

# Rules and Regulations

Federal Register

Vol. 67, No. 27

Friday, February 8, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 457

RIN 0563-AB79

#### Common Crop Insurance Regulations; Millet Crop Insurance Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule; correction.

**SUMMARY:** This document contains a correction to the final regulation the Federal Crop Insurance Corporation published in the **Federal Register** on Wednesday, January 23, 2002 (67 FR 3036-3039). The regulation pertains to the Millet Crop Insurance Provisions.

**EFFECTIVE DATE:** February 22, 2002.

**FOR FURTHER INFORMATION CONTACT:** Gary Johnson, Insurance Management Specialist, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 6501 Beacon Drive, Kansas City, MO, 64133, telephone (816) 926-7730.

**SUPPLEMENTARY INFORMATION:** On page 3037, in the second column, under section 457.165, Millet crop insurance provisions, introductory text, the year 2002 should read 2003.

Signed in Washington DC, on January 28, 2002.

**Phyllis W. Honor,**

*Acting Manager, Federal Crop Insurance Corporation.*

[FR Doc. 02-2710 Filed 2-7-02; 8:45 am]

**BILLING CODE 3410-08-P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 55

[Docket No. 00-108-1]

RIN 0579-AB35

#### Chronic Wasting Disease in Cervids; Payment of Indemnity

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are establishing animal health regulations to provide for the payment of indemnity by the United States Department of Agriculture for the voluntary depopulation of captive cervid herds known to be infected with chronic wasting disease. The payment of indemnity will encourage depopulation of infected herds, and therefore will reduce the risk of other cervids becoming infected with the disease. We have determined that this action, which will accelerate existing chronic wasting disease eradication efforts, is necessary to protect cervids not infected with chronic wasting disease from the disease.

**DATES:** This interim rule was effective February 5, 2002. We invite you to comment on this docket. We will consider all comments we receive that are postmarked, delivered, or e-mailed by April 9, 2002.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies (an original and three copies) to: Docket No. 00-108-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 00-108-1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 00-108-1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building,

14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Lynn Creekmore, Staff Veterinarian, VS, APHIS, 4101 LaPorte Avenue, Fort Collins, CO 80521, (970) 266-6128.

#### SUPPLEMENTARY INFORMATION:

##### Background

Chronic wasting disease (CWD) is a transmissible spongiform encephalopathy (TSE) of cervids (elk, deer, and other members of the deer family) that to date has only been found in North America. First recognized as a clinical "wasting" syndrome in 1967, it is typified by chronic weight loss leading to death. Species that have been affected with CWD include Rocky Mountain elk, mule deer, white-tailed deer, and black-tailed deer. Other ruminant species, including wild ruminants and domestic cattle, sheep, and goats, have been housed in wildlife facilities in direct or indirect contact with CWD-affected deer and elk, and to date there has been no evidence of transmission of CWD to these other species.

In the United States, CWD has been confirmed in free-ranging deer and elk in a limited number of counties in northeastern Colorado, southeastern Wyoming, and western Nebraska. CWD has also been diagnosed in fewer than 20 captive (farmed) elk herds in South Dakota, Nebraska, Oklahoma, Montana, and Colorado.

Research is being conducted to develop live-animal diagnostic tests for CWD. Currently, definitive diagnosis is based on postmortem examination (necropsy) and testing of postmortem samples. On microscopic examination, lesions of CWD in the central nervous system resemble those of other TSE's. In addition, using a technique called immunohistochemistry, scientists test

brain tissues for the presence of the protease-resistant prion protein.

The origin and mode of transmission of CWD is unknown. Animals born in captivity and those born in the wild have been affected with the disease. Based on epidemiology, transmission is thought to be lateral, or from animal to animal. Although maternal transmission may also occur, it appears to be relatively unimportant in maintaining epidemics. These facts about CWD transmission, in conjunction with the small number of captive herds currently affected by CWD, suggest that prompt action now may control the CWD problem in captive herds, but lack of such action would allow more movement of CWD-infected animals to new herds, escalating the CWD problem.

Surveillance for CWD in free-ranging deer and elk in Colorado and Wyoming has been ongoing since 1983, and, to date, has confirmed the limits of the endemic areas in those States. CWD in free-ranging deer in Nebraska was detected in 2000/2001; more intensive surveillance to better define the prevalence and distribution of the disease in free-ranging deer in Nebraska is underway. An extensive nationwide surveillance effort was started in 1997–98 to better define the geographic distribution of CWD in free-ranging cervids in the United States. This surveillance effort is a two-pronged approach consisting of hunter-harvest cervid surveys conducted in many States, as well as surveillance throughout the entire country targeting deer and elk exhibiting clinical signs suggestive of CWD. Surveillance for CWD in captive elk began in 1997 and has been a cooperative effort involving State agriculture and wildlife agencies and the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (the Department). Farmed cervid surveillance has been increasing each year since 1997 and will be an integral part of the Department's program to eliminate CWD from captive cervids.

The presence of CWD in cervids causes significant economic and market losses to U.S. producers. Recently, Canada has begun to require, as a condition for importing U.S. elk into Canada, that the animals be accompanied by a certificate stating that the herd of origin is not located in Colorado or Wyoming, and CWD has never been diagnosed in the herd of origin. South Korea and Japan recently suspended the importation of deer and elk and their products from the United States and Canada. The domestic prices for elk are severely affected by fear of CWD; it is extremely difficult to sell elk

that have any history of exposure to CWD.

APHIS's regulations in 9 CFR subchapter B govern cooperative programs to control and eradicate communicable diseases of livestock. In accordance with 21 U.S.C. 111–113, 114a, 115, 117, 120, 123, and 134a, the Secretary of Agriculture has the authority to promulgate regulations and take measures to prevent the introduction into the United States and the interstate dissemination within the United States of communicable diseases of livestock and poultry, and to pay claims growing out of the destruction of animals. Animal health regulations promulgated by the Department under this authority include those specifically addressing control programs and indemnity payments for tuberculosis (part 50), brucellosis (part 51), pseudorabies (part 52), and scrapie (part 54), and regulations in part 53 regarding payment of claims for other diseases.

This interim rule establishes a new part 55, "Control of Chronic Wasting Disease."

#### Key Definitions

We are establishing the following new definitions for part 55. We also define a number of other terms in part 55 that are not discussed below, because they are already defined in other parts of 9 CFR subchapter B with respect to other APHIS animal disease control programs.

*Captive* is defined to distinguish captive cervids, the class eligible for indemnity, from other cervids. This term includes animals that are privately or publicly maintained or held for economic or other purposes within a perimeter fence or confined space. Animals that are held for research purposes are not included, because research animals will not be eligible for indemnity, and because we expect that future rulemaking affecting captive cervids will include interstate movement restrictions or other requirements that will not be necessary or suitable for research animals.

*Cervid* is defined as all members of the family Cervidae and hybrids, including deer, elk, moose, caribou, reindeer, and related species.

*Chronic wasting disease* is defined as a TSE of cervids.

*A CWD exposed animal* is defined as an animal that is part of a CWD positive herd, or that was part of a herd within 5 years prior to that herd's designation as CWD positive, or an animal that has been housed with or been in direct contact with a positive animal, or an animal that has been on a contaminated premises.

*A CWD positive animal* is defined as an animal that has had a diagnosis of CWD confirmed by means of an official CWD test.

*A CWD positive herd* is defined as any herd in which a CWD positive animal resided at the time it was diagnosed and which has not been released from quarantine.

*A CWD suspect animal* is defined as an animal for which an APHIS employee has determined that laboratory evidence or clinical signs suggest a diagnosis of CWD.

*A herd plan* is defined as a written herd management agreement developed by APHIS with input from the herd owner, State representatives, and other affected parties. A herd plan sets out the steps to be taken to eradicate CWD from a CWD positive herd, or to prevent introduction of CWD into another herd. A herd plan will require: specified means of identification for each animal in the herd; regular examination of animals in the herd by a veterinarian for signs of disease; reporting to a State or APHIS representative of any signs of central nervous system disease in herd animals; maintaining records of the acquisition and disposition of all animals entering or leaving the herd, including the date of acquisition or removal, name and address of the person from whom the animal was acquired or to whom it was disposed, cause of death, if the animal died while in the herd. A herd plan may also contain additional requirements to prevent or control the possible spread of CWD, depending on the particular condition of the herd and its premises, including but not limited to: specifying the time for which a premises must not contain cervids after CWD positive, exposed, or suspect animals are removed from the premises; fencing requirements; depopulation or selective culling of animals; restrictions on sharing and movement of possibly contaminated livestock equipment; cleaning and disinfection requirements, or other requirements. APHIS may review and revise a herd plan at any time in response to changes in the situation of the herd or premises or improvements in understanding of the nature of CWD epidemiology or techniques to prevent its spread.

*Materials* is defined to identify types of articles on a premises that may spread CWD if exposed to a CWD positive animal. The definition of materials includes parts of barns or other structures, straw, hay, and other feed for animals, farm products or equipment, clothing, and any other articles on the premises that have been in contact with captive cervids.

An *official appraiser* is a person authorized by APHIS (an APHIS official appraiser) or a State (a State official appraiser) to appraise animals for the purposes of this part. The official appraiser may be an APHIS employee, a State employee, or a professional livestock appraiser working under contract to APHIS or a State.

An *official CWD test* is defined as any test for the diagnosis of CWD approved by the Administrator and conducted in a laboratory approved by the Administrator in accordance with § 55.8, "Official CWD tests and approval of laboratories to conduct official CWD tests."

The requirements of § 55.8 regarding how APHIS will authorize official tests and approve laboratories to conduct them is essentially the same as requirements APHIS has established for this purpose in other animal disease programs, e.g., scrapie (9 CFR part 54) and pseudorabies (9 CFR part 52). They include requirements such as using test protocols provided by the National Veterinary Services Laboratories, and demonstrating that laboratories have the necessary equipment and personnel skills to properly conduct the tests listed in § 55.8(a) and properly record and preserve test results data.

#### Payment of Indemnity

We have determined that all of the factors discussed above—the danger of further spread of CWD, the relatively small number of herds currently infected with CWD, and the opportunity to limit the CWD problem before it escalates—make this an appropriate time to accelerate the CWD eradication effort by swift and thorough elimination of infected herds. Coordinated action at the Federal level will accelerate the efforts toward removal of infected cervids already underway at the State level. Therefore, in this interim rule, we are establishing regulations that will allow the Department to pay indemnity to owners of herds who destroy positive, exposed, or suspect animals. We are also authorizing payments to reimburse State animal health agencies that have paid indemnity to owners prior to the effective date of this rule, in accordance with cooperative agreements between the States and APHIS and the maximum indemnity amounts in this rule, to purchase and destroy positive, exposed, or suspect animals. APHIS has used such cooperative agreements with States to enhance the ability of State programs to contribute to the control of CWD. States will be reimbursed for their costs for indemnity payments to owners, and for associated carcass disposal and cleaning and disinfecting costs, as

authorized in a cooperative agreement. These cooperative agreements will be quite restrictive, as our intent is not to reimburse States for all of the CWD indemnity payments they may choose to make in the future. This provision will only provide reimbursement for certain payments States made in support of Federal efforts to control CWD before Federal indemnity funds were available.

Although the regulations being established will allow for the payment of indemnity by the Department, participation in the indemnity program will be entirely voluntarily for producers. Producers who choose not to have an eligible herd depopulated will not be required by APHIS to do so. However, State quarantines on CWD positive herds will probably serve as a strong incentive for participation.

We intend to pay indemnity primarily for whole-herd depopulation of herds of captive cervids that are determined to be CWD positive. Given CWD's long incubation period, the absence of a live animal, pre-clinical test, and our incomplete knowledge of CWD transmission, whole herd depopulation with no restocking on depopulated premises without APHIS approval appears to be the best option to prevent further spread of the disease once a positive diagnosis has been made. However, in the future we may develop alternative approaches to address situations where whole-herd depopulation is impractical or unnecessary. For example, better understanding of modes of transmission of CWD might make it possible to remove selected high risk animals rather than depopulating entire herds.

We will also pay indemnity when APHIS removes individual animals from herds to euthanize them and test for CWD. We do this when animals have been identified as CWD suspect or exposed; e.g., we might remove and test animals from a herd that received animals from another herd that was later determined to be CWD positive.

#### Indemnity Program Guidelines for Producers

Cervid producers who choose to take part in the indemnity program may apply for participation as of the effective date of this interim rule. The indemnity program will extend from the effective date of this interim rule until funds allocated for the program are depleted.

The owner of any herd that is determined to be a CWD positive herd will be eligible to apply for payment of indemnity for depopulation.

#### Amount of Indemnity Payments and Conditions for Receiving Indemnity

Subject to the availability of funding, the amount of indemnity payments for eligible animals will be determined by appraisal, with the indemnity payment set at 95 percent of the appraised value, with a cap on payments of \$3,000 per animal. CWD positive herds will be appraised by an APHIS official appraiser and a State official appraiser jointly, or, if APHIS and State authorities agree that both appraisers are not needed for a given situation, by either a State official appraiser or an APHIS official appraiser alone. The appraised value of the cervids will be their fair market value as determined by the meat or breeding value of the animals. Animals may be appraised in groups, provided that where appraisal is by the head, each animal in the group is the same value per head, and where appraisal is by the pound, each animal in the group is the same value per pound.

To make this indemnity program equitable for producers in all the States that might participate, we will reduce the Federal indemnity payment for an animal when indemnity payments for the same animal from non-Federal sources exceed 5 percent of its appraised value. The reduction in the Federal payment will equal the amount by which the non-Federal payments exceed 5 percent of the animal's appraised value. We are taking this action to prevent inequities that could reduce participation by owners who believe that the total Federal and non-Federal payments offered to them is unfairly lower than payments offered in other States.

Appraisals of cervids must be reported on forms furnished by APHIS and signed by the appraisers and the owner of the cervids. Reports of appraisals must show the number of cervids and the value per head or the weight and value by pound. We will not pay indemnity unless the owners have signed the appraisal form, indicating their agreement with the appraisals.

As a condition of receiving indemnity, producers must sign a written agreement with APHIS in which they agree that if they maintain cervids in the future on their premises, they will maintain the animals in accordance with a herd plan developed by APHIS, and they will not introduce cervids to the premises until after the date specified in that herd plan. We are currently evaluating research to determine how to effectively clean and disinfect premises, and how long to wait before reintroducing cervids in order to

minimize risks of CWD transmission through the premises environment. We particularly seek public comments on these two points.

After cervids are destroyed, their premises must be cleaned and disinfected. All structures on the premises, including barns, stockyards, and pens used to house the cervids, all cars and other conveyances used to transport the cervids, and the materials on those premises or conveyances must be cleaned and disinfected under the supervision of an APHIS employee or a State representative, using methods specified by the APHIS employee or a State representative, before being reused to house or convey cervids. Generally, the owners of the cervids for which indemnity is paid will be responsible for the costs of all cleaning and disinfection, except that APHIS or a State will pay for the cleaning and disinfection of conveyances used to transport the cervids to the disposal location. APHIS may also decide to pay the cost of cleaning and disinfecting premises when the procedures needed to conduct effective cleaning and disinfection are unusually extensive and require methods that are not normally available on a premises. For example, normal procedures would include washing surfaces with high-pressure hoses and disinfectants and burying or burning contaminated materials. Unusually extensive procedures would include, but are not limited to, disposing of contaminated materials by digestive disposal or high-temperature incineration.

Owners who receive indemnity but then fail to comply with the cleaning and disinfection requirements, or the requirement not to reintroduce cervids to the premises for a period defined in the herd plan, will be in violation of the regulations and may be subject to civil or criminal penalties under 18 U.S.C. 1001, 21 U.S.C. 117 and 122, or other statutory authorities. In addition, State governments are prepared to cooperate with APHIS to ensure compliance by using appropriate State quarantine authorities to prevent movement of cervids onto or from premises that have been exposed to CWD and have not been cleaned and disinfected. Such State cooperation will also help address situations where a premises exposed to CWD is sold to a new owner who has not signed a herd plan with APHIS; in such cases, many State animal health statutes allow States to exercise authority over the premises.

Claims for indemnity for the value of animals destroyed must be documented on a form furnished by APHIS and presented to an APHIS employee or a

State representative authorized to accept the claims. The owner of the animals must certify on the form that the animals covered either are or are not subject to any mortgage. If the owner states that there is a mortgage, the owner, and each person holding a mortgage on the animals, must sign forms furnished by APHIS consenting to the payment of indemnity to the owner or lienholder.

APHIS will pay the reasonable costs of destruction and carcass disposal for animals that are indemnified. To obtain reimbursement for disposal costs, animal owners must obtain written approval of the disposal costs from APHIS, prior to disposal. Except in cases where APHIS or a State directly arranges for disposal, the owner of the animals must present an APHIS employee with a written contract or estimate of disposal costs. Prior to receiving reimbursement the owner must also present an APHIS employee with a copy of either a receipt for expenses paid by the owner or a bill for services rendered to the owner. Any bill for services rendered presented by the owner must not be greater than the normal fee for similar services provided by a commercial entity. APHIS does not intend to allow owners to personally dispose of carcasses on their premises, so this provision does not allow claims from owners for their own labor.

This interim rule provides that no indemnity will be paid if the eligible animals have been moved or handled by the owner in violation of a law or regulation administered by the Secretary regarding animal disease, or in violation of a law or regulation for which the Secretary has entered into a cooperative agreement.

At the option of APHIS, cervids for which we pay indemnity will be destroyed on their premises, moved to another location for destruction under conditions specified by APHIS, or moved to an approved research facility under conditions specified by APHIS.

The carcasses of any cervids destroyed in accordance with this rule must be incinerated, destroyed in an alkaline hydrolysis tissue digester, or disposed of by another method authorized by an APHIS employee and in accordance with local, State, and Federal laws. The carcasses may not be sold to be processed for human or animal food, including dietary supplements.

#### **Emergency Action**

This rulemaking is necessary on an emergency basis to ensure that the CWD indemnity program is implemented as soon as possible to prevent the spread

of CWD. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see DATES above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

Below is a summary of the economic analysis for the chronic wasting disease indemnity program described in this document. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act. A copy of the full economic analysis is available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this document).

We do not have enough data for a comprehensive analysis of the economic effects of this interim rule on small entities. Therefore, in accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis for this interim rule. We are inviting comments about this interim rule as it relates to small entities. In particular, we are interested in determining the number and kind of small entities who may incur benefits or costs from implementation of this rule and the economic impact of those benefits or costs.

In accordance with 21 U.S.C. 111–113, 114a, 115, 117, 120, 123, and 134a, the Secretary of Agriculture has the authority to promulgate regulations and take measures to prevent the introduction into the United States and the interstate dissemination within the United States of communicable diseases of livestock and poultry, and to pay claims growing out of the destruction of animals. Animal health regulations promulgated by the Department under

this authority include those specifically addressing control programs and indemnity payments for tuberculosis (part 50), brucellosis (part 51), pseudorabies (part 52), and scrapie (part 54), and regulations in part 53 regarding payment of claims for other diseases.

### Program Description and Benefits

CWD is recognized to cause considerable and growing economic losses. The Secretary of Agriculture has authorized the transfer of \$2.65 million in funds from the Commodity Credit Corporation to begin conducting a CWD indemnity program. Most of this money will be used for indemnity costs, and the remainder will be used for euthanasia, transport, disposal, cleanup, and surveillance. Payment of indemnity will be based on fair market value, and the amount paid per cervid will likely fluctuate during the course of the CWD indemnity program. Participation may be limited if funds are exhausted due to increases in the fair market value above our current estimates. Since this is a voluntary indemnity program, some eligible producers may not choose to participate.

This interim rule provides Federal indemnification of up to \$3,000 per animal for the depopulation of CWD positive, CWD exposed, or CWD suspect captive cervids. Previously, there was no such indemnification program.

The number of deer and elk in the United States that have died as a result of contracting CWD is unknown, largely because there is no way to track deaths among the free-ranging segment of the cervid population. However, sampling in a limited area where CWD is known to exist in wildlife—i.e., northern Colorado, southern Wyoming, and southwestern Nebraska—has suggested an infection rate of 15 percent among wild mule deer and 2 percent among wild elk. For captive cervids, the number of deaths to date has been relatively low. Based on nonmandatory stock sale and disease report records kept by industry associations, it is estimated that fewer than 50 farmed elk, and no farmed deer, have died as a result of contracting CWD.<sup>1</sup> The number of captive elk that have died is equivalent to less than one-tenth of 1 percent of the current U.S. captive elk population, estimated at 110,000. However, for every infected animal, far more have been exposed to the disease.

Limited hard statistical data exist on the deer and elk farming industries, mostly compiled by the two major industry associations—the North American Elk Breeders Association

(NAEBA) and the North American Deer Farmers Association (NADeFA). Deer and elk farms are not included as a separate line item in the most recent agricultural census data.

NAEBA estimates that there are about 110,000 elk on 2,300 U.S. farms. The number of elk per farm varies, from a high of about 700 (for commercial farms) to a low of about 10 (for hobby farms). The value of each elk held also varies, depending on the type of animal (e.g., bull, heifer, calf), market conditions, and other factors. NAEBA, which maintains detailed records of average sale prices to assist their members in business planning, estimates that the average value of each elk is \$2,000, with the typical high-end value at about \$5,000.<sup>2</sup> Based on the average of \$2,000 per animal, the value of all 110,000 elk on U.S. farms is estimated at \$220 million (110,000 × \$2,000). In 1999, gross receipts for the elk farming and velvet antler industry in North America totaled an estimated \$150 million.<sup>3</sup>

NADeFA estimates that there are between 100,000 and 150,000 deer on approximately 2,000 U.S. farms. The number of deer per farm varies, from a high of about 3,000 (for commercial farms) to a low of about 5 (for hobby farms). The value of each deer also varies, depending on such factors as the type of animal (e.g., wapiti, white-tailed, fallow). NADeFA estimates the value of all 66,172 deer on its member farms at \$111.6 million, an average of \$1,687 per animal. At the high end, wapiti deer are valued at \$4,000 each; fallow deer are at the low end, with a value of \$375 each. NADeFA-member revenues from deer or deer products are estimated at \$5.4 million annually, with sales of livestock comprising 41 percent, or \$2.2 million, of that amount. NADeFA members have 527 employees, and operate on 65,032 acres of fenced land valued at \$38.8 million.<sup>4</sup>

This action will provide herd owners with a financial incentive to identify and destroy their CWD positive, exposed, and suspect animals, thus arresting the spread of the disease and accelerating eradication efforts. Those producers not engaging in surveillance of their herds would have incentive to do so. Several benefits flow from this action. First, it will reduce costs to the elk and deer industries from animal mortality, reductions in per animal breeding, meat, and recreation values

from being associated with an infected herd, costs from possible State regulatory actions, and trade restrictions on U.S. elk, deer, and related product exports. Second, this action will also help reduce the possibility of cross-species transmission. Third, an accelerated program now, while the number of known infected herds is small, may obviate the need for higher future Federal costs to contain a more widespread outbreak.

While the number of captive cervids that have died from or are infected with CWD is currently small, it is possible that the number could quickly expand. Based on the rate of increase in the number of infected herds in recent years, APHIS estimates that without improved CWD control efforts, the disease could infect almost the entire U.S. captive elk herd over the next 15–20 years. This estimate is based on an unpublished study by the APHIS Centers for Epidemiology and Animal Health that employed informal growth rate models based on the limited available data. Data is limited because the spread of CWD has been closely studied for only a few years, but the 15–20 year estimate takes into account CWD spread patterns in both the United States and Canada. The elk industry is in its early stages, which requires owners to purchase and sell large numbers of animals for breeding stock as they develop superior lines. Such large movements of animals between herds exacerbates risks of disease spread. One herd in Colorado sold approximately 400 animals to many other herds in one year. In Canada, after CWD was discovered in 1996, movements of animals from one herd resulted in the infection of 38 other herds, which resulted in the Canadian government buying and destroying 7,400 animals. While it is risky to extrapolate from limited data covering only a few years, the few herds studied in detail do suggest that CWD is easily spread through unrestricted commerce in elk, and could become established in most U.S. herds within 15 years. Hence, we feel that almost the entire U.S. elk herd, currently valued at an estimated \$220 million, is at risk. The value of animals from herds known to be infected are sharply discounted compared to animals from CWD-free herds. Action now could protect substantial industry assets. CWD has not been diagnosed in captive deer except in association with positive captive elk, so comparable projections of savings are not available for the captive deer industry.

Other benefits would be expected from this action. Eradication of CWD may save owners of infected herds

<sup>2</sup> Gross receipts data for the United States, as a separate entity within North America, are not available.

<sup>3</sup> Source: NAEBA.

<sup>4</sup> Source: NADeFA.

<sup>1</sup> Source: NADeFA and NAEBA.

future costs from State-imposed quarantines and other restrictions on the subsequent agricultural use of their land, actions which many view as tantamount to closure.

This action would also reduce the impact, felt by owners of infected and non-infected animals, of trade restrictions due to CWD. South Korea and Japan temporarily suspended all imports of deer and deer products (including antler velvet) from the United States and Canada. Cervid exports to Canada also must meet CWD-specific Canadian import requirements.

This rule will also produce third-party trade benefits by demonstrating to trading partners the intent and ability of the United States to protect its animal industries, thus easing ability to negotiate access to foreign markets.

A further benefit of the rule is to reduce the potential for any transmission of CWD across species. While current evidence does not indicate much risk of such transmission, much remains unknown about the CWD disease agent.

If producers participate in this program, this action would also help reduce potential future eradication program costs. As cited earlier, Government costs to operate the scrapie eradication program may have been reduced with more aggressive action upon initial diagnoses. Similarly, the Canadian Government estimates that delayed action has increased its eradication program costs.

#### Costs

Under this interim rule, subject to available funding, cervid herd owners would be eligible for Federal indemnity payments equal to 95 percent of the appraised value of each animal, up to a cap of \$3,000 per animal, when they destroy their eligible CWD positive, CWD exposed, or CWD suspect animals. Currently, there are an estimated 1,500 CWD positive or CWD exposed captive elk in the United States, spread among 7 herds (including 1 herd with approximately 700 affected elk). Assuming an average indemnity payment of \$1,900 per animal (i.e., 95 percent of the \$2,000 average value of each captive elk), APHIS' indemnity liability, based on the number of elk now known to be infected or exposed, would be \$2.85 million (1,500 x \$1,900). We may also request additional funding, if needed, to complete the indemnity program in the future.

Due to limited funding for surveillance and other initiatives, the full extent of infection in captive cervids is unknown. It is likely that there are some infected herds that have

not been detected, and that additional funds would have to be expended to indemnify owners for the destruction of these animals. It is also possible that imperfections in our current state of knowledge about CWD e.g., how to effectively clean and disinfect premises, or exactly how long an infected premises should lie fallow before restocking with elk—may result in elk on restocked premises becoming infected with CWD, causing additional indemnity to be paid.

#### Options Considered

In assessing the need for this interim rule, we identified three alternatives. The first was to maintain the status quo, where State efforts are supported by Federal technical assistance but not by Federal compensation programs or interstate movement restrictions. We rejected this option because it does not fully address the animal disease risks associated with CWD. While States generally have authority to quarantine a herd once it is known to be infected with CWD, they may lack the legal authorities, infrastructure, and resources for comprehensive testing and traceback programs to identify newly infected herds. States also lack authority to directly regulate interstate commerce in elk. Finally, while State quarantines are an important tool, quarantining a herd does not eliminate the risk posed by the herd, since people may deliberately or accidentally violate the quarantine. Making Federal indemnity funds available serves as a powerful incentive for owners of quarantined herds to depopulate, eliminating the risk of further spread of CWD from the herd.

The second option would have been to provide financial and technical assistance to the cervid industry for continuation and expansion of a variety of herd management practices to reduce or eliminate CWD. Although this option may be less costly than the option we chose, option 3 below, we did not select it because it does not allow us to advance CWD eradication as quickly or effectively as the chosen option. However, APHIS will continue to work with industry to develop voluntary herd management practices to preserve and increase the reduction in CWD levels that the indemnity program is expected to achieve.

The third option, to provide indemnity payments to depopulate CWD-infected herds, was the one we chose. Given our current understanding of the disease, depopulation of infected herds is currently the most effective way to eliminate CWD. Under this alternative, producers will gain partial compensation for animals in CWD

positive herds. These animals are often unable to be sold at prices anywhere near the price brought by similar animals from herds that are not CWD positive.

#### Potential Impact on Small Entities

This interim rule establishes a voluntary program that allows cervid producers to be paid indemnity for CWD positive, CWD exposed, or CWD suspect animals. Many producers, as well as a number of slaughter plants that process cervids, may be small businesses.

To the extent that the interim rule contributes to the elimination of CWD in captive cervid herds in the United States, all herd owners should benefit over the long term. In the short term, the economic impact on herd owners will vary. In most cases, the payment of indemnity will allow owners to recoup much of the value of destroyed animals. In cases where the animals destroyed are highly valuable breeding stock, the authorized indemnity payments will fall far short of the potential value of such animals if they were CWD free; however, in the real market, a breeding elk from highly regarded stock loses almost all of its value if it is suspected of being infected with CWD. Another variable arises in view of the fact that, while indemnity payments may cover the full market value of an animal, an owner may face additional costs associated with cleaning and disinfecting premises, delays in restocking, and complying with herd plan conditions for a restocked herd (identification and health monitoring requirements, etc.). The cost of cleaning and disinfection will vary with the size and characteristics of the premises. The costs caused by delayed restocking and herd plan conditions would also vary depending on the nature of the owner's business operations.

The number and size of the affected herd owners is unknown. However, it is reasonable to assume that most are small in size, under the U.S. Small Business Administration's (SBA) standards. This assumption is based on composite data for providers of the same and similar services in the United States. In 1997, there were 10,045 U.S. farms in NAICS 11299, a classification comprised solely of establishments primarily engaged in raising certain animals (including cervids but excluding cattle, hogs and pigs, poultry, sheep and goats, animal aquaculture, apiculture, horses and other equines, and fur-bearing animals). For all 10,045 farms, the per-farm average gross receipts in 1997 were \$105,624, well below the SBA's small entity threshold

of \$750,000 for farms in that NAICS category.<sup>5</sup>

This interim rule contains various recordkeeping and reporting requirements. These requirements are described in this document under the heading "Paperwork Reduction Act."

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579-0189 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. 00-108-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 00-108-1 and send your comments within 60 days of publication of this rule.

This interim rule establishes regulations to provide for the payment of indemnity by the Department for the voluntary depopulation of CWD positive, exposed, or suspect animals. In order to take part in the indemnity program, cervid producers must apply for participation, must sign a payment, appraisal, and agreement form, and must certify as to whether any other parties hold mortgages on the herd. Implementing this program will entail the use of two information collection activities: an Appraisal/ Indemnity Claim Form, and a Herd Plan Agreement. We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

*Estimate of burden.* Public reporting burden for this collection of information is estimated to average 1 hour per response.

*Respondents.* Cervid herd owners, State personnel who perform appraisal work.

*Estimated annual number of respondents.* 10.

*Estimated annual number of responses per respondent.* 1.

*Estimated annual number of responses.* 10.

*Estimated total annual burden on respondents.* 10. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

#### List of Subjects in Part 55

Animal diseases, Cervids, Chronic wasting disease, Deer, Elk, Indemnity payments, Transportation.

Accordingly, we are amending 9 CFR, chapter I, subchapter B, by adding a new part 55 to read as follows:

#### PART 55 CONTROL OF CHRONIC WASTING DISEASE

Sec.

55.1 Definitions.

##### Subpart A—Chronic Wasting Disease Indemnification Program

55.2 Payment of indemnity.

55.3 Appraisal and destruction of captive cervids.

55.4 Disinfection of premises, conveyances, and materials.

55.5 Presentation of claims for indemnity.

55.6 Mortgage against animals.

55.7 Claims not allowed.

55.8 Official CWD tests and approval of laboratories to conduct official CWD tests.

#### Subpart B—[RESERVED]

**Authority:** 21 U.S.C. 111-113, 114, 114a, 114a-1, 120, 121, 125, and 134b; 7 CFR 2.22, 2.80, and 371.4.

#### § 55.1 Definitions.

*Administrator.* The Administrator, Animal and Plant Health Inspection Service, or any other employee of the Animal and Plant Health Inspection Service, United States Department of Agriculture, delegated to act in the Administrator's stead.

*Animal.* Any captive cervid.

*Animal and Plant Health Inspection Service (APHIS).* The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

*APHIS employee.* Any individual employed by the Animal and Plant Health Inspection Service who is authorized by the Administrator to do any work or perform any duty in connection with the control and eradication of disease.

*Captive.* Animals that are privately or publicly maintained or held for economic or other purposes within a perimeter fence or confined space. Animals that are held for research purposes are not included.

*Cervid.* All members of the family Cervidae and hybrids, including deer, elk, moose, caribou, reindeer, and related species.

*Chronic wasting disease, CWD.* A transmissible spongiform encephalopathy of cervids.

*CWD exposed animal.* An animal that is part of a CWD positive herd, or that was part of a herd within 5 years prior to that herd's designation as CWD positive, or an animal that has been housed with or been in direct contact with a positive animal, or an animal that has been on a contaminated premises.

*CWD positive animal.* An animal that has had a diagnosis of CWD confirmed by means of an official CWD test.

*CWD positive herd.* A herd in which a CWD positive animal resided at the time it was diagnosed and which has not been released from quarantine.

*CWD suspect animal.* An animal for which an APHIS employee has determined that laboratory evidence or clinical signs suggest a diagnosis of CWD.

*Department.* The United States Department of Agriculture.

*Herd.* A group of animals that are:

(1) Under common ownership or supervision and are grouped on one or more parts of any single premises (lot, farm, or ranch) or

<sup>5</sup> Source: 1997 Census of Agriculture and SBA.

(2) All animals under common ownership or supervision on two or more premises which are geographically separated but on which animals have been interchanged or had direct or indirect contact with one another.

**Herd plan.** A written herd management agreement developed by APHIS with input from the herd owner, State representatives, and other affected parties. A herd plan sets out the steps to be taken to eradicate CWD from a CWD positive herd, or to prevent introduction of CWD into another herd. A herd plan will require: specified means of identification for each animal in the herd; regular examination of animals in the herd by a veterinarian for signs of disease; reporting to a State or APHIS representative of any signs of central nervous system disease in herd animals; maintaining records of the acquisition and disposition of all animals entering or leaving the herd, including the date of acquisition or removal, name and address of the person from whom the animal was acquired or to whom it was disposed, cause of death, if the animal died while in the herd. A herd plan may also contain additional requirements to prevent or control the possible spread of CWD, depending on the particular condition of the herd and its premises, including but not limited to: specifying the time for which a premises must not contain cervids after CWD positive, exposed, or suspect animals are removed from the premises; fencing requirements; depopulation or selective culling of animals; restrictions on sharing and movement of possibly contaminated livestock equipment; cleaning and disinfection requirements, or other requirements. APHIS may review and revise a herd plan at any time in response to changes in the situation of the herd or premises or improvements in understanding of the nature of CWD epidemiology or techniques to prevent its spread.

**Materials.** Parts of barns or other structures, straw, hay, and other feed for animals, farm products or equipment, clothing, and any other articles on the premises that have been in contact with captive cervids.

**Mortgage.** Any mortgage, lien, or other security or beneficial interest held by any person other than the one claiming indemnity.

**Official appraiser (APHIS official appraiser, State official appraiser).** A person authorized by APHIS (an APHIS official appraiser) or a State (a State official appraiser) to appraise animals for the purposes of this part. An official appraiser may be an APHIS employee, a State employee, or a professional

livestock appraiser working under contract to APHIS or a State.

**Official CWD test.** Any test for the diagnosis of CWD approved by the Administrator and conducted in a laboratory approved by the Administrator in accordance with § 55.8 of this part.

**Person.** Any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

**Secretary.** The Secretary of Agriculture of the United States, or any officer or employee of the Department delegated to act in the Secretary's stead.

**State.** Each of the States of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

**State representative.** A person regularly employed in the animal health work of a State and who is authorized by that State to perform the function involved under a cooperative agreement with the United States Department of Agriculture.

**Veterinarian in charge.** The veterinary official of Veterinary Services, APHIS, who is assigned by the Administrator to supervise and perform official animal health work for APHIS in the State concerned.

### Subpart A—Chronic Wasting Disease Indemnification Program

#### § 55.2 Payment of indemnity.

The Administrator is authorized to pay for the purchase and destruction of CWD positive animals, CWD exposed animals, and CWD suspect animals. Subject to available funding, the amount of the Federal payment for any such animals will be 95 percent of the appraised value established in accordance with § 55.3 of this part, but the Federal payment shall not exceed \$3,000 per animal. If a non-Federal source makes a payment for an animal for which a Federal indemnity is paid, and the non-Federal payment exceeds 5 percent of the appraised value established in accordance with § 55.3 of this part, the amount of the Federal payment for any such animals will be reduced by the amount by which the non-Federal payment exceeds 5 percent of the appraised value. The Administrator is also authorized to reimburse State governments or State animal health agencies for payments they make for the purchase and destruction, on or after October 1, 2001, of CWD positive animals, CWD exposed animals, and CWD suspect animals, and for State expenditures for associated

carcass disposal and cleaning and disinfection costs resulting from such purchase and destruction, in accordance with cooperative agreements signed by the Administrator and the duly authorized agent of the State.

#### § 55.3 Appraisal and destruction of captive cervids.

(a) CWD positive herds, or individual CWD suspect animals or exposed animals removed by APHIS from a herd for testing, will be appraised by an APHIS official appraiser and a State official appraiser jointly, or, if APHIS and State authorities agree, by either a State official appraiser or an APHIS official appraiser alone.

(b) The appraisal of cervids will be the fair market value as determined by the meat or breeding value of the animals. Animals may be appraised in groups, provided that where appraisal is by the head, each animal in the group is the same value per head, and where appraisal is by the pound, each animal in the group is the same value per pound.

(c) Appraisals of cervids must be reported on forms furnished by APHIS and signed by the appraisers, and signed by the owner of the cervids to indicate agreement with the appraisal amount. Reports of appraisals must show the number of cervids and the value per head or the weight and value by pound.

(d) In accordance with instructions from an APHIS employee, cervids for which indemnification is sought must be:

(1) Destroyed on the premises where they are held, pastured, or penned at the time indemnity is approved;

(2) Moved to another location for destruction under conditions specified by the APHIS employee; or

(3) Moved to an approved research facility under conditions specified by the APHIS employee.

(e) The carcasses of any cervids destroyed in accordance with this part are authorized by the Administrator to be incinerated, destroyed in an alkaline hydrolysis tissue digester, or disposed of by any other method authorized by an APHIS employee and in accordance with local, State, and Federal laws. APHIS will pay the reasonable costs of destruction and carcass disposal for animals that are indemnified. To obtain reimbursement for disposal costs, animal owners must obtain written approval of the disposal costs from APHIS, prior to disposal. Except in cases where APHIS or a State directly arranges for disposal, the owner of the animals must present an APHIS employee with a written contract or estimate of disposal costs. Prior to

receiving reimbursement, the owner must also present an APHIS employee with a copy of either a receipt for expenses paid by the owner or a bill for services rendered to the owner. Any bill for services rendered presented by the owner must not be greater than the normal fee for similar services provided by commercial entities. The carcasses of cervids destroyed in accordance with this section may not be sold to be processed for human or animal food, including dietary supplements.

(Approved by the Office of Management and Budget under control number 0579-0189).

#### **§ 55.4 Disinfection of premises, conveyances, and materials.**

After cervids are destroyed in accordance with this part, all premises, including barns, stockyards and pens, all cars and other conveyances, and all other materials on any premises or conveyances used to house or transport such cervids must be cleaned and disinfected under the supervision of an APHIS employee or a State representative, using methods specified by the APHIS employee or a State representative. Premises may not be restocked with cervids until after the date specified in the herd plan required by § 55.7(b) of this part. The owner to whom the indemnity is paid will be responsible for expenses incurred in connection with the cleaning and disinfection, except that APHIS or a State will pay for cleaning and disinfection of the conveyances used to transport the cervids to the location of disposal. However, APHIS may also decide to pay the cost of cleaning and disinfecting premises when the procedures needed to conduct effective cleaning and disinfection are unusually extensive and require methods that are not normally available on a premises. For example, normal procedures would include washing surfaces with high-pressure hoses and disinfectants and burying or burning contaminated materials. Unusually extensive procedures would include disposing of contaminated materials by digestive disposal or high-temperature incineration.

#### **§ 55.5 Presentation of claims for indemnity.**

Claims for indemnity for the value of animals destroyed must be documented on a form furnished by APHIS and presented to an APHIS employee or a State representative authorized to accept the claims.

(Approved by the Office of Management and Budget under control number 0579-0189).

#### **§ 55.6 Mortgage against animals.**

When cervids have been destroyed under this part, any claim for indemnity must be presented on forms furnished by APHIS. The owner of the cervids must certify on the forms that the cervids covered are, or are not, subject to any mortgage as defined in this part. If the owner states there is a mortgage, the owner and each person holding a mortgage on the cervids must sign, consenting to the payment of indemnity to the person specified on the form.

(Approved by the Office of Management and Budget under control number 0579-0189).

#### **§ 55.7 Claims not allowed.**

(a) The Department will not allow claims arising out of the destruction of cervids unless the cervids have been appraised as prescribed in this part and the owners have signed the appraisal form indicating agreement with the appraisal amount as required by § 55.3(c) of this part.

(b) The Department will not allow claims arising out of the destruction of cervids unless the owners have signed a written agreement with APHIS in which they agree that if they maintain cervids in the future on the premises used for cervids for which indemnity is paid, they will maintain the cervids in accordance with a herd plan and will not introduce cervids onto the premises until after the date specified in that herd plan. Persons who violate this written agreement may be subject to civil and criminal penalties.

(c) The Department will not allow claims arising out of the destruction of cervids that have been moved or handled by the owner or a representative of the owner in violation of a law or regulation administered by the Secretary regarding animal disease, or in violation of a law or regulation for which the Secretary has entered into a cooperative agreement.

(Approved by the Office of Management and Budget under control number 0579-0189).

#### **§ 55.8 Official CWD tests and approval of laboratories to conduct official CWD tests.**

(a) An official CWD test is:

(1) Histopathological examination of central nervous system (CNS) tissues from the animal for characteristic microscopic lesions of CWD, using test protocols provided by the National Veterinary Services Laboratories (NVSL);

(2) The use of proteinase-resistant protein analysis methods including but not limited to immunohistochemistry and/or western blotting on CNS and/or peripheral tissue samples from a live or a dead animal, using test protocols provided by NVSL; or

(3) Any other test method approved by the Administrator in accordance with this section.

(b) The Administrator may approve new tests for the diagnosis of CWD conducted on live or dead animals, and will base the approval or disapproval of a test on the evaluation by APHIS and, when appropriate, outside scientists, of:

(1) A standardized test protocol that must include a description of the test, a description of the reagents, materials, and equipment used for the test, the test methodology, and any control or quality assurance procedures;

(2) Data to support reproducibility, that is, the ability to reproduce the same result repeatedly on a given sample;

(3) Data to support suitability, that is, data to show that similar results can be produced when the test is run at other laboratories;

(4) Data to support the sensitivity and specificity of the test; and

(5) Any other data requested by the Administrator to determine the suitability of the test for program use.

(c) Specific protocols for official CWD tests are available upon request to NVSL.

(d) State, Federal, and university laboratories will be approved by the Administrator to conduct official CWD tests when he or she determines that the laboratory:

(1) Employs personnel assigned to supervise the testing who are qualified to conduct the test based on education, training, and experience and who have been trained by NVSL or who have completed equivalent training approved by NVSL;

(2) Has adequate facilities and equipment to conduct the test;

(3) Follows standard test protocols;

(4) Meets check test proficiency requirements;

(5) Meets recordkeeping requirements;

(6) Will retain records, slides, blocks, and other specimens from all cases for at least 1 year and from positive cases for 5 years;

(7) Will allow APHIS to inspect<sup>1</sup> the laboratory without notice during normal business hours; and

(8) Will report all test results to State and Federal animal health officials within agreed timeframes.

<sup>1</sup> An inspection may include, but is not limited to, review and copying of records, examination of slides, observation of the test being conducted, and interviewing of personnel.

(e) The Administrator may withdraw approval of any laboratory for failure to meet any of the conditions required by paragraph (d) of this section. The Administrator shall give written notice of the proposed withdrawal to the director of the laboratory and shall give the director an opportunity to respond. If there are conflicts as to any material fact concerning the reason for withdrawal, a hearing will be held to resolve the conflicts. The hearing will be conducted in accordance with rules of practice that will be adopted by the Administrator for the proceeding.

Done in Washington, DC, this 5th day of February, 2002.

**James G. Butler,**

*Acting Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 02-3081 Filed 2-7-02; 8:45 am]

**BILLING CODE 3410-34-U**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

**RIN 3150-AG88**

#### List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®-24P, -52B, and -61BT Revision; Confirmation of Effective Date

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is confirming the effective date of February 12, 2002, for the direct final rule that appeared in the **Federal Register** of November 29, 2001 (66 FR 59531). This direct final rule amended the NRC's regulations by revising the Transnuclear West, Inc. Standardized NUHOMS®-24P, -52B, and -61BT cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 4 to Certificate of Compliance (CoC) No. 1004. Amendment No. 4 allows the storage of low burn-up spent fuel in the NUHOMS®-24 canister. In addition, the Technical Specifications (TS) are revised to correct administrative errors regarding the width dimension of the spent fuel. Specific changes are made to TS 1.2.1 and 1.2.15, Tables 1-1a, 1-1b, 1-1c, 1-1d, 1-2a, and 1-2c, and Figure 1-1. The CoC is revised to change the certificate holder from Transnuclear West, Inc. to Transnuclear Inc. This document confirms the effective date.

**DATES:** The effective date of February 12, 2002, is confirmed for this direct final rule.

**ADDRESSES:** Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking web site (<http://ruleforum.llnl.gov>.) For information about the interactive rulemaking web site, contact Mrs. Carol Gallagher (301) 415-5905; e-mail [CAG@nrc.gov](mailto:CAG@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:**

Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415-8126 (E-mail: [mlh1@nrc.gov](mailto:mlh1@nrc.gov)).

**SUPPLEMENTARY INFORMATION:** On

November 29, 2001 (66 FR 59531), the NRC published in the **Federal Register** a direct final rule amending its regulations in 10 CFR 72 to revise the Transnuclear West, Inc. Standardized NUHOMS®-24P, -52B, and -61BT cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 4 to Certificate of Compliance (CoC) No. 1004. Amendment No. 4 allows the storage of low burn-up spent fuel in the NUHOMS®-24P canister. In addition, the Technical Specifications (TS) are revised to correct administrative errors regarding the width dimension of the spent fuel. Specific changes are made to TS 1.2.1 and 1.2.15, Tables 1-1a, 1-1b, 1-1c, 1-1d, 1-2a, and 1-2c, and Figure 1-1. The CoC is revised to change the certificate holder from Transnuclear West, Inc. to Transnuclear Inc. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on the date noted above. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 4th day of February, 2002.

**Michael T. Lesar, Chief,**

*Rules and Directives Branch, Division of Administrative Services, Office of Administration.*

[FR Doc. 02-3109 Filed 2-7-02; 8:45 am]

**BILLING CODE 7590-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. NM210, Special Conditions No. 25-196-SC]

#### Special Conditions: Boeing Model 747-100, -100B, -200B, -200C, -200F, -300, SR, and SP Series Airplanes; High Intensity Radiated Fields (HIRF)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for Boeing Model 747-100, -100B, -200B, -200C, -200F, -300, SR, and SP series airplanes modified by Electronic Cable Specialists. These airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of triple Honeywell Classic Navigator Systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is January 25, 2002. Comments must be received on or before March 11, 2002.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM-113), Docket No. NM210, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM210. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Meghan Gordon, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; telephone (425) 227-2138; facsimile (425) 227-1149.

**SUPPLEMENTARY INFORMATION:**