

**Farmed Cervidae Rulemaking
Cervid Producer Listening Session
Tuesday, February 16, 2021
4:00 p.m. to 5:30 p.m.**

Attendance

Registered Farmed Cervidae Producers

Tony Beckel
Jerry Campbell
Brenda Hartkopf
Lance Hartkopf
Deb Holthaus
Rich Meech
Todd Miller
Roger Nietfeld
Gary Olson
Michael Robokoff
Scott Salonek
Marlen Schmitz
Daryl Simon
Dennis Suelflow
Steve and Melissa Uchytel
Brian Wagner
Kraig Wurst
Richard Zappa
Glen Zebarth

Industry Representatives

Minnesota Elk Breeders, Jim Byrne

Guests

Dean Compart
Tony Kwilas

Board of Animal Health (Board) Representatives

Annie Balghiti, Rules Coordinator
Beth Thompson, Executive Director
Dr. Linda Glaser, Assistant Director and Farmed Cervidae Program Director
Dale Lauer, Assistant Director
Dr. Courtney Wheeler, Senior Veterinarian

Welcome and Introductions

Ms. Annie Balghiti asked participants for comments on where to start in reviewing the Board's proposed draft amendments to Farmed Cervidae Rules. She directed the group to the February 5, 2021 rules draft posted on the Board's website (<https://www.bah.state.mn.us/media/BAH-2.05.21-DRAFT-changes-for-Minnesota-Rules-Chapter-1721.0370-to-1721.0420.pdf>) [Note: the Board also mailed this draft of the rules to registered farmed Cervidae producers along with a notice of the scheduled listening sessions].

Jim Byrne referenced Minn. Rule 1721.0420, Subp. 1(C) (State Chronic Wasting Disease (CWD) herd certification program) which reads, "For each animal not successfully tested and/or recurring missed samples of test-eligible animals, per the APHIS-Veterinary Services CWD Program Standards the board shall implement consequences based on risk-based assessments of the farmed Cervidae owner's herd. The risk-based assessments the board will apply to farmed Cervidae herds shall be in accordance with the board's farmed Cervidae CWD surveillance standards, available and kept updated on the board's website." Mr. Byrne requested that the Board consider adding specific consequences to the rules to avoid being "nebulous", adding, "this needs to be in rule, not in policy".

Mr. Byrne referenced Minn. Rule 1721.0420, Subp. 2 (Quarantine Procedures) which reads, "The board must immediately quarantine a farmed Cervidae herd that is suspected to be infected with CWD based on a suspect test result or clinical signs". Mr. Byrne referenced "clinical signs" pointing out that this language appeared to be "murky" and the Board needed to clarify. Mr. Byrne requested that a definition of clinical signs needs to be listed in rule and not in a separate document that can be changed "on a whim."

Mr. Byrne summarized his concerns by asking Dr. Linda Glaser to address consequences and define clinical signs.

Dr. Glaser pointed out that consequences for failure to meet requirements under the state's CWD herd certification program are available on the Board's website. She asked Mr. Byrne to present suggestions for alternate language.

Mr. Byrne reiterated that because this document is in policy, it is not clear and subject to change. To coincide with the Board's cited goals of rulemaking (update, simplify, and clarify existing rules) the language outlined in this policy should be written into rule. Mr. Byrne stated, "Once they are in the rules they are permanent. Policies are subject to change without notice."

In response to Mr. Byrne's concerns regarding the term "clinical signs", Dr. Glaser stated that there are "approved" descriptions for CWD that the Board would refer to. She added that the term clinical signs is utilized in rule language and is applied to other regulated diseases (tuberculosis, brucellosis, etc.).

Dr. Glen Zebarth agreed with Mr. Byrne that there is no validity to using clinical signs on a program disease stating that "clinical signs for CWD are unpredictable" and the federal program requires a positive diagnosis to quarantine a herd.

Dr. Glaser pointed out that under Board rules animals presenting with clinical signs of certain diseases must be reported to the Board but this is not required for CWD (<https://www.bah.state.mn.us/reportable-diseases/>). Dr. Glaser stated that the Board will consider removing this language.

Dr. Zebarth compared quarantining a herd with any animals with clinical signs consistent with CWD to testing every cow that aborts for brucellosis.

Dr. Zebarth referenced Minn. Rule 1721.0420, Subp. 2(C), which reads “Farmed Cervidae herds with CWD exposed animals shall be released from quarantine when: (1) all CWD exposed animals that currently reside or resided in the herd have a CWD test result of not detected, or (2) it has been 5 years since the animals were exposed to a CWD infected animal and the animals are determined by the board to be free of clinical signs of CWD infection.” Dr. Zebarth asked if the intent of this language was that a producer needed to achieve both of these requirements or one or the other.

Dr. Glaser responded that the language states “or” illustrating that a quarantine could be released by achieving either “number one or number 2”. Dr. Glaser further explained that if CWD exposed animals are in the herd and the producer doesn’t want to kill and test them they have an option to be quarantined for five years from the last date of exposure.

Scott Salonek inquired why there is not an option for rectal biopsy for [CWD] exposed animals.

Dr. Glaser explained that the federal government does not recognize rectal biopsy as an official test for CWD.

Mr. Salonek stated that the Board is not entirely following USDA program standards (https://www.aphis.usda.gov/animal_health/animal_diseases/cwd/downloads/cwd_program_standards.pdf), and is “adding their own rules”.

Dr. Glaser explained that program standards are a minimum requirement for recognition as a consistent state and each state can develop and implement rules that are more restrictive. For CWD investigations and when managing herds under the national surveillance plan, national program standards must be followed.

Gary Olson stated that federal program standards are not a requirement but a suggested guideline. He added that, “there is nothing that says they have to be followed to a tee”.

Dr. Glaser reiterated that program surveillance standards must be followed if Minnesota is to be recognized as a consistent state and herds want to be eligible for interstate movement.

Mr. Olson restated that his understanding is that this [federal program standards] is a suggested document, and the Board can’t state it as a requirement. Mr. Olson agreed with Dr. Zebarth and Mr. Byrne on their suggestion to remove “clinical signs” as no one can tell which animal will be positive for CWD based on clinical signs. Mr. Olson stated, “From my experience, it just doesn’t work”.

Todd Miller referenced Minn. Rule 1721.0420, subp. 2(C) which reads, “Farmed Cervidae herds with CWD exposed animals shall be released from quarantine when it has been 5 years since the animals were exposed to a CWD infected animal and the animals are determined by the board to be free of clinical signs of CWD infection”. Mr. Miller requested that the language “clinical signs” be removed from this section as well for consistency.

Glen Zebarth referenced Minn. Rule 1721.0420 subp. 2(D) which reads, “If a farmed Cervidae herd is determined to be infected with CWD, then the herd owner must depopulate the farmed Cervidae herd in accordance with Minnesota Statutes section 35.155, subdivision 11. If an indemnification application is not submitted, then the herd owner must depopulate the herd in a timely manner.” Dr. Zebarth requested that the Board consider inserting language that allows the producer to ask for assistance from the state [state indemnification].

Dr. Zebarth also stated that it is not clear in rule if animals originating from a management zone can be slaughtered at an inspected facility [controlled marketing].

Dr. Glaser confirmed that there is no state indemnification available for farmed cervids at this time. She reminded the group that this language has been “borrowed” from statute changes implemented by the legislature in 2019. An indemnification application is referring to an owner’s request to national staff. Dr. Glaser further explained that if indemnified by the federal government, USDA would determine the disposition of those animals. In the past, USDA has approved controlled marketing of exposed animals.

Dr. Zearth stated that he doesn’t approve of the idea of demanding depopulation and not offering assistance to the producer to complete indemnification forms or providing compensation for animals.

Scott Salonek referenced Minn. Rule 1721.0420, subp. 3 B(3), Determining boundaries of CWD farmed Cervidae management zones in the state, which reads: “Individual farmed Cervidae herds where animals are kept on premises within a designated CWD farmed Cervidae management zone shall be excluded from and not considered to be a part of a CWD farmed Cervidae management zone if exclusionary fencing is installed within 14 days of the designation of a CWD farmed Cervidae management zone, and the herd is assessed by the board and determined to either be low risk for CWD infection or meets other factors that would have limited the introduction of CWD into the herd.” Mr. Salonek questioned the reasonableness of eliminating 180 days [currently in rule] and substituting 14 days.

Dr. Glaser responded that the reason for editing this language is that when CWD is identified in the wild there is higher risk that farmed animals in that area will be exposed to CWD. The Board recognizes that there are short term strategies that may be utilized to prevent exposure.

Mr. Salonek asked, “if the goal is to eliminate contact between wild and domestic animals, shouldn’t there be some funding available for the producer?”

Dr. Glaser answered that, right now the only funding available is through MDA grants and loans.

Mr. Salonek expressed that he “wanted to see some science behind these rules”.

Dr. Glaser asked him to consider that once CWD is identified in a wild cervid, we believe that this is not the only animal infected in the area; the likelihood of other wild cervids in the area being infected is higher based on that identification. We [the Board] believe 180 days is too long to allow for potential transmission from wild to farmed cervids.

Mr. Salonek asked, “why did you not pick 90 days?”

Dr. Glaser stated that the Board will accept supported comments with proposals for an alternate timeline.

Daryl Simon referenced Minn. Rule 1721.0420, subp. 3(A) which reads: “The board shall designate the geographic area of a CWD farmed Cervidae management zone by including all locations within at least 15 miles of an area where CWD is confirmed in wild Cervidae as the CWD farmed Cervidae management zone”. Mr. Simon questioned, why was the distance increased [from 10] to 15 miles?

Dr. Glaser explained that DNR study data followed deer movement that showed the average range of wild deer movement to be extended.

Daryl Simon pointed out that in DNR publications they use a 3 mile buffer to determine which animals to test. He stated that, “This is a back-door way to put producers out of business”. Mr. Simon further stated that according to research performed in 2005, it has been proven that nose to nose contact between wild and domestic animals is not common. Mr. Simon expressed that in his opinion, this rule states that if a wild deer in a 15 mile area has CWD, all producers in the area must also have CWD. He asked if the Board could provide proof

that there has ever been a case of CWD in a farmed deer in an endemic area [farmed Cervidae management zone]. Mr. Simon stated that he felt the Board was adopting rules not based on science, but political pressure from the DNR.

Dr. Glaser informed Mr. Simon that the DNR verified that they are using a 15 mile buffer and he could contact Michelle Carstensen to confirm. Dr. Glaser further explained that the Board decided that when the DNR demonstrated that an animal moves 15 miles within a day, that was a reasonable distance to utilize if a deer is infected with CWD. Dr. Glaser added that the DNR's study reported that a number of wild cervids move much farther than that (up to 72 miles).

Dr. Glaser stated that she was not positive which study Mr. Simon was referencing, but that it was likely a 2007 study by USDA which documented 2 fence contacts during 1,000 hours of observation (https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1716&context=icwdm_usdanwrc). Dr. Glaser pointed out that in the discussion section of this study, the authors cited that because disease agents like CWD are persistent in the environment, the levels of activity still demonstrate potential for indirect disease transmission.

Dr. Glaser went on to say that the most recently depopulated infected CWD herd did have a double fence and we know that it's located in an endemic area, that is an area with CWD in wild animals in Minnesota. Dr. Glaser also cited epi reports from Wisconsin and New York that documented CWD had infected herds in areas that were considered endemic. Dr. Glaser stated that even though the Board does not have definitive proof of transmission from wild to farmed animals, the Board has to consider the potential for disease transmission to occur.

Jim Byrne stated that he was present at the Board meeting when Dr. Glaser addressed the Board to increase the endemic area from 10 to 15 miles. Mr. Byrne commented that he doesn't approve that the amended language says "at least" 15 miles as he believes it leaves too much discretion for the Board to extend this area. Mr. Byrne suggested that if Board staff feel that this area needs to expand, the citizen Board needs to approve as there is precedence.

Dr. Glaser pointed out that in its current rules the Board does have the authority to designate a larger area. She read: "The board shall designate larger geographic areas of the state as part of a CWD endemic area if necessary to prevent the spread of CWD".

Mr. Byrne restated that currently if the area were to exceed 15 miles, the approval of the citizen Board would be required. The Board needs to have the capability to make exceptions but also needs to be tempered in those exceptions. Mr. Byrne suggested the addition of language that states, "or with an exception as approved by the 5 member citizen Board". He added that the proposed language can't be used "carte blanche" to expand the zone if the Board wants.

Dennis Suelflow asked, "Are we setting a precedence when we ask producers to put up a fence to separate farmed from wild animals?"

Dr. Glaser responded that the fencing requirements are already in rules with 180 days to prevent commingling through a number of methods approved to prevent nose to nose contact. She explained that if a producer doesn't accomplish this then they continue to be subject to movement restrictions, while those that install exclusionary methods are exempted. Currently there are three options for exemption: constructing exclusionary fencing 36 months ahead of time; herds that were previously excluded under the 180 day exemption; and if neither of these apply, erect exclusionary fencing within 14 days to prevent contact with wild cervids.

Dr. Glaser cited that a currently approved example of exclusionary fencing is shade cloth. She stated that if a producer can get this installed or move animals into internally fenced areas until other fencing is put up they will be excluded. She added that proposed amendments are just narrowing the timeline window once we know disease is outside the fence.

Glen Zebarth clarified that when we are referencing movement in this context, we are referring to intrastate movement. He asked, what effect does this have on interstate movement.

Dr. Glaser responded that currently most states are prohibiting importation based on distances from a [CWD] affected animal, free-ranging or sometimes a farmed cervid, or a county where CWD is identified in free-ranging cervids.

Dr. Zebarth asked if other states allow an exception for exclusionary fencing.

Dr. Glaser responded that states could allow it, but currently states “make or break” based on location of a herd in relation to a positive wild animal.

Scott Salonek asked for clarification, “If there is CWD within 13 miles of my farm, the Board labels me. Can I take animals to slaughter?”

Dr. Glaser confirmed that this was accurate.

Mr. Salonek requested that this language be added to the rule.

Dr. Glaser pointed out that this language is in a different section related to movement, not in the CWD management zone section.

Dr. Zebarth asked Dr. Glaser to clarify what is meant in rule by “permit”. Specifically, Dr. Zebarth asked if this included an international Certificate of Veterinary Inspection or VS-127.

Dr. Glaser explained that the Board utilizes a permitting system that is state specific. She used an example, stating that if a producer within a farmed Cervidae management zone requested movement, we would verify the movement information, review, and issue a permit if the movement was allowed. Dr. Glaser stated that we would allow movement of animals on a VS-127 if other states agree.

Dr. Zebarth commented that Colorado, Iowa, and Wisconsin allow movement on a VS-127.

Brenda Hartkopf referenced the third option for exemption from movement restrictions within a farmed Cervidae management zone: erecting exclusionary fencing within 14 days to prevent contact with wild cervids. Ms. Hartkopf cited multiple barriers producers face in meeting this timeline, including making a decision on what type of fencing to erect, trying to find a vendor for materials, and time to complete construction, which is especially difficult in winter months. Ms. Hartkopf added that even in spring, maybe 120 days wouldn't be acceptable. She pointed out that Minnesota has not identified a single case of CWD in farmed Cervidae within 180 days of identification of a positive wild cervid.

Scott Salonek supported Ms. Hartkopf's comments stating that “it's a two month lead time to get material”. He added that there are no programs that would approve funding/financing within 14 days.

Tony Beckel provided an example, “Last winter I had a water line freeze. To put in fence posts in in the winter, when CWD is most commonly identified would cost about \$300.00 per post. With three feet of snow, 4 to 6 feet of frost, this [14 days] is not reasonable. Last year I put up fencing in June and I had a foot of frost still. I think

this is ridiculous. It takes 5 days just to get a letter from Minneapolis. It's impossible". Mr. Beckel added that he didn't see the benefit in erecting a temporary fence just to tear it down and rebuild a more permanent fence.

Gary Olson requested that the Board contact suppliers to determine what is reasonable. He cited that during COVID-19, supplies have not been readily available. Mr. Olson referenced the proposed language allowing "96 inch-high mesh wire fencing plus either 3 strands of high-tensile fence-top deterrent wire, such as 10- 12.5 gauge wire or cable, placed no less than 4 inches apart". He informed the group that standard spacing for most fencing is 6 inches and to accomplish this a producer would still have to put larger fence posts in and utilize more equipment.

Brenda Hartkopf supported Mr. Olson's comments. She explained that equipment needed to put in an 8 foot versus a 10 foot fence is quite different. She also noted that the Board has not documented animals [farmed Cervidae] escaping by jumping over a fence.

Scott Salonek asked for an explanation of the "science for changing fence height", stating that most of these changes are not scientifically based.

Dr. Glaser replied that we know that the fencing constructed by the DNR to prevent predation of crops is 10 feet.

Gary Olson inquired why proposed language required three wires 4 inches apart, when the DNR can space wires 12 inches apart. He added, "I have six foot gates inside my system, and I have never seen a deer jump a six foot gate". Mr. Olson added that a couple of years ago the Board pushed to ensure that all fences were actually 8 foot stating, "that made sense, but now to go to something that hasn't been a problem seems unreasonable and overbearing".

Scott Salonek commented that when the DNR had the [farmed Cervidae] program fence height requirement was 8 foot. He stated, "The DNR is trying to make it more of a burden".

Ms. Balghiti inquired if it made a difference that the proposed amendment would only apply to new producers.

Mr. Salonek and Mr. Olson agreed that this requirement would discourage new producers from getting into farming.

Lance Hartkopf stated, "This has to be an industry that can survive; regulations can't go overboard". Mr. Hartkopf wanted to know what was pushing these changes. He asked, "Why go to extremes in comparison to other states, why does Minnesota have to be more restrictive".

Jim Byrne commented that the Board was "devaluing the preface to why the rule changes are happening" (refer to guiding principles on the first page of Proposed Revisions to Farmed Cervidae Rules <https://www.bah.state.mn.us/media/BAH-2.09.21-DRAFT-changes-for-Minnesota-Rules-Chapter-1721.0370-to-1721.0420.pdf>).

Gary Olson added, "We're basically seeing a back door approach to the legislature's decision to not require double fencing. We used to be a 900 farm herd in Minnesota and now we're down to less than 300. None of these changes have anything to do with science related to CWD".

Dr. Glaser pointed out that all regulations don't require science. Those regulations that are not related to disease are requirements stipulated in statute or rule. Regulations related to disease transmission do use science which is the science of preventing the transmission of a contagious disease – CWD. She stated that the Board is adding legislative changes, responding to the Office of the Legislative Auditor's (OLA) 2018 audit

(<https://www.auditor.leg.state.mn.us/ped/2018/deerfarmssum.htm>), and dealing with scrutiny and concern about CWD in both wild and farmed populations. She referenced discussion leading up to a stop movement order issued by the DNR in 2020 (https://www.bah.state.mn.us/media/BoardMinutes_1219.pdf) to illustrate the concerns of people outside the Board. Dr. Glaser added that changes are driven by concerns and input from other stakeholders including the general public, wildlife organizations, and tribes.

Debra Holthaus commented that legislative pressure is not always real and alternative agriculture is the wave of the future.

Jim Byrne stated that very little of the suggestions submitted by the Minnesota Elk Breeders Association (MNEBA) have been considered and incorporated. He commented that “the draft hasn’t changed since the first draft” and he was “disappointed that our [MNEBA] comments are not being taken seriously”. Mr. Byrne expressed his opinion that “the more you tighten rules, the more compliance will fall off”. He implored the Board to go back and look at the comments as he didn’t believe the most current draft is in concert with suggestions.

Brian Wagner agreed with Mr. Byrne’s opinion that the Board has not taken into consideration producers’ comments. He used the example that producers proposed a compromise from 180 to 120 days to erect exclusionary fencing and be excluded from the farmed Cervidae management zone.

Dr. Glaser stated that the Board has edited the document from the first draft quite a bit, even though we haven’t incorporated every comment.

Rich Meech stated that this was a good listening session and that “there has been a lot of great comments”. Mr. Meech agreed with Mr. Byrne and Mr. Wagner that, “nothing has been changed”. He added that he could identify 7 or 8 items that will put cervid producers out of business and he “never dreamt that we would have to take on the Board of Animal Health”. He concluded by saying that he really want to know what the Board’s intent is in proposing these “draconian measures”.

Dr. Glen Zebarth inquired if the Board had delved into a thorough search of epidemiology of the program.

Dr. Glaser responded that it would be great if we could identify a source for every infected herd.

Dr. Zebarth asked if that is because it’s hard to do or if the Board hasn’t looked hard enough.

Dr. Glaser responded that “it’s hard to do because of long incubation periods and frequent movement of animals”. She referenced Dr. Scott Wells preliminary studies looking at risk of CWD exposure (https://vetmed.umn.edu/sites/vetmed.umn.edu/files/cwd_transmission_risks_to_cervid_farms_one_pager_10_25.2019.pdf). She also referenced a recent publication confirming that it takes a low infectious dose to transmit this disease, (<https://veterinaryresearch.biomedcentral.com/articles/10.1186/s13567-019-0626-2>) i.e. small amounts of prion can move in multiple ways and contaminate a premises.

Daryl Simon asked what the intent was of the Board expanding regulations for farmed Cervidae producers. He stated that “The only way to decrease CWD spread under current conditions seems to be by decreasing the number of farms in the state and I think this is being driven by people who have no skin in the game”. Mr. Simon added that in his opinion, rule amendments were coming from people who think “deer shouldn’t be behind a fence”.

Gary Olson commented that “regulations shouldn’t be based on one case of potentially ‘atypical CWD’”. He added that producers should trump wildlife and felt the Board was listening way too much to legislatures in the “metro” and not listening to agriculture.

Dr. Glen Zebarth stated that we shouldn't lose sight of the potential of the prion to spread through carcasses. He illustrated his point by saying that, "Wyoming has the most CWD and no deer farmers". Dr. Zebarth closed by saying that, "Farming Cervidae has become the riskiest and most non-productive industries in the state thanks to over-governing".

Adjournment

The meeting went a few minutes beyond its scheduled time and was then concluded. Annie Balghiti thanked everyone for their comments and attendance. She said that anyone should feel free to submit additional comments to the Board. Ms. Balghiti reminded producers that another listening session is scheduled for Friday February 19th.