

**DRAFT**

**Statement of Need and Reasonableness (SONAR)**

**For Minnesota Rules, Chapter 1721**

**Proposed Revisions to 1721.0370 to 1721.0420**

**Farmed Cervidae**

**Preface**

This is a DRAFT document and is subject to change before it is finalized.

Revisions will continue to be made to this Statement of Need and

Reasonableness (SONAR) until the signature date on the final Notice of Intent

for this rulemaking.

## **STATEMENT OF NEED AND REASONABLENESS**

In the Matter of Proposed Revisions of Minnesota  
Rule Chapter 1721 Amending the Rules Governing  
Farmed Cervidae; Revisor ID No. R-04649  
OAH 5-9048-36940

August XX, 2021

General information:

- 1) Availability: The State Register notice, this Statement of Need and Reasonableness (SONAR), and the proposed rule will be available during the public comment period on the Agency's Public Notices website: <https://www.bah.state.mn.us/public-rule-making/>
- 2) View older rule records at: [Minnesota Rule Statutes https://www.revisor.mn.gov/rules/status/](https://www.revisor.mn.gov/rules/status/)
- 3) Agency contact for information, documents, or alternative formats: Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Annie Balghiti, Rulemaking Coordinator, Board of Animal Health, 625 Robert Street North, St. Paul, MN 55155; telephone: 651-201-6805 (voice), fax: 651-296-7417 ; email [annie.balghiti@state.mn.us](mailto:annie.balghiti@state.mn.us). Persons with hearing loss or speech difficulties may call the Board through their preferred Telecommunications Relay Service.
- 4) How to read a Minnesota Statutes citation: Minn. Stat. § 999.09, subd. 9(f)(1)(ii)(A) is read as Minnesota Statutes, section 999.079, subdivision 9, paragraph (f), clause (1), item (ii), subitem (A).
- 5) How to read a Minnesota Rules citation: Minn. R. 9999.0909, subp. 9(B)(3)(b)(i) is read as Minnesota Rules, chapter 9999, part 0909, subpart 9, item B, subitem (3), unit (b), subunit (i).

# Contents

**STATEMENT OF NEED AND REASONABLENESS..... Error! Bookmark not defined.**

Contents ..... X

Acronyms..... X

Introduction and overview ..... X

*Introduction* ..... X

*Statement of General Need* ..... X

*Scope of the proposed amendments:*..... X

Background ..... X

Public participation and stakeholder involvement ..... X

Statutory authority ..... X

Reasonableness of the amendments ..... X

*General Reasonableness* ..... X

*Specific Reasonableness*..... X

Regulatory analysis..... X

[Other statements, such as Environmental Justice Policy, Health Equity Policy, etc., as needed] ..... X

Notice Plan ..... X

*Notice*..... X

*Additional notice plan*..... X

Performance-based rules ..... X

Consideration of economic factors ..... X

Consult with MMB on local government impact ..... X

Impact on local government ordinances and rules ..... X

Costs of complying for small business or city..... X

Differences with federal and other state standards ..... X

Authors, witnesses and SONAR exhibits ..... X

*Witnesses and other staff*..... X

*SONAR exhibits*..... X

Conclusion ..... X

## Acronyms

APA	Administrative Procedures Act
ALJ	Administrative Law Judge
Board or BAH	Board of Animal Health
CFR	Code of Federal Regulations
CWD	Chronic Wasting Disease
MAT	MN Association of Townships
Minn. R. pt	Minnesota Rules part
Minn. Stat.	Minnesota Statutes
MMB	Minnesota Management and Budget
MN	Minnesota
MORS	MN Office of the Revisor of Statutes
OAH	Office of Administrative Hearings
SONAR	Statement of Need and Reasonableness
[More as needed]	[Additional definitions]

DRAFT

## Minnesota Board of Animal Health

### STATEMENT OF NEED AND REASONABLENESS

#### Proposed Amendments to Rules Governing Farmed Cervidae, *Minnesota Rules, 1721.0370 to 1721.0420*; Revisor's ID Number R-04649

### INTRODUCTION AND BACKGROUND

The Board of Animal Health (Board) is the regulatory agency charged with protecting the health of Minnesota's domestic animals. In executing this duty, the Board has oversight of farmed Cervidae in Minnesota.

The Board proposes to amend its current rules governing farmed Cervidae (also referred to as farmed cervid(s) in this document), Minnesota Rules chapters 1721.0370 to 1721.0420. Farmed Cervidae are livestock and are members of the family Cervidae that are raised for any purpose. The family Cervidae includes, but is not limited to, white-tailed deer, mule deer, red deer, elk, moose, caribou, reindeer, and muntjac. Farmed Cervidae are the most intensely regulated livestock species in Minnesota.

The amendments to the farmed Cervidae rules are to incorporate changes made by the Minnesota legislature in 2019 to Minnesota Statute 35.155, which governs the requirements for possession of farmed Cervidae and changes made to the program based on recommendations from the Office of the Legislative Auditor (OLA) after a review of the Board's farmed cervid program in 2018 (see the attached *OLA BAH Oversight of Deer and Elk Farms, 2018 Evaluation Report*, published in April 2018).

The Board is also proposing additional amendments to all parts of Minnesota Rules chapters 1721.0370 to 1721.0420. The current rules were adopted by the Board in 2013. These rules have served Minnesota well, but as the Board has implemented these rules it has recognized the rules could be improved through rulemaking in order to clarify ambiguities in current regulations, better help the agency prevent and control disease, allow the Board to more effectively address and respond to detections of Chronic Wasting Disease (CWD) positive farmed Cervids, and support compliance with state and federal requirements for farmed Cervidae. These possible amendments would, at a minimum, address the following objectives:

- Update, simplify, and clarify existing rules;
- Add or change definitions to improve clarity;
- Add or change language to align the rules with current and relevant scientific evidence related to transmission of CWD;
- Omit language that is inconsistent with federal guidelines for regulating farmed Cervidae;
- Add or change language to allow the Board to better respond to and manage animal disease events; and

Additional objectives may be proposed or identified during the rulemaking process, or based on comments received, but only as time allows.

Significant changes to the rules that are in the current draft of proposed rule amendments include: (1) additional updated and refined definitions; (2) the Board's ability to refuse an application to register a person if the Board had revoked their previous registration; (3) deletion of the definition for CWD contaminated premises to meet current scientific evidence; (4) regulation of farmed Cervidae semen (5) more stringent requirements for intrastate movement of farmed Cervidae; (6) modifications to CWD surveillance standards for farmed Cervidae herds; (7) the addition of increased detail regarding quarantine procedures; (8) a requirement that all tissue samples submitted for CWD testing must be collected by Board-authorized sample collectors; (9) and striking factors which would allow a herd to be excluded from and moved from a CWD endemic area.

In developing the proposed rules, the Board has been working with an Advisory Committee, composed of 15 carefully selected stakeholder representatives, and with the Minnesota tribes and inter-tribal organizations. The Board has also carefully reviewed and considered input received from Board staff, members of the public and special interest groups, such as hunters.

## **GENERAL EDITORIAL CHANGES**

### **Correct basic grammar problems**

We corrected many word usage and verb tense errors. A grammatically correct rule is easier for the user to understand and apply. Correcting the errors is reasonable.

#### **"At least"**

This phrase is used to give notice of minimum standards, while still allowing the Board discretion to effectively respond to situations based on the particular circumstances.

## **ALTERNATIVE FORMAT**

Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Annie Balghiti at MN Board of Animal Health, phone: 651.201.6805, and [annie.balghiti@state.mn.us](mailto:annie.balghiti@state.mn.us).

## **STATUTORY AUTHORITY**

The Board's statutory authority to adopt rules is stated in Minnesota Statutes, section 35.03, which provides: *The Board shall protect the health of Minnesota's domestic animals and carry out the provisions of this chapter. The Board shall make rules necessary to protect the health of domestic animals;* and in Minnesota Statutes, section 35.155, subdivision. 13, which provides: *The Board of Animal Health shall adopt rules as necessary to implement this section and to otherwise provide for the control of Cervidae diseases.*

The Board exercised its initial rulemaking statutory authority within the 18-month time limit and adopted rules within its initial statutory timeframe. Minnesota Statutes, section 14.125 permits the subsequent amendment or repeal of rules where the statutory authority was first used within the time limit. The legislature amended Minn. Stat. §35.155 in 2019, so the rules must be amended to incorporate those changes.

Under these statutes, the Board has the necessary statutory authority to adopt the proposed rules.

## **ADVISORY COMMITTEE**

BAH formed an advisory committee to advise the agency on its development of the rules. The fifteen committee members chosen represent the diversity of views, interests, and values associated with farmed Cervidae in Minnesota.

Starting in August 2020, BAH met with the advisory committee eight times to discuss and comment on the proposed rules and BAH's proposed rules drafts. BAH posted the agenda and minutes of each meeting on the rulemaking page of BAH's website. In addition to the formal meetings, advisory committee members emailed each other and BAH staff informally to discuss issues that were in turn presented to the advisory committee members at the meetings. Every advisory committee meeting was open to the public, and members of the public were allowed to speak when they had comments.

Between August 2020 and January 2021, when the eighth and final advisory committee meeting was held, BAH published six proposed rules drafts on its website that were discussed in each advisory committee meeting. BAH published **five** proposed rules drafts on its rulemaking page after the last meeting was held in January 2021. Of these **five** subsequent rules drafts, four were circulated to the advisory committee members via email for their written feedback. The fifth subsequent rules draft was developed in response to the committee members' written feedback. A report summarizing the work of the advisory committee is attached to this document (see *Advisory Committee Report*).

### **Committee Members**

- Representative of the Minnesota Department of Natural Resources: Michelle Carstensen
- Representative of the Minnesota Department of Agriculture: Kelly Anderson
- Representative of the Minnesota Department of Health: Dr. Joni Scheftel
- Representative of the University of Minnesota Veterinary Diagnostic Lab: Dr. Jerry Torrison
- Representative of the United States Department of Agriculture: Dr. Stephan Schaeffbauer



- Representative of the Minnesota Deer Farmers: Rich Meech; Alternate: Todd Miller
- Representative of the Minnesota Elk Breeders Association: Mark Luedtke; Alternate: Brenda Hartkopf
- Representative of Minnesota deer hunters: Craig Engwall
- Representative of Minnesota cervid veterinarians: Dr. Joel Ihnen
- Representative of Non-native Minnesota Cervidae species producers: Daryl Simon
- At-large representative of Minnesota farmed cervid producers: Robert Ernst
- Representatives of Minnesota Tribal members: Miles Falck and Philomena Kebec
- At-large member of the public: Amy Cordry
- At-large livestock producer (other than farmed Cervidae producer): Dan Miller
- Representative of Association of Minnesota Counties: Steve Notch

## **PUBLIC PARTICIPATION AND STAKEHOLDER INVOLVEMENT**

The Board published a Request for Comments (RFC) identifying topics of possible rule changes and inviting comments on any rule changes sought by interested parties in the *State Register* on June 29, 2020 (44 SR 53). The Board extended its RFC comment period and published a second RFC to that effect in the State Register on August 31, 2020 (45 SR 9).

The Board posted both RFCs on the Board's website; posted information, links to the RFCs, and reminders about the Board's rulemaking project on the Board's Facebook page; and emailed the RFCs to all registered farmed Cervidae producers with an email address. The Board also sent the RFC and links to the RFC to various stakeholders by issuing press releases on the Board's rulemaking and including it in the Board's electronic newsletters.

The Board also held four public listening sessions for the general public (virtually due to the pandemic). Prior to the sessions the Board posted information about them on the Board's website and emailed notices via GovDelivery. The largest number of participants that attended any of these meetings was 10; the fourth meeting was cancelled after 60 minutes when Board staff were present and available in the meeting chat room but no members of the public appeared/called into the listening session.

The Board held three virtual listening for the Minnesota tribes and tribal organizations.

At a special board meeting held on **July 28, 2021**, the board members passed a resolution approving the rules as drafted, and authorizing the actions necessary to adopt the rules, including publishing a Dual Notice of Intent to Adopt Rules With or Without a Hearing. Prior to the special board meeting, the Board's rulemaking project and possible rules were discussed at four properly noticed regular meetings of the Board's five-member citizen board, and the board members took comments from the public at these regular meetings.

## REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out eight factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (8) below quote these factors and then give the Board's response.

**“(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule”**

### **Classes of affected persons:**

- People in Minnesota involved in the farmed cervid industry who must meet the rule requirements. This class will bear the primary costs of fulfilling the requirements in the proposed rules.
- Other classes of person who may be affected are members of the public and farmed Cervidae producers outside the state of Minnesota who conduct business with Minnesota farmed Cervidae producers; the Cervidae industry; representatives from other Minnesota livestock industries; the Minnesota hunting community; laboratories conducting CWD testing; Minnesota tribes and tribal organizations; and the general public.
- Other state agencies, such as:
  - The Minnesota Department of Natural Resources (DNR), which is statutorily charged with the oversight of wild Cervidae and cases of CWD found in wild Cervidae. The DNR is a partner with the Board in epidemiological investigations of CWD-positive farmed Cervidae premises; and has some statutory authority in the regulation of farmed Cervidae. Minn. Stat. 35.155.
  - The Minnesota Department of Agriculture (MDA), which is statutorily charged with the oversight of livestock. Farmed Cervidae are defined as livestock under MDA statutes. MDA is also a partner with the Board in emergency preparedness and planning to manage agency responses to food, agriculture, and livestock emergencies throughout the state.
  - The Minnesota Department of Health (MDH), which is statutorily charged with the oversight of the intersection between human and animal health.

### **Who will bear the costs of the proposed rules?**

- At present there are approximately 260 farmed cervid herds in Minnesota. Farmed cervid producers in Minnesota and people in Minnesota involved in the farmed cervid industry who must meet the rule requirements are the class of people most affected by the proposed rules. This class will bear most of the primary costs of fulfilling the requirements in the proposed rules. The rules create stricter requirements for

possessing farmed cervids in exchange for better disease detection and control. The proposed rules may increase costs for farmed cervid producers who are not in compliance with the rules as one of the Board's often used enforcement tools is to issue civil penalties for non-compliance with the law. As this class is required to comply with the rules, however, whether a producer bears a cost associated with noncompliance is not a guaranteed outcome of the proposed rules. Where a particular proposed rule has a probable cost, that cost is discussed in the rule-by-rule analysis.

- *CWD Testing.* Testing for CWD is required on every farmed cervid 12 months of age or older that dies. When testing or vaccination is required to control or eradicate animal diseases, this class must bear the expense of such activities unless state or federal funds are available for this purpose. CWD testing is currently and historically has been funded by the Board (the Board contracts with University of Minnesota Veterinary Diagnostic Lab), with a cervid owner bearing the expense of collecting and shipping samples to the lab. This requirement has been in place since 2004 and the proposed rules do not represent a new cost which must be borne by this class for testing.
- *Quarantined herds.* If a farmed cervid owner's herd is either exposed to CWD or determined to be CWD-positive, the owner will potentially bear a cost in the following ways:
  - Exposed herds must be quarantined, and during the time a herd is quarantined a farmed cervid owner is not allowed to move animals in their herd. An owner who wishes to sell or move their animals during this time will not be able to generate revenue from their herd, unless a herd owner wants to move an animal directly to slaughter and obtain a permit from the Board.
  - The proposed rules give the Board discretion to require a farmed cervid owner to minimize commingling between their herd and wild cervids until the CWD-positive herd is depopulated. The potential costs associated with this requirement will vary depending on the means used to prevent commingling, the composition of the premises, and the size of the herd. For example, some farmed cervid premises are already double-fenced or have smaller holding pens which the animals could be moved into; minimal to no costs would be associated with preventing commingling on these premises. Other premises may opt to install shade cloth to prevent commingling, the cost of which will vary depending on the size of the area involved.
  - If a herd is determined to be CWD-positive and federal indemnity is not available to the producer, then the requirement for a producer to depopulate their herd without compensation will be a significant cost to the producer. This requirement, however, comes from the authorizing statute and is one of the revisions made by the legislature in 2019 that must be incorporated into the Board's rules.
- *Physical Inventories.* The requirement to conduct a physical inventory requirement is

another potential increased cost borne by producers. This is a reasonable and necessary cost to have producers bear as a periodic physical inventory ensures inventories are correct, animals are properly identified, and there have not been any undocumented escapes. A requirement for a physical inventory is also based on a recommendation in the OLA Evaluation Report.

- *Requirement for two forms of ID.* There are costs associated with the proposed requirement for two forms of ID for producers who want to move an animal from their herd off their premises to other locations. This is, however, only an additional cost for those farmed cervid producers that do not also want to move animals interstate; if a producer wants to move interstate, the herd is already required to have two forms of ID in all animals. Federal guidelines require this in order for farmed cervids to move interstate so those producers affected by this requirement have already accepted this cost.
- *CWD Surveillance Standards.* A producer will incur costs if movement of their herd is restricted due to missed CWD surveillance or if they choose to harvest an animal as a substitute to a missed test. This would be a cost to the owner's potential future business, but this cost is only incurred as a consequence of non-compliance with requirements for CWD testing.
- *Requirement to become a CWD authorized sample collector.* This training is free to the producer, but an individual who wants to become certified must dedicate some time to the training and authorizing process. There is a cost to the Board of time to develop training materials and provide the classroom and field demonstration portions of the training. If a farmed Cervidae producer doesn't become authorized, they will need to find someone else to collect tissues from their farmed cervids that they kill or that die in their herd. This is critical to ensure proper collection of tissues from farmed cervids to get successful test results for CWD and have optimal CWD surveillance of the herd. This recommendation for training was made in OLA audit.
- *Disposal of CWD-infected carcasses.* Under 1721.0420, subp. 2(D)(2), requiring carcasses from a CWD-infected herd to be disposed of as required by the Board is not a cost to the producer currently so long as the producer receives federal indemnity for their herd. If a producer with a CWD-infected herd does not receive federal indemnity, because Minn. Stat. 35.155 requires mandatory depopulation and the statute is silent on the issue of disposal and who bears the cost of disposal for these carcasses, the Board would likely cover the disposal costs to ensure carcasses of properly disposed of, so long as funding is available, just as the Board currently pays for producers' CWD testing, provided funding is available. The Board would require the carcasses to be disposed of in a manner approved by the Board, which currently is tissue digestion in the alkaline digester at the University of Minnesota's Veterinary Diagnostic Laboratory. If Board funding were not available at the time of mandatory depopulation, then the producer

would bear the cost of carcass disposal. Requiring the producer to bear this cost, however, is reasonable and necessary because—just as the legislature has determined that CWD-positive farmed Cervidae herds in Minnesota should be removed from the landscape—the state has an interest in ensuring CWD-positive and CWD-exposed carcasses are properly disposed of.

- *Change to ability to be excluded from a CWD farmed Cervidae management zone.* Under this proposed rule, there is a cost of business that will be borne by a producer who becomes part of a CWD farmed cervid management zone as the producer would no longer have an option to move animals to other locations in Minnesota that are outside of the CWD farmed cervid management zone, unless per 1721.0410, subp. 6(A)(3), a testing method becomes available to verify the animals are not infected with CWD. The current rule allows such movement if a producer constructs exclusionary fencing; this is a cost they bear, but they may then move animals intrastate.

As discussed elsewhere in this document, the Board believes that continuing to allow farmed Cervidae from CWD endemic areas to move under the exception in the current rule is neither reasonable nor responsible, nor supported by events here and in other states. This 6 month window after CWD is detected in the wild deer (triggering the creation of the CWD farmed Cervidae management zone) allows additional time for farmed cervids to be exposed to CWD from wild cervids in the area with the chance that subsequent movement of animals out of the herd could include animals exposed to CWD but not yet detected as infected. Based on recent evidence from the most recent CWD-positive herd, exclusionary fencing is not effective at preventing transmission of CWD. It only takes one asymptomatic but infected animal to transmit CWD to another part of the state, and it only takes one CWD-infected animal, moved into another herd, to require depopulation of that herd. If, in the future, live animal testing is available to determine whether an animal is infected with CWD, the producer would bear that cost of testing to be able to move animals to other locations in Minnesota.

There are other increased costs associated with the proposed rule amendments (re-inspection fees, all new fencing and fencing repairs must be high-tensile wire, redundant gating, mandatory depopulation without federal indemnity, maintain fencing for 5 years on an empty herd enclosure); these requirements, however, were made by the legislature in the 2019 statutory changes and are currently in law. These are not new costs imposed by the Board in the proposed rules.

#### **Who will benefit from the proposed rules?**

All of the above-identified classes who are affected by the rules will also benefit from the proposed rules. When efforts to control or eradicate animal diseases are successful, animals, people, and communities are healthier. Farmed cervids will be better protected from infection, particularly from infection with CWD—allowing a producer to avoid the costs of mandatory depopulation of their herd and loss of their business—and a farmed cervid producer’s ability to

move (sell) farmed cervids within the state and between states will be preserved. Classes of people who are concerned for the health of the wild deer population in Minnesota will also benefit in that the requirements in the rules which protect farmed cervids from exposure to wild deer will inversely better protect the wild deer from potential exposure to CWD-positive farmed deer. Those who must comply with the rules requirements and the Board will benefit from the proposed rules amendments because improved clarity makes it easier to comply with requirements.

**“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues”**

**The Probable Costs to the Board to Implement and Enforce**

The Board will incur probable costs for additional implementation and enforcement measures regarding the following requirements in the rules:

- *Physical inventory and Tagging.* The Board has to verify a physical inventory, which includes verifying the ID tag in each animal, tracking that registered herds have done a physical inventory, and enforcing compliance.
- *Reinspection.* Any reinspection adds additional time spent on a herd by field staff. There would also be consultation with office program staff on passing or failing re-inspections. In the 2019 statutory changes, however, the legislature mandated a re-inspection fee for producers, so the only increased cost will be the additional expenditure of staff time.
- *Authorized sample collectors.* The requirement that all CWD test specimens be collected by an authorized sample collector will require additional data recording and tracking of authorization by Board office staff. It will also require additional time for Board field staff to conduct sample collection training for producers or other individuals just learning to collect samples, and to verify test results from initial collections as well as notify the authorized sample collectors of results. The early sample collector training program was developed by Board program managers, and the in-person classroom trainings were held in six different locations around Minnesota. Now, Board field staff who are veterinarians provide this training based on individual training requests. This takes extra field staff time to provide the classroom portion of the training.

All of the above will take increased staffing time both in the field and the office to educate producers on the changes to our rules to ensure producers comply with them and that this information is recorded with the Board.

**The Probable Costs to Any Other Agency of Implementation and Enforcement**

The Board is the sole state agency mandated to administer these rules. In the 2021 special session, the legislature made an additional amendment to Minn. Stat. §35.155, giving the DNR concurrent authority with the Board to regulate and enforce these rules as to farmed white-tailed deer. The proposed rule changes are necessary regardless of this change to the statute. In addition, the legislature appropriated to the DNR \$1.25 million in the first year, and \$2.25 million in the

second year to implement these statutory changes and regulate fanned white-tailed deer. The Board cannot speak to how the DNR will allocate this funding or what the probable costs will be to the DNR to implement and enforce the rules. The Board foresees no additional implementation or enforcement costs for other agencies.

### **Anticipated Effect on State Revenues**

There is no anticipated significant effect on state revenue. Most of the requirements in the proposed rules have either been extracted from the current rules or from the enabling statute. For those rules, costs for the Board or any other agency for implementation and enforcement of these requirements will not change and will not affect state revenues. For those parts of the proposed rules that have changed, the cost to the Board or any other agency for implementation and enforcement is as follows:

- The rules increase inspection fees for farmed Cervidae herds and add a re-inspection fee for fencing deficiencies. These changes to the rules are being made to align with the changes the legislature made to the enabling statute, Minn. Stat. §35.155. As these costs have been set in statute since 2019, the Board does not expect the proposed rules to have a significant effect on state revenues.
- The rules may increase staffing costs for the Board as some of the rule changes will require more data entry, recording, and tracking; and increased time will need to be spent by Board field staff to conduct inspection components and compliance. These increased costs should not be significant, however, and are necessary to implement and enforce the rules.
- With the 2021 amendment to Minn. Stat. §35.155 which gives the DNR concurrent authority over farmed white-tailed deer, there may be an effect on state revenues related to their enforcement activities; as neither agency yet knows at this time what this concurrent authority will look like in practice, the Board cannot anticipate the effect on state revenue.

There are no other anticipated costs to other agencies nor anticipated effects on state revenue. Adoption of the proposed rules will have little effect on state revenues.

### **“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule”**

The Board has carefully considered the cost and potential burden of the proposed rules. Farmed Cervidae are the most regulated livestock species in Minnesota, with most of the requirements set in statute by the legislature. In drafting the proposed rules, the Board balanced its statutory mission and its goals for these rules with its consideration as to whether less costly or less intrusive methods could achieve the purpose of the rules.

The primary purpose of the proposed rules is to protect the health of the state’s farmed

Cervidae population. There are many possible approaches that could be taken to meet this goal. When drafting the proposed rules, the Board convened a 15-member advisory committee, with each member representing a breadth of interests in farmed Cervidae regulations. Beginning in August 2020, the Board worked with this committee to provide extensive review and input on all working drafts of the rules. The Board produced ten working drafts. Six of the ten drafts, and the new requirements of each proposed rule, were discussed with the advisory committee at length. After the final advisory committee meeting was held in January 2021, the Board continued to communicate with the committee and seek their written feedback on the additional rules drafts the Board produced. The Board took written comments from the committee members on all ten working drafts and submitted all comments to the board members for their review. The advisory committee did not reach consensus on certain areas of rules, and in some areas of the rules members of the committee had widely disparate views (see attached *Advisory Committee Report*). These areas of our rules are discussed below.

The Board's statutory mission and expertise, statutory requirements, current rules, and public comment also influenced the Board's approach for the proposed rules. The Board determined there are no less costly or intrusive methods for achieving the purpose of the proposed rules than as written, and the following explains some of how this determination was made.

**Consideration of less costly or less intrusive methods:**

- *Prevention of commingling for CWD-positive herds.* The purpose of this requirement is to prevent further spread of CWD by protecting the population of wild deer from exposure to the CWD-positive farmed Cervidae herd, which in turn protects other farmed cervid herds from exposure to CWD-positive wild deer. The Board considered whether a less costly or less intrusive method could achieve this purpose and determined that by giving the Board discretion as to when to implement this requirement, the Board could make a determination on a case-by-case basis whether, based on the individual circumstances, to require the prevention of commingling. For example, whether the herd at issue has existing exclusionary fencing, such as double fencing; whether the herd is in an area with low deer density; or if the existing herd enclosure is of sufficient distance from wild deer habitat to have the potential for minimal interaction would be some of the factors the Board would consider in order to determine whether to require a producer with a CWD-positive herd to take steps to prevent commingling and incur potential additional costs to do so.

The Board also determined that requiring an owner of a CWD-positive farmed Cervidae herd to take measures to minimize commingling of the herd with wild Cervidae until depopulated is the least intrusive method of preventing transmission of CWD while the positive herd remains on the landscape other than requiring a producer to depopulate their herd faster. The Board determined that to set a specific timeframe in rule (i.e., interpreting the statutory language of "within a reasonable time") as to when an owner must depopulate a herd would be more intrusive as each depopulation is



circumstance-dependent (how long the federal indemnification process takes, the size of the herd, the time of year, availability of federal and state personnel to assist with depopulation for herds receiving indemnification). The Board evaluates the individual circumstances of the herd at issue in determining what is a reasonable time for depopulation.

- *Double fencing.* The Board received comments from multiple sources—including the public, MN deer hunters, and Minnesota tribes—that the Board should require double fencing for all farmed Cervidae premises, regardless of a herd’s CWD status. The Board believes requiring all premises to be double-fenced would exceed our statutory authority and impose potentially significant costs on producers. In addition, and as discussed elsewhere in this document, based on evidence gathered from the Board’s epidemiological investigation of the most recently detected CWD-positive farmed Cervidae herd, the Board does not believe that double fencing effectively prevents the transmission of CWD between wild and farmed Cervidae as there are many other paths for prions to move into a farmed cervid herd. The Board determined that preventing commingling once a herd is determined to be CWD-positive is the least costly and intrusive method to achieve one of the goals exclusionary fencing would meet, which is to prevent transmission of CWD by physical contact between CWD-positive farmed Cervidae and wild Cervidae.
- *Increased fence height.* The Board considered whether to increase the required perimeter fence height for all new farmed Cervidae premises in order to better prevent the escape of farmed Cervidae from the enclosure or the entry by wild Cervidae into the enclosure. The Board received comments from multiple sources—including the public, MN deer hunters, the DNR, and Minnesota tribes—that this requirement should be added to its rules. In earlier drafts of the proposed rules, the rules required an increased perimeter fence height of 120 inches (from the current from 96 inches) for farmed Cervidae premises with white-tailed deer. The Board ultimately determined this method was more costly and intrusive than the benefit of the proposed rule because there is no documented evidence of Minnesota Cervidae entering or exiting farmed Cervidae enclosures when fences were maintained at the current 96-inch requirement.
- Other methods such as requiring CWD-positive cervid herds to be depopulated, and farmed cervid producers to maintain fencing for five years after date of CWD detection, are required by statute. For those requirements the Board could not require less costly or intrusive methods in its rules without conflicting with its statutory authority.

**“(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule”**

The Board's mission is to protect the health of the state's domestic animals. The legislature gave the Board broad authority in Minn. Stats. 35.03 and 35.155 to make rules necessary to protect the health of domestic animals and to otherwise provide for the control of Cervidae diseases. With the Board's mission in mind, when an alternative method for achieving the purpose of a proposed rule was seriously considered by the Board, the reasons the alternative method was rejected in favor of the proposed rule is discussed throughout this document, including discussion about less costly or intrusive methods that were considered.

**“(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals”**

The majority of the requirements and associated compliance costs in the proposed rules have been extracted from the authorizing statute and from the current rules. The probable costs of complying with the unchanged requirements for governmental units, businesses, or individuals will not change.

When the legislature amended the enabling statute, Minn. Stat. 35.155, to regulate the possession of farmed Cervidae, it increased the annual inspection fees associated with farmed Cervidae herds and mandated a re-inspection fee for fencing deficiencies. As these costs are set in statute, the Board does not expect the proposed rules to significantly change the costs for farmed Cervidae producers who were registered with the Board prior to the proposed rule.

For those parts of the proposed rules that have changed significantly, the probable cost and portion of costs of compliance with them that will be borne by identifiable categories of affected parties, such as farmed cervid producers, is as follows:

- *Intrastate movement of deer and elk.* The probable cost of complying with the new restrictions on intrastate movement of farmed deer and elk herds for herds that are already at a Level 6 status—which is most of the registered herds in Minnesota—will be insignificant for farmed Cervidae producers. For farmed Cervidae herds that become part of a CWD farmed Cervidae management zone and are no longer able to move under the proposed rules unless a Board-approved live animal test is developed, the probable cost could be significant. The Board believes, however, this cost is necessary and reasonable (and discussed further in other areas of this document) and in the best interests of Minnesota and its domestic animals.
- *Importation of deer and elk.* The probable cost of complying with the increased restrictions for importation of deer and elk will be insignificant for Minnesota deer and elk producers, the Board, and other Minnesota governmental units.
- *Chronic wasting disease.* The probable cost of complying with the CWD herd certification program could be significant for Minnesota deer and elk producers,

depending on the requirement. For CWD testing requirements, the cost of complying with CWD testing requirements for most farmed producers will be minimal as the Board pays for the cost of CWD testing.<sup>1</sup> If a producer does not submit CWD test samples as required, or consistently fails to receive a successful CWD test result, then the cost may be more significant as either their herd status could be lowered or if they choose to substitute another test-eligible animal for each missed or unsuccessful CWD test, then they would be sacrificing another animal from their herd which is a cost. However, without appropriate sampling, the herd will not be allowed to move animals, which may affect a herd that relies on cervid movement for income.

- *Testing.* There are no additional costs associated with this rule part. The costs associated with complying with the requirements for mandatory CWD testing will not change significantly. The Board pays for the costs of the CWD tests. The requirement for test samples to be collected by an Authorized CWD Sample Collector may decrease costs because if a producer becomes authorized and collects samples themselves, they may avoid incurring costs associated with a veterinarian collecting samples.
- The Board determined there are no other probable costs to the Board, other than those identified, or to other Minnesota governmental units.

**“(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals”**

**The probable costs or consequences of not adopting the proposed rules**

- *Intrastate movement of deer and elk.* If the new restrictions on intrastate movement of farmed deer and elk are not adopted, deer and elk from herds with fewer years of CWD surveillance in their herd than is currently required would continue to be allowed by the rules to move from herd to herd within the state. Requiring all herds to have achieved the highest CWD status level in the program before they can move animals to another herd would ensure the Board has monitored each herd to the program’s greatest extent to minimize the risk of moving CWD by live animal between herds. The consequences of not adopting this proposed rule is, when CWD is diagnosed in deer and elk herds, interstate and international trade is restricted or stopped. Loss of the ability to export animals and animal products will cost producers money in the way of lost sales.
- *Importation of deer and elk.* If the increased restrictions for importation of deer and elk are not adopted, Board rules will not be consistent with federal requirements for

---

<sup>1</sup> When funding is available. The Board appropriates funds every fiscal year for this purpose.

interstate movement of deer and elk. If Board rules are not consistent with federal requirements, other states will not accept Minnesota deer and elk and the value of Minnesota animals would drop significantly.

- *Testing.* If the CWD surveillance standards and requirements for testing animals are not adopted, the Board's ability to control CWD would be severely impaired.

**“(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference”**

The proposed rules are consistent with and, in some parts, are more restrictive than existing federal regulations. The more restrictive state regulations are needed and reasonable because:

- Minnesota needs increased record keeping requirements that are more restrictive than existing federal regulations to reliably track farmed cervids within the state and better control and trace any disease.
- Changes to requirements for CWD management zones are more restrictive than existing federal regulations and needed to minimize risk of CWD transmission from wild to farmed deer once CWD is known to be in the wild deer population within a certain distance from a farmed cervid operation.
- Redundant gating, more restrictive than existing federal regulations, is necessary because the requirement is in the authorizing state statute.
- Fencing composed of high tensile wire and re-inspections of fencing deficiencies is more restrictive than existing federal regulations, but is necessary because the requirement is in the authorizing state statute.
- Requiring two forms of ID if not moving interstate is not part of federal regulations but allows Minnesota to better track animals within the state. Tags, especially in farmed cervids, can fall out or be pulled out with everyday activities by farmed cervids. If animals have just one form of identification and multiple animals in a herd lose their ID, then tracking a specific animal that has lost their ID is problematic. If animals have two forms of ID, it is unlikely an animal will lose both IDs before a lost tag is discovered by the producer and replaced with a new tag applied to the animal. This will allow the Board to know to track the specific animal through time.
- Mandatory depopulation of a CWD-infected herd is more restrictive than the federal regulations, but is required by the authorizing state statute, Minn. Stat. §35.155.
- For farmed Cervidae producers whose herds have not met CWD testing requirements, the consequences in the proposed CWD surveillance standards will be more restrictive because fewer missed tests will be allowed before the herd's movement is restricted than the current rules allow.

**“(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule. . . . ‘[C]umulative effect’ means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.”**

The primary objectives of this rulemaking are to incorporate statutory changes, prevent and control disease, allow the Board to more effectively address and respond to detections of Chronic Wasting Disease (CWD) positive farmed Cervids, and support compliance with state and federal requirements for farmed Cervidae. The Board partners with the USDA, the DNR, MDA, and MDH in its regulation of farmed Cervidae. The state and federal regulations complement each other as each focuses on the health and management of Cervidae. Where the state and federal program requirements overlap, the Board makes some state requirements stricter where the Board determined it is necessary, but none of the state and federal requirements conflict with each other. The Board consulted with its state and federal partners throughout the rule drafting process and ensured that a representative from each of these partners was on the farmed Cervidae rulemaking advisory committee to lend their expertise and raise concerns about any potential conflict with their regulations. No conflicts were identified, although potential gaps in authority, where no state or federal regulations applied, were. The proposed revisions work in unison with existing state and federal laws and will benefit local units of government and citizens of the state by ensuring healthy animals for healthy people and communities. Some of the proposed rules cover areas that are not addressed by federal law or other Minnesota state laws. Therefore, this consideration is not applicable for those portions of the rules.

### **PERFORMANCE-BASED RULES**

Minnesota Statutes, sections 14.002 and 14.131, require that the SONAR describe how the agency, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the agency’s regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.

A statutory responsibility of the Board is to protect the health of the domestic animals of the state. The Board is required to oversee regulations related to farmed cervids. The Board was guided by performance based regulatory principles as it developed these proposed rule amendments. The proposed rules were developed with the goal of designing programs for the control and eradication of animal diseases with the most flexibility for Minnesota regulatory officials, the Board’s federal regulatory partners, farmed Cervidae producers, and others involved in the farmed Cervidae industry. With the adoption of these rules, the Board believes

it will be able to advance the control of chronic wasting disease at the least cost possible to the producer. In much of animal health regulation, maximum flexibility for the regulated party or the agency is not possible without putting animal health in jeopardy. In this case, these proposed rules provide regulated parties as much flexibility within a standard framework for disease control that is performance-based and is as noninvasive as possible.

Flexibility is important because every animal disease is unique and control protocols must be tailored to meet specific criteria for each disease. Every control and eradication program must also be based on the epidemiology of the disease.

Regardless of differences between diseases and animals, every disease control program is based on three fundamental components. To effectively administer disease control programs, the Board must be able to (1) locate the animals that are at risk of exposure to the disease, (2) test the animals to determine if they are infected with the disease, and then (3) implement effective programs to stop the spread of the disease.

The proposed rules provide regulatory authority to the Board to fulfill its mission while also allowing the Board enough flexibility to timely administer disease control response and programs with compassion and respect for livestock producers and animal owners.

Farmed cervid producers are required to test for CWD. If CWD is detected in a farmed cervid herd, once that cervid farm is identified as infected, CWD-positive cervid farms are required to be quarantined and depopulated; farmed cervid producers must maintain fencing for five years after date of CWD detection and post fencing on the premises with biohazard signs, as there are currently no proven methods to eradicate prion infection without removal of animals on contaminated properties.

CWD poses a major threat to cervid farms due to continued disease spread. CWD transmission is possible through multiple exposure pathways to susceptible farms. The proposed rule amendments will regulate all farmed cervid producers. These proposed rules are to meet the Board's mission to protect the health of the state's domestic animals, and particularly farmed cervids.

The proposed rules apply these same standards and protective measures. Since the proposed rules will be mandatory for all current and future farmed cervid producers, the Board must amend the rules to incorporate the changes made by the legislature in 2019. The Board also proposes amending the rules to better protect the health of the state's domestic animals/farmed cervids. Using the existing framework of the current rules maintains consistency and clarity for farmed cervid producers and promote better understanding of the proposed rules they must comply with. The Board knows of no better way that would make

these requirements more flexible yet continue to meet the Board's mission to protect the health of the state's domestic animals.

### **ADDITIONAL NOTICE**

Minnesota Statutes, sections 14.131 and 14.23, require that the SONAR contain a description of the Board's efforts to provide additional notice to persons who might be affected by the proposed rules or explain why these efforts were not made. The Board did the following to provide additional notice to persons who might be affected by the proposed rules:

- posting the Request for Comments and the rule draft on the Board's rulemaking page of its website
- emailing the Request for Comments to the approximately 13,631 Listserv subscribers of the Board's GovDelivery system
- emailing the Request for Comments to:
- giving notice to everyone who has registered to be on the Board's rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a
- giving notice to the Legislature per Minnesota Statutes, section 14.116
- holding 4 virtual public listening sessions
- holding 3 listening sessions for the federally recognized MN tribes and associated tribal organizations
- holding 2 virtual listening sessions specifically for farmed Cervidae producers

The below Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in a \_\_\_\_\_, 2021, letter and Order by Administrative Law Judge James R. Mortenson.

### **ADDITIONAL NOTICE PLAN**

1. Persons on the Board's rulemaking mailing list
2. Persons on the Boards "news release" notification list
3. The Minnesota House of Representatives Agriculture and Food Finance and Policy Division Committee
4. The Minnesota State Senate Agriculture, Rural Development, and Housing Finance Committee
5. The Minnesota House of Representatives Committee on Environment and Natural Resources Policy
6. The Minnesota State Senate Environment and Natural Resources Finance Committee
7. The Minnesota Department of Agriculture (MDA)
8. The Minnesota Department of Health (MDH)
9. The Minnesota Department of Natural Resources (DNR)
10. The Minnesota Pollution Control Agency (PCA)

11. The University of Minnesota College of Veterinary Medicine (UMN-CVM)
12. The University of Minnesota Veterinary Diagnostic Laboratory (UMN-VDL)
13. The Minnesota Veterinary Medical Association (MVMA)
14. The United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service
15. (APHIS) Veterinary Services (VS), Minnesota Area Office and National Cervid Health Program staff
16. All farmed Cervid producers registered by the Board
17. All "CWD Sample Collectors" authorized by the Board
18. The Minnesota Deer Farmers Association
19. The Minnesota Elk Breeders Association
20. The Reindeer Owners and Breeders Association
21. The Minnesota Deer Hunters Association
22. All veterinary clinics in Minnesota for whom the Board has contact information
23. All Minnesota Type II accredited veterinarians
24. All "livestock markets" located in Minnesota
25. The Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Animal Health
26. The Iowa Department of Agriculture and Land Stewardship, Animal Industry Bureau
27. The North Dakota Department of Agriculture, Animal Health Division
28. The South Dakota Animal Industry Board
29. The North American Elk Breeders Association
30. The North American Deer Farmers Association
31. The University of Wisconsin Veterinary Diagnostic Laboratory (WVDL)
32. The Minnesota Farm Bureau
33. The Minnesota Farmers Union
34. The Association of Minnesota Counties
35. Great Lakes Indian Fish & Wildlife Commission
36. The Minnesota Zoo
37. Hemker Wildlife Park
38. Paul Bunyan Animal Land
39. City of Little Falls
40. Trowbridge Creek Zoo
41. Backcountry Hunters & Anglers (BHA), Minnesota Chapter
42. Quality Deer Management Association (QDMA), Minnesota Branches
43. Bluffland Whitetails Association (BWA)
44. Whitetails Unlimited
45. Persons who submitted comments during the Request for Comments period
46. All 11 of the federally recognized Minnesota Tribal Nations
47. The Minnesota Chippewa Tribe



48. The 1854 Treaty Authority, including specific members of their natural resources/wildlife staff
49. MN Inter-Tribal Organizations, including specific natural resources/wildlife staff members

The Board's Notice Plan also includes giving notice required by statute. The Board will mail the rules and the Notice of Intent to Adopt to everyone who has registered to be on the Board's rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a. The Board will also give notice to the Legislature per Minnesota Statutes, section 14.116.

The Board's Notice Plan includes notifying the Minnesota Commissioner of Agriculture because the rules affect farming operations per Minnesota Statutes, section 14.111. The Board met with the Commissioner on October 26, 2020, and notified him of the proposed amended rules.

The Board created a webpage on the Board's website regarding rulemaking. All notices sent to parties listed above included the link to the Board's rulemaking webpage: Information relevant to this rulemaking is located on the Board's rulemaking webpage:

<https://www.bah.state.mn.us/public-rule-making/>.

The website provides electronic links to:

- the Request for Comments as published in the Minnesota State Register,
- directions on how to submit comments,
- the online comment page,
- the proposed rule draft,
- subscribe to the Board's rulemaking listserv, and
- contact information for the Farmed Cervidae rulemaking staff and rules coordinator.

The Board will provide all future notices required by statute. We will send the Notice of Intent to Adopt to all parties previously notified, parties we identified during the rule development phase as being affected and interested by the rules, those who submitted comments during the first formal comment period, and any additional parties, as requested. We will post the SONAR and proposed rules on the Board's website when the Notice of Intent to Adopt is published in the *State Register*.

The Board's plan is designed to broadly interpret "affected and interested parties" and to provide affected and interested parties with many opportunities to know about the Board's rulemaking process and to participate and voice their concerns.

## **CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT**

As required by Minnesota Statutes, section 14.131, the Board will consult with Minnesota Management and Budget (MMB). When the Board sends the documents listed below to the Governor's Office for review and approval, the Board will also send the same documents to MMB. We will do this before the Board publishes the Notice of Intent to Adopt. The documents are:

- the Governor's Office's Proposed Rule and SONAR Form,
- the proposed rules, and
- the SONAR.

The Board will submit a copy of the correspondence and any response received from MMB to the Minnesota Office of Administrative Hearings (OAH) at the hearing, or with the documents that it submits for Administrative Law Judge review.

#### **DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION**

As required by Minnesota Statutes, section 14.128, subdivision 1, the agency has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The agency has determined that they do not because implementation and enforcement of the rules are performed by the Board and, as of the 2021 special legislative session, the DNR as to farmed white-tailed deer.

#### **COST OF COMPLYING FOR SMALL BUSINESS OR CITY**

##### **Agency Determination of Cost**

As required by Minnesota Statutes, section 14.127, the Board has considered whether the cost of complying with the proposed rules amendments in the first year after the rules take effect will exceed \$25,000.00 for any small business or small city. The Board has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city. The Board has made this determination based on the probable costs of complying with the proposed rules, as described in the Regulatory Analysis section of this SONAR on pages \_\_\_\_\_, and based on over 100 years of experience implementing and enforcing animal disease control and eradication programs in Minnesota. Since the Board was established in 1903, many diseases have been successfully eradicated from the state's livestock populations. These include Glanders in horses, scabies in sheep, tuberculosis and brucellosis in cattle, hog cholera and pseudorabies in swine, *Salmonella pullorum* and *Salmonella gallinarum* in chickens and turkeys, and *Mycoplasma gallisepticum* in turkeys. Other diseases are continually or sporadically present in Minnesota's domestic animals and are controlled under current rules. Some of these include avian influenza in domestic poultry, chronic wasting disease in deer and elk, equine infectious anemia and West Nile Virus in horses, and tuberculosis in cattle. In no case has the cost of control or eradication of these

diseases exceeded \$25,000 for any small business or small city in any given year. Where there is a cost to complying with a proposed rule amendment, the cost is discussed in the rule-by-rule analysis of this SONAR.

## **LIST OF WITNESSES**

If these rules go to a public hearing, the Board anticipates having the following witnesses testify in support of the need for and reasonableness of the rules:

1. Dr. Linda Glaser, Assistant Director, Board of Animal Health, will testify about the need and reasonableness of the rules amendment as it relates to farmed Cervidae producers.
2. Dr. Courtney Wheeler, Senior Veterinarian, Board of Animal Health, will testify about the need and reasonableness of the rule amendment as it relates to farmed Cervidae producers.
3. [Name], [Title], Department of [Name] will testify about [describe], OR  
The Board does not anticipate having any non-agency witnesses if a hearing is held [TBD].

## **RULE-BY-RULE ANALYSIS**

This section explains what each proposed rule change does and why the change is needed. Some proposed rule changes, which serve to add statutory changes made by the legislature, are discussed only briefly.

Proposed change to Minnesota Rules:

### **Justification for Minnesota Rules, Part 1721.0370 DEFINITIONS.**

Definitions have been added or modified as the new term is now included in amendments to the rules (annual inventory, authorized CWD sample collector, CWD Exposed animal, CWD state level 6 herd, CWD farmed Cervidae management zone, exclusionary fencing, official animal identification, physical inventory, redundant gating, successful CWD test result), or where the term is currently found in the rules and is now added or changed to provide clarification (commingled animals, CWD test, farmed Cervidae, herd, wild Cervidae)

Definitions are also proposed to be deleted if the term does not appear in the rules or where the rule or rule part using the term is proposed to be struck (brucellosis certified free herd, CWD contaminated premises, and tuberculosis accredited free herd).

Below are specific terms with additional information provided on our reason for proposing to

change the term:

**Subp. 6** – We have deleted the previous subpart 6, ‘CWD Contaminated premises’, as this definition used qualitative criteria to differentiate levels of CWD contamination on a premises. The length of time required to maintain an enclosure fence on a property where a CWD infected herd was found was based on these criteria. These descriptive criteria cannot be validated or measured and were not scientifically defensible in assessing the length of time to maintain a fence enclosure. This term is not used in the proposed amended rules.

**Subp. 8** – The word ‘certified’ is struck from the term and ‘state level 6’ was added. ‘Certified’ is the term used in the federal CWD Herd Certification Program to indicate a herd has reached the highest CWD Status level of that program and is eligible to move animals interstate. We did not want confusion between the state and federal programs so we changed this term to clarify the status in this definition is under the state program.

**Subp. 9** – We changed the term for an area the Board determines based on cases of CWD confirmed in wild deer from ‘CWD endemic area’ to ‘CWD farmed Cervidae management zone’. The word ‘endemic’ describes a disease that is established and maintained in a population and it was not the intent of the Board to make this determination about CWD in either the Minnesota wild deer population or wild herds in other locations of the country. The intent of this term is to designate the geographic area we have established for the purposes of regulating farmed Cervidae and limiting the potential spread of CWD. The Board determines the area based on confirmed cases of CWD in the wild, but does not require the disease to be endemic in the state’s wild cervid herd in Minnesota before the Board would act.

**Subp. 11** – We deleted the term ‘Official CWD test’ as that term is defined in the USDA CWD federal program standards. We now define ‘CWD test’ as the Board wants authority to approve other tests as they become available for testing farmed cervids. This testing would occur outside the federal CWD program standard testing requirements where only an ‘official CWD test’ can be used.

#### **Justification for Minnesota Rules, Part 1721.0380 GENERAL REQUIREMENTS.**

**Subp. 2** – Minnesota Statute 35.155, subp.10 (b), indicates a person is ineligible for future registration unless the person had undertaken measures that make future escapes extremely unlikely. The Board has added a sentence to this part of the rule regarding the Board’s authority to refuse to re-register a person if a previous registration under section 35.155 had been revoked. The Board has the authority to cancel or revoke a registration if the owner fails to comply with the requirements of Minnesota Rules 1721.0370 to 1721.0420.

Herd registration cancellation is not done capriciously by the Board. This action is only initiated

when a producer demonstrates the inability to comply with farmed Cervidae regulations, as evidenced by documentation of chronic non-compliance and multiple efforts by the Board to educate the producer regarding compliance with program requirements. The time, effort, and documentation required by the Board to implement herd cancellation, including preparing a 'Findings of Fact and Order', take significant Board resources. Additional time and resources are expended by the Board to enforce the rule which requires a person to be registered with the board to possess live Cervidae in the state. Under Minnesota Statute §35.93, subd. 2, the Board has authority to revoke or refuse to renew a permit, license, or certification if a person violates Chapter 35. In the proposed rules the Board is applying this authority to refusing to renew a registration based on a person's violation of Minn. Stat. §35.155 and rules its rules.

**Subp. 3** – The Board has changed the language of this part of the rule from conducting an inspection 'at least once every 12 months' to conducting an inspection 'annually'. This language aligns with the language of the relevant statute, Minn. Stat. 35.155, Subd.7(a), which says, 'The Board must annually inspect farmed Cervidae, farmed Cervidae facilities, and farmed Cervidae records.' The Board struck the last sentence currently in this subpart.

- **Section A** regarding a fence deficiency detected during an inspection is amended to include language added to Minn. Stat. 35.155, subds. 4 and 7(b), during the 2019 legislative session.
- **Section B** adds language to clarify the existing requirement in this subpart that a Board representative may inspect a site prior to being stocked with farmed Cervidae to ensure the site's/herd owner's compliance with the regulations--specifically for the Board to verify that the enclosure that will hold the farmed Cervidae is adequately fenced to meet requirements, and that there are no wild Cervidae inside the enclosure, which is not allowed as outlined in Minn. Stat. 35.155, subd. 2.
- **Section C** was inserted to specifically state that a Board representative is allowed to conduct an inspection to verify a herd owner no longer possesses farmed Cervidae and no longer needs to be registered by the Board. Until this is verified, the herd owner must meet the requirements of the state's farmed Cervidae program.

**Subp. 4** – The initial sentence inserted into this section clarifies that the records that must be kept by the herd owner must include all information outlined in subpart 10. Language has been added to this section to distinguish between the requirements for performing and documenting an annual inventory versus a physical inventory. The terms 'annual' and 'physical' inventory have been added to the 'Definitions' section of the rules (Minn. Rule 1721. 0370). A physical inventory is now required every three years for all registered farmed Cervidae herds in Minnesota where prior to 2019 this was only required for farmed Cervidae herds to meet federal requirements to move animals interstate. This new requirement has been added to the rules based on a recommendation from the Office of the Legislative Auditor in April 2018 after an audit of the Board's Farmed Cervidae Program (refer to p. 24 of *OLA BAH Oversight of Deer and Elk Farms, 2018 Evaluation Report*, published in April 2018).

A physical inventory must include visual verification of all the numbers and letters of all animal identification in every cervid that is required to be identified at the time the inventory is conducted. It is critical to verify identification for each animal in a herd to reliably track an animal's movement through time, as we do in the Board's database, to ensure the herd owner is in compliance with Board regulations. Ensuring the Board's and owner's written records are consistent is essential to disease traceability and will now be verified every three years with a physical inventory.

- **Section A** modifies existing language to clarify the two individuals who must verify every inventory. One of the individuals must be an accredited veterinarian with no ownership interest in the herd or the premises where the herd resides. It is important to have two people review and verify the identification of animals in a herd to minimize the chance for errors. Language was also inserted to clarify the need to provide information on animals that are retagged as animals may lose an identification tag for a variety of reasons. It is critical for a new identification number to be linked to the previous identification number in an animal so that an individual animal can be tracked over time and movement by both the Board and the owner.
- **Section B** Language was struck, and new language inserted to clarify requirements allowing the Board to request a physical inventory when necessary and to include the same requirements for two individuals to verify the inventory as outlined in Section A.

**Subp. 5** – This subpart has new language and is now divided into sections to increase clarity and readability of the rules.

- **Section A**, restates statutory requirements that “All perimeter fences for farmed Cervidae must be at least 96 inches in height and be constructed and maintained in a way that prevents the escape of farmed Cervidae or entry into the premises by free-roaming Cervidae”.
- **In Section B**, language is added to include the 2019 legislative changes to Minn. Stat. 35.155, subd. 4, regarding all fencing installed or repaired after July 1, 2019. The Board is expanding on this language in rule to include the option for other materials to be used in lieu of high tensile wire if they are equivalent to or more effective in preventing the ingress and egress of farmed cervids. We believe the goal of preventing ingress or egress is predominant and should include the ability to construct or repair an area of a fence with materials chosen by an owner to maintain or improve their fencing that are just as strong or stronger than high tensile wire.
- **In Section C**, language is inserted in from statute regarding the requirement for redundant gating. The term ‘Redundant Gating’ has been added to the ‘Definitions’ section of the rules (Minn. Rule 1721. 0370). Not all access sites to an enclosure are used regularly by farmed Cervidae owners, and there is a need to ensure these access points remained closed to prevent ingress or egress of cervids. Inserted language requires that access points that are not regularly used for feeding, managing, or handling farmed

Cervidae. be secured.

- **Section D** is added to this subpart from 2019 legislative additions to the statute.

**Subp. 6** – Language in this section is inserted that requires all animals that escape to be tested for CWD regardless of age. The herd owner must keep a record of the escape event to be maintained along with all other records required in these regulations.

- **Section A** requires all escaped animals that are killed or found dead to be tested for CWD, regardless of age. This testing requirement exceeds the requirement in Minn. Stat. 35.155, subd. 11(c), which requires animals over 12 months of age to be tested. We believe the concern for potential exposure to wild Cervidae justifies the testing of all escaped farmed cervids. The Board has trained staff willing to collect samples from escaped animals that may be killed by hunters or found dead by members of the public and is willing to cover the cost of laboratory testing.
- **Section B** is language we added to this subpart based on changes to the statute in the 2019 legislative session regarding the ability of the Board to revoke an owner's registration based on more than one escape in a six-month period. This language was added to Minn. Stat. 35.155, subd. 4 ("Fencing"), but as the language pertains to escapes, we believe it is better placed in this subpart.

**Subp. 7** –

- Amendments to language in **Section A** of this subpart clarifies that wild Cervidae must be removed from the enclosure area prior to bringing any farmed Cervidae to the premises to prevent contact between wild and farmed animals.
- Amendments to **Section B** clarifies the owner must destroy wild Cervidae found in their enclosure and not within the facility as all areas of the facility may not be required to be fenced fence as outlined in subpart 5 of this rule.

**Subp. 10** – In this subpart we amend and insert language to emphasize the need for an owner to keep records related to a herd inventory and disease traceability. Amendments clarify which records must be maintained including the source of farmed Cervidae semen, contact information for buyers and sellers of animals and the dates animals were moved into and out of the herd and all escape events. The requirement to report movement of farmed Cervidae semen is proposed because current research has revealed the presence of the CWD prion in semen. Semen is collected and transported to other herds, across the state and across state lines for artificial insemination (AI.) Research is ongoing on the implications of CWD in semen. As the Board's mission is to protect the health of the domestic animals of the state, it is imperative that semen be tracked by the Board. This change is a reporting change only, to further enhance the Board's ability to perform epidemiological investigations when a herd is found to be infected with CWD.

#### **Justification for Minnesota Rules, Part 1721.0390 ANIMAL IDENTIFICATION.**

In this area of the rules we clarify that all farmed Cervidae must be officially identified and

when. Official identification is defined by USDA APHIS for livestock species which includes farmed Cervidae. There are two numbering systems that Minnesota currently approves as official identification in farmed Cervidae species, and there are a variety of forms of ear tags with these numbering systems; plastic tags of various colors, metal ear tags, and microchips.

- In *Section A*, we inserted language to align with Minn. Stat. 35.155, subd. 6, requiring white-tailed deer fawns to be identified earlier than newborns of other farmed Cervidae species.
- In *Section B*, we add additional criteria that animals must have two forms of identification ID) before being moved off a premises to maintain the identity of an animal if one tag is lost. One ID must be “official animal identification” as described in Minn. Rule 1720.0370, definitions, the other must be unique within the herd. Currently, this is a requirement under the federal herd certification program for all animals in a herd where the herd owner wants to move animals interstate. We are now requiring two forms of identification for all animals in herds that move animals off their property. This new requirement will impact herds that do not move animals interstate but want to move animals within the state of Minnesota.

#### **Justification for Minnesota Rules, Part 1721.0400 IMPORTATION OF FARMED CERVIDAE.**

##### **Subpart 1**

We added the requirement that a permit must be obtained prior to the movement of not only live Cervidae but also farmed Cervidae semen. This allows the Board to control and trace disease during an investigation.

##### **Subp. 2**

We added the word “farmed” to clarify that a CVI is required for farmed, not wild species.

##### **Subp. 3**

We moved the requirement that a producer that moves animals into their farmed Cervidae herd must report that movement to the Board within 14 days as outlined in Minn. Stat. 35.155, subd. 11(b). The rule language was amended to clearly define the information that must be submitted and to include reporting requirements for farmed Cervidae semen.

##### **Subp. 4**

- In *Section A*, language was amended to include that farmed Cervidae semen must originate from a level 6 herd.
- In *Section B* of this subpart, we remove the term ‘endemic’ which implies a certain level of infection in a population. The Board does not have the data to assess whether CWD is endemic in other states and each state has unique terminology for areas in which CWD has been identified.
- *Section C* directs that live Cervidae and farmed Cervidae semen may not be imported



from a herd that is infected with or exposed to CWD. Under Minn. Stat. §35.155, subd. 12, the Board has statutory authority to modify import requirements based on disease concerns in a state at the time animals are being imported.

- **In Section D** of this subpart, we now prohibit the movement of entire farmed Cervidae carcasses into Minnesota to reduce the risk of moving a CWD infected carcass into the state. We do continue to allow portions of the carcass to be imported if they do not include parts of the animal known to harbor the CWD prion.
- **Section E** is added to this subpart to allow Minnesota farmed Cervidae that are moved to other states for a display to return to their herd in Minnesota if their area of display meets the requirement preventing any contact with farmed or wild cervids. We believe this type of movement and activity poses minimal risk of disease exposure to the state farmed Cervidae herd as these Minnesota animals would not be commingled or have any type of contact with other cervids.
- In response to requests from representatives of the farmed Cervidae industry language was added to **Section F** which requires the Board to post a list of approved CWD tests.

#### **Justification for Minnesota Rules, Part 1721.0410 INTRASTATE MOVEMENT OF FARMED CERVIDAE.**

**Subp. 1** includes the requirement for a producer that receives animals or farmed Cervidae semen into their herd to report this movement to the Board. The requirement to report movement of live farmed Cervidae is currently outlined in Minn. Statute 35.155, subd. 6(b). The rule language was amended to clearly define the information that must be submitted and aligns it with requirements for farmed Cervidae imported into Minnesota (See Minn. Rule 1721. 0400. Subp. 3).

**Subp. 2** we reference the identification and reporting requirements for farmed Cervidae that move to other locations in Minnesota, as outlined Minn. Rule 1721. 0390, in lieu of repeating requirements.

**Subp. 3** was added to this section to clarify the minimum level of CWD herd surveillance that must be achieved before animals may move out of a herd to other locations in Minnesota. As farmed cervids can be infected with CWD for a relatively long period of time before showing any signs of clinical illness, it is critical to manage movement of farmed Cervidae in relation to herd surveillance for CWD. This will minimize the risk of moving a CWD infected animal that appears clinically healthy.

CWD herd surveillance levels are outlined in Minn. Rule 1721.0420, subp. 1E, and only herds at the highest level of CWD surveillance (level 6) may move to other farmed Cervidae herds in Minnesota. Herds at lower levels of CWD herd surveillance must be individually permitted by the Board prior to moving animals so that the movement can be evaluated for risk of CWD exposure to other farmed cervids.

**Subp. 4:** current rule language is amended to clarify requirements for restraint of animals in transit.

**Subp. 5** adds language to require a farmed Cervidae herd to achieve a level 4 or higher status in the state's CWD herd certification program before they can receive animals from other herds. This requirement will not impact owners that are in compliance with all state regulations for farmed Cervidae; it will only affect Minnesota producers who have not participated in the program long enough to achieve a level 4 or higher herd status, or those whose statuses were lowered to a CWD level 3 or lower status due to non-compliance. Herds with a status level lower than level 4 will not be able to acquire more animals until they come into compliance and advance to a CWD Level 4 status.

In addition, farmed Cervidae may not be moved to a premises that is not in compliance with Board regulations for possessing farmed Cervidae. This requirement was added to the rules to eliminate the sale of farmed Cervidae to people in Minnesota that are not registered with the Board and do not meet the requirements to possess farmed Cervidae. Farmed Cervidae have been advertised for sale on Craigslist, Facebook, and likely other social media outlets, in addition to being sold at livestock sales barns, auctions, or other sales. Buyers have purchased farmed Cervidae without knowledge of state requirements for possessing them, and sometimes have no ability to meet these requirements. Sellers will now need to ensure they are selling their farmed Cervidae to a person that is registered with the Board and meets all program requirements.

#### **Subpart 6**

- **In Section A** of the current rules, the movement of live farmed Cervidae from a CWD farmed Cervidae management zone (formally termed CWD endemic area) to a slaughtering establishment is allowed by permit from the Board. This section has been amended to allow additional options for permitted movement between herds that are all located within a CWD farmed Cervidae management zone. Movement of farmed cervids within a contiguous zone does not increase the risk of CWD infection to Minnesota farmed Cervidae outside the zone. Allowing this type of movement will provide increased commerce in this area with no additional risk of spreading CWD to cervids as these herds are all within an area where CWD is found in wild cervids within 15 miles of their registered location. Amendments will also allow farmed Cervidae to move out of a CWD farmed Cervidae management zone to other locations in Minnesota with approved testing, when additional testing options become available. Currently there are no approved live animal testing options to determine whether an animal is infected with CWD. However, recent research has identified testing methods that may be accurate in live animals.
- **Section C** of this subpart amends language limiting the movement of farmed Cervidae carcasses out of a farmed Cervidae management zone unless permitted by the Board.

### **Justification for Minnesota Rules, Part 1721.0415 EXHIBITION.**

Previously the farmed Cervidae rules did not include a section on exhibition. Board staff want to provide a separate rules part with clear guidance for farmed Cervidae that are moved for exhibition, as is the case with rules for other livestock groups.

#### **Subpart 1**

This portion of the rule outlines the requirement to report movements of farmed Cervidae to exhibit as already required in parts 1721.0400 and 0410. This subpart also repeats identification requirements as outlined in part 1721.0390.

#### **Subpart 2**

This portion of the rule provides an exemption from intrastate movement requirements (1721.0410, subp. 6) to exhibition into a farmed Cervidae management zone with prior approval from the Board. Animals moving to exhibit within a farmed Cervidae management zone may be permitted to move if the animals are not exposed to other farmed cervids, wild cervids, or land where cervids are kept. This exemption allows the movement of cervids, such as reindeer to winter holiday events or other types of cervids to hunting shows, where there is no risk of exposure to or from other farmed or wild cervids.

### **Justification for Minnesota Rules, Part 1721.0420 CHRONIC WASTING DISEASE (CWD).**

We clarify here that the rules under this part pertain to a Minnesota CWD surveillance and herd certification program to distinguish them from the federal CWD herd certification program. In this rule, we have changed the term 'slaughtered' to 'killed' as we believe it is a more appropriate term for the circumstances under which animals' lives are ended on these farms. The term 'slaughtered' in the context of these rules implies inspection of the carcass and/or a facility where the animal's life is ended. This is not the case for farmed Cervidae killed within their own enclosures primarily by gunshot.

#### **Subpart 1**

- **Current Section B** rule language is stricken as we do not believe it is necessary for a farmed Cervidae owner to sign an agreement annually to comply with program requirements. Board agents provide education on the rules and explain program requirements to producers with their initial registration to possess farmed Cervidae. The requirement under this section to test all farmed Cervidae 12 months of age and older that die or are killed continues throughout the management of their herd.

- **New Section B** proposes alternative language to the stricken language as written in current rule (1721.0420, Section I) (see explanation below). Requirements as outlined in this new language are more effective for assessing and applying consequences for missed CWD

surveillance in farmed Cervidae herds. These guidelines are based on recommendations for states in the federal USDA APHIS CWD program standards and will create an increased impact for missed testing. With the proposed outline of consequences for missed CWD surveillance, for a herd with good compliance history that fails to test one animal or less than 10% of animals that die or are killed in a 12-month period, CWD status level would not be impacted. As the percentage of animals not successfully tested or missed increases, consequences are either lowering or suspending the CWD status level of a herd which would impact the ability of the herd owner to move animals out of their herd.

The Board does not outline consequences for failure to comply with legal requirements in any other areas of its rules, but we believe CWD is a disease of concern to the public and other state agencies. By outlining consequences for failure to test for this disease we are striving to be transparent as well as provide notice to the public and those affected. As these assessments may change with new testing options or better understanding of the epidemiology of CWD, these criteria will not require a rule change and will be available and kept updated on the Board's website. The Board will also notify farmed Cervidae producers when program criteria change and will allow producers a grace period to comply. The Board will change program criteria only after risk-based assessments in consultation with federal farmed Cervidae program experts and approval by the State Veterinarian.

- **In Section C**, we have added the requirement that all samples from farmed Cervidae for CWD testing for herd surveillance must be collected by Board-Authorized Sample Collectors. The Board initiated a program in 2019 which requires training and certification of individuals who collect samples from farmed Cervidae for CWD testing. The goal of this requirement is to improve the quality of samples submitted, and to improve the rate of successful test results. This certification requirement was also a key recommendation made in the 2018 audit of the Board's farmed Cervidae program by the Office of the Legislative Auditor (*OLA BAH Oversight of Deer and Elk Farms, 2018 Evaluation Report*. Summary, Key Recommendations p. 30).

In this section, we also clarify who has the authority to approve laboratories to conduct "official CWD testing" of farmed Cervidae as this is a federal authority, not state authority. The USDA Animal Plant Health Inspection Service (APHIS) is the authority to approve the laboratories and their CWD testing for any 'official' tests required for CWD herd surveillance under the federal CWD program standards. Currently, the only 'official' test approved for routine surveillance of farmed Cervidae is the immunohistochemistry (IHC) test. We have also added to this section that the Board has discretion to approve other tests for additional testing protocols outside of the federal program requirements for CWD surveillance in the state herd. At this point in time there are no additional diagnostic tests available for assessment of CWD in cervids.

- **Section F** strikes the first sentence of the current rule language as the requirement for movement of animals is now in both sections of the rule regarding movement of farmed cervids (see 'Movement Reports' in parts 1721.0400 and 0410).

- **Section G** clarifies that an inherited CWD herd status is based on the lowest herd status of a source herd for any animals added to the herd.

- **In Section H** we struck the second sentence of the current rule language as we believe it's more appropriate for this language to be included earlier in the rules, under the general requirements, and applies to a herd owner's failure to comply with any of the rules in the farmed Cervidae program.

- **Section I** of this subpart is stricken because this section required the surveillance period to be shortened as the primary consequence for animals that are not tested for CWD or animals that are not successfully tested due to poor quality samples where the CWD status of the animal cannot be determined. That requirement is ineffective as a consequence for missed surveillance as most herd owners have participated in CWD surveillance for many years or inherited animals from herd owners that participated in herd surveillance for many years. Based on the calculations in this section, herds with a CWD Level 6 status would have their surveillance start date advanced 90 days for each animal that is not successfully tested for CWD. If a producer began CWD surveillance in the mid-2000's, then there would be no change to their CWD herd status and no impact to the herd owner until egregious missed surveillance occurred. As an example: a producer with a CWD surveillance start date of January 2005 could fail to test 40 animals before their herd's CWD status level would be impacted in December 2020. This is an inadequate consequence for missed CWD surveillance that was also recognized in the OLA audit referenced above, and a key OLA recommendation was to strengthen enforcement of missed CWD surveillance (*OLA BAH Oversight of Deer and Elk Farms, 2018 Evaluation Report*. Summary, Key Recommendations p. 27).

## **Subpart 2**

In this section we clarify when the board would quarantine a herd related to CWD.

- **In Section B**, we modified the requirement for submitting records to the Board as the Board may need either more than five years of records or fewer than five years of records in some situations. This change should not present a hardship to a herd owner as herd owners are required to keep records for 10 years.

- **In Section C**, we struck all current language regarding release of quarantines because:
  - 1) the 2019 legislative changes to the farmed Cervidae program statutes made some of the current options under the rules obsolete, and/or
  - 2) we have chosen to strike the criteria of premises contamination and the rule that used these criteria to determine the length of time a premises enclosure must be maintained to prevent access by wild Cervidae or prohibit restocking with farmed Cervidae. The criteria were based on an empirical evaluation of transmission of CWD

among herd animals and the length of time the infection was recognized in the herd. Given the current scientific knowledge of the potential survivability of CWD prions in the environment, we will now require the enclosures to be maintained and restocking with farmed Cervidae prohibited for the maximum time period allowed by statute for any site that held CWD infected animals, and/or

3) there is updated guidance language in the federal program standards for describing conditions for quarantine release. Some of the conditions in the current rules still warrant quarantine release and are included in the rewording and reorganization of language in Sections C and D.

• **Section D** is amended to incorporate the 2019 changes to statutory language. We added several requirements to Section D which are not part of the current rule. Most of the new requirements are currently in policy as best management practices for disease control; one requirement is new.

- We added language that the Board may require a herd owner to prevent commingling of their CWD infected herd with wild Cervidae as we believe this is prudent to prevent any disease transmission, including to the wild population. This measure may be required after assessing how quickly the herd can be depopulated and the risk for this herd to expose wild Cervidae across the fence-line. Farmed cervids in areas close to or surrounded by wild deer habitat and under conditions where farmed cervid food may be available to wild cervids would be examples of high-risk factors where a CWD infected farmed cervid herd could commingle with wild cervids.
- The language we added regarding the best management practices of carcass disposal and cleaning and disinfecting a premises to the extent possible are currently Board policy.
- Maintaining the enclosure fencing for five years is required by statute and is meant to prevent access to the enclosure by wild cervids to prevent any potential for disease transmission from CWD prions in the environment inside the enclosure to wild cervids. As this requirement to maintain fencing is out of concern for transmitting CWD from the environment to cervids, we believe it is a best management practice not to allow farmed cervids in the enclosure area for this period as well. Note that the Board received comments that 5 years is either an arbitrary number or not long enough; this timeframe, however, comes from the authorizing statute, Minn. Stat. §35.155.

### **Subpart 3**

We made several changes to this area of the rules based on information we have learned about CWD from scientific experts since the current rules were established in 2013. There is still a need to specify how the boundaries of a CWD farmed cervid management zone in Minnesota is determined. The proposed rules specify that a CWD farmed cervid management zone must include all locations within fifteen miles of a confirmed case of CWD in Minnesota wild Cervidae.

We want to maintain our authority to determine the appropriate area of a CWD management zone required if doing so is necessary to prevent the spread of CWD and are not changing this rule language. We also want to determine if establishing a CWD management zone is necessary. Under Minn. Stat. §35.155, the Board has broad statutory authority to “adopt rules as necessary to implement this section *and to otherwise provide for the control of Cervidae diseases.*” The Board’s authority in the current rules to determine the appropriate area of a CWD endemic area (now called a “CWD farmed Cervidae management zone”) was derived from the italicized language in this statutory authority.

The Board is increasing a management zone, once established, from 10 miles to 15 miles. When CWD was identified in wild cervids in Fillmore County in 2016 and there was continued spread of the disease in wild cervids from this area outward, the Board continued to evaluate the CWD management zone established at that time, on an annual basis.

For example, information received from the DNR regarding the average daily movements of wild deer in southeastern MN based on their radio-collar study of wild deer in this area helped inform the Board of the extent of movement of wild cervids in SE MN in early 2019. That research indicated the potential for wild cervids that are infected with CWD to move on the landscape, possibly intersecting with farmed cervid enclosures.

For the Board, this research established it was necessary for the Board to increase the radius of a Board-determined CWD endemic area from 10 miles to include all farmed cervids within a minimum of 15 miles in a CWD Endemic area. The Board’s five members citizen board unanimously voted on this measure at a regularly scheduled board meeting in March 2019. With the proposed rule change the Board is now officially putting into rule what has been the practice since March 2019. The Board wants to continue to be able to use scientific information to guide our judicious use of this authority. Certainly, once CWD is found in wild cervids, farmed cervid herds in proximity to these animals may be profoundly impacted by movement restrictions placed on these herds by the Board. The reason for these restrictions is to minimize the potential for herds surrounded by a CWD infection in the wild, and potentially infected by it, to move CWD infected but apparently healthy looking farmed cervids to another herd.

We are also eliminating the part of this rule that allowed herds to not be considered part of a CWD farmed cervid management zone if they prevented commingling of farmed and wild Cervidae. We no longer believe preventing this commingling is adequate to prevent exposure of farmed Cervidae to CWD when it is confirmed in wild Cervidae outside the enclosure. Recent studies have identified there are multiple potential routes of transmission of CWD to farmed Cervidae from infected wild deer and with limited testing methods available to detect CWD in live animals, this allows for outwardly healthy farmed Cervidae infected with CWD to be moved to uninfected farmed Cervidae herds in other locations in Minnesota.

When these rules were promulgated in 2013, the exception was premised on CWD being spread through commingling (i.e., physical, nose to nose contact) between farmed and wild Cervidae. Since that time, research studies demonstrate exposure to prions is more complicated than previously thought with indirect transmission a significant growing concern as there are multiple pathways for contamination of the environment with CWD prions. Prions can survive and remain infectious in the environment for long periods of time attaching to soil particles and moving with the soil through water, in dust, or attached to plant material. CWD prions can be deposited in the environment when soil or plant material is contaminated by prion laden feces, saliva, or urine from CWD infected animals or feces from animals, including birds, that have scavenged carcasses of CWD infected animals. CWD prions can withstand the digestive process of a scavenger, and the prions may be moved and deposited via feces to a new geographical area. Animals susceptible to infection with CWD prions can then ingest soil or plant material, possibly even water, and become infected.

Until all mechanisms for preventing exposure to CWD are understood, there should be no exceptions to the current rule. The Board believes that continuing to allow farmed Cervidae from CWD farmed cervid management zones to move under this rule is neither reasonable nor responsible. It only takes one infected animal to transmit CWD to another part of the state. Additionally, it only takes one infected animal, moved into another herd, to require depopulation of that herd. Based on the current evidence regarding the latest transmission of CWD, allowing any farmed Cervidae to move from a CWD endemic area to another area in the state is not reasonable and presents a very serious and immediate threat to the domestic health of Minnesota's farmed cervid herd.

#### **LIST OF EXHIBITS**

In support of the need for and reasonableness of the proposed rules, the Board anticipates that it may enter the following exhibits into the hearing record: **[List the exhibits.]**

#### **CONCLUSION**

**In conclusion:** The Board drafted these rules by incorporating comments from industry professionals, government partners, and members of the public, considering standard acceptable practices, and considering the Board's mission and existing requirements in chapter 35. Based on the foregoing, the proposed rules are both needed and reasonable.

---

[Date]

---

[Name]

[Title]



This document is available for public review on TBD [Date].

Attachments: [TO BE ADDED TO FINAL SONAR – For this version see the links to these documents on the Board’s rulemaking page:

<https://www.bah.state.mn.us/public-rule-making/>]

- Advisory Committee Report
- OLA BAH Oversight of Deer and Elk Farms, 2018 Evaluation Report
- Update released in 2019 to the OLA BAH Oversight of Deer and Elk Farms, 2018 Evaluation Report

DRAFT