

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

Form #3

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2001 JUL 25 P 1:56

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

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

CITE AUTHORITY WV Code §19-1-4-J and §19-9-2 b

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AMENDMENT TO AN EXISTING RULE: YES X NO \_\_\_\_\_

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Animal Disease Control

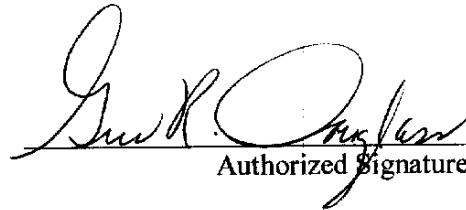
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IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

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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 COMMITTEE FOR THEIR REVIEW.

  
Authorized Signature

TITLE 61  
LEGISLATIVE RULE  
DEPARTMENT OF AGRICULTURE

SERIES 1  
ANIMAL DISEASE CONTROL

FILED

2001 JUL 25 P 1:56

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

TITLE: Animal Disease Control

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**§61-1-1. General**

1.1. Scope - This legislative rule establishes general operating rules and procedures in the Animal Health Division which are established to prevent, suppress, control and eradicate communicable diseases of livestock and poultry.

1.2. Authority - W. Va. Code 19-9-2.

1.3. Filing Date -

1.4. Effective Date -

1.5. Amendment of Former Rules - This legislative rule amends Department of Agriculture rule "Animal Disease Control" 61CSR1, filed May 8, 1997, effective May 8, 1997.

**§61-1-2. Definitions**

2.1. Accredited Veterinarian means any veterinarian accredited by APHIS and approved by the Animal Health Official of the state where the veterinarian is doing business.

2.2. Animal means a bird, fish, reptile, or mammal other than man.

2.3. APHIS means the Animal and Plant Health Inspection Service or its successor agency of the United States Department of Agriculture.

2.4. Approved E.I.A. and/or Pseudorabies Laboratory means any United States Department of Agriculture laboratory approved for conducting an official E.I.A. (Coggins') test and/or an official pseudorabies test.

2.5. Biologicals mean products that are intended for diagnostic or therapeutic purposes in animals other than man.

2.6. Boar means any male swine used for or intended to be used for breeding purposes.

2.7. Brucellosis or Bang's Disease is an infectious disease in bovine animals caused by any member of the Genus Brucella. Any animal is considered infected with brucellosis if it has a positive reaction to any APHIS approved test for brucellosis, or if any member of the Genus Brucella has been found in the body or its secretions or discharges, or if it has been treated with a live culture of Brucella.

2.8. Calves mean bovine animals which have not reached the usual age of maturity for the particular breed.

2.9. Cattle means bison or bovine animals of any age.

2.10. Certified Brucellosis Free Herd means a herd which is certified as free from brucellosis by the Commissioner and APHIS.

2.11. Cervidae means a deer or elk of any age.

2.12. Commissioner means the Commissioner of the West Virginia Department of Agriculture or his or her agent. Employees of the Veterinary Services of APHIS have the authority to act as agents of the commissioner.

2.13. Communicable disease means all the diseases listed in WV Code §19-9-1(e) and the disease avian influenza.

2.14. Equine means an animal that is a member of the Equine genus including horses, ponies, mules, asses and zebras.

2.15. E.I.A. Reactor means an equine one year of age or older who has had two consecutive positive tests for E.I.A. performed in an approved E.I.A. laboratory and one additional positive test performed in a United States Department of Agriculture. The animal may not show clinical signs of the disease.

2.16. Exposed E.I.A. Animal means any equine is or has been stabled or commingling (racetracks excluded) within 200 yards of any equine that has had a positive E.I.A. (Coggins') test and may include an animal which has had the same handler as the equine that has had the positive E.I.A. (Coggins') test.

2.17. Farm means one contiguous parcel of land operated as a unit. Parcels of land owned by a farmer, but separated by other farms are considered separate farms.

2.18. Feeder pig means any immature swine used for or intended to be used exclusively for feeding for slaughter.

2.19. Fur-Bearing animal means a mink, weasel, muskrat, beaver, opossum, skunk, civet cat (commonly called polecat), otter, red fox, gray fox, wildcat, bobcat, bay lynx, raccoon or fisher.

2.20. Histopathology service is the preparation and staining tissue for microscopic viewing for the detection of abnormalities which may be indicative of a disease or condition.

2.21. Indemnity means money paid by the commissioner to the owner of an animal found to be a reactor for a communicable disease which cannot be cured or controlled by isolation and adequate or proper veterinary treatment. The amount of the indemnity will be the difference between the sale price of the animal and the value of the animal in the certificate of appraisal.

2.22. Laboratory services are those procedures done in the laboratory.

2.23. Non-reactor means an animal showing a negative reaction noted by a specific titer to a test.

2.24. Official Health Certificate means an official form issued by an accredited veterinarian in the state of origin and approved by the Animal Health Official of the state of origin listing all animals (with an accurate description or other identification) covered by the certificate that have been examined by the person issuing the form, stating the nature of the examination and the findings of the health of the animals covered by the certificate. In addition, the official health certificate shall contain the names and address of the consignor and the consignee of the animals, the vaccinations that the animals may have received and the dates that the vaccinations occurred. The official health certificate is void thirty (30) days after issuance.

2.25. Official Pseudorabies Serologic Test is an official pseudorabies test conducted on swine serum to detect the presence or absence of pseudorabies antibodies.

2.26. Official Pseudorabies Test is any test for the diagnosis of pseudorabies approved by the United States Department of Agriculture and conducted in an approved laboratory.

2.27. Person means any individual, partnership, association, fiduciary, firm, company, corporation or any organized group of persons whether incorporated or not. The term extends to the

agents, servants, officers and employees of the person.

2.28. Pseudorabies or Aujeszky's disease (mad itch) is an infectious and contagious disease of swine and certain other warm-blooded animals.

2.29. Ratite means any group of flightless birds having a flat breastbone without the keel-like prominence characteristic of most flying birds. This includes, but is not limited to the emu, ostrich, and rhea.

2.30. Reactor means any animal that responds to a test for a particular disease showing a positive titer above that which is considered a negative or suspect reaction for a particular disease.

2.31. Restricted vaccines are vaccines containing live, modified-live or infectious agents for any disease known to be a public health hazard, or that is for diseases not yet known to occur in this State or are capable of causing harm to man or animals when misused.

2.32. Sow means any female swine used for or intended to be used for breeding purposes.

2.33. Stocker Cattle means sexually intact cattle not consigned to slaughter.

2.34. Suspect means an animal that shows a titer to a particular test that makes it uncertain whether the animal has been exposed or has the particular disease.

2.35. Test means an examination made to determine the presence or absence of antibodies to a disease or an incriminating reaction to an antigen or other activities to determine whether or not an animal has a particular disease.

2.36. Tuberculosis means an infectious disease caused by *Mycobacterium bovis*, commonly known as the tubercle bacillus.

2.37. User fees are those fees collected from users of the laboratory's services.

2.38. Vaccine means any biological that is a preparation of live, modified-live or killed infectious agents or a preparation of tissue that is administered to produce or artificially increase immunity to a particular disease.

2.39. Vaccination means the inoculation of an animal with a vaccine.

2.40. Veterinarian means any veterinarian employed by a state or federal agency, any veterinarian in this state that is recognized by the West Virginia Veterinary Medical Association, any licensed veterinarian, or any livestock technician employed by the commissioner.

2.41. Wild Animal means any mammal native to the State of West Virginia, occurring either in a natural state or in captivity. The term does not include mice and rats.

2.42. Wild Bird means any bird native to the state, or migrating through this state and includes any imported foreign game bird, such as a pheasant, partridge, quail, grouse or waterfowl regardless of whether the birds are held in captivity or not. The term does not include a chicken, duck, goose, guinea fowl, peafowl, turkeys, common canary, exotic finches, ring doves or psittacidae.

2.43. Wildlife means any wild bird, wild animal, game animal, fur-bearing animal, fish (including minnows), amphibians, aquatic turtles or any aquatic animal used as fish bait, whether dead or alive.

#### **§61-1-3. Biologicals**

3.1. The Commissioner shall publish a list of the restricted vaccines on January 1 of each year. This list shall be provided to any person upon request.

3.2. No person may manufacture, offer for sale, or sell any biological in this state without a valid permit for the sale of biologicals issued by the commissioner.

#### **§61-1-4. Quarantines**

4.1. The commissioner may place a special or a general quarantine on any animal or animals as provided by WV Code §19-9-13,14 and 15 and by this rule, when any animal is found to be infected with any contagious or infectious disease, when he or she suspects that any animal is infected with any contagious or infectious disease, or when the animal has been imported into this state in violation of the provisions of WV Code §19-9-1 et seq. or this rule.

4.2. The commissioner may extend the special or general quarantine to the premises where the animal is or has been located when the premises is suspected of being capable of transmitting the disease to other animals or humans, or the animal needs to be segregated from other animals so as not to transmit the disease to

other animals or humans.

4.3. The commissioner may extend the special or general quarantine to the meat or milk products of any animal found to be, or suspected of having, any contagious or infectious disease and to any equipment used in the collection, transportation, processing or manufacturing of the meat or milk products of the animal.

4.4. No person may move any animal or article under quarantine from the area specified in the quarantine while the quarantine is in effect, except when the commissioner gives written permission for this movement to take place.

4.5. The commissioner will release a quarantine when the animal, product or location under quarantine is found to be free of disease or not capable of causing the transmission of disease to other animals or man.

4.6. The commissioner shall allow those animals that were released from quarantine when found to be free of disease to enter commerce free from any restraint caused by the quarantine.

#### **§61-1-5. Tuberculosis or Brucellosis in Cattle**

5.1. No person other than an accredited veterinarian, a qualified official of the United States Department of Agriculture or agents of the commissioner may perform any activity for the control or eradication of brucellosis or tuberculosis.

5.2. Each laboratory performing tests for brucellosis or tuberculosis shall report, in writing, to the commissioner, the results on all tests for brucellosis and tuberculosis as soon as the test results are received. Each report shall contain a description of the animal including the animal's tattoo or ear tag number and any other marks of identification, the sex, the age the breed, the complete test results, the name and address of the owner of the animal, the place where the animal was located when tested, and the name and address of the person testing the animal.

5.3. The test results for brucellosis will be evaluated with other factors such as the age of the animal, the vaccination status, if any, and the herd conditions when the commissioner is determining if an animal is a reactor. An animal tested at a public market may be considered a reactor when both the buffered plate antigen at a 1/25 dilution of serum and the standard card test results are positive.

5.4. The commissioner may quarantine any female animal who has not had a calf when found to be a progeny of a cow that is a reactor to brucellosis until the animal has had a calf and a

subsequent negative test for brucellosis.

5.5. The commissioner shall quarantine any nursing bull calf found in this state that is a progeny of a cow that is a reactor to brucellosis until that animal has been castrated or the commissioner gives a special permit for the movement of that animal.

5.6. The commissioner shall mark any animal found to be infected with tuberculosis or brucellosis by placing an ear tag supplied by APHIS in the left ear of the animal and branding the the animal high on the left hip near the tailhead with the capital letter "B" for brucellosis or the capital letter "T" for tuberculosis in letters not less than 2 inches high and 1 ½ inches wide. The commissioner may accept the use of hot brands for this purpose.

5.7. Any person owning any animal infected with or exposed to tuberculosis or brucellosis that is under quarantine may apply to the commissioner for a permit to move the animal to slaughter. The application shall include the complete description of the animal, the place where the owner wishes to have the animal slaughtered and any other information that the commissioner may require to determine if he or she should grant a permit.

5.7.a. If the commissioner grants a permit to move to slaughter and issues a VS FORM 1-27 for this purpose, the permit shall specify all conditions for movement under which the permit is approved, including the requirement that the slaughter take place under the supervision of an authorized Federal or State meat plant veterinarian. The commissioner shall require the authorized Federal or State meat plant veterinarian supervising the slaughter to provide him or her immediately with a post-mortem report on the animal in the case where the animal was found to be a reactor to tuberculosis.

5.8. The commissioner shall pay an indemnity to the owner of any bison or bovine animal that has been found to be infected with either brucellosis or tuberculosis or to be a reactor to these diseases under the following conditions:

5.8.a. Funds for the payment of indemnities are available to the commissioner;

5.8.b. The animal was located in this state when it was when found to be infected or when found to be a reactor;

5.8.c. The animal was tested for brucellosis using an APHIS approved test by veterinarians employed by APHIS or by the commissioner or for tuberculosis using an APHIS approved test by an

accredited veterinarian;

5.8.d. The animal had been vaccinated for brucellosis within the age limits prescribed by the commissioner, as specified in section 9 of this rule, and the animal was at least 20 months of age, if it was a dairy type breed, or at least 24 months of age, if it was a beef type breed when found to be infected or when found to be a reactor;

5.8.e. The animal was not vaccinated for brucellosis as an adult nor maintained in a herd where vaccination for brucellosis of any animal in the herd has occurred at an age other than that specified in section 9 of this rule;

5.8.f. The animal has been quarantined, branded, issued a certificate of appraisal by the commissioner and slaughtered under the supervision of a Federal or State meat plant veterinarian;

5.8.g. The owner of the animal has allowed a quarantine to be placed on all the animals remaining under his or her ownership, signed an agreement with the commissioner listing all cattle owned by him or her and agreed to testing for brucellosis or tuberculosis on all cattle listed in the agreement. The owner has further agreed to destroy any animal found to be infected within 15 days of the date that the commissioner issues a certificate of appraisal for any animal found to be infected;

5.8.h. The owner of the animal has agreed to comply with WV Code §19-9-28 through §19-9-37 and with the provisions of this rule;

5.8.i. The owner of the animal has agreed to make any further additions to the herd in compliance with the provisions of WV Code §19-9-1 et seq. and with section 6 of this rule;

5.8.j. The owner of the animal has cleaned and disinfected all premises where the animal was located while it was infected;

5.8.k. The owner has not been negligent nor carelessly exposed any animals under his or her care to brucellosis or tuberculosis, and the owner has not purchased any animal that he or she knew or had reason to believe that had a communicable disease;

5.8.l. The owner of the animal is not any governmental agency or a political sub-division of this state;

5.8.m. The owner of the animal or his or her agent has not been previously found to have engaged in any fraudulent attempt to obtain an indemnity for any animal; and

5.8.n. The owner of the animal has sold the animal at the highest possible price.

5.9. The commissioner will issue a certificate of appraisal based on the purebred value of the animal only when the purebred registration certificate is submitted to the commissioner prior to making the appraisal. If the animal is less than three years of age, the commissioner may amend the appraisal within 30 days after the original certificate was issued when the breed association submits the registration certificate for the animal. All other certificates of appraisal shall appraise the cattle at a value of a non-purebred, or grade, animal.

5.10. The commissioner shall require that any herd that has been released from a brucellosis quarantine after the reactor animals in the herd have been removed, be retested for brucellosis at 9 and at 12 months after the quarantine is lifted.

#### **§61-1-6. Animal Importation**

6.1. No person may import any animal into this state in violation of the provisions of WV Code §19-9-1 et seq. or this rule. Any animal that is imported into this state in violation of WV Code §19-9-1 et seq. or this rule is subject to quarantine at the expense of the owner of the animal. Animals imported into this state for the sole purpose of exhibition at a fair or festival or for sale at a purebred consignment sale are subject to the provisions of section 8 of this rule in addition to those of this section.

6.2. Except for the provisions of this section, no person may import any animal into this state that is infected with a communicable disease, that has recently been exposed to a communicable disease, or that is from an area under a state or federal quarantine.

6.3. No person may import any animal into this state for breeding purposes or that is to be included in a dairy herd without a valid official health certificate.

6.4. The commissioner may require that an animal that is imported into this state for sale at a public market or for exhibition at a fair or festival in this state have a valid official health certificate issued by an accredited veterinarian

when the protection of the public and/or animal health of this state warrants this requirement.

6.5. The animal health official of the state of origin of the animal to be imported into this state should forward the official health certificate to the commissioner, in care of the Animal Health Division, prior to the importation of the animal.

6.5.a. The commissioner will not accept an official health certificate unless the name of the consignor and the consignee of the animal, an accurate description or identity of the animal, the general health status and any other information that is required by the provisions of this rule are listed on the certificate.

6.6. The commissioner may decline to accept the official health certificate of any animal, and thus prevent the importation of the animal, under the provisions of WV Code §19-9-25.

6.7. The commissioner may require that an animal have a special permit issued by him or her prior to importation into this state as specified by this section.

6.7.a. When the commissioner requires that the animal to be imported have a special permit, the owner or cosigner of the animal shall apply to the commissioner for the permit. The application shall state the name of the owner, the description of the animal, the place of origin and the destination of the animal. The application may cover the importation of more than one animal if the origin and the destination are the same.

6.7.b. No person may import an animal that requires a special permit for entry without a valid special permit and may not import an animal in any manner that is contrary to the provisions of the permit issued.

6.7.c. The commissioner will not issue a special permit for any animal that is not consigned to a legal resident of this state.

6.7.d. The commissioner will issue a special permit for a period not to exceed fifteen days after the date of issue.

6.8. The commissioner may allow any animal that does not have, or that has not been exposed to a communicable disease, to be imported into this state for immediate slaughter without an official health certificate. The commissioner will allow an animal to be imported into this state for immediate slaughter when that animal has a communicable disease or has been exposed to a

communicable disease only under the provisions of this section.

6.9. Nursing animals may be imported into this state on the dam's test or status, except where otherwise specified.

6.10. Any person in possession of any animal that is imported into this state shall maintain the official health certificate on the waybill that shall accompany the animal at all times.

6.11. All owners and operators of common carriers, railway cars, trucks and any other conveyance may not move livestock into this state or through this state unless the common carrier, railway car, truck or other conveyance:

6.11.a. is maintained in a sanitary condition, or

6.11.b. has been thoroughly cleaned and sanitized after use for the transportation of any animal that has been exposed to or that has any communicable disease. In the case where any animal that has been exposed to or has tuberculosis, the owner or operator of that conveyance shall maintain proof with the waybill that the cleaning and sanitizing of the conveyance has occurred under official supervision.

6.12. Cattle

6.12.a. No person may import into this state any bison or bovine animal that is affected with or that has been exposed to scabies.

6.12.b. The commissioner may require bison or bovine animals that are not capable of reproducing to have had a tuberculosis test prior to entry.

6.12.c. The commissioner shall allow any bison or bovine animal infected with brucellosis or tuberculosis to enter this state only for slaughter, and only when a VS FORM 1-27 has been issued for that animal.

6.12.d. No person may import any bison or bovine animal into this state that has been infected with or has been exposed to brucellosis or tuberculosis without a valid special permit issued by the commissioner.

6.12.d.A. The special permit that the commissioner issues for an animal exposed to brucellosis or tuberculosis shall require that the animal be quarantined for not less than ninety days after importation and shall be retested after that time at the owner's expense to determine that the animal is not infected with,

or a reactor to, brucellosis or tuberculosis.

6.12.e. No person may import any bovine into this state that is from a herd that has been under quarantine for tuberculosis during the twelve months previous to the importation unless that animal has had a negative tuberculosis test no more than 2 months prior to importation into this state.

6.12.f. The commissioner shall allow any bison or bovine animal imported for breeding purposes or for use in a dairy herd to be imported into this state with an official health certificate and

6.12.f.A. without a tuberculosis test on the animal when that animal comes from a herd that has been completely tested for tuberculosis and found to contain no reactors within 12 months previous to the importation, or when the animal comes from a herd that is accredited as Tuberculosis Free by APHIS, or

6.12.f.B. with a negative tuberculosis test no more than 2 months prior to importation into this state.

6.12.g. The commissioner ~~shall allow~~ may require that any female animal that has not had a calf but that has been vaccinated for brucellosis and that comes from a herd of unknown brucellosis status to be imported into this state only when a special permit has been issued. The special permit shall require that the animal shall be quarantined until after the animal's first parturition and a subsequent negative test result for the presence of brucellosis.

6.12.h. The commissioner shall allow any bovine to be imported for immediate slaughter, or to a public stockyard without an official health certificate or a special permit. However, the Commissioner shall require any bovine that has been vaccinated for brucellosis at an age older than 240 days be issued a VS FORM 1-27 prior to the importation of the animal for the purpose of immediate slaughter.

6.12.i. No person may import for feeding purposes any bison or bovine animal that has been infected with tuberculosis or brucellosis.

6.12.i.A. The commissioner shall require that any bison or bovine animal that has been infected with tuberculosis or brucellosis be imported into this state only with a valid VS FORM 1-27 issued by APHIS and only for movement directly to slaughter.

6.12.j. ~~No~~ The commissioner may stipulate that no person may import any bovine into this state for breeding or milking

purposes from any state that is designated a "Free", or "Class A" state as designated by the United States Department of Agriculture unless the following conditions are met:

6.12.j.A. The animal is

6.12.j.A.(a) verifiable progeny of a herd that is a United States Department of Agriculture Certified Brucellosis Free Herd. The latest complete herd test date and results shall be noted on the official health certificate; or

6.12.j.A.(b) from a "Free" state and has been tested and found to be free of brucellosis within 1 month of importation into this state. Officially vaccinated dairy type animals less than 20 months of age and officially vaccinated beef type animals less than 24 months of age are exempt from the test required; or

6.12.j.A.(c) from a "Class A" state and shall be

6.12.j.A.(c)(A) from a herd that has had a complete herd test for brucellosis not more than 12 months and not less than 3 months prior to the importation; or

6.12.j.A.(c)(B) from a herd that has had a negative milk ring test not more than 6 months and not less than 180 days prior to entry; and

6.12.j.A.(c)(C) each individual animal shall have had a negative brucellosis test no more than 30 days prior to entry, except for official vaccinates of dairy breeds that are less than 20 months of age, or for official vaccinates of beef breeds that are less than 24 months of age where the brucellosis test is not required.

6.12.k. No person may import into this state any bovine under 18 months of age that is capable of reproducing for feeding purposes without an official health certificate, some form of permanent identification, and without allowing the commissioner to place the animal under quarantine until it is slaughtered or moved out of this state. The commissioner shall require any animal that is capable of reproducing that is over 18 months of age that is imported into this state, to meet all the requirements of cattle imported for breeding cattle.

6.12.l. Any animal that is imported into a dairy or breeding herd should be segregated from the herd until a brucellosis test is made within 45-120 days after importation and negative results are received.

### 6.13. Goats

6.13.a. No person may import any goat into this state that has been infected with or has been exposed to brucellosis or tuberculosis without a valid special permit issued by the commissioner.

6.13.b. ~~No~~ The commissioner may stipulate that no person may import any goat into this state for breeding or milking purposes unless that animal has a valid official health certificate showing that the animal has had a negative tuberculosis test within 2 months prior to entry into this state or that the animal has been maintained in a herd that is a United States Department of Agriculture Accredited Tuberculosis Free Herd.

6.13.c. ~~No~~ The commissioner may stipulate that no person may import any goat into this state for breeding or milking purposes without a valid official health certificate showing that the animal has had a negative brucellosis test within 1 month prior to entry into this state or that the animal has been maintained in a herd that is a United States Department of Agriculture Certified Brucellosis Free Herd.

### 6.14. Equines

6.14.a. No person may import any equine, for any purpose except for sale at a public market, without a valid official health certificate showing the results of a negative approved APHIS test for E.I.A. attached to or noted on the health certificate and that the animal has been found free of symptoms of any infectious or clinical disease. The commissioner will accept the test result from a test within 12 months prior to importation into this state if the state of importation has an E.I.A. program that equals or exceeds the program outlined in section 11 of this rule. In all other cases, the commissioner will accept the test result from a test within 6 months prior to importation into this state.

### 6.15. Sheep and lambs

6.15.a. No person may import any sheep or lambs into this state for any purpose other than immediate slaughter without a valid official health certificate showing the that flock of origin was fully examined not more than thirty days prior to entry into this state and found to be free of scabies, contagious ecthyma (sore mouth), foot rot, or any other contagious or communicable disease.

6.15.b. The commissioner shall prohibit the importation

of any sheep or lambs into this state that have a condition that can be treated with full immersion in a pesticidal solution, unless that animal has been treated within 10 days prior to entry into this state.

#### 6.16. Swine

6.16.a. No person may import into this state any swine that has been vaccinated for pseudorabies.

6.16.b. No person may import into this state any swine that does not have a valid official health certificate that identifies the animal and states that the animal is free of any infectious or contagious disease, unless the animal has been consigned to immediate slaughter upon entry into this state.

6.16.c. No person may import into this state any swine that are to be used for breeding purposes without an official health certificate showing that the animal has been;

6.16.c.A. tested negative to an official brucellosis test within 1 month prior to importation if the animal is not from a herd that has a certification from the United States Department of Agriculture as a Validated Brucellosis Free Herd and the official health certificate shows the date of the last brucellosis test on that herd; and

6.16.c.B. tested negative to an official pseudorabies serologic test or other official pseudorabies test within 1 month prior to importation, if the animal is not from a herd that has a certification as a qualified pseudorabies negative herd. The date of the last pseudorabies test shall be listed on the health certificate.

#### 6.17. Wildlife

6.17.a. The commissioner will not allow the importation of any wildlife into this state without a valid official health certificate and without evidence that the animal has been issued a valid "Wildlife Importation Permit" by the Division of Natural Resources, unless that animal is not required to obtain that permit by the Department of Natural Resources.

#### 6.17.b. Cervidae and Elk

6.17.b.A. No person may import any animal of the Cervidae genus, except for animals that are consigned directly to slaughter, without a valid official health certificate issued by an accredited veterinarian and a special permit from the commissioner. The official health certificate shall indicate that the animal

6.17.b.A.(a) is from a herd that has had no tuberculosis reactors found during a complete herd test for tuberculosis on all animals six months of age and older within the 12 months prior to the importation; and

6.17.b.A.(b) is an animal that has had a negative tuberculosis test within 2 months prior to the importation of the animal; and

6.17.b.A.(c) has had a negative brucellosis test within 1 month prior to the importation of the animal.

6.17.b.B For purposes of this section, the complete herd test for tuberculosis shall use the single cervical test as prescribed by the United States Department of Agriculture on December 31, 1990.

6.17.b.C. No person may import any animal of the Cervidae genus consigned directly to slaughter without an official health certificate and may only import an animal that has been exposed to tuberculosis or brucellosis with a VS FORM 1-27 issued by APHIS accompanying the animal.

6.17.c. No person may import any animal into West Virginia that is to be placed in a zoo, or is of a species likely to be found in a zoo, without a valid official health certificate issued by an accredited veterinarian. The official health certificate shall state that the animal has been examined within 1 month prior to entry and found to be free of any communicable disease not known to have been exposed to any communicable disease.

#### 6.18 Dogs and Cats

6.18.a. No person may import any dog or cat into this state that is over 6 months of age without a valid official health certificate that states that the animal has had a rabies vaccination within the 12 months prior to the importation.

#### 6.19. Birds Other than ratites

6.19.a. No person shall import any bird that is from a flock that is known to be infected with pullorum/typhoid or that is from an area under quarantine for Avian Influenza or Viscerotropic Velogenic Newcastle Disease.

6.19.b. The commissioner requires that any bird that is imported into this state be accompanied by

6.19.b.A. a statement completed and signed by the owner of the bird upon entry into this state that the bird has been

free from disease for the 30 days prior to the importation of the bird and did not originate from a flock known to be infected with pullorum/typhoid; and

6.19.b.B. a United States Department of Agriculture Form 9-2 from the tester stating that the birds have been tested for pullorum typhoid within 3 months prior to the date of the importation; or

6.19.b.C. a United States Department of Agriculture Form 9-3 from the tester indicating that the bird has originated from a flock that is not infected with pullorum/typhoid.

6.19.c. All other birds shall be tested for pullorum typhoid and shown to be free of disease by a tester at the time and place of importation.

#### 6.20. Ratites

6.20.a. No person may import any ratite that is from a flock or farm that is known to be infected with any communicable disease.

6.20.b. The Commissioner requires that any ratite that is imported into this state be accompanied by

6.20.b.A. an approved health certificate issued by an accredited veterinarian;

6.20.b.B. a negative AGID test for avian influenza in a federal approved laboratory within ten days prior to shipment with test date and results listed on the health certificate;

6.20.b.C. permanent identification listed on the health certificate; and

6.20.b.D. a permit issued by the West Virginia Department of Agriculture, with the permit number listed on the interstate health certificate.

#### §61-1-7. Rules for Livestock Sales

7.1. The commissioner ~~shall~~ may test all bovine animals that are over 18 months of age and sexually intact, for the presence of brucellosis except for

7.1.a. any male animal that is considered to be too dangerous to test; and

7.1.b. any official vaccinate that is under 20 months of age for animals of dairy-type breeds and under 24 months of age for

animals of beef-type breeds.

7.2. The commissioner shall require that any animal considered to be too dangerous to test for brucellosis be consigned directly to slaughter.

7.3. The commissioner may require that any animal, including female nursing calves of a reactor, found to be a reactor for brucellosis at a public sale be issued a VS FORM 1-27 and be permanently identified as a brucellosis reactor by the commissioner's agent at the sale and be consigned directly to a slaughterhouse from the public sale. However, male nursing calves which may be returned to the owner after castration.

7.4 The Commissioner shall allow animals at a public sale found to be commingled with positive brucellosis-tested animals, as well as the animals that are positive to the buffered plate antigen at 1/25 dilution of serum and the standard card test to be:

7.4.a. returned to the owner in this State. The animal(s) and the herd of origin will be placed under quarantine and the animals shall not be returned to commerce until the herd is tested clean; or

7.4.b. returned to the owner in a state other than West Virginia after agreement of the commissioner, the United States Department of Agriculture and the animal health official of the state of origin.

7.5. The commissioner shall require that any animal found to be diseased, down, drugged or dying be consigned directly to slaughter.

**§61-1-8. Requirements for West Virginia Fairs, Festivals and Purebred Consignment Sales**

8.1. General

8.1.a. No person shall import any animal into the state of West Virginia for showing at a fair, festival, show or sale without a valid official health certificate that has been received by the commissioner at least 5 days prior to the importation of the animal.

8.1.b. The commissioner shall permit a nursing animal to be moved based on the test status of the dam.

8.2. Cattle

8.2.a. No person may import an animal into this state for the purpose of exhibition without a valid official health certificate.

8.2.b. No person may import an animal into this state for the purpose of exhibition without a special permit when the commissioner requires that a special permit be issued due to a disease outbreak in the state of origin.

8.2.c. The commissioner recommends that no bovine or bison animal that is affected with warts, pinkeye, or ringworm be exhibited in this state.

8.2.d. Tuberculosis

8.2.d.A. ~~No~~ The commissioner may stipulate that no person may show any bovine or bison originating within this state unless the animal:

8.2.d.A.(a) is from a United States Department of Agriculture Accredited Tuberculosis Free Herd;

8.2.d.A.(b) is from a herd that has had a complete negative tuberculosis herd test within the 12 months prior to the show;

8.2.d.A.(c) will not be sold at the show and is less than 24 months of age;

8.2.d.A.(d) has had a negative tuberculosis test within the calendar year of the exhibition but prior to the date of exhibition; or

8.2.d.A.(e) will be shown in a slaughter class.

8.2.d.B. ~~No~~ The commissioner may stipulate that no person may show any bovine or bison originating from without this state unless the animal meets all the requirements of paragraph 8.2.d.A. of this rule; except that

8.2.d.B.(a) the animal has had a negative tuberculosis test within 3 months prior to the date of exhibition, when a test is required; and

8.2.d.B.(b) animals shown in slaughter classes must have an individual test and meet the requirements of subdivisions 6.12.e. and 6.12.f. of this rule, except that the

negative tuberculosis test must be within 3 months prior to importation into this state.

8.2.d.C. No person may offer any bovine or bison for sale at a purebred consignment sale unless that animal meets the requirements set forth in subdivisions 6.12.e. and 6.12.f. of this rule.

#### 8.2.e. Brucellosis

8.2.e.A. No person may exhibit any animal, except for steers, at a fair, festival or show that is from a herd that is under quarantine for brucellosis.

8.2.e.B. No person may exhibit an animal at a fair, festival or show that requires an official health certificate when that certificate does not show the animal to be a verifiable progeny of a particular herd.

8.2.e.C. ~~No~~ The commissioner may stipulate that no person may exhibit an animal at a fair, festival or show unless that animal originates from a herd:

8.2.e.C.(a) that is a United States Department of Agriculture Certified Brucellosis Free Herd;

8.2.e.C.(b) that has had a complete negative brucellosis test within the 12 months prior to the exhibition of that animal;

8.2.e.C.(c) in West Virginia and has had a negative brucellosis test within the calendar year of the exhibition but prior to the exhibition. No individual test is required for official vaccinates that are less than 20 months of age for dairy type breeds, or 24 months of age for beef type breeds; or

8.2.e.C.(d) from a state other than West Virginia and has had a negative brucellosis test within 1 month prior to the exhibition except for official vaccinates that are less than 20 months of age for dairy type breeds, or 24 months of age for beef type breeds, in which case no individual test is required.

8.2.e.D. No person may offer any bovine or bison for sale at a purebred consignment sale unless that animal meets the requirements of subdivision 6.12.j. of this rule.

#### 8.2.f. Leptospirosis

8.2.f.A. No person may exhibit any non-pregnant

female animal or any other animal other than one to be slaughtered within 1 month after the exhibition at a fair, festival, or show unless that animal has been vaccinated with Leptospirosis pomona within 12 months prior to the exhibition.

8.2.f.B. No person may exhibit any animal that is required to have had a vaccination with Leptospirosis pomona without showing to the officials in charge of the exhibit a vaccination certificate that shows the date of vaccination, the name of the herd owner, the serial number of the vaccine, the pharmaceutical company distributing the vaccine and the name of the person vaccinating the animal.

8.2.f.C. The commissioner recommends, but does not require, that all bovines be vaccinated with Leptospirosis pomona, L. canicola, L. icterohaemorrhagiae, L. hardjo and L. grippotyphosa within 12 months prior to the date of the exhibition.

### 8.3. Goat

8.3.a. No person may import any goat into this state for the purpose of showing at an exhibition without a valid official health certificate.

8.3.b. No person may import an animal into this state for the purpose of exhibition without a special permit when the commissioner requires that a special permit be issued due to a disease outbreak in the state of origin.

8.3.c. No person may import any goat showing signs of caseous lymphadenitis, unless the animal has been issued a written statement from an accredited veterinarian that the node, or nodes, show no signs of rupture during the time the animal is expected to be in this state.

8.3.d. The commissioner recommends that any goat being imported into this state follow the same rules for cattle for tuberculosis set forth in subdivision 8.2.d. of this rule.

8.3.e. The commissioner recommends that no goat be exhibited in this state that is affected with warts, pinkeye, or ringworm.

### 8.4. Equine

8.4.a. No person may exhibit any equine from any band that is under quarantine for any communicable disease.

8.4.b. No person may exhibit any equine that shows signs

of any infectious or communicable disease.

8.4.c. The officials of the exhibition are responsible to see that all equines shown meet the requirements of this subsection.

8.4.d. No person may exhibit any equine originating from outside this state without a valid official health certificate that shows the test results for an E.I.A. test.

8.4.e. No person may exhibit any equine originating from this State without a negative E.I.A. test within 24 months prior to the exhibition. Equine from states with an E.I.A. program comparable to this State's as set forth in section 11 of this rule, shall have a negative test within 12 months prior to the exhibition. All other equine shall have a negative test within 6 months prior to the exhibition.

8.4.e.A. For purposes of this section the negative E.I.A. test must have been performed in an approved United States Department of Agriculture laboratory.

#### 8.5. Sheep and Lambs

8.5.a. No person may exhibit any sheep or lamb that is capable of breeding that does not have a valid official health certificate or that does not have a certificate that the animal originates from an Honor Flock as designated by the commissioner.

8.5.b. The commissioner shall inspect all sheep or lambs in the market class for the presence of any infectious disease when the animal is exhibited. The commissioner may refuse to allow an animal to be shown based on the results of the examination.

#### 8.6. Swine

8.6.a. ~~No~~ The commissioner may stipulate that no person may exhibit any swine other than West Virginia without an official health certificate or official test record from an approved pseudorabies laboratory that shows that the animal has had a negative pseudorabies test within 60 days prior to the exhibition or that shows that the animal is from a qualified pseudorabies negative herd. However, swine from West Virginia may be exhibited if they meet the requirement of the preceding portion of this sentence or are progeny of a monitored herd. The chart or record shall show the qualified pseudorabies negative number and the date(s) of the last qualifying test(s).

8.6.b. ~~No~~ The commissioner may stipulate that no

person may exhibit any swine originating within this state that is capable of breeding that has not had an examination by a veterinarian within 5 days prior to the exhibition and been found to be free from any symptoms of infectious disease.

8.6.b.A. For purposes of this section, the commissioner shall accept a serum neutralization test or other pseudorabies test approved by APHIS.

8.6.d. The commissioner may require a statement from the animal health official of the state of origin that the animal did not originate from an area where pseudorabies is known to be present.

#### 8.7. Birds

8.7.a. The provisions of subsection 6.19 of this rule apply to the exhibition of birds in this state.

8.7.b. The management of the exhibit shall maintain records of the documents required by this section including the names and addresses of all exhibitors and the number of birds exhibited by those persons for a period of 2 years after the show and shall provide the records to the commissioner upon request.

8.7.c. The management of the exhibit shall deny entry to all birds of a particular owner when any one of the birds of that owner tests positive for pullorum-typhoid.

8.7.d. The owner of any bird found to test positive for pullorum typhoid shall submit the bird to the commissioner who will necropsy the bird and sample the tissues for recovery of the organism.

#### **§61-1-9. Official Vaccinates**

9.1. Official vaccinates are calves that have been vaccinated for brucellosis between the ages of 120 days and 240 days by an accredited veterinarian who

9.1.a. marks the calf at the time of vaccination with a legible tattoo consisting of the numeral of the quarter of the year, a "V-shield" and the last number in the current year in the right ear of any calf and securely fastens a metal ear tag in the right ear of any calf that does not already have a legible purebred registration tattoo; and

9.1.b. completes a Calfhood Vaccination Report on the animal using forms supplied by the commissioner. The completed report shall contain the name and address of the owner of the calf,

the county where the animal was located when vaccinated, the date of the vaccination, the manufacturer and serial number of the vaccine, the number of the ear tag or the purebred animal tattoo, a stamp of the tattoo, the breed, a designation of purebred or grade, the sex of the animal, the date of birth, and the name and address of the person completing the report.

9.2. The accredited veterinarian shall forward the original and one copy of the Calfhood Vaccination Report to the commissioner, in care of the Animal Health Division and one copy to the owner of the calf no later than five days following the vaccination. The accredited veterinarian shall keep one copy of the report for ten years following the vaccination.

9.3. No person shall classify any official vaccinate as a reactor or suspect for brucellosis, even though the test results may indicate a reactor or suspect, until the animal has been tested after they have reached 20 months of age for animals of the dairy breeds or 24 months of age for animals of the beef breeds.

9.4. The commissioner shall classify vaccinated calves or adults from herds containing reactors to brucellosis as reactors when they reach the age of 20 months for animals of dairy type breeds or 24 months for animals of beef type breeds, only if they have a titer of a reactor.

#### **§61-1-10. Establishment and Maintenance of a Certified Brucellosis Free Herd.**

10.1 For the purpose of this section, the term herd means one or more cattle six months of age or older that are cows or bulls. No steers or spayed heifers or official vaccinates that are less than 20 months of age for dairy animals or 24 months of age for beef animals shall be considered to be part of a herd. A herd shall be located on a farm any may consist of animals located in separate fields of a farm. The animals in a herd may have several owners.

#### 10.2. Establishment of Herd Status

10.2.a. The owner or owners, of the herd must sign an agreement with the commissioner that they will comply with WV Code §19-9-20 through 24 and with the provisions of this rule.

10.2.b. The commissioner and the United States Department of Agriculture shall certify the herd as brucellosis free after two series of tests for brucellosis between 10 and 14 months apart show that all animals in the herd are free from brucellosis.

10.2.c. The commissioner and the United States Department of Agriculture shall then issue a certificate for the Certified Brucellosis Free herd. The certificate is valid for one year unless sooner revoked by the commissioner for non-compliance with the provisions of WV Code §19-9-20 through 24 or with the provisions of this rule.

### 10.3. Maintenance of Herd Status

10.3.a. The commissioner and the United States Department of Agriculture shall renew a certificate for a Certified Brucellosis Free Herd for the period of one year when the herd has shown no reactors after a complete herd test.

10.3.b. The owner or owners, of the herd shall cause any animal in a certified herd that is suspected of having brucellosis to be segregated from the herd. The animal shall be retested between 30 and 60 days after the initial test. If the animal tests negative to the retest, it can be returned to the herd and the animal will not be the cause for non-renewal of the certified herd certificate. The commissioner recommends that all animals in the herd be tested at 180 days under these conditions.

10.3.b.A. If the suspect animal tests as a reactor during the subsequent test, then all animals in the herd shall be tested again for brucellosis.

10.3.c. If more than one reactor is found in a herd, the commissioner shall refuse to renew, and shall revoke the certificate and the owner of the herd must reapply for herd status.

10.3.c.A. The commissioner shall quarantine the herd until brucellosis testing has been performed to establish the status of the herd and the animals in the herd.

### 10.3.d. Addition of animals

10.3.d.A. The owner or owners, of the herd may add animals to the herd during the period of establishment of herd status or while the herd is certified under the following conditions:

10.3.d.A.(a). the animal is from a herd that is certified as free of brucellosis. The commissioner will not require the animal to have had a test for brucellosis prior to entry; or

10.3.d.A.(b). The animal is over 6 months of age

and is from a herd that is in the process of establishing brucellosis certification. The animal must have a negative brucellosis test within 30 days of importation into the herd. The animal must be separated from other animals in the herd until they show a negative brucellosis test at 60 days after importation into the herd and segregation.

#### **§61-1-11. Equine Infectious Anemia**

11.1. The commissioner shall immediately quarantine any equine that is found to be an E.I.A. reactor. The quarantine shall extend to all exposed E.I.A. Animals and to any place or location that the commissioner considers necessary to protect the health of the equines of this state.

11.1.a. The commissioner may consider all racehorses handled by the same trainer as exposed E.I.A. Animals.

11.1.b. The commissioner may consider all other equines that have been housed in the same shed row or stall area as exposed E.I.A. Animals.

11.1.c. If the E.I.A. reactor has a foal, the foal should be isolated from the reactor by the owner as soon as possible after birth and E.I.A. tested. Any foal that is found to be an E.I.A. reactor shall be placed under quarantine by the commissioner. If the foal is tested at 12 months of age and found to be an E.I.A. reactor at that time, then the quarantine remains in effect and the commissioner shall brand the animal.

11.2. Under terms of the quarantine the commissioner shall require the E.I.A. reactor to be isolated from all equines by stabling or pasturing at least 200 yards from all other equines.

11.3. The commissioner shall identify all E.I.A. reactors with a visible freeze brand under the mane on the left side of the equine. The brand shall start with "54 A" and end with a number that the commissioner assigns to the equine.

11.4. The commissioner shall allow the E.I.A. reactor to be removed from the quarantine area only upon written permission.

11.5. The quarantine remains in effect for all exposed E.I.A. Animals after the E.I.A. reactor has been removed.

11.6. The commissioner shall not release the quarantine for exposed E.I.A. Animals until all exposed E.I.A. animals have been determined to be non-E.I.A. reactors at least 30 days after the

E.I.A. reactor has been removed from the band.

11.7. The commissioner shall perform testing for Equine Infectious Anemia on any other equine that the E.I.A. reactor has been in contact with during the past 12 months, within the limits of his or her resources.

11.8. The commissioner shall not pay an indemnity for any E.I.A. reactor that must be destroyed.

#### §61-1-12. Pseudorabies in Swine

12.1. No person shall perform a test for pseudorabies on any swine without placing an eartag on each animal that is not previously identified with eartags for their purebred registry. The commissioner shall allow only an USDA approved eartags be used for identification of feeder pigs, when eartags are used. The person performing the test shall record the sex, age, breed and the identification of the animal by the eartag number shall record the purebred registry eartags.

12.2. ~~No~~ The commissioner may stipulate that no person shall sell, lend, lease, or trade any feeder or breeder swine in this state, or import into this state or export out of this state any feeder pig unless that animal

12.2.a. originates from a pseudorabies monitored herd or a qualified pseudorabies negative herd from within this state, or from a herd that meets or exceeds the requirements of these herds provided by this section; or

12.2.b. the animal has been tested and found to be free of pseudorabies within 1 month prior to the movement of the animal or the date of the sale; or

12.2.c. originates from a Stage V-(Free) state.

#### 12.3. Pseudorabies Monitored Herds

12.3.a. The owner of a swine breeding herd may establish their status as a pseudorabies monitored herd after all the animals required by this subsection to be tested have been found to be free of pseudorabies. All boars shall be tested. All sows shall be tested in herd of 10 sows or fewer. Ten randomly selected sows shall be tested in herds containing 11 to 35 sows. Thirty percent of the sows, or 30 randomly selected sows, whichever is fewer, shall be tested in herds containing 36 or more sows.

12.3.b. The owner of a swine breeding herd may maintain their status as a pseudorabies monitored herd by testing the animals every twelve months as prescribed by subdivision 12.3.a., of this section plus all the boars, and thirty percent of the sows added to the herd since the previous herd test.

#### 12.4. Qualified Pseudorabies Negative Herds

12.4.a. A swine breeding herd may establish their status as a qualified pseudorabies negative herd after the provisions of Title 9, Part 85.1 of the Code of Federal Regulations have been met; and

12.4.a.A. all swine over 6 months of age, plus a number of progeny equal to 20% of the breeding swine population of the herd have been found to be free of disease when tested using an official pseudorabies serologic test, the herd is not known to have been exposed to the disease within the month previous to the test, and at least ninety percent of the animals in the herd have been in the herd and on the premises for at least 2 months prior to the test or have entered the herd directly from another qualified pseudorabies negative herd. Progeny less than 6 months of age shall be randomly selected from the older swine in the herd.

12.4.b. A swine breeding herd may maintain their status as a qualified pseudorabies negative herd after

12.4.b.A. all swine over 6 months of age, and their progeny as described in Paragraph 12.4.a.A. of this rule have been found to be free of disease when tested using an official pseudorabies serologic test; and

12.4.b.B. twenty-five percent of all swine over 6 months of age and their progeny as described in Paragraph 12.4.a.A. of this rule have been found to be free of disease when tested every 80-105 days using an official pseudorabies serologic test. No animal shall be tested more often than once every 12 months; or

12.4.b.C. ten percent of all swine over 6 months of age and their progeny as described in Paragraph 12.4.a.A. of this rule have been found to be free of disease when tested every month using an official pseudorabies serologic test. No animal shall be tested more often that once every 10 months.

12.5. The commissioner shall accept a valid Swine Herd Health Certificate issued by the state veterinarian as proof that any animal is part of a Pseudorabies Negative Herd.

12.6. The commissioner shall accept an official pseudorabies test chart indicating that the animal has been tested and found free of pseudorabies within the past month and identifying the individual feeder pig tested as proof that the animal is free of pseudorabies.

12.7. The commissioner shall quarantine any swine herd when any animal is found to be a reactor to an official pseudorabies test. The quarantine may be released only after the provisions of Title 9 Part 85.1 of the Code of Federal Regulations has been met including:

12.7.a. depopulation of all animals that have found to be reactors and all exposed swine, followed by cleaning and disinfecting the location of the herd by a method that has been approved by the commissioner; or

12.7.b. removal of all swine that have been found to be reactors, cleaning and disinfecting the premises as directed by the commissioner, followed by the testing schedule as follows:

12.7.b.A. after 1 month, testing all swine, except for nursing animals and finding all animals to test negative to pseudorabies, then

12.7.b.B. after an additional 1 to 2 months, testing all swine over 6 months of age and finding all animals to test negative to pseudorabies.

**§61-1-13. Rules for Hatcheries, Growers and Contractors Pertaining to Poultry Disease Control and Eradication**

13.1. General

13.1.a. For the purposes of this section a flock means a group of poultry that are characteristic of the breed, variety, cross or other combination which they are stated to represent.

13.1.b. The owners of any flock shall test all poultry on the premises, except for wild birds or unmated and segregated birds held for laying purposes, for pullorum-typhoid.

13.1.c. No person shall maintain a flock containing any birds testing positive for pullorum-typhoid without complying with the provisions of this section of this rule.

13.1.d. The commissioner intends for the provisions of this section of the rule to supplement, and not supersede, the

regulations set forth in the National Poultry Improvement Plan and Auxiliary Provisions set forth in Title 44 of the Code of Federal Regulations Parts 145 through 147 (published October 26, 1979).

13.1.e. Any person owning a hatchery or a flock is responsible for furnishing transportation on the premises and necessary labor needed for handling birds at no expense to the commissioner or the tester when needed by the tester to perform his duties under this section of the rule.

13.1.f. The commissioner requires that all birds found to be reactors or suspected of being a reactor to any disease be removed from the flock and destroyed within 10 days after the test was reported. The owner of the birds must certify to the commissioner that the birds were destroyed within 10 days of test results in a manner approved by the commissioner.

### 13.2. Testing

13.2.a. The commissioner shall accept only official test results. The commissioner shall accept tests performed by inspectors certified by the commissioner and performed according to the provisions of this section of the rule and the National Poultry Improvement Plan and Auxiliary Provisions as official tests.

13.2.b. No person may use any chicken for breeding purposes without having that bird tested and found negative for the presence of pullorum-typhoid when the bird reaches 5 months of age and prior to being used for breeding.

13.2.c. No person may use any turkey for breeding purposes without having that bird tested and found negative for the presence of pullorum-typhoid when the bird reaches 4 months of age, and prior to being used for breeding.

13.2.d. The commissioner shall not accept any test performed with any lot of pullorum-typhoid antigen that was not approved by the United States Department of Agriculture.

13.2.e. The commissioner shall not accept any test performed with pullorum-typhoid antigen on any animal that has had a previous test with any Salmonella antigen within 21 days of the pullorum-typhoid test.

13.2.f. The commissioner shall set the fee for testing and inspection at a rate to reflect the actual costs of doing the testing and inspection for the commissioner's employees. The costs for testing and inspection for the commissioner's employees is 30 cents per mile for all travel and \$10 per hour for the time for

travel, testing and inspection. The owner of the birds tested shall pay the fee to the West Virginia Department of Agriculture within 10 days of billing by the commissioner.

13.2.g. The owner of birds may contract with independent certified testers to perform official testing and inspection. The fees charged by the independent certified tester are not bound by the fees charged by the commissioner.

13.2.h. The tester shall identify each bird that has been officially tested with an officially sealed and numbered leg or wing band.

### 13.3. Reporting

13.3.a. All persons owning hatcheries shall report the total number of eggs set and the total number of chicks and poults hatched on a weekly basis to the Federal-State Crop and Livestock Reporting Service, United States Department of Agriculture, Capitol Building/Guthrie Center, Charleston, West Virginia 25305.

13.3.b. The tester shall mail all official test records within seven days of the completion of the test on the flock to the commissioner, in care of the Animal Health Division, Charleston, WV. The official test records shall include the name and address of the owner of the birds, the date of test, the number of the leg or wing band attached to the bird, the test results and the total number of birds tested in the flock.

13.3.c. Any dealer in baby chicks and broiler contractors shall keep records of the number of shipments of chicks and poults into this state for a period of 5 years and shall provide them to the commissioner upon request.

### 13.4. Classification of a flock

13.4.a. The provisions of the National Poultry Improvement Plan and Auxiliary Provisions shall determine the classification of a flock.

13.4.b. The commissioner shall not consider the test results of any bird for the purposes of classifying the flock that was found to be a reactor using antigen and subsequently found to be not infected upon necropsy and subsequent bacterial examination.

## § 61-1-14. Laboratory Services and User Fees

### 14.1. General

14.1.a. For the purpose of this section only a licensed veterinarian, government-employed animal health technician or a person or persons as designated by the Department as being duly qualified to submit the samples may submit samples to the laboratory.

14.1.b. The laboratory is prepared to accept only submissions for tests and services that are performed by personnel of the West Virginia Department of Agriculture. If the laboratory receives other submissions, it will forward them to the proper destination. The user is responsible for the costs of services requested and subject to administrative costs of forwarding the sample.

14.1.c. The Commissioner of Agriculture may waive all fees and requirements under extenuating circumstances.

#### 14.2. Schedule of User Fees

14.2.a. The fees due the Department for the specific tests are as follows:

TEST	CHARGE	TEST	CHARGE
avian influenza	\$0.75	<i>Mycoplasma gallisepticum</i>	\$0.40
bluetongue	\$2.00	<i>Mycoplasma mealeagridis</i>	\$0.30
caprine arthritis encephalitis	\$2.00	<i>Mycoplasma spp.</i> (HI)	\$0.50
culture samples	\$2.00	<i>Mycoplasma synoviae</i>	\$0.50
equine infectious anemia	\$1.00	Necropsy (1-6 birds or 1 animal)	\$20.00
fecal floatation	\$2.00	<i>Salmonella pullorum-typhoid</i>	\$0.25
Johne's disease	\$5.00	<i>Salmonella typhimurium:</i>	
<i>Leptospirosis spp.</i>	\$1.00	Plate	\$0.50
		Titer (micro)	\$0.10

#### 14.3. Procedure for payment

14.3.a. Following the last day of each month, the Animal Health Division will submit an invoice to the appropriate persons or companies for the amount of charges for the previous month.

14.3.b. All payments shall be made to West Virginia Department of Agriculture, Administrative Services Division, Fiscal

Management Office, 1900 Kanawha Boulevard, East, Charleston, West  
Virginia 25305-0173 within thirty days.

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Animal Disease Control

Type of Rule:  Legislative     Interpretive     Procedural

Agency: West Virginia Department of Agriculture

Address: 1900 Kanawha Boulevard, East, Building 1, Room E-28, State Capitol Complex  
Charleston, WV 25305

1. Effect of Proposed rule:

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	-0-	\$15,000	\$3,500	\$15,000	\$15,000
PERSONAL SERVICES	-0-	\$15,000	\$3,500	\$15,000	\$15,000
CURRENT EXPENSE	-0-	-0-	-0-	-0-	-0-
REPAIRS & ALTERATIONS	-0-	-0-	-0-	-0-	
EQUIPMENT	-0-	-0-	-0-	-0-	
OTHER	-0-	-0-	-0-	-0-	

2. Explanation of Above Estimates:

The estimated totals are based on the last complete fiscal year.  
 The adoption of this rule will result in a savings of approximately \$28,000.  
 The loss in revenue from testing cattle will be about \$13,000.  
 This will result in a decrease of expenditures of \$15,000 per year.

3. Objectives of These Rules:

1. Promote equality and disease costs to our cattle industry.
2. Cease actions which harm our livestock markets.
3. Discontinue procedures for which there remains little validity for their continuation.
4. Restore constitutionality. 1

## Statement of Circumstances

This proposed rule change allows the Commissioner of Agriculture to discontinue first-point testing of test eligible cattle at the West Virginia Livestock Markets. In the *West Virginia State Code* §61-1-7.1. the word "shall" is stricken and replaced by the word "may." This will relieve buyers of test eligible cattle in the West Virginia Livestock Markets of paying the \$1 testing fee. Markets in adjacent states do not test nor charge the \$1 fee. This is an economic advantage to the cattle producers and restores equity to the livestock markets. The continuation of the practice could well be ruled unconstitutional.

Since the cattle are no longer to be tested, this will result in savings to the taxpayers of approximately \$15,000 per year, as less part-time labor will be needed. This in no way will affect our disease prevention status, as testing in adjacent states ended on December 1, 2000.

This proposed rule change also allows the Commissioner of Agriculture the option of continuing or discontinuing testing requirements for livestock being shown at fairs, festivals and exhibitions. It also allows the Commissioner of Agriculture to remove some of the restrictions on importation of livestock when disease conditions no longer warrant the restrictions. These proposed restrictions would be no less than those accorded our producers by other states. This will create a rapport among the states and livestock producers while not jeopardizing our outstanding animal health program. The proposed rules are written in a manner allowing the Commissioner of Agriculture to increase restrictions when and if serious disease threats should develop in neighboring states or West Virginia.

In summary, the affects of this change may be found in the following statements:

1. Elimination of a negative impact and an economic hardship on cattle producers, livestock markets, and the public at large.
2. The continuation of this rule could be legally challenged.
3. The cost of operating will be less.
4. There will be a substantial saving for the livestock industry.
5. Restore compatibility to the economic climate in cattle production.

**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 25, 2001

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Department of Agriculture

1900 Kanawha Blvd., East, Charleston, WV 25305-0172

LEGISLATIVE RULE TITLE: Animal Disease Control

1. Authorizing statute(s) citation §19-1-4-J and §19-9-2.b.

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

June 22, 2001 @ 1:47 p.m.

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

None

c. Date of Public Hearing(s) *or* Public Comment Period ended:

July 23, 2001 @ 4:30 p.m.

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

Attached \_\_\_\_\_ No comments received XX

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

June 22, 2001 @ 1:47 p.m.

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

All West Virginia Livestock Markets have been notified

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- 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)

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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.

June 22, 2001 @ 1:47 p.m.

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b. Date of hearing or comment period:

June 22, 2001 @ 1:47 p.m. to July 23, 2001 @ 4:30 p.m.

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

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d. Attach findings and determinations and reasons:

Attached 

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