

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Parts 55 and 81

[Docket No. 00–108–11]

RIN 0579–AB35

#### Chronic Wasting Disease Herd Certification Program and Interstate Movement of Farmed or Captive Deer, Elk, and Moose

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting as a final rule, with two miscellaneous changes, an interim final rule that established a herd certification program to control chronic wasting disease (CWD) in farmed or captive cervids in the United States. The interim final rule specifically requested comment on our policy that our CWD regulations set minimum requirements for the interstate movement of farmed or captive deer, elk, and moose but will not preempt State or local laws or regulations that are more restrictive than our regulations. This document responds to comments we received on that policy. The interim final rule was necessary to help to control the incidence of CWD in farmed or captive cervid herds and prevent its spread.

**DATES:** Effective on April 29, 2014, we are adopting as a final rule the interim final rule published at 77 FR 35542–35571 on June 13, 2012. The amendments in this final rule are also effective April 29, 2014.

**FOR FURTHER INFORMATION CONTACT:** Dr. Patrice Klein, Senior Staff Veterinarian, Sheep, Goat, Cervid & Equine Health Center, Surveillance, Preparedness, and Response Services, Veterinary Services, APHIS, 4700 River Road Unit 43,

Riverdale, MD 20737–1231; (301) 851–3435.

#### SUPPLEMENTARY INFORMATION:

##### Background

Chronic wasting disease (CWD) is a transmissible spongiform encephalopathy of cervids (members of Cervidae, the deer family) that, as of May 2011, has been found only in wild and captive animals in North America and in captive animals in the Republic of Korea. First recognized as a clinical “wasting” syndrome in 1967, the disease is typified by chronic weight loss leading to death. Species currently known to be susceptible to CWD via natural routes of transmission include Rocky Mountain elk, mule deer, white-tailed deer, black-tailed deer, sika deer, and moose.

In the United States, as of April 2013, CWD has been confirmed in wild deer and elk in 18 States and in 40 farmed elk herds, 19 farmed white-tailed deer herds, and 1 farmed red deer herd in 13 States. The disease was first detected in U.S. farmed elk in 1997. It was also diagnosed in a wild moose in Colorado in 2005.

The presence of CWD in cervids causes significant economic and market losses to U.S. producers. Canada prohibits the importation of elk from Colorado and Wyoming and now requires that other cervids be accompanied by a certificate stating that CWD has not been diagnosed in the herd of origin. The Republic of Korea has suspended the importation of deer and elk and their products from the United States and Canada. The domestic prices for elk and deer have also been severely affected by fear of CWD.

To help producers avoid the losses caused by CWD infection and risk, we determined that it was necessary to establish a program that would actively identify herds infected with CWD and allow producers to manage these herds in a way that will prevent further spread of CWD. Specifically, on July 21, 2006, we published a final rule in the **Federal Register** (71 FR 41682–41707, Docket No. 00–108–3; “the July 2006 final rule”) that established the Chronic Wasting Disease Herd Certification Program in 9 CFR subchapter B, part 55. (That part had previously contained only regulations related to the payment of indemnity to the owners of CWD-

positive captive herds who voluntarily depopulate their herds.)

Under the July 2006 final rule, owners of deer, elk, and moose herds who choose to participate have to follow the program requirements of a cooperative State-Federal program for animal identification, testing, herd management, and movement of animals into and from herds. The July 2006 final rule also amended 9 CFR subchapter C by establishing a new part 81 containing interstate movement requirements designed to prevent the spread of CWD through the movement of farmed or captive deer, elk, or moose.

After publication of the July 2006 final rule, but before its effective date, the Animal and Plant Health Inspection Service (APHIS) received three petitions requesting reconsideration of several requirements of the rule. On September 8, 2006, we published a notice in the **Federal Register** (71 FR 52983, Docket No. 00–108–4) that delayed the effective date of the CWD final rule while APHIS considered those petitions. On November 3, 2006, we published another notice in the **Federal Register** (71 FR 64650–64651, Docket No. 00–108–5) that described the nature of the petitions and made the petitions available for public review and comment, with a comment period closing date of December 4, 2006. We subsequently extended that comment period until January 3, 2007, in a **Federal Register** notice published on November 21, 2006 (71 FR 67313, Docket No. 00–108–6).

We received 77 comments by that date. They were from cervid producer associations, individual cervid producers, State animal health agencies, State wildlife agencies, and others. We carefully considered the petitions and the public comments received in response to them.

On March 31, 2009, we published in the **Federal Register** (74 FR 14495–14506, Docket No. 00–108–7; “the March 2009 proposed rule”) a proposal to amend the July 2006 final rule. Specifically, we proposed to recognize State bans on the entry of farmed or captive cervids for reasons unrelated to CWD, increase to 5 the number of years an animal must be monitored for CWD before it may be moved interstate; restrict the interstate movement of cervids that originated from herds in proximity to a CWD outbreak; change

herd inventory procedures; prohibit the addition of animals to CWD-positive, -suspect, and -exposed herds; require States to conduct wildlife surveillance for CWD as part of their Approved State CWD Herd Certification Programs; provide for optional confirmatory DNA testing of CWD-positive samples; and make several other changes.

On June 13, 2012, we published in the **Federal Register** (77 FR 35542–35571, Docket No. 00–108–8; “the June 2012 interim final rule”) an interim final rule<sup>1</sup> that set an effective date of August 13, 2012 for the July 2006 final rule, with amendments as discussed in the March 2009 proposed rule and the June 2012 interim final rule itself. The interim final rule also set a compliance date of December 10, 2012, for the interstate movement provisions in 9 CFR part 81, to give States and producers time to come into compliance with the herd certification program requirements in 9 CFR part 55.

In the June 2012 interim final rule, we specifically requested comments only on our policy with respect to preemption of State and local laws and regulations regarding CWD. Comments on issues other than preemption will not be addressed in this document, as the June 2012 interim final rule finalized the other provisions of the regulations. However, we are considering comments submitted on those other provisions for potential future rulemaking.

Both the July 2006 final rule and the March 2009 proposed rule indicated that we would preempt State and local laws and regulations that were more restrictive than our regulations. However, in reviewing the comments on the March 2009 proposed rule, we decided that it would be more appropriate that our regulations not preempt State and local laws and regulations that are more stringent than our regulations. We provided one exception, which is that cervids that are eligible to move interstate may transit a State that bans or restricts the entry of such animals en route to another State, under certain conditions.

We solicited comments concerning the preemption issue for 30 days ending July 13, 2012. We reopened and extended the deadline for comments until August 13, 2012, in a document published in the **Federal Register** on July 20, 2012 (77 FR 42625, Docket No. 00–108–9). We received 199 comments by that date. They were from interested members of the public, producers,

researchers, and representatives of State and foreign governments. They are discussed below by topic.

#### *Support for Previous Preemption Policy*

Some commenters stated that APHIS regulations should preempt all State and local regulations with respect to CWD, thus ensuring that State and local laws and regulations could not be more restrictive than APHIS’ regulations. Some of these commenters stated that States may use this discretion to impose stricter regulations than are justified, meaning that owners of farmed and captive cervids could not engage in interstate commerce even though they had met the requirements of the Federal CWD program.

We decided to allow State and local laws and regulations with respect to CWD to be more restrictive than our regulations for multiple reasons. One of those reasons is that it is more difficult to determine with certainty what restrictions are justified for CWD than for other diseases, given our relative lack of knowledge about CWD. Importantly, there is no conclusive knowledge about how CWD may be transmitted between wild cervid populations and farmed and captive cervids. Other gaps in the available science about CWD also impair our ability to achieve eradication of CWD, including the lack of certainty regarding the disease status of individual live animals and the lack of knowledge regarding effective cleaning and disinfection measures for premises on which CWD has been found. (For example, no cleaning and disinfection measures have been proven to effectively address the persistence of CWD in substrates.) This makes it more difficult to determine what restrictions may be justified. Recognizing this uncertainty, we have determined that it is appropriate to allow States to impose more restrictive requirements with respect to CWD, based on their interpretation of the available evidence and on local conditions.

One commenter stated that a purpose of the Federal CWD rules should be to establish national uniformity in disease regulation. Allowing States to impose more restrictive regulations undermines the Federal rule and essentially negates it. The commenter expressed particular concern about the difficulties that will arise regarding testing for CWD and herd compliance for interstate movement.

We recognize that our preemption policy will not ensure national uniformity in CWD regulation; indeed, many States impose restrictions that go beyond APHIS’ CWD regulations.

However, the decision not to preempt more restrictive State and local laws and regulations was also based on the fact that our goal for the CWD program has changed. As discussed in the June 2012 interim final rule, the objective of our regulations is now to control the incidence of CWD in farmed and captive cervids and prevent the interstate spread of the disease, rather than eliminating CWD in farmed and captive cervids. Eliminating CWD from farmed and captive cervids is not practical given the persistence of CWD in wild cervid populations and the lack of knowledge about the disease discussed earlier. However, States may decide that a higher level of protection is appropriate in their State, and allowing States to establish more restrictive laws and regulations on farmed and captive cervids recognizes that States may want to establish a higher level of protection against the disease than the Federal program is designed to provide.

It is important to keep in mind, both with respect to the comments discussed above and those discussed later in this document, that the CWD program was only established in the June 2012 interim final rule, although the effort to establish the program goes back further. Changing conditions, new knowledge about CWD, or our experience administering the program could all lead APHIS to determine that a change in our preemption policy is necessary. We will continue to consider this issue as we implement the CWD program.

#### *Opposition to Allowing Farmed or Captive Cervids To Move Through States and Localities With More Restrictive Laws or Regulations*

As noted earlier, we made an exception to our policy of allowing State and local laws and regulations to be more restrictive than APHIS’ regulations to provide conditions for the interstate movement of farmed or captive cervids through a State or locality. These conditions preempt State and local laws and regulations that would otherwise apply to such movement through a State or locality. The conditions for such movement are:

- The farmed or captive deer, elk, or moose must be eligible to move interstate under § 81.3. This section requires animals that move interstate to be from herds that are Certified as low risk for CWD, to be from wild populations that have been documented to be low risk for CWD, or to be moved directly to slaughter. It also provides for movement of research animals under permit, which will only be issued if the movement authorized will not result in the interstate dissemination of CWD.

<sup>1</sup> To view the interim final rule and the comments we received, go to <http://www.regulations.gov/#/docketDetail;D=APHIS-2006-0118>.

- The farmed or captive deer, elk, or moose must meet the entry requirements of the destination State listed on the certificate or permit accompanying the animal.

- Except in emergencies, the farmed or captive deer, elk, or moose must not be unloaded until their arrival at their destination. Emergencies might include a breakdown of the vehicle transporting the deer, elk, or moose or weather conditions that make it impossible or extremely unsafe for a vehicle to continue along its scheduled itinerary.

Some commenters stated that States should have the authority to further regulate or ban the transit of farmed or captive cervids through a State en route to another State.

Three commenters stated that movement of farmed or captive cervids through a State introduces risk and would potentially affect State efforts to exclude or eradicate CWD. One stated that State and local authorities know the risks and resources within their jurisdictions and are more suited to protect their resources beyond the protection afforded by a national program if required. Another stated that it is the prerogative of each State to determine the level of risk it is willing to accept with respect to CWD. One commenter stated that the interim rule stated that interstate movement is a low risk with limited exceptions, and asked what the exceptions are.

While there may be some risk associated with the movement of farmed or captive cervids through a State en route to another State, the available evidence indicates that the risk is low in all circumstances. As discussed in the June 2012 interim final rule, the available science suggests that CWD is not highly infectious. In addition, the regulations in § 81.3 limit the interstate movement of farmed or captive cervids to animals from herds that have achieved Certified status as being low-risk for CWD, with certain exceptions for specific movements as noted earlier.

As discussed in the June 2012 interim final rule, not providing for movement through States that ban or further restrict the entry of farmed or captive deer, elk, or moose would also raise several issues. The rerouting required to avoid such States may make transportation of farmed or captive cervids economically unfeasible. Even if such transportation is economically feasible, the additional time necessary to traverse a lengthy route may raise animal health or welfare issues for the cervids being transported; the cervids would need regular water, feed, and rest, as required for all livestock under the Twenty-Eight Hour Law (49 U.S.C.

80502). Captive cervids that needed to be offloaded for such purposes would not be easy to confine and to reload onto a conveyance. Several commenters on the interim final rule agreed that circuitous routing around States that ban or restrict movement raises both economic and animal welfare concerns.

Given the low risk associated with this type of movement, and the concerns that not allowing such movement raises, we have determined that it is appropriate to provide for the movement of farmed or captive cervids through States and localities whose laws or regulations on the movement of captive cervids are more restrictive than the regulations in part 81.

One commenter stated that the preemption policy does not take into account States' legitimate concerns for captive cervid escapes through emergency unloading and accidents.

As noted earlier, the regulations require farmed or captive cervids moved through a State to be eligible for interstate movement under part 81, and thus to be low risk for CWD. We do not believe the risk of allowing movement through a State outweighs the economic and animal welfare benefits described earlier.

Two commenters stated that preempting State and local laws and regulations regarding the movement of farmed or captive cervids through a State or locality en route to another State was not within APHIS' authority under the Animal Health Protection Act (AHPA, 7 U.S.C. 8301 *et seq.*). One commenter elaborated that the AHPA gives the Secretary of Agriculture the authority to prohibit or restrict the movement in interstate commerce of any animal, if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction or dissemination of any pest or disease of livestock. The commenter stated that the June 2012 interim final rule does not prohibit or restrict movement in interstate commerce as authorized by the AHPA.

Prior to August 13, 2012, when the June 2012 interim final rule became effective, there had been no Federal regulation of the interstate movement of farmed or captive cervids. The regulations in part 81, which the interim final rule added to 9 CFR chapter I, restrict the movement in interstate commerce of farmed or captive cervids, including the interstate movement of farmed or captive cervids through a State. As noted earlier, such movement may only occur in accordance with certain requirements.

The provisions allowing for interstate movement through a State were

promulgated with the AHPA in mind. In 7 U.S.C. 8301, Congress found that the prevention, detection, control, and eradication of diseases and pests of animals are essential to protect animal health, and that regulation is also necessary to prevent and eliminate burdens on interstate commerce, among other things. Given the low risk associated with the movement through a State of farmed or captive cervids that meet the other requirements in 9 CFR part 81, we believe we have appropriately balanced our duties under the AHPA to prevent and control CWD and to prevent and eliminate burdens on interstate commerce.

#### *Additional Restrictions on Movement Through a State or Locality*

Some commenters asked whether States and localities could impose additional restrictions on the interstate movement of farmed or captive cervids through a State or locality, beyond those listed in § 81.5.

Two commenters, both State fish and wildlife agencies, requested that we amend § 81.5 to allow for State approval of transport of cervids through a State. One of these commenters stated that the commenter's State bans all transportation of cervids through the State except under a permit issued by that agency. The commenter stated that the intent of the permit was not to impede transit of cervids but to ensure that animals are properly secured during transport, all documentation is valid, and that the route taken through the State is as efficient and expeditious as possible. A third commenter asked whether a State could require a permit or an inspection of cervids moving through a State, or a fee for movement of farmed or captive cervids through a State.

A State could use any kind of permit or inspection requirement as a *de facto* ban on the interstate movement of farmed or captive cervids through the State. For this reason, adding such a provision to § 81.5 could be counterproductive to the goal of facilitating interstate movement that poses a low risk. However, we encourage persons moving farmed or captive cervids through a State to notify the States through which the movement will occur.

Since a State cannot require permits or inspections for cervids moved through their State en route to another State, as this would obstruct transiting that State, we assume that fees specific to the interstate movement of farmed or captive cervids through a State would not be necessary, as they are not for other livestock.

Two commenters recommended that we add requirements to address the potential escape of urine and feces from conveyances being used to move farmed or captive cervids interstate. One commenter stated that research has demonstrated that CWD can be transmitted by environmental transmission, and prions are excreted in the urine and feces of infected animals. The other commenter recommended that we also require decontamination for all transport vehicles and equipment that cross state lines and transporter recordkeeping to allow traceback of all live animals.

We do not consider these requirements to be necessary to mitigate the low risk associated with the movement through a State of farmed or captive cervids that are eligible for interstate movement under 9 CFR part 81. Such farmed or captive cervids are already at low risk for CWD. Wild cervids are unlikely to receive sustained exposure from urine or feces that inadvertently escapes a cervid transport vehicle moving on an interstate highway, for example. Decontamination of transport vehicles and equipment could be required by the receiving State after the animals have been offloaded at their destination. If the commenter is referring to decontamination during transport of a vehicle loaded with animals before the vehicle enters a State en route to its final destination, that would require unloading the cervids, which would potentially pose a greater risk of escape and may affect the welfare of the animals. Finally, all farmed or captive cervids moved interstate are required to be identified in accordance with § 81.2, which requires two forms of animal identification, one of which is official. Under § 81.4, the animal identification must be included on the certificate that accompanies the farmed or captive cervids moved interstate. These requirements allow for any traceback that should be necessary.

#### *Federal CWD Herd Certification Program*

In the first sentence of paragraph (b) of § 55.22, the July 2006 final rule provided for direct enrollment in the Federal CWD Herd Certification Program by owners as follows:

Any owner of a farmed or captive deer, elk, or moose herd may apply to enroll in the CWD Herd Certification Program by sending a written request to the appropriate State agency, or to the veterinarian in charge if no Approved State CWD Herd Certification Program exists in the herd's State.

The June 2012 interim final rule amended this sentence to indicate that direct enrollment by herd owners in the

Federal CWD Herd Certification Program would be subject to the availability of Federal funds. Such appropriated funding is not currently available.

Three commenters expressed concern about what they perceived to be the preemptive effects of this provision. They stated that it conflicted with the overall policy of allowing States and localities to establish more restrictive regulations for CWD. Two of the commenters also stated that the decision to implement a herd certification program should be at the State's discretion and no private individual should be granted the flexibility to circumvent State authority. One stated that it is unlikely that appropriated funds will be available. One of these commenters, however, stated that if the provision serves to qualify a cervid owner to export deer to another State that permits it, the commenter's State fish and wildlife agency could assist the cervid owner to meet requirements necessary to enroll individually into the herd certification program.

The last of the comments is closest to the intent of the provision. If a State prohibits cervid farming, our regulations will not preempt that law. Rather, this provision addresses the specific situation of a State that allows cervids to be farmed but does not provide a State CWD Herd Certification Program in which herd owners can participate. In such a case, a herd owner could apply to the Federal CWD Herd Certification Program, subject to the availability of Federal funding. We do not believe that the provision is ambiguous, as a person could not own a herd of cervids in a State where farming cervids was prohibited; the provision could only apply if a herd owner, operating legally in a State, had no State CWD Herd Certification Program to which he or she could apply.

It is important to provide this option because only farmed or captive cervid herds that have reached Certified status under an approved herd certification program are eligible for interstate movement under 9 CFR part 81; if no herd certification program is available in a State, no farmed cervids can be moved interstate from that State.

#### *Wild Cervids*

Both the July 2006 final rule and the June 2012 interim final rule included requirements for the interstate movement of wild cervids. Specifically, paragraph (b) of § 81.3 requires captive cervids captured from a wild population for interstate movement and release to be accompanied by a certificate stating that the source population has been

determined to be low risk for CWD, based on a CWD surveillance program in wild cervid populations that is approved by the State Government of the receiving State and by APHIS.

One commenter stated that this provision preempts the authority of States to control the movement of wild cervids.

As noted in the Background section of the June 2012 interim final rule, the Federal CWD regulations indeed set minimum standards for CWD control. We believe that these are the minimum standards necessary to have an effective CWD control program. The movement of wild cervids captured for interstate movement and release could easily spread CWD. As a result, we have determined that it is necessary to impose minimum restrictions on this movement.

#### *Miscellaneous Changes*

In the June 2012 interim final rule, we described how the goal of the CWD program had shifted from the elimination of CWD from farmed and captive cervids in the United States to controlling the incidence of CWD in farmed and captive cervids and preventing the interstate spread of CWD. In § 55.1, the definition of *herd plan*, established in a previous action, indicates that a herd plan sets out the steps to be taken to eradicate CWD from a CWD-positive herd, among other things. Completion of a herd plan is required to allow a herd enrolled in the Federal CWD herd certification program to reenroll in the program after it has been determined to be positive for or exposed to CWD. However, as the goal of the CWD program is no longer to eliminate CWD from farmed and captive cervids, the term "eradicate" may not be appropriate; in some cases, a herd plan may seek to control CWD within the herd, without necessarily depopulating the whole herd. For this reason, we are amending the definition of *herd plan* to indicate that such a plan will set out the steps to be taken to control the spread of CWD from a CWD-positive herd.

Under § 81.3, cervids moved directly to slaughter must, among other things, be moved to a recognized slaughtering establishment. We did not include in the June 2012 interim final rule a definition of the term "recognized slaughtering establishment." This omission could cause confusion. Accordingly, we are adding a definition of *recognized slaughtering establishment* to § 81.1, which reads "An establishment where slaughtering operations are regularly carried out under Federal or State inspection and which has been approved by the Animal

and Plant Health Inspection Service to receive animals for slaughter.” This definition is taken from the regulations governing the importation of ruminants in § 93.400 and is consistent with the intended meaning of the term in § 81.3.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim final rule as a final rule, with the changes discussed in this document.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 13563, 12372, and 12988 and the Paperwork Reduction Act.

Further, this action has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

### Regulatory Flexibility Act

This final rule follows an interim final rule that established a Federal herd certification program for CWD and put in place interstate movement restrictions to prevent CWD from spreading interstate. The interim final rule specifically requested comments only on the issue of our new preemption policy.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

This final rule affirms prior regulatory actions that established a voluntary herd certification program for the control of CWD in farmed or captive cervids (deer, elk, and moose) in the United States. The program regulations include CWD monitoring and testing requirements, and set minimal requirements for interstate movement that will not preempt more restrictive State or local laws or regulations. At present, herd owners' interstate marketing decisions may need to account for dissimilar State CWD certification regulations.

Herd owners who choose to participate in the herd certification program will have to meet program requirements for animal identification, testing, and herd management. Other than for cervids moving to slaughter or for research, those that move interstate must be from Certified herds that have been monitored for a period of at least 5 years and that have not been epidemiologically linked to herds where CWD has been diagnosed, or captured

from a wild cervid population that has been documented to be low risk for CWD based on a surveillance program.

Some herd owners may be adversely affected by the 5-year monitoring requirement for interstate movement; however, available research indicates that this minimum period of monitoring is necessary to provide an adequate level of protection against the spread of CWD. Most researchers agree that CWD manifests itself within 5 years if the disease is present in a herd of farmed or captive cervids. Many herd owners have been participating in State-level CWD herd certification programs for at least 5 years and will have met this requirement as a result of being enrolled in a State program that becomes an Approved State Herd Certification Program in the national CWD herd certification program.

Producers who participate in the herd certification program will be required to maintain a complete inventory of their herds, with verification by APHIS or State officials. A physical inventory of the animals will be required at the time a herd is enrolled in a CWD certification program and thereafter the animals will need to be physically assembled for inventory within 3 years of the last physical inventory. An annual herd inventory—including a review of owner records and an observation of the herd's unrestrained animals in a viewable, enclosed area—will continue to be required, but the animals will not necessarily need to be physically assembled and restrained.

The inventory cost is estimated to average about \$25 to \$30 per deer or elk, including the animals' physical inventory once every 3 years and use of eartags for identification. (We do not know of any farmed or captive moose herds.) Values of farmed or captive deer and elk range widely, depending on the type of animal and market conditions. Based on average per animal values of \$2,000 for deer and \$2,200 for elk, annual inventory costs are estimated to average less than 2 percent of the value of farmed or captive deer and elk.

All on-farm cervid mortalities and any cervids on herd inventories sent to slaughter and hunt facilities must be tested to achieve certified status. Thereafter, all on-farm mortalities of Certified cervids will be required to be tested for CWD to maintain Certified status. There also will be optional confirmatory DNA test provisions for animals that test CWD-positive. CWD testing will entail submission of the carcass or whole head for tissue sampling and testing, or collection of the tissue samples by State officials, APHIS employees, accredited

veterinarians, or State-certified or -designated CWD sample collectors. The estimated cost is about \$150 per sample, equivalent to about 8 percent of the average value of a farmed or captive deer and about 7 percent of the average value of a farmed or captive elk. CWD testing of cervids is recognized by APHIS, the States, and cervid herd owners as essential to successful control of this disease. Owners who choose confirmatory DNA testing will consider it a benefit, as evidenced by their payment for this voluntary, optional test.

Most cervid operations are small entities. The rule will have a positive overall economic impact on affected entities large and small, and for the U.S. cervid industries generally, in controlling the spread of CWD and facilitating interstate and international trade in cervids and cervid products.

### List of Subjects

#### 9 CFR Part 55

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

#### 9 CFR Part 81

Animal diseases, Cervids, Deer, Elk, Moose, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, the interim final rule amending 9 CFR parts 55 and 81 that was published at 77 FR 35542–35571 on June 13, 2012, is adopted as a final rule with the following changes:

### PART 55—CONTROL OF CHRONIC WASTING DISEASE

- 1. The authority citation for part 55 continues to read as follows:

**Authority:** 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

#### § 55.1 [Amended]

- 2. In § 55.1, the definition of *herd plan* is amended by removing the word “eradicate” and adding the words “control the spread of” in its place.

### PART 81—CHRONIC WASTING DISEASE IN DEER, ELK, AND MOOSE

- 3. The authority citation for part 81 continues to read as follows:

**Authority:** 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

- 4. In § 81.1, a new definition of *recognized slaughtering establishment* is added in alphabetical order to read as follows:

#### § 81.1 Definitions.

\* \* \* \* \*

*Recognized slaughtering establishment.* An establishment where slaughtering operations are regularly carried out under Federal or State inspection and which has been approved by the Animal and Plant Health Inspection Service to receive animals for slaughter.

Done in Washington, DC, this 24th day of April 2014.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2014-09714 Filed 4-28-14; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

#### 9 CFR Part 201

#### Scales; Accurate Weights, Repairs, Adjustments or Replacements After Inspection

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** The Grain Inspection, Packers and Stockyards Administration (GIPSA) Packers and Stockyards Program (PSP) is incorporating by reference “2013 edition of the NIST Handbook 44” and to require that the scales used by stockyard owner, market agencies, dealers, packers, and live poultry dealers to weigh livestock, livestock carcasses, live poultry, or feed for the purpose of purchase, sales acquisitions, payment, or settlement meet applicable requirements of the 2013 edition of the NIST Handbook 44.

**DATES:** This rule is effective June 30, 2014. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of June 30, 2014. Comments are due May 29, 2014. If adverse comments are received, GIPSA will publish a timely withdrawal of the rule in the **Federal Register**.

**ADDRESSES:** We invite you to submit comments on this direct final rule by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- Mail: Send hardcopy written comments to Irene Omade, GIPSA, USDA, 1400 Independence Avenue SW., Room 2530-S, Washington, DC 20250.

- Hand Delivery or Courier: Deliver comments to Irene Omade, GIPSA,

USDA, 1400 Independence Avenue SW., Room 2530-S, Washington, DC 20250.

- Fax: Send comments by facsimile transmission to: (202) 690-2173.

**Instructions:** All comments will become a matter of public record and should be identified as “NIST Handbook 44 IBF Comments,” making reference to the date and page number of this issue of the **Federal Register**. Comments will be available for public inspection at <http://www.regulations.gov> and in the above office during regular business hours (7 CFR 1.27(b)). Please contact the GIPSA Management and Budget Services at (202) 720-8479 to make an appointment to read the comments received.

**FOR FURTHER INFORMATION CONTACT:** S. Brett Offutt, Director, Policy and Litigation Division by Email at [s.brett.offutt@usda.gov](mailto:s.brett.offutt@usda.gov), or by telephone at (202) 720-7363.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Grain Inspection, Packers and Stockyards Administration (GIPSA) enforces the Packers and Stockyards Act (P&S Act) and those regulations necessary to carry out provisions of the P&S Act. The regulated entities are stockyard owners, swine contractors, market agencies, dealers, packers, and live poultry dealers. GIPSA issued regulations covering devices that regulated entities use for weighing and grading livestock and poultry. The purpose for these regulations is to ensure fairness and accuracy in the determination of prices the regulated entities pay for livestock and poultry.

Title 9, CFR 201.71(a) incorporates by reference the National Institute of Standards and Technology (NIST) Handbook 44 to regulate devices used by regulated entities to weigh or grade livestock or poultry. Currently, 9 CFR 201.71(a) incorporates by reference the 2009 edition of NIST Handbook 44, “Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices.” The 2009 edition included the “tentative” status of code to regulate the weighing and measuring devices used by regulated entities. In July 2012, the National Conference on Weights and Measures took action to change the “tentative” code to “permanent”. Since the “tentative” code has become “permanent” in the 2013 edition of Handbook 44, effective January 1, 2013, GIPSA is amending 9 CFR 201.71(a) to incorporate by reference the 2013 edition of Handbook 44.

#### Direct Final Action

Pursuant to 5 U.S.C 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to public interest to give preliminary notice prior to putting this direct final rule in effect because GIPSA regularly updates this section of the P&S Act regulations to incorporate by reference NIST Handbook 44. Further, GIPSA views this action as noncontroversial and anticipates no adverse public comment. This rule will be effective, as published in this document, 30 days after the date of publication in the **Federal Register**, unless GIPSA receives written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the **Federal Register**. Adverse comments are considered to be those comments that suggest the rule should not be adopted or suggest the rule should be changed.

If GIPSA receives written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. GIPSA will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered thoughtfully, and a final rule addressing the comments will be published.

#### Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601-612), GIPSA has determined that this rule will not have a significant economic impact on a substantial number of small entities. GIPSA has determined that most regulated entities are complying with the current 2013 edition of Handbook 44 since State weights and measures departments already impose the standards. Since regulated entities are required under States law to comply with NIST Handbook 44, there are no new costs or burden to comply with those standards.

#### Executive Order 12988

This direct final rule has been reviewed under Executive Order 12988, Civil Justice Reform. These actions are not intended to have retroactive effect. This direct final rule would not preempt any State or local laws, or regulations,