

aged 16 months or older, and must make the carcasses of such animals available for tissue sampling and testing. This includes animals killed on premises maintained for hunting. The owner also must allow test samples to be collected from any animals sent to slaughter that APHIS desires to test;

- The owner must maintain herd records including a complete inventory of animals that records the age and sex of each animal, the date of acquisition and source of each animal that was not born into the herd, the date of disposal and destination of any animal removed from the herd, and all individual animal identification numbers (from tags, tattoos, electronic implants, etc.) associated with each animal. Upon request, the owner must allow an APHIS employee or State representative access to the premises and herd to conduct a physical herd inventory with verification reconciling animals and identifications with the records maintained by the owner;

- If an owner wishes to maintain separate herds, he or she must maintain separate herd inventories, records, working facilities, water sources, equipment, and land use. No commingling of animals may occur. Movement of animals between herds must be recorded as if they were separately owned herds; and

- New animals may be introduced into the herd only from other herds enrolled in the CWD Herd Certification Program (including herds in Approved State CWD Herd Certification Programs). If animals are received from an enrolled herd with a lower program status, the receiving herd will revert to that lower program status. If animals are obtained from a herd not participating in the program, then the receiving herd will be required to start over in the program.

Herd Status and Movement of Animals Between Enrolled Herds (§ 55.24)

In this proposed section, the progress of a herd through the various stages of the program are described. When a herd is first enrolled in the CWD Herd Certification Program, it would be placed in First Year status. If the herd continues to meet the requirements of the program, each year, on the anniversary of the enrollment date the herd status would be upgraded by 1 year; *i.e.*, Second Year status, Third Year status, Fourth Year status, and Fifth Year status. One year from the date a herd is placed in Fifth Year status, the herd status would be changed to Certified, and the herd would remain in Certified status as long as it remained enrolled in the program (and provided no signs of CWD are detected). Once the

herd has received Certified status, the requirements the herd must meet to remain in the program would be slightly reduced. Testing of all animals sent to slaughter and all animals killed on hunting premises would no longer be required, because 5 years of program participation would have documented a minimal herd risk that does not justify such expensive comprehensive testing, but other requirements of the program would remain in force.

This proposed section also describes how a herd could lose its herd status or have it temporarily suspended. If a herd is designated a CWD-positive herd or a CWD-exposed herd, it would immediately lose its program status, and the owner could only re-enroll after completing a herd plan. Owners of CWD-positive herds must make a business decision on whether it is worthwhile to complete a herd plan, which usually would require depopulation of the herd. If an owner completes a herd plan, he or she can at least use the same premises and equipment to raise elk in the future, even if the herd animals are depopulated. If the owner elects not to complete a herd plan, animals from the herd may not move interstate, and the owner may find it difficult to sell animals even within the State, due to buyer reluctance and State restrictions. If a herd is designated a CWD-suspect herd, a trace back herd, or a trace forward herd, it would immediately be placed in Suspended status pending an epidemiologic investigation by APHIS or a State animal health agency. This epidemiologic investigation could have three possible outcomes: It could determine that the investigated herd was not commingled with a CWD-positive animal; it could determine that the herd was commingled with a CWD-positive animal; or it could be unable to make a definite determination of exposure.

If the epidemiologic investigation determined that the herd was not commingled with a CWD-positive animal, the herd would be reinstated to its former program status, and the time spent in Suspended status would count toward its promotion to the next herd status level.

If the epidemiologic investigation determines that the herd was commingled with a CWD-positive animal, the herd would lose its program status and would be designated a CWD-exposed herd. The herd would not be eligible to reenroll in the CWD Herd Certification Program until it completed a herd plan.

If the epidemiological investigation was unable to make a determination

regarding the exposure of the herd, because the necessary animal or animals were no longer available for testing (*i.e.*, a trace animal from a known positive herd died and was not tested) or for other reasons, the herd status would continue as Suspended unless and until a herd plan was developed for the herd. If a herd plan was developed, the herd would be reinstated into the CWD Herd Certification Program at the First Year status level, with a new enrollment date set at the date the herd entered into Suspended status. Treatment of these indeterminate status herds differs from treatment of Exposed herds in that indeterminate status herds can re-enter the program as soon as a herd plan is developed, while Exposed herds cannot re-enter until they have completed a herd plan and are no longer classified Exposed. The indeterminate herd would have to comply with the requirements of the herd plan as well as the requirements of the CWD Herd Certification Program, and the herd plan would require testing of all animals that die in the herd for any reason, regardless of the age of the animal, and could require movement restrictions for animals in the herd based on epidemiologic evidence regarding the risk posed by the animals in question.

Herds could also lose their program status if the Administrator determined that the herd owner failed to comply with the requirements of the program.

We propose to allow an appeals process for herd owners subject to cancellation of enrollment or loss or suspension of herd status. Herd owners could appeal any of these actions by writing to the Administrator within 10 days after being informed of the reasons for the proposed action. The appeal would have to include all of the facts and reasons upon which the herd owner relies to show that the reasons for the proposed action are incorrect or do not support the action. The Administrator would grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision. If there is a conflict as to any material fact, a hearing would be held to resolve the conflict. Rules of practice concerning the hearing would be adopted by the Administrator. However, cancellation of enrollment or loss or suspension of herd status would become effective pending final determination in the proceeding if the Administrator determines that such action is necessary to prevent the possible spread of CWD. This cancellation of enrollment or loss or suspension of herd status would continue in effect pending the completion of the proceeding, and any