

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File # 626

Permanent Rule X

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 8/13 DUE DATE 9/2

Resubmitted and Received _____

a. Returned to Agency w/o Filing w/Secretary of State _____
b. Approved 9/2 Date Sent Back to Agency _____
Secy of State 9/4/80

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1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable ✓
4. Order for Hearing ✓
5. Notice of Hearing ✓ 6.5.80
Sufficiency ✓ see HE 4 re. lobbyist definition
6. Secretary of State's List ✓ (one copy only)
7. Certificate of Acquisition of Secretary of State's List ✓
8. Secretary of State's Certification of Delivery of Secretary of State's List to Agency ✓
9. Affidavit of Mailing ✓
At least 30 days prior to hearing ✓
10. Publication in State Register ✓ copy not submitted but see HEP2
At least 30 days prior to hearing _____
11. Statement of Need and Evidence ✓
12. Hearing Examiner's Report ✓
13. Agency's Findings of Fact ✓
14. Certificate of Board's Resolution Adopting Rules, where applicable ✓
15. Order Adopting ✓
16. Report of Chief Hearing Examiner ✓
17. Order Approving Incorporation by Reference, where applicable N/A
18. Certificate of Compliance with Rulemaking Procedures ?
19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable N/A
20. Petition by Public, where applicable N/A

OUR FILE NO. 626

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : **JON K. MURPHY**
Special Assistant
Attorney General

DATE: **September 4, 1980**

FROM : JERRY S. ANDERSON
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: Rules as Approved **- 3 MCAR § 2.024 / Amendment to Rules of the State Livestock Sanitary Board - Control of Pseudorabies**

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

Directly following the approved rules is a complete set of required documents and transcript which must be retained with the rules by you or your agency.

If you have any questions in this regard, please contact me.

JSA/bw
Encl.
cc: Duane Harves
Susan Robertson

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : JERRY ANDERSON
Special Assistant
Attorney General

DATE: August 12, 1980

FROM : JON K. MURPHY
Special Assistant
Attorney General

PHONE: 6-0415

SUBJECT: RULES, 3 MCAR § 2.024, LIVESTOCK SANITARY BOARD

Enclosed please find the above referenced rules for review.

Peder Hong participated in the rules procedure which was completed prior to my taking over. My review of the documents and reports however satisfies me of their compliance with the rules.

JKM/dw

Enclosure

STATE OF MINNESOTA

LIVESTOCK SANITARY BOARD

In the Matter of the Proposed Amendment to Rules of the State Livestock Sanitary Board, Governing 3 MCAR § 2.024 Control of pseudorabies.

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Hearing Examiner Richard Luis of the Minnesota Office of Hearing Examiners at 9:30 A.M. on Thursday, June 5, 1980 in Conference Room D, Veterans Service Building, 20 West 12th Street, St. Paul, Minnesota, after proper notice required by Minnesota Statutes Section 15.0412 (1978) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose and was published in the State Register.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above-captioned rules:

NOW, THEREFORE, IT IS ORDERED that these rules identified as 3 MCAR § 2.024 Control of pseudorabies, as presented to the Minnesota Livestock Sanitary Board for consideration, are adopted this 11th day of July, 1980 pursuant to authority vested in me by the Livestock Sanitary Board.

STATE OF MINNESOTA
LIVESTOCK SANITARY BOARD

R. L. Mersch, D.V.M.

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : JERRY ANDERSON
Special Assistant
Attorney General
G-25 Administration Building

DATE: September 2, 1980

FROM : JON K. MURPHY
Special Assistant
Attorney General

PHONE: 6-0415

SUBJECT: In the Matter of the Proposed Amendment of Rules of the State Livestock Sanitary Board Governing 3 MCAR § 2.204 Control of Pseudorabies

In reviewing the above captioned rules which have been submitted to you for approval, a typographical error was discovered in the last line of 3 MCAR § 2.024B-3. The word "identification" has been misspelled. On behalf of the Livestock Sanitary Board you are hereby authorized and requested to correct this error in the adopted rules.

JKM/dw

Adopted-MG copy

3 MCAR § Control of pseudorabies

B. General requirements.

1. Veterinarians shall report all cases of pseudorabies they diagnose and all cases suspected of being pseudorabies.

2. All pseudorabies tests will be at owner's expense except tests conducted to release quarantines which may be made by veterinarians of the Board or USDA if personnel and funds are available.

3. All swine tested shall be individually identified by eartag, tattoo, registration number or other identification which makes individual swine readily identifiable and the identification entered on the test chart.

4. Quarantines will be established by the Board as authorized in Minn. Stat. ch. 35.05 (1978) on all swine herds in which a reactor to an official pseudorabies test is disclosed, or a clinical diagnosis, or a laboratory diagnosis of pseudorabies is made. The quarantine will be served on the owner.

5. Quarantined swine may be moved to slaughter accompanied by a shipping permit issued by an accredited veterinarian or the Board, or by a notice of shipment, or with permission of the Board to other premises presently under quarantine for pseudorabies. When it can be established that the quarantined herd produces pigs for sale as feeders, and there are no clinical signs of pseudorabies in the herd, the identified swine for feeding may be sold for movement for finishing under quarantine on premises where there are no breeding swine. These quarantined swine can be sold only for slaughter.

6. Quarantines on swine herds will be released when all quarantined swine have been sold for slaughter or:

a. Reactor swine have been removed from the premises for slaughter with a shipping permit or notice of shipment and

b. The premises have been cleaned and disinfected and

c. All swine six months of age and over have passed a negative official pseudorabies test at least 30 days after the reactors were shipped.

Following a depopulation, no swine should be allowed on the premises for 30 days.

7. Livestock, other than swine, determined to have pseudorabies and livestock, other than swine, exposed to pseudorabies infected animals will be quarantined. The quarantine will be released 21 days after the diagnosis or exposure if there are no signs of pseudorabies in the quarantined livestock.

APPROVED AS TO FORM AND LEGALITY

SEP 0 2 1980 19____

WARREN SPANNAUS, ATTORNEY GENERAL

BY _____

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
SEP 4 1980
Joan Anderson Growe
Secretary of State
9:45 AM

STATE OF MINNESOTA

LIVESTOCK SANITARY BOARD

In the Matter of the Proposed Amendment to Rules of the State Livestock Sanitary Board, Governing 3 MCAR § 2.024 Control of pseudorabies.

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Hearing Examiner Richard Luis of the Minnesota Office of Hearing Examiners at 9:30 A.M. on Thursday, June 5, 1980 in Conference Room D, Veterans Service Building, 20 West 12th Street, St. Paul, Minnesota, after proper notice required by Minnesota Statutes Section 15.0412 (1978) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose and was published in the State Register.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above-captioned rules:

NOW, THEREFORE, IT IS ORDERED that these rules identified as 3 MCAR § 2.024 Control of pseudorabies, as presented to the Minnesota Livestock Sanitary Board for consideration, are adopted this 11th day of July, 1980 pursuant to authority vested in me by the Livestock Sanitary Board.

STATE OF MINNESOTA
LIVESTOCK SANITARY BOARD

R. L. Marsch, D.V.M.

Amendments as Proposed

3 MCAR § 2.024 Control of pseudorabies.

B. General requirements.

1. Veterinarians shall report all cases of pseudorabies they diagnose and all cases suspected of being pseudorabies.

2. All pseudorabies tests will be at owner's expense except tests conducted to release quarantines which may be made by veterinarians of the Board or USDA if personnel and funds are available.

3. All swine tested shall be individually identified by eartag, tattoo, registration number or other identification which makes individual swine readily identifiable and the identification entered on the test chart.

4. Quarantines will be established by the Board as authorized in Minn. Stat. ch. 35.05 (1978) on all swine herds in which a reactor is disclosed or a clinical diagnosis or a laboratory diagnosis~~, other than a diagnosis based only on serological tests,~~ of pseudorabies is made. The quarantine will be served on the owner.

~~5. Quarantines will be established by the Board on individual swine positive on serological tests in herds which do not show clinical signs or have laboratory confirmation of pseudorabies. The quarantine will be served on the owner.~~

5. ~~6.~~ Quarantined swine ~~and swine from quarantined herds~~ may be moved ~~only~~ to slaughter accompanied by a shipping permit or notice of shipment ~~issued by an accredited veterinarian or the Board~~. When it can be established that the quarantined herd ~~only~~ produces pigs for sale as feeders, th~~at no breeding stock has been sold~~ and there are no clinical signs of pseudorabies in the herd, the individually identified feeder pigs may be sold for movement for finishing under quarantine on premises where there are no breeding swine. These quarantined feeders can be sold only for slaughter.

6. ~~7.~~ Quarantines on swine herds will be released when all quarantined swine have been sold for slaughter or:

a. Reactor swine have been removed from the premises for slaughter with a shipping permit or notice of shipment and

b. The premises have been cleaned and disinfected and

c. All swine six months of age and over have passed a negative official pseudorabies test at least 30 days after the reactors were shipped.

Following a depopulation, no swine should be allowed on the premises for 30 days.

~~8. Quarantines on individual test positive swine will be released when the swine have been sold for slaughter or have been retested and found to be negative for pseudorabies.~~

7. ~~9.~~ Livestock, other than swine, determined to have pseudorabies and livestock, other than swine, exposed to pseudorabies infected animals will be quarantined. The quarantine will be released 21 days after the diagnosis or exposure if there are no signs of pseudorabies in the quarantined livestock.

LSB-80-002-RL

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE LIVESTOCK SANITARY BOARD

In the Matter of the Proposed Amendment of Rules Governing Control of Pseudorabies (3 MCAR § 2.024)

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Richard C. Luis, Hearing Examiner assigned by the Chief Hearing Examiner, at 9:30 a.m. on Thursday, June 5, 1980 in Conference Room D, Veterans Service Building, 20 W. 12th Street, St. Paul, Minnesota.

This Report is part of a rulemaking procedure pursuant to Minn. Stat. Ch. 15 to determine whether certain amendments to 3 MCAR § 2.024 (control of pseudorabies) should be adopted.

Peder Hong, Special Assistant Attorney General, appeared on behalf of the Livestock Sanitary Board (the "Board"). The Board's panel consisted of J. G. Flint, D.V.M., Secretary and Executive Officer of the Board, and L. T. Christensen, D.V.M., Assistant Secretary of the Board.

Eleven persons attended and eight persons spoke at the hearing as representatives of the general public. The chief contributors of public testimony were Dr. Basil Ward, Ken Koppelman, Bruce Johnson, Ben Bartusek, Jr., and Dr. Kent Kislingbury.

Subsequent to publication of the proposed amendments in the State Register, but prior to the hearing, the Board filed additional proposed amendments. None of the additional proposed amendments involved a deletion from or substitution for the proposed amendments as published. Further proposed amendments were filed by the Board prior to the close of the record in response to suggestions made by members of the public and the Hearing Examiner at the hearing. The record closed on June 12, 1980. No additional written comments were filed.

Pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), this Report shall be available for review to all affected individuals upon request for at least five days. Thereafter, the Livestock Sanitary Board shall, if it proposes to adopt the rules as originally proposed or amended, submit a copy of the Order Adopting Rules, a copy of any additional agency findings, a copy of the rules as originally proposed, and a copy of the rules as adopted to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4 (1978). The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his report to the Livestock Sanitary Board on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412, subd. 4 (1978) within ten calendar days. The Board will be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On April 15, 1980, the Livestock Sanitary Board filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed amendments.
(b) The Order for Hearing proposed to be issued, with an attached Resolution of the Board authorizing the Board's Executive Officer to proceed with this hearing process.
(c) The Notice of Hearing proposed to be issued.

2. On May 5, 1980, a Notice of Hearing and a copy of the proposed amendments were published at 4 State Register 1729.

3. On May 5, 1980, the Livestock Sanitary Board mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On May 7, 1980, the Livestock Sanitary Board filed the following documents:

(a) The Order for Hearing and authorizing resolution.
(b) The Notice of Hearing as mailed.
(c) The affidavit of receipt of the Secretary of State's list.
(d) The affidavit of mailing the notice to all persons on the Secretary of State's list.
(e) The Statement of Need and Reasonableness.
(f) The names of Board personnel who would represent the Board at the hearing.
(g) Additional amendments proposed by the Board but not published in the State Register.

The Notice of Hearing as mailed and as published in the State Register contained only a summary of the statutory definition of a lobbyist as defined in Minn. Stat. § 10A (1979 Supp.). Since this summary is an accurate paraphrasing of the "statutory definition of a lobbyist" required in the Notice of Hearing under the rules of the Office of Hearing Examiners (see 9 MCAR § 2.102 C.6.), the Hearing Examiner is of the opinion that the Notice of Hearing was sufficient. As the Minnesota Supreme Court recently commented:

> ". . . We note at the outset that the law does not mandate in all cases strict and literal compliance with all procedural requirements. Technical defects in compliance which do not reflect bad faith, undermine the purposes of the procedures, or prejudice the rights of those intended to be protected by the procedures will not suffice to overturn governmental action. . ."
> City of Minneapolis v. Wurtele, et al, 291 N.W.2d 386 (Minn. 1980)

Even if the Board's paraphrasing of Minnesota Statutes, Chapter 10A, is a technical defect in the Notice of Hearing, there is no evidence of bad faith or prejudice to the rights of individuals intended to be protected in the course of this rulemaking proceeding as a result of that defect. The purpose of the rulemaking proceeding has not been undermined.

5. On May 21, 1980, a statement was filed by the Livestock Sanitary Board of the number of persons expected to attend the hearing and the estimated length of time necessary for the Board to present its evidence at the hearing. Under 9 MCAR § 2.102 C.10., this statement should have been filed prior to the promulgation of the Notice of Hearing. The purpose of this particular rule is to allow for reservation of a meeting room of sufficient size and for a time sufficient to accommodate the hearing. Since the rule is for the convenience

of all concerned and not jurisdictional in nature, the Board's failure to comply with the rule's provisions does nothing to jeopardize the legal effect of this rulemaking process.

6. The above-discussed documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

7. The record remained open through June 12, 1980 for the receipt of written comments and statements. The only document filed of record since the hearing is one containing further amendments proposed by the Board making clarifying grammatical and punctuation changes and adopting a suggestion raised at the hearing from a member of the public.

Statutory Authority

8. The Livestock Sanitary Board cites Minn. Stat. § 35.03 (1978) as the statutory authority for promulgation of the proposed rule amendments. That statute provides, in relevant part:

> "The board shall protect the health of the domestic animals in the state, and carry out the provisions of this chapter; employing such means and making such rules and regulations as it may deem expedient to that end."

Compliance with the Federal Requirements

9. Pseudorabies is an acute viral disease that is frequently fatal and affects most species of domestic and wild animals. Swine are the natural hosts of this disease, and pigs may also develop its symptoms and/or die from the virus (the symptoms of which are similar to pneumonia). Effective May 17, 1979, the United States Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) promulgated Pseudorabies Regulations (9 C.F.R. §§ 85.1-85.13) under Title 9, Chapter I, Subchapter C, Part 85 of the U.S.Code. These regulations, at 9 C.F.R. § 85.7(a)(4), provide that as of July 1, 1980, swine may be moved interstate only from a state which requires that livestock exposed to or infected by pseudorabies be quarantined, which quarantine can be released only after having met quarantine release standards no less restrictive than those outlined in 9 C.F.R. § 85.1(l). 9 C.F.R. § 85.1(l) requires that swine herds must be quarantined when the swine from the herd are tested for pseudorabies and found to be positive reactors to an official pseudorabies test or when a veterinary diagnosis of the disease has been made. This regulation is stricter than the current Minnesota rule, which generally allows for a quarantine on individual swine without quarantining the entire herd. The Board panel advised the Hearing Examiner at the hearing that the United States Department of Agriculture has allowed Minnesota (which exports over one-half million hogs annually) an extension of time beyond July 1, 1980 in order to provide for adoption of rules mandating quarantines on herds before it will attempt to enjoin the interstate movement of swine from this state. The Hearing Examiner is of the opinion that the need for such a tightening of the Minnesota rules is obvious.

In order to accomplish its goal of compliance with the Federal standard, the Board has proposed the deletion of the current 3 MCAR §§ 2.024 B.5. and B.8., which two clauses allowed for quarantine imposition on individual swine and conditions of release from quarantine for individual swine. The Hearing Examiner agrees with the Board's conclusion that such provisions are no longer necessary and that it is reasonable to delete them. The Board also proposes to add the clause "a reactor to an official pseudorabies test is disclosed,

or" after "which" and before "a clinical diagnosis" in the first sentence of 3 MCAR § 2.024 B.4. in order to make Minnesota's rule as restrictive as the quarantine standards of 9 C.F.R. § 85.1(1). The Hearing Examiner believes that this insertion accomplishes the necessary task in a reasonable fashion. It should be noted that the words "to an official pseudorabies test" and commas after the word "disclosed" and "clinical diagnosis" were inserted in the Board's original proposal after the hearing pursuant to suggestions from the public. The Hearing Examiner finds these later amendments to be merely clarifying or grammatical in nature and not a substantial departure from the proposals originally published.

10. The Board has recommended the renumbering of paragraphs B.6., B.7. and B.9. of the current rules to B.5., B.6. and B.7., respectively, due to the proposed deletion of the current paragraphs B.5. and B.8. The Hearing Examiner finds the renumbering as proposed to be needed and reasonable.

11. The proposals advanced by the Board in order to bring Minnesota into compliance with Federal regulations covering the interstate movement of swine drew commentary from farmers Ken Koppelman, Bruce Johnson, and Ben Bartusek, Jr., and Dr. Kent Kislingbury, a veterinarian, who criticized the imposition of quarantine on entire herds when an individual reactor to a blood test is found. The thrust of the criticism was that a herd quarantine, once imposed, is extremely difficult to release and financially traumatic to feeder pig producers and persons in the business of purebred hog breeding. The Board's panel agreed, but remarked that it had no choice under the Federal regulations. Dr. Basil Ward, a United States Department of Agriculture veterinarian assigned to St. Paul, testified that the rule changes as proposed will bring Minnesota into compliance with Federal Pseudorabies Regulations regarding interstate shipment of swine.

Other Proposed Amendments

12. The Livestock Sanitary Board decided to take the opportunity afforded by the rulemaking procedure it felt mandated to undertake due to Federal requirements to propose additional amendments in the rules governing control of pseudorabies aimed at easing the intrastate shipment of quarantined hogs and clarifying the existing rules. The first such proposal was insertion of the word "tested" between "swine" and "shall" in 3 MCAR § 2.024 B.3. in order to clarify the fact that it is only necessary to individually identify tested swine under the rule. The Hearing Examiner is persuaded that this amendment is needed and reasonable.

13. 3 MCAR § 2.024 B.6. (proposed to be renumbered as B.5.) governs the intrastate movement of swine quarantined for pseudorabies from the quarantined premises to other areas for finishing (in the case of pigs not yet ready for slaughter) or to slaughter. The existing rule provides for the movement of affected hogs to slaughter from quarantined premises only if the pigs are accompanied by a shipping permit issued by an accredited veterinarian or the Board. The originally published amendment liberalized this requirement by adding the language "or notice of shipment" after the word "permit" in the first sentence of the paragraph, and by deleting the phrase "issued by an accredited veterinarian or the Board" from the same sentence. The purpose of adding "notice of shipment" is to allow the use of a second system for documentation of the movement of swine from quarantine to slaughter. The Board is of

the opinion that marketing practices make it impractical in some instances to obtain a shipping permit from a veterinarian or from the Board. Therefore, the proposed amendment allows the owner to prepare a notice of shipment (to be filed with the Board on a form which the Board will presumably supply to any owners whose animals come under a pseudorabies quarantine) in order to allow the Board to monitor the shipment of quarantined swine. The Board also recommends the addition of the phrase "or notice of shipment" after the word "permit" in 3 MCAR § 2.024 B.7.a. (proposed to be renumbered as B.6.a.), which deals with standards for release of a swine herd from pseudorabies quarantine. The Hearing Examiner finds the proposed amendments to be needed (in light of the realities of the marketplace) and the method chosen to ease the intrastate shipment of quarantined swine (adoption of the above outlined changes) to be reasonable, except as noted below in Finding of Fact No. 14.

14. The proposed amendments originally published by the Board delete the phrases "and swine from quarantined herds" and "issued by an accredited veterinarian or the Board" from the first sentence of 3 MCAR § 2.024 B.6. (proposed to be renumbered as B.5.). The Hearing Examiner is of the opinion that it is necessary and reasonable to make the first deletion. The phrase "and swine from quarantined herds" is redundant. Any individual swine which is part of a quarantined herd is already a "quarantined swine" and thus included in the first two words of the sentence. The Hearing Examiner recommends that the phrase "issued by an accredited veterinarian or the Board" be left after the word "permit" (as in the current rule) in order to clarify who has authority to issue a shipping permit. Deletion of the phrase, as proposed by the Board, would make the provision ambiguous. The Hearing Examiner further recommends the addition of the words "by a" between "or" and "notice" in the interests of clarity so that the entire proposed phrase would read "accompanied by a shipping permit issued by an accredited veterinarian or the Board or by a notice of shipment".

15. Subsequent to the original publication of the proposed amendments in the State Register, the Board proposed additional amendments to further accomplish its goal of easing the intrastate movement of swine quarantined for pseudorabies. The Board presented these changes at the hearing, and also adopted some of the suggestions made at the hearing by the Hearing Examiner and members of the general public in making its final recommendation prior to the close of the record. All of these additional amendments are contained in paragraph B.6. (proposed to be renumbered as B.5.) of 3 MCAR § 2.024. In the first sentence of the paragraph, the proposal is to delete the word "only" and add the phrase ", or with permission of the Board to other premises presently under quarantine for pseudorabies." after the word "shipment". This change would enable a producer to move swine quarantined for pseudorabies to a different quarantined premises for feeding when that producer does not have the facility to feed the affected pigs to market weight. Since pseudorabies is present on both premises, this amendment would solve a production problem without contributing to the spread of pseudorabies. The Hearing Examiner is of the opinion that the amendment as proposed is needed (to help alleviate the necessity for transforming certain operations not equipped to feed hogs to market weight)

and reasonable. The Hearing Examiner is of the further opinion that the amendments proposed for the first sentence of paragraph B.6. (proposed to be renumbered as B.5.) do not constitute a substantial change in the meaning and intent of the rule or the amendments as published. If the Board adopts the Hearing Examiner's recommendation in the preceding Finding of Fact, the complete sentence in question will read:

> 5. Quarantined swine may be moved to slaughter accompanied by a shipping permit issued by an accredited veterinarian or the Board or by a notice of shipment, or with permission of the Board to other premises presently under quarantine for pseudorabies. complied

The changes added to the remainder of the affected paragraph after the original publication of the proposed amendments, like the changes made to the first sentence, are designed to implement the goal of easing the conditions for moving quarantined swine requiring further feeding to other quarantined premises where they can be fed to slaughter weight. The amendments delete the requirement that a herd only produce pigs for sale as feeders, delete the requirement that no breeding stock can be sold from the herd before movement, and delete the requirement that the swine to be moved be individually identified. Reference to the designation "feeder pigs" is dropped for purposes of clarity. It is the opinion of the Hearing Examiner that these additional amendments are necessary in light of the amendments to the first sentence of the paragraph, and that the changes as proposed in the document submitted by the Board on June 6, 1980, reasonably meet that need. The Hearing Examiner further believes that the amendments proposed for the last two sentences of paragraph B.6. (proposed to be renumbered as B.5.) do not constitute a substantial change in the meaning and intent of the rule or the amendments as published.

CONCLUSIONS

1. Due, timely and legally adequate notice of the hearing was properly served and published by the Board. All other substantive and procedural requirements of law and rule have been sufficiently met. While one of the Board's filings with the Office of Hearing Examiners was not timely, the rule technically violated is one of administrative convenience and not jurisdictional.

2. The Board has demonstrated its statutory authority to adopt the proposed rule amendments.

3. The Board has demonstrated the need for and reasonableness of the proposed rule amendments by an affirmative presentation of facts.

4. The additions to the proposed rule amendments which were proposed after publication of the amendments in the State Register do not constitute a substantial change.

RECOMMENDATION

The Hearing Examiner recommends that the proposed amendments to the rules governing control of pseudorabies be adopted by the Livestock Sanitary Board in accordance with the Findings of Fact herein, with due consideration to the suggestion noted in Finding of Fact 14.

Dated this 2nd day of July, 1980.

Richard C. Luis

RICHARD C. LUIS
Hearing Examiner

STATE OF MINNESOTA

LIVESTOCK SANITARY BOARD

In the matter of proposed amendments to
rules of the Livestock Sanitary Board
3 MCAR § 2.024 Control of pseudorabies.

FINDINGS OF FACT

The above-entitled matter came on for hearing before Hearing Examiner Richard Luis of the State Office of Hearing Examiners at 9:30 A.M. Thursday June 5, 1980 in Conference Room D, 20 West 12th Street, Veterans Service Building, St. Paul, Minnesota after proper notice required by Minnesota Statute (1978) Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose and was published at 4 State Register 1729 and 1730.

Having afforded interested persons an opportunity to present written and oral data, statements and arguments, having heard all testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, having confirmed the need and reasonableness for the above-captioned rules, having considered the report of the Hearing Examiner dated July 2, 1980 and received on July 2, 1980 the Board makes the following findings:

Findings of Fact

1. The findings and conclusions contained in the report of the Hearing Examiner dated July 2, 1980 are hereby adopted.

2. The amendments proposed are essential if the state is to meet Federal regulations governing pseudorabies control and retain the privilege of moving Minnesota swine interstate. They will also provide for the orderly movement of quarantined swine to slaughter or to feeding premises.

3. At the hearing changes in two sections of the proposed rule were suggested, considered, submitted to the Board for adoption and adopted by the Board.

a. At the suggestion of Ken Koppelman of Cleveland the language "to an official pseudorabies test," was proposed to be added in B.4. after "a reactor is disclosed." There were no objections.

b. At the suggestion of the Board in B.5. after "or notice of shipment" in the first sentence the following language was proposed to be added "or with permission of the Board to other premises presently under quarantine for pseudorabies." In the second sentence delete the words "only" the words "That no breeding stock has been sold" and the word "individually" (at the suggestion of Mr. Koppelman). In the same sentence the words "feeder pigs" be deleted and replaced with "swine for feeding." In the last sentence the word "feeders" be deleted and replaced with "swine." There were no objections.

c. At the suggestion of the hearing examiner in his report the language "issued by an accredited veterinarian or the Board" is inserted in B.5. after "accompanied by a shipping permit." The Board agreed to this addition as clarifying the requirement.

4. The change in B.4. noted in paragraph 3.a. above is reasonable and will define reactor as an animal positive on an official pseudorabies test.

5. The changes in B.5. noted in paragraph 3.b. above are reasonable and will provide a means by which swine producers with herds under quarantine will be able to move swine to slaughter or to other premises for finish feeding. The change will not decrease the effectiveness of the disease control program.

The Board is of the opinion that the proposed rule and the amendments of the proposal are needed and reasonable for the control of pseudorabies in Minnesota.

July 14, 1980

J. C. Flint, D.V.M.
Secretary & Executive Officer

CERTIFICATE OF BOARD'S

ADOPTION OF RULES RESOLUTION

I, Dr. J. G. Flint, do hereby certify that I am Secretary and Executive Officer of the Livestock Sanitary Board, a board duly authorized under the laws of the State of Minnesota, and that the following is true, complete and correct copy of a resolution adopted at a meeting of the Livestock Sanitary Board duly and properly called and held on the 11th day of July, 1980; that a quorum was present at said meeting; (that a majority of those present voted for the resolution); that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> RESOLVED, that the rules relating to 3 MCAR § 2.024 Control of pseudorabies, be and they hereby are approved and adopted, pursuant to authority vested in us by Minnesota Statutes 1978, Section 35.03 and that Dr. R. L. Mersch, one of the members of the Minnesota State Livestock Sanitary Board, be and hereby is authorized to sign an order adopting these rules.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 11th day of July, 1980.

J. G. Flint, D.V.M.
Secretary and Executive Officer

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE LIVESTOCK SANITARY BOARD

IN THE MATTER OF THE PROPOSED)
AMENDMENT OF RULES GOVERNING)
CONTROL OF PSEUDORABIES)
(3 MCAR § 2.024).)

ORDER OF THE
CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on June 5, 1980, before Richard C. Luis, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Report of the Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Livestock Sanitary Board on July 2, 1980; and

WHEREAS, the Livestock Sanitary Board has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Livestock Sanitary Board has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4, and 9 MCAR § 2.110; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Livestock Sanitary Board has met all requirements of Minn. Stat. § 15.0412, subd. 4.

NOW, THEREFORE, upon receipt of this Order, the Livestock Sanitary Board has the responsibility of submitting the complete hearing record and the rules as adopted by the Board to the Attorney General, notifying all persons who requested to be informed that the hearing record has been submitted to the Attorney General, and publishing in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated this 21st day
of July, 1980.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

LIVESTOCK SANITARY BOARD

In the Matter of the Proposed Amendment
of 3 MCAR § 2.024 Control of pseudorabies

STATEMENT OF NEED AND REASONABLENESS

The above captioned rules are amendments to existing rules of the Livestock Sanitary Board. The rules were adopted in 1979, becoming effective September 11, 1979. The Livestock Sanitary Board is authorized to promulgate and amend rules by Minn. Stat. § 35.03 (1978).

The need to adopt these rules arises because of conflicts between 3 MCAR § 2.024 and the Code of Federal Regulations Title 9 Part 85 Pseudorabies. Part 85 defines standards for pseudorabies control programs and outlines the conditions which must be complied with when swine are moved interstate. The CFR regulation requires that swine herds must be quarantined when swine from the herd are tested for pseudorabies and found to be positive or when a clinical or laboratory diagnosis of pseudorabies has been made. Failure to meet this requirement would make any interstate movement of swine from Minnesota a violation of the federal regulation. To correct this deficiency we propose to amended 3 MCAR § 2,024 to provide that swine herds will be placed under quarantine when swine from the herd are tested for pseudorabies and found to be reactors. Presently these tested swine, which have reacted on the test, have been quarantined as individuals and the herd has not been quarantined. The proposed amendments will assure that Minnesota swine, not affected with pseudorabies, will be able to move interstate in compliance with federal interstate regulations.

J. G. Flint, D.V.M.
Secretary and Executive Officer
Minnesota Livestock Sanitary Board

STATE OF MINNESOTA

LIVESTOCK SANITARY BOARD

In the Matter of Proposed Amendments to Rules
of the Livestock Sanitary Board 3 MCAR § 2.024
Control of pseudorabies

AFFIDAVIT OF MAILING

Dr. L. T. Christensen, being first duly sworn, deposes and says:

That on the 5th day of May, 1980, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing by depositing it in the United States Mail at said City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid, or by interoffice mail or directly to the addresses to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State as well as to all persons listed on the attached sheet as presently being members of the Minnesota legislature.

L. T. Christensen

Subscribed and sworn to before me
this 5th day of May, 1980.

Marian S. Comford

MARIAN S. COMFORD
Notary Public, Ramsey County, Mn.
My commission expires Sept. 16, 1986

AFFIDAVIT

L. T. Christensen, D.V.M., being duly sworn on oath deposes and says:

1) That he is an employee of the Livestock Sanitary Board of the State of Minnesota.

2) That on the 24th day of April, 1980, he called the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. 15.0412 (1978).

3) That on the 1st day of May, 1980, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

Futher affiant sayeth not.

L. T. Christensen

Subscribed and sworn to before me
this 1st day of May, 1980.

Marian S. Comford

MARIAN S. COMFORD
Notary Public, Ramsey County, Mn.
My commission expires Sept. 16, 1986

STATE OF MINNESOTA

LIVESTOCK SANITARY BOARD

In the Matter of Proposed Amendments to Rules
of the Livestock Sanitary Board 3 MCAR § 2.024
Control of pseudorabies

CERTIFICATE

I hereby certify that the enclosed 4 sheets 345 labels with the list for the Livestock Sanitary Board constitute the complete list of persons, associations, and other interested groups who as of 8:00 o'clock, A.M., this 1st day of May, 1980, have requested pursuant to M.S., Section 15.0412 (1978) that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Secretary of State

Joan Anderson Growe

By Donna Scott

STATE OF MINNESOTA

LIVESTOCK SANITARY BOARD

In the Matter of Proposed Amendments to Rules of the Livestock Sanitary Board 3 MCAR § 2.024 Control of Pseudorabies

NOTICE OF HEARING

Notice is hereby given that a public hearing in the above entitled matter will be held pursuant to Minn. Stat. §. 15.0412, subd. 4 (1978), in the Room D Veterans Service Building, 20 West 12th Street, St. Paul, Minnesota, commencing at 9:30 A.M., or as soon thereafter as possible, Thursday, June 5, 1980, and continuing until all interested or affected persons have had an opportunity to be heard. 1 2

The Livestock Sanitary Board proposes to amend rule 3 MCAR § 2.024 Control of Pseudorabies to provide for quarantining swine herds in which swine reacting to an official pseudorabies test are disclosed. This amendment is necessary so that the Minnesota rule is in agreement with the federal regulations governing interstate movement of swine. 3

A free copy of the amended rule is available and can be obtained from the Minnesota Livestock Sanitary Board, LL 70 Metro Square, St. Paul, Minnesota, 55101. Additional copies will be available at the hearing.

Statutory authority to promulgate the proposed rules is vested in the Livestock Sanitary Board by Minn. Stat. § 35.03 (1978). Adoption of the amended rule will not require the expenditures of additional public monies by local public bodies. 4 10

Relevant statements or written material may be submitted for the record at the hearing or to the hearing examiner, Richard Luis , Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota, 55104, phone 612-296-8114 before the hearing or within five working days after the public hearing or for a longer period not to exceed 20 calendar days if ordered by the Hearing Examiner. 5 7

Please be advised that Minn. Stat. Ch. 10A requires each lobbyist to register with the Ethical Practices Board within 5 days after he commences lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota, 55155, phone 612-296-5615. 6

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rule for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report) or to the agency (in case of the agency's submission or resubmission to the Attorney General).

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule/rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

STATE OF MINNESOTA
LIVESTOCK SANITARY BOARD

J. G. Flint, D.V.M.
Secretary and Executive Officer

Dated this 5th day of May, 1980

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of the Proposed Amendment
to Rules of the Minnesota Livestock
Sanitary Board, Governing 3 MCAR § 2.024
Control of Pseudorabies

ORDER OF HEARING

To effectively implement and make more specific the Livestock Sanitary Board deems it necessary to consider amending the above-captioned rule pursuant to the authority vested in it by Minn. Stat. 1978, Sec. 35.03.

NOW, THEREFORE, IT IS ORDERED this 15th day of April, 1980, that a public hearing on the proposed amendment to the above-captioned rules be held in the Room D Veterans Service Building, 20 West 12th Street, St. Paul, Minnesota, on Thursday the 5th day of June, 1980, commencing at 9:30 A.M. and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for that purpose and all persons who are presently members of the Minnesota Legislature and be published in the State Register.

J. G. Flint, D.V.M.
Secretary and Executive Officer
Livestock Sanitary Board

CERTIFICATE

OF

BOARD'S AUTHORIZING RESOLUTION

I, J. G. Flint, do hereby certify that I am Secretary of the Livestock Sanitary Board, a Board duly authorized under the laws of the State of Minnesota, and that the following is true, complete, and correct copy of a resolution adopted at a meeting of the Livestock Sanitary Board duly and properly called and held on the 11th day of April, 1980, that a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified:

> RESOLVED, that Dr. J. G. Flint, the Secretary and Executive Officer of the Livestock Sanitary Board, be and he hereby is granted the authority and directed to call a hearing for the purpose of amending 3 MCAR § 2.024 Control of Pseudorabies, as well as perform any and all acts incidental thereto, signing an order of hearing and notice of hearing.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 15th day of April, 1980.

J. G. Flint, D.V.M.
Secretary and Executive Officer
Minnesota Livestock Sanitary Board

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General , do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

Special Assistant
Attorney General

Dated: 8/12/80