the sex of each ~~animal~~ Captive Cervid born to document that they originated at ~~this~~ the ~~premise~~ Facility and were not purchased and relocated onto the ~~preserve~~ Facility.

13.6. The licensee shall maintain accurate and current records of all ~~c~~Cervid~~s~~ releases made at the ~~s~~Shooting ~~p~~Preserve, which must include the date of release, the number of releases, the sex, and the official identification if from another ~~captive Cervid~~ ~~f~~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 ~~c~~Cervids ~~taken~~ Harvested, the number of the tag affixed to each carcass, and the official identification~~, if applicable~~.

13.8. The licensee must submit a ~~s~~Shooting ~~p~~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~~ ~~c~~Captive ~~c~~Cervid ~~under W. Va. Code §19-2H-1~~ that is Slaughtered ~~shall~~ must be ~~s~~Slaughtered and processed at a state or federal licensed Slaughter Facility ~~commercial facility~~ if ~~venison~~ any product derived from that ~~animal~~ Captive Cervid is to be sold at a commercial outlet or to an individual. ~~Animals~~ Captive Cervids ~~s~~Slaughtered for personal use are exempt from this section.

14.2. Any ~~animal regulated as a~~ ~~c~~Captive ~~c~~Cervid ~~under W. Va. Code §19-2H-1 taken~~ Harvested as a hunted animal, for a fee, may be Slaughtered and processed with the assistance of a ~~facility owner~~ Licensee or ~~f~~Facility employee at the ~~f~~Facility site, or a licensed custom or commercial Slaughter Facility ~~establishment~~.

14.3. A licensee shall keep records ~~on venison~~ of the sale~~s~~ of Captive Cervid byproducts, including venison, for a minimum of two (2) years.

§61-34-15. Standards for closure.

15.1. A Class I or Class II licensee ~~facility~~ may close~~,~~ their ~~f~~Facility ~~operations and~~ or sell ~~out~~ their Facility to another licensee, so long as both ~~f~~Facilities are in compliance with CWD, TB and Brucellosis program standards as referenced in §61-34-11 of this rule and the licensee(s) comply with §61-34-5 of this rule.

15.2. A ~~facility~~ licensee may process ~~stocked~~ Captive ~~c~~Cervids for its own use.

15.3. A ~~f~~Facility may process ~~stocked~~ Captive ~~c~~Cervids for ~~s~~Slaughter as referenced in §61-34-14 of this rule.

15.4. The Department shall inspect the ~~f~~Facility upon closure for the following purposes:

15.4.~~a~~1. To ensure that the ~~f~~Facility meets the requirements for closure according to this rule; and

15.4.~~b~~2. To collect all official identification tags.

15.5. The licensee of the ~~f~~Facility shall file with the Department a final inventory and death report of ~~stocked~~ Captive ~~c~~Cervids.

15.6. If a licensee becomes incapacitated or is adjudicated mentally incompetent, the licensee's attorney-in-fact, guardian, conservator, or other person authorized by law to act on behalf of the licensee may operate the Facility under the existing license until the license expires. Prior to the expiration of the license, the attorney-in-fact, guardian, conservator, or other authorized person shall:

15.6.~~a~~1. Subject to the prior written approval of the Department, sell or transfer the Facility to another licensee or person eligible for licensure under this rule;

15.6.~~b~~2. Subject to the prior written approval of the Department, sell or transfer all Captive Cervids from the Facility to another licensee or person eligible for licensure under this rule; or

15.6.~~c~~3. Submit to the Department and implement a Department-approved plan for the orderly Depopulation of the Facility.

15.7. If a licensee dies, the personal representative of the estate may operate the Facility under the existing license until the license expires.

15.7.~~a~~1. Subject to the prior written approval of the Department, the personal representative may sell or transfer the Facility or any Captive Cervids therein.

15.7.~~b~~2. An heir, devisee, beneficiary, or other person acquiring an ownership interest in the Facility may apply for a license in accordance with Sections 3 and 5 of this rule.

15.7.~~c~~3. If no person obtains a license for the Facility before the expiration of the existing license, the Facility shall be subject to Section 5.5 of this rule.

15.8. If an attorney-in-fact, guardian, conservator, personal representative, or other individual authorized to act on behalf of an incapacitated, incompetent, or deceased licensee ("Authorized Individual") continues to control the Facility after expiration of the license, or the Facility is not otherwise disposed of as provided in this rule, then the Department may place the Facility under a Quarantine. If a Quarantine is placed on the Facility pursuant to this Subsection 15.8, then the Department and Authorized Individual shall establish a plan for the orderly sale or Depopulation of the Captive Cervids.

§61-34-16. Penalties.

16.1. The Commissioner may assess administrative penalties for violations of W. Va. Code § 19-2H-1, et seq., or the provisions of this rule; violations may result in the revocation of a person's license.

16.2. Violations shall be classified according to severity, as follows:

16.2.~~a~~1. Class I Violations are flagrant violations. For a Class I Violation, in addition to other administrative penalties or authority described in this rule, the Commissioner shall assess a $1000 penalty per violation and may permanently or temporarily revoke the license; Class I violations include the following:

~~16.2.a.1~~16.2.1.a. Failure to obtain the Department's approval for the transfer or receipt of a Cervid prior to its transfer or receipt;

~~16.2.a.2~~16.2.1.b. Failure to report an escaped Cervid;

~~16.2.a.3~~16.2.1.c. Failure to maintain the Facility in an appropriate manner to prevent the escape of Captive Cervids or the introduction of wild Cervids;

~~16.2.a.4~~16.2.1.d. Violating an issued Quarantine of a Facility;

~~16.2.a.5~~16.2.1.e. Substitution of a wild Cervid carcass, or any subdivision thereof, in place of a Captive Cervid subject to testing under this rule;

~~16.2.a.6~~16.2.1.f. Ceasing operation of or abandoning a Facility without complying with the requirements and rules promulgated under § 61-34;

~~16.2.a.7~~16.2.1g. Releasing or causing the release of any Captive Cervids from a Facility or allowing the entry or introduction of wild Cervids into a Facility;

~~16.2.a.8~~16.2.1.h. Removing the official identification of a Captive Cervid; and

~~16.2.a.9~~16.2.1.i. Failure to correct a Class II violation within 30 days after the Department provides notice of the Class II violation.

16.2.~~b~~2. Class II Violations are serious violations of W. Va. Code § 19-2H-1, et seq., or the provisions of this rule. In addition to other administrative penalties or actions described in this rule, a person found to have committed a Class II violation will be provided with a warning notice and may be assessed a $300 penalty per violation. Class II violations include the following:

~~16.2.b.1~~16.2.2.a. Failure to correct Class III violations within the timeframe established in the notice of Class III violation given pursuant to Subsection 16.2.c;

~~16.2.b.2~~16.2.2.b. Failure to respond to Department communications for program inquires; or

~~16.2.b.3~~16.2.2.c. Operating a Facility without a license.

16.2.~~c~~3. Class III Violations are any other violations of W. Va. Code § 19-2H-1, et seq., or W. Va. Code R. § 61-34-1, et seq., not specifically identified in Sections 16.2.a or 16.2.b above. In addition to other administrative penalties or actions described in this rule, a person is found to have committed a Class III violation, the person will be provided an initial warning notice and may be assessed $150 penalty per violation.

16.3. Any person or entity seeking to contest an administrative action of the Commissioner under this rule shall bring such contestation in writing within 14 days.

16.4. The Commissioner may order disposition of Captive Cervid inventory on properties determined to be unlicensed, not able to be licensed, or due to three repeated containment failures within one calendar year.