



April 19, 2018

ACTION ALERT for American Members!
Submit Comments for Proposed CWD Program Standards to
USDA APHIS by April 30!

Instructions to Comment:

You may submit comments at the Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0011>

The NAEBBA Board of Directors approved the following list of concerns on April 10, 2018. The American Cervid Alliance also unanimously approved these concerns on April 17, 2018.

NOTE: It is important to remember that if people within cervid industry have different interpretations of the proposed language and possible impacts, this will surely result in different interpretations by state animal health, state wildlife and federal animal health officials. Ambiguity has been a problem for many state industries in the last several years.

Please send an email on behalf of your ranch listing your exact concern(s). Please note your location in the email. Cite exact language and page number, if possible.

NAEBBA's primary concern is there are too many sections that include language beyond the scope of USDA APHIS Federal CWD Rule (CFR 9 Parts 55 & 81). Furthermore, the speculative language could very easily be used as tools against our industry to suggest more restrictive programs at the state level. Unfortunately, this is not hypothetical speculation but has actually already occurred in several states since 2012.

USDA APHIS has made several positive changes in the new document. NAEBBA appreciates APHIS has removed suggested language for ten-foot fences. APHIS has removed several references relating to secondary barriers. These are both examples of suggested language that is in excess of CFR 9 Parts 55 & 81. NAEBBA also appreciates the clarifications made to avoid "spider web trace outs." In the last five years, the cervid industry has seen several state animal health and wildlife officials implement draconian responses to CWD discovery with multiple layers of trace outs that crippled commerce in the whitetail deer industry. The proposed Program Standards is now allowing ante-mortem testing for certain circumstances in whitetail herds. NAEBBA believes this is a step in the right direction to avoid unnecessary depopulation of animals with values well beyond APHIS' cap for indemnity funds. NAEBBA appreciates all of these positive changes.

However, the proposed changes do not go far enough to alleviate the industry's concerns. In fact, several new features have been added that create new problems in of themselves. There are still many sections with language that goes beyond the scope of CFR 9 Parts 55 & 81. NAEBA truly does not understand why this document continues to violate its own federal rule.

NAEBA Board of Directors unanimously agreed the following changes must be amended in the document.

Mention of Double Fencing: The USDA APHIS Chronic Wasting Disease Federal Rule does not mention double fencing at all. However, in this proposed Program Standards document, a reminder is made for states they can use double fencing requirements. Deer and elk operations do not want to be required to double fence their ranch. State representatives already have this power and they know this. State wildlife agencies and other opponents of the cervid industry use these USDA approved suggestions against the industry in propaganda and the ruling making processes. NAEBA respectfully requests to remove this language once and for all.

Part A, Section 4 (page 23) *"State representatives have the discretion to require the use of additional barriers and/or other biosecurity measures deemed necessary to mitigate the risks of CWD transmission."*

Elk Industry Overlooked for Ante-Mortem Testing of Herds that Contain or Contained CWD-Exposed Animals. NAEBA appreciates the historic change for the Program Standards to use ante-mortem testing as a management tool for whitetail deer. However, the austere language is not open to elk, or other species, as science becomes available. This means a new re-write of the Program Standards would have to take place, including clearing process, comment period, before elk or other species can be added. This is a minimum two-year process from start to finish. (For reference, the current revision process has already exceeded 30 months as of April 2018). Moreover, CWD researchers already dispute APHIS omitting ante-mortem testing in elk. At a minimum, NAEBA requests languages be added that states "APHIS may allow ante-mortem testing of herds that contain or contained CWD-exposed animals for other cervid species when the science becomes available." NAEBA also believes there is enough science to justify use for 132 codon elk to allow ante-mortem testing of herds that contain or contained CWD-exposed animals.

Invitation for Draconian Polices. Again, NAEBA believes there is no reason to remind states they can add more strict requirements. Some states, like North Carolina, have used this as precedent for draconian polices. NAEBA requests the highlighted language below be removed.

Introduction (page 4). *"The methods in these Program Standards have been approved by the APHIS Administrator. Alternatively, States may propose other methods/approaches to meet the regulatory requirements. These alternative proposals should be submitted in writing to APHIS for approval. States may also have additional or stricter requirements that exceed the minimum requirements described in the CWD regulations."*

Requirement to Test Hunter Harvested Animals and Slaughtered for CWD Beyond Discretion of State Animal Health Officials. The proposed document makes the comment that herds enrolled in the HCP are required to submit samples on "all animals under their ownership sent to hunting ranches and/or slaughter facilities." This also becomes problematic for owners of both trophy ranches and breeding facilities that are owned by the same person, whether they are different premises or not. NAEBA asks APHIS use the language in the existing CWD Program Standards on these two provisions.

Part A, Section 5.2 Mortality Reporting and Routine Surveillance. (Page 25). *To achieve and maintain herd certification status, enrolled herd owners are required to conduct CWD testing as described in 9 CFR 55.23(b)(3).*

Herd owners must report and make the following animals available for sample collection and CWD testing:

- 1) *All on-farm deaths of farmed or captive deer, elk, and moose aged 12 months or older.*
- 2) *All animals 12 months or older that are slaughtered on the farm.*
- 3) **All animals under their ownership that are sent to hunting operations and/or slaughter facilities**

Cleaning Requirements for Sale Barns: This requirement is very harmful to livestock markets, particularly to our members in Missouri and Texas. These suggestions are not included in the USDA APHIS Chronic Wasting Disease Federal Rule. NAEBA requests the language in yellow be deleted.

Definition of “Limited Contact” (page 9) *“Limited Contact: Any brief, incidental contact between cervids from different herds such as occurs in sale or show rings and alleyways at fairs, livestock auctions, sales, shows, and exhibitions. Limited contact does not include penned animals having less than 10 feet of physical separation or contact through a fence; or any activity where uninhibited contact occurs such as sharing an enclosure, a section of a transport vehicle, sharing equipment, food, or water sources; or contact with bodily fluids or excrement. Pens at fairs, livestock auctions, sales, shows, and exhibitions should be thoroughly cleaned and all organic material removed after use and before holding another animal.”*

Ambiguity on CWD Sample Collectors. Many states allow herd owners to collect CWD samples on mortalities. States have different procedures of how they allow this. The proposed Program Standards language of “certified CWD sample collectors” is ambiguous for states that do not give herd owners the label of “certified collector.” Clarification is needed to ensure misinterpretation by an agency does not prohibit a herd owner collecting samples or mandate onerous certification procedures. This is a state’s issue. NAEBA recommends adding language stating “...or certified CWD sample collectors as determined by state officials.”

Part A, Section 5.3- Sample Collection and Submission Procedures (page 25). “It is the owner’s responsibility to ensure complete, good quality tissue samples are collected and all required samples are submitted. Failure to comply with the surveillance requirements in this section may result in loss of program status or other actions applicable under Approved State or Federal regulation. **Tissue samples may only be collected by State officials, APHIS employees, accredited veterinarians, or certified CWD sample collectors.** Alternatively, owners may remove and submit the entire head with all attached identification devices to an approved CWD laboratory for tissue collection. Samples should be submitted to an approved laboratory within 7 days of collection.”

Definition of CWD-Susceptible Cervid Species Authorizes APHIS to Regulate, not only by Natural Infection, but also by Experimental Inoculation. The proposed Program Standards add a new definition for CWD-Susceptible Cervid Species. The USDA APHIS Chronic Wasting Disease Federal Rule only applies to cervid species known to naturally contract the disease. USDA APHIS Chronic Wasting Disease Federal Rule lists only three genera: *Odocoileus* (Whitetail Deer, Mule Deer, Blacktail Deer), *Cervus* (Elk, Red Deer, Sika Deer) and *Alces* (Moose). Numerous attempts have been made by regulators to arbitrarily add additional cervid species. The USDA APHIS Chronic Wasting Disease Federal Rule implemented in 2012 states in its background notes that APHIS “*have not expanded coverage to genera in which no species has demonstrated susceptibility via natural routes of transmission. To do so would extend the requirements of this rule without a sound basis, unnecessarily increasing the burden on regulated parties, especially zoos with large and varied animal collections. We are prepared to extend the definition in the future if new research demonstrates additional species in other genera are susceptible to CWD by natural routes of transmission.*” Traditionally, APHIS focuses most of its attention on whitetail and elk and are largely unfamiliar with exotic deer species and corresponding regulatory impacts. This has been clearly illustrated in conversations with APHIS team leaders. They are unaware how any vibrant ranches exist that breed

exotic deer species. There is not a known “lethal dose” for Chronic Wasting Disease. Experimental inoculation is supernatural, not natural. Moreover, the genus Muntiacus (Muntjac Deer) has not ever been discovered with CWD by natural route transmission. This new definition is in excess of the federal rule and should be removed. This wording is especially damaging to the reindeer owners because of the restrictions on interstate commerce of CWD susceptible species. NAEBA request this entire section be removed as this may be the most egregious addition to the Program Standards document.

“CWD-Susceptible Cervid Species: (page 7). APHIS identifies CWD-susceptible species based on scientific evidence of natural infection or **experimental infections through intranasal and/or oral routes.** This includes animals in the genera *Odocoileus*, *Cervus*, and *Alces* and their hybrids, i.e. deer, elk, and moose. Specifically, the following are considered to be susceptible to CWD: White-tailed deer (*Odocoileus virginianus*), mule deer (*Odocoileus hemionus*), black-tailed deer (*Odocoileus hemionus columbianus*), and any associated subspecies. It also includes North American elk or wapiti (*Cervus ipponensis*), red deer (*Cervus elaphus*), and Sika deer (*Cervus ippon*). NOTE: APHIS proposes to amend the definition of “cervid” in the CFR in the near future by removing the list of susceptible species from the definition. To accommodate this future change, we are adding the definition of “CWD susceptible cervid species” to this revision of the Program Standards. **In the future, APHIS anticipates adding the genera Rangifer and Muntiacus to the list of CWD-susceptible species when the CFR is amended.”**

Unlawful Taking of Property: The proposed document recommends mandatory surrender of animals, regardless if indemnity is available. This statement is a “taking” of property without compensation. Taking of property without compensation is not allowed under federal law. NAEBA requests changes that state depopulation is only mandatory with consent of owner with indemnity funds available.

Appendix II: Guidelines for Use of Whole Herd Ante-Mortem Testing of Herds that Contain or Contained CWD-Exposed Animals (page 51). “10)If a positive result is found on rectal biopsy, the animal must be surrendered for further testing. There will be no compensation to the owner unless indemnity funds are available. The herd will remain under quarantine and will be designated a CWD-positive herd. “

Definition on “Annual Removal” Needs to be Clarified so Herd Owners are Not Responsible for Testing All Animals that Leave Herd Inventories. New language regarding missing samples has created a definition of “annual removals” that includes ANY animal removed from inventory. This definition needs additional clarity to ensure this excludes animals moved by change of ownership. NAEBA requests APHIS amend this definition accordingly to exclude animals that are no longer under the ownership of that specific premise.

Definitions (page 5). “Annual Removals: All adults (12 months or older) **removed or lost from inventory for any reason since the previous annual inventory.”**

5.4 Consequences of Poor Quality and Missing Samples (page 27). “The following tables are provided as examples of adjustments that could be made to CWD herd status to account for poor quality, incomplete, or missing samples. This example considers the current status of the enrolled herd, the number of poor quality/missing samples, and the percentage of annual removals from the herd. **Annual Removals are defined as all adult animals (12 months or older) that were removed or lost from inventory for any reason since the previous annual inventory. When animals are removed from a herd, they are lost to surveillance testing.** In this example, status reduction may be avoided if the owner elects to remove and perform post-mortem CWD testing on an animal of the same sex and species that has resided in the herd for at least as long as the untested animal with the poor quality or missing sample.”

Automatic 5 Year Trace-outs Instead of Epi Investigation. The options for responding to a trace back, CWD exposed herd do not use the all of the science that is currently available in order to eliminate the unnecessary automatic 5-year quarantines. The epidemiological investigation should use the science and include, but not be limited to, the following: The genotype of the CWD positive animal- The most susceptible genotypes should not be traced back 5 years. The tissues of the animal that tested positive for CWD- Depending upon the genotype, animals that test positive in the lymph node only should not be traced back 5 years. Determine the status of the trace back herd- How many years has the herd been certified? Has the herd tested all eligible deaths? Has the herd tested a sufficient number of animals each year? If a CWD positive animal passed through a trace back herd 2 or more years previously, one whole herd test of the trace back herd should be considered depending upon the genotype of the positive animal, the tissues that tested positive, and the genotype of the trace back herd. NAEBA recommends the language be changed from “5 years” to “a time determined by the epidemiological investigation.”

3.2 Trace Back, CWD-Exposed Herd(s) (Page 39). *“The herd should be quarantined for 5 years since the exposure to a CWD exposed animal, with or without selective culling of animals.”*

Severe Consequences for Poor Quality and Missed Samples: Language has been added that will have consequences for herds that did not test 100% of their eligible mortalities due to poor quality, incomplete, or missed samples. No agricultural industry should have a mandate to kill healthy animals. This is an example of “guilty” until proven “innocent”. Option #3 is unrealistic and unfair treatment especially considering there is no consideration given to the number of good quality samples submitted during the year or the submission history of the subject herd. NAEBA recommends the removal of option #3.

5.4 Consequences of Poor Quality and Missing Samples (page 27). *“(3) A direct suspension of herd status for some period of time.”*

In this example, status reduction may be avoided if the owner elects to remove and perform post-mortem CWD testing on an animal of the same sex and species that has resided in the herd for at least as long as the untested animal with the poor quality or missing sample.

5.4 Consequences of Poor Quality and Missing Samples- (Page 28). *“(Herds with Certified Status 4) A non-certified herd with a 15 percent annual removal rate fails to test 2 animals that died in the herd. They also decline to euthanize and test comparable animals from the herd as replacements for the missed samples. In this case, the herd would be reduced in status by 2 years. 5) A non-certified herd with a 15 percent annual removal rate fails to test 2 animals that died in the herd. They agree to euthanize and test 2 comparable animals from the herd as replacements for the missed samples. In this case, the herd would retain their status as long as the test results are “not detected”.*

APHIS should not have authority over non-certified herds. Non-certified herd language should be changed to “herds enrolled in the HCP and have not yet achieved certified status”.

Top Soil Requirements: This is very burdensome protocol in the event a deer or elk farmer discovers Chronic Wasting Disease. The language of “close confinement” is very vague and is up for interpretation. Moreover, it would be incredibly expensive. There is no mention of this in the USDA APHIS Chronic Wasting Disease Federal Rule. This was very burdensome when this was implemented in Iowa. NAEBA recommends removing this language.

Appendix IV: Biosecurity and Decontamination Procedures for Farmed Cervid Facilities. Section B (Page 63): *“B. Dry Lot Where CWD-positive animals have been held in close confinement (this includes but is not limited to corrals, pens,*

stalls, and alleyways or pathways) may be treated as follows: 1. Remove organic materials (manure, feed, bedding, and other organic material). This material may be buried deeply onsite in areas not accessed by farmed or wild animals, incinerated, or digested by alkaline hydrolysis. Composting may be used to reduce the volume of organic materials. Composted material should be buried deeply, incinerated, or digested by alkaline hydrolysis after composting is complete. Composting alone does not inactivate prions. 2. In addition, removal of the top 1 to 2 inches of soil may help to reduce surface contamination. The soil removed may be buried deeply or incinerated.”

APHIS Uses Genotypes Against Herds in Trace outs: As the industry breeds towards CWD resistant animals, there will be negative consequences for resistant herds when linked to a CWD positive animal/herd. Given the success of sheep industry’s use of Scrapie resistant animals, USDA APHIS should not punish the cervid industry for moving in this direction. NAEBA Recommends deleting language that prohibits herds with resistant animals.

Appendix II: Guidelines for Use of Whole Herd Ante-Mortem Testing (Page 50). *“C. Herds with fewer than 50 percent GG animals will not be permitted to use ante-mortem RAMALT testing.”*

Program Standards Will No Longer Be Reviewed Annually. The current Program Standards states “These Program Standards will be reviewed at least annually by representatives of the cervid industry and appropriate State and Federal agencies.” This has now been changed. NAEBA repeatedly hears APHIS say it is better to make changes in the Program Standards, rather than the Federal Rule, because the Federal Rule takes 3-5 years. Without annual review of the Program Standards, this will be no different. NAEBA recommends using the language in the existing Program Standards.

Introduction (page 4). *These Program Standards will be reviewed regularly by APHIS and, as appropriate, representatives of the cervid industry and State and Federal agencies.*