

the carcasses of the animals available for tissue sampling and testing in accordance with instructions from the APHIS or State representative. In cases where animals escape or disappear and thus are not available for tissue sampling and testing, an APHIS representative will investigate whether the unavailability of animals for testing constitutes a failure to comply with program requirements and will affect the herd's status in the CWD Herd Certification Program;

(4) The owner must maintain herd records that include a complete inventory of animals that states 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 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 an annual physical herd inventory with verification reconciling animals and identifications with the records maintained by the owner. The owner must present the entire herd for inspection under conditions where the APHIS employee or State representative can safely read all identification on the animals. The owner will be responsible for assembling, handling and restraining the animals and for all costs incurred to present the animals for inspection;

(5) 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. There must be a buffer zone of at least 30 feet between the perimeter fencing around separate herds, and no commingling of animals may occur. Movement of animals between herds must be recorded as if they were separately owned herds;

(6) New animals may be introduced into the herd only from other herds enrolled in the CWD Herd Certification Program. 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 partici-

pating in the program, then the receiving herd will be required to start over in the program.

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§ 55.24 Herd status.

(a) *Initial and subsequent status.* When a herd is first enrolled in the CWD Herd Certification Program, it will be placed in First Year status, except that; if the herd is comprised solely of animals obtained from herds already enrolled in the Program, the newly enrolled herd will have the same status as the lowest status of any herd that provided animals for the new herd. If the herd continues to meet the requirements of the CWD Herd Certification Program, each year, on the anniversary of the enrollment date the herd status will 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 will be changed to "Certified", and the herd will remain in "Certified" status as long as it is enrolled in the program, provided its status is not lost or suspended in accordance with this section. Once the herd has received "Certified" status, slaughter surveillance and surveillance of animals killed in shooter operations will no longer be required, but other requirements of the program will remain in force.

(b) *Loss or suspension of herd status.*
 (1) If a herd is designated a CWD-positive herd or a CWD-exposed herd, it will immediately lose its program status and may only reenroll after entering into a herd plan.

(2) If a herd is designated a CWD-suspect herd, a trace back herd, or a trace forward herd, it will immediately be placed in Suspended status pending an epidemiologic investigation by APHIS or a State animal health agency. If the epidemiologic investigation determines that the herd was not commingled with a CWD-positive animal, the herd will be reinstated to its former program status, and the time spent in Suspended status will count toward its promotion to the next herd status level.

(i) If the epidemiologic investigation determines that the herd was commingled with a CWD-positive animal, the herd will lose its program status and will be designated a CWD-exposed herd.

(ii) If the epidemiological investigation is unable to make a determination regarding the exposure of the herd, because the necessary animal or animals are 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 will continue as Suspended unless and until a herd plan is developed for the herd. If a herd plan is developed and implemented, the herd will be reinstated to its former program status, and the time spent in Suspended status will count toward its promotion to the next herd status level; *Except that*, if the epidemiological investigation finds that the owner of the herd has not fully complied with program requirements for animal identification, animal testing, and recordkeeping, the herd will 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. Any herd reinstated after being placed in Suspended status must then comply with the requirements of the herd plan as well as the requirements of the CWD Herd Certification Program. The herd plan will require testing of all animals that die in the herd for any reason, regardless of the age of the animal, may require movement restrictions for animals in the herd based on epidemiologic evidence regarding the risk posed by the animals in question, and may include other requirements found necessary to control the risk of spreading CWD.

(3) If an APHIS or State representative determines that animals from a herd enrolled in the program have commingled with animals from a herd with a lower program status, the herd with the higher program status will be reduced to the status of the herd with which its animals commingled.

(c) *Cancellation of enrollment by Administrator.* The Administrator may cancel the enrollment of an enrolled herd by giving written notice to the herd owner. In the event of such cancellation, the herd owner may not re-

apply to enroll in the CWD Herd Certification Program for 5 years from the effective date of the cancellation. The Administrator may cancel enrollment after determining that the herd owner failed to comply with any requirements of this section. Before enrollment is canceled, an APHIS representative will inform the herd owner of the reasons for the proposed cancellation.

(1) Herd owners may appeal cancellation of enrollment or loss or suspension of herd status by writing to the Administrator within 10 days after being informed of the reasons for the proposed action. The appeal must 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 will 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 will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator. However, cancellation of enrollment or loss or suspension of herd status shall become effective pending final determination in the proceeding if the Administrator determines that such action is necessary to prevent the possible spread of CWD. Such action shall become effective upon oral or written notification, whichever is earlier, to the herd owner. In the event of oral notification, written confirmation shall be given as promptly as circumstances allow. This cancellation of enrollment or loss or suspension of herd status shall continue in effect pending the completion of the proceeding, and any judicial review thereof, unless otherwise ordered by the Administrator.

(2) [Reserved]

(d) *Herd status of animals added to herds.* A herd may add animals from herds with the same or a higher herd status in the CWD Herd Certification Program with no negative impact on the certification status of the receiving herd.² If animals are acquired from a

²Note that in addition to this requirement, §81.3 of this chapter restricts the interstate movement of farmed and captive deer, elk, and moose based on their status in the CWD Herd Certification Program.

herd with a lower herd status, the receiving herd reverts to the program status of the sending herd. If a herd participating in the CWD Herd Certification Program acquires animals from a nonparticipating herd, the receiving herd reverts to First Year status with a new enrollment date of the date of acquisition of the animal.

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§ 55.25 Animal identification.

Each animal required to be identified by this subpart must have at least two forms of animal identification attached to the animal. The means of animal identification must be approved for this use by APHIS, and must be an electronic implant, flank tattoo, ear tattoo, tamper-resistant ear tag, or other device approved by APHIS. One of the animal identifications must be official animal identification as defined in this part, with a nationally unique animal identification number that is linked to that animal in the CWD National Database. The second animal identification must be unique for the individual animal within the herd and also must be linked to that animal and herd in the CWD National Database.

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PART 56—CONTROL OF H5/H7 LOW PATHOGENIC AVIAN INFLUENZA

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AUTHORITY: 7 U.S.C. 8301-8317; 7 CFR 2.22, 2.80, and 371.4.

SOURCE: 71 FR 56323, Sept. 26, 2006, unless otherwise noted.

§ 56.1 Definitions.

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

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

Breeding flock. A flock that is composed of stock that has been developed for commercial egg or meat production and is maintained for the principal purpose of producing chicks for the ultimate production of eggs or meat for human consumption.

Classification. A designation earned by participation in a Plan program.

Commercial meat-type flock. All of the meat-type chickens or meat-type turkeys on one farm. However, at the discretion of the Official State Agency, any group of poultry which is segregated from another group in a manner sufficient to prevent the transmission of H5/H7 LPAI and has been so segregated for a period of at least 21 days may be considered as a separate flock.

Commercial table-egg layer flock. All table-egg layers of one classification in one barn or house.

Commercial table-egg layer premises. A farm containing contiguous flocks of commercial table-egg layers under common ownership.

Cooperating State Agency. Any State authority recognized by the Department to cooperate in the administration of the provisions of this part 56. This may include the State animal health authority or the Official State Agency.

Department. The U.S. Department of Agriculture.

Domesticated. Propagated and maintained under the control of a person.

Flock plan. A written flock management agreement developed by APHIS and the Official State Agency with input from the flock owner and other affected parties. A flock plan sets out the steps to be taken to eradicate H5/H7 LPAI from a positive flock, or to prevent introduction of H5/H7 LPAI into another flock. A flock plan shall include, but is not necessarily limited