

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1034

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 6-15-84
DATE FOR REVIEW 6-26-84
DATE DUE 7-5-84

Adopted w/a hearing ✓
Adopted w/o hearing
Temporary rule

Approved 7-5-84 Disapproved Returned to Agency

Resubmitted Due
Approved Disapproved Returned to Agency

Date filed w/Secretary of State 7-6-84 Revisor approved 6/22/84 disapproved

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✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 6.8.84 Date

N/A Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
2.24.84 date of Hearing

Certificate of Board's Authorizing Resolution not submitted

✓ Notice of rulemaking
✓ Sufficiency contains small biz statement.

✓ Affidavit of Mailing Notice or rulemaking
1.18.84 At least 30 days prior to hearing/adoption
" " " Notice to Trade organizations

✓ Mailing list Certificate

✓ Publication in State Register
1.23.84 At least 30/20 days prior to hearing/adoption

✓ Hearing Examiner's Report

✓ Chief Hearing Examiner's Report(s)
4.10.84 Approving H.E.'s Report
6.7.84 Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General
-3 days after submission to AG.

✓ Notice of Submission to the Attorney General — does not follow usual format, no mention of review period

SF-00006-02

DEPARTMENT ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

TO : Dr. C.H. CONTAG, President
Board of Animal Health
Attn: JON MURPHY, Special Assistant Att. General

DATE: 7/5/84

FROM : LARRY D. STARNS
Special Assistant Attorney General
LDS

PHONE: 297-3493

SUBJECT: In the Matter of the Proposed Adoption of Rules of the State Board of Animal Helath Governing 3 MCAR § 2.024 Control of Pseudorabies (Renumbered 3 MCAR § 2.026)

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. Please 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 stamps of the Attorney General and Secretary of State;

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

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

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

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

LDS:sa

STATE OF MINNESOTA

BOARD OF ANIMAL HEALTH
160 AGRICULTURE BLDG.
90 W. PLATO BLVD.
ST. PAUL, MN 55107
(612) 296-2942

June 15, 1984

State of Minnesota
Attorney General's Office
204 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155

Dear Sirs;

Enclosed are copies of a rule adopted by the Board of Animal Health, 3 MCAR § 2.026, Control of Pseudorabies.

A public hearing was held on February 24, 1984 and the Hearing Examiners report is dated June 7, 1984.

The rule and associated documents are being submitted for your approval.

Sincerely,

W. J. Mackey, D.V.M.
Assistant Secretary
Board of Animal Health

WJM/pma
Enc.

AN EQUAL OPPORTUNITY EMPLOYER

Board of Animal Health

Adopted Rules of the State Board of Animal Health, Governing the Control of Swine Pseudorabies

Rules as Adopted

3 MCAR S 2.026 Pseudorabies control.

A. Definitions. As used in this rule, the terms defined in this part have the meanings given them.

1. "Board" means the Board of Animal Health.

2. "Breeding herd" means all swine on one premises which are at least six months old, which are maintained for breeding purposes, which are kept separated from all swine from other sources, and for which care personnel and equipment are not interchanged with other herds.

3. "Infected herd" means a swine herd in which pseudorabies has been diagnosed in one or more animals by an official test, clinical diagnosis by a veterinarian, or laboratory diagnosis. The final determination of the herd status must be made by a state or federal district regulatory veterinarian.

4. "Isolation" means maintenance of swine in a manner which will ensure (1) that the swine have no physical contact with other domestic animals on the premises, (2) that all drainage of organic waste is handled to prevent it from having contact with any other swine on the premises, and (3) that the swine are separated from other animals by a lot or road or are held in a confinement building.

5. "Official pseudorabies test" means the serum neutralization test or other ~~test~~ tests approved by the ~~board~~ United States Department of Agriculture which may be approved by the board if it finds that they are appropriate for the detection of pseudorabies. In approving additional tests the board shall consider scientific evidence of their reliability, the opinions of experts, experience with their use, their cost-effectiveness, and their hazards, if any. The board shall

keep a list of approved tests available to the public.

6. "Pseudorabies controlled vaccinated herd" means a breeding herd in which all animals over six months old have been tested negative for pseudorabies and then officially vaccinated within 15 days under the direction of the board and monitored pursuant to J.2.

7. "Qualified pseudorabies negative herd" means a herd of swine which has been free of pseudorabies for the previous 12 months, in which all swine over six months old have been initially tested negative for pseudorabies, and for which the procedures in I. have been followed.

8. "Quarantined herd" means an infected herd which is maintained on the quarantined premises so as not to have contact with animals belonging to other owners.

9. "Restricted movement swine" means breeding or feeding swine of unknown pseudorabies status which are sold in Minnesota through a swine concentration point.

10. "Slaughter-only market" means a ~~state-and~~ federally approved slaughter market for swine in which all swine moving through the facility are consigned directly to a slaughter establishment or sold for direct reassignment to a recognized slaughter establishment.

11. "Swine concentration point" means a facility or location where swine are assembled for sale or resale for feeding, breeding, or slaughter purposes and where contact may occur between groups of swine from various sources. "Swine concentration point" includes, without limitation, a public stockyard, auction market, street market, state or federal market, untested consignment sales location, buying station, and livestock dealer's yard, truck, and facility.

B. Pseudorabies test procedures. Blood samples drawn in administering an official pseudorabies test must be drawn by an accredited veterinarian, and serological tests must be conducted by a ~~state-and-federally-approved-laboratory-or-other~~ laboratory approved by the ~~board~~ United States Department of Agriculture. #E17

Animals tested must be individually identified by eartag,

tattoo, registration number, or standard ear notch. The identification ~~procedure~~ number must be recorded on the test form.

C. Disease reporting. When clinical or laboratory evidence indicates the presence of pseudorabies in an individual animal or herd, the veterinarian or laboratory shall report that diagnosis to the board within two business days.

D. Infected herd; procedures.

1. The board shall immediately quarantine ~~an infected~~ a herd which is affected with, which shows symptoms of, or which has been exposed to pseudorabies, as authorized by Minnesota Statutes, section 35.05. HE18

2. Livestock other than swine which are infected with pseudorabies ~~or exposed to animals infected with pseudorabies~~ must be quarantined. The board shall lift the quarantine 21 days after the diagnosis ~~or exposure~~ of infection if there are no signs of pseudorabies in the quarantined livestock. HE19

3. When species of animals other than swine have been diagnosed as having pseudorabies, the state or federal district veterinarian shall conduct an epidemiological investigation of any swine on the premises. The investigation must include blood testing of ten percent of the ~~older~~ swine over four months of age, made up of a minimum of ten head selected randomly. HE20 The owner shall pay the laboratory fees associated with this testing. If pseudorabies reactors are disclosed, or if the owner refuses to cooperate in carrying out the test, the swine herd must be quarantined in accordance with the quarantine procedures of this rule.

4. Livestock from an infected herd may be disposed of pursuant to a. or b.

a. Market or breeding swine or other infected or exposed species may only be sold ~~to~~ for slaughter via a federally approved slaughter market, public stockyard, packer buying station, or directly to a slaughter plant accompanied by a shipping permit or an owner's notice of shipment.

b. Feeder pigs may only be sold to a quarantined

feedlot accompanied by a shipping permit or an owner's notice of shipment. The quarantined swine feedlot must be a feedlot where purchased quarantined swine can be fed out in isolation from other domestic animals and where a state or federal veterinarian has determined that:

(1) no breeding swine are on the premises; and

(2) the feedlot owner agrees to sell all the swine from the feedlot directly for slaughter accompanied by a shipping permit or owner's notice of shipment; and

~~(3) prior to its approval as a quarantined feedlot, the lot is inspected for compliance by a state or federal regulatory veterinarian.~~

HE 21

5. No person may sell swine which are known to be infected with or have been exposed to pseudorabies, except directly to slaughter or, in the case of feeder pigs, to a quarantined feedlot.

E. Release of quarantine.

1. Swine herd quarantine release may be accomplished by any of the methods in a.-c.

a. The entire herd may be sold to slaughter accompanied by a shipping permit or owner notice of shipment. The premises must be cleaned and disinfected under the direction of the board. The quarantine ~~may~~ must be released 30 days after completion of the cleaning and disinfection.

HE 24

b. All swine positive to an official test may be removed from the premises. All remaining swine in the breeding herd must then pass a negative official test at least 30 days after the removal of the infected swine and a second negative official test of the breeding herd at least 30 days after the first negative official test before the quarantine is released.

c. Progeny may be weaned, isolated from a quarantined herd under direction ~~and supervision~~ of the board, and pass two negative official tests of 100 percent of these pigs at least 30 days apart.

HE 25

2. When an epidemiological evaluation and herd history ~~indicate~~ establish that a tentative diagnosis of pseudorabies is

HE 28

the result of a vaccination reaction, the quarantine ~~may~~ must be released. The epidemiological evaluation must be conducted ~~by~~ under the direction of the district veterinarian and must include ~~at least~~ all the items in a.-d. HE 28

a. The herd owner shall submit a signed statement that the animal diagnosed as having pseudorabies was either vaccinated for pseudorabies or was the progeny of a vaccinated animal ~~and of an age when maternal antibodies would normally be~~ HE 30 present. The owner shall also state that, to the best of his knowledge, he has not seen any indication of psuedorabies in the herd.

b. The attending veterinarian shall submit a signed statement that he has not seen symptoms of pseudorabies in the herd.

c. Evidence must be submitted to document the use of pseudorabies vaccine in the herd. Acceptable evidence includes purchase records, owner vaccination request forms, ~~and~~ or other ~~relevant items~~ reliable evidence that the owner has vaccinated his herd for pseudorabies. HE 30

d. A negative pseudorabies test must be conducted, at the owner's expense, on at least 20 unvaccinated swine over four months of age. ~~If necessary, additional testing may be conducted at the discretion of the state or federal veterinarian.~~ HE 31

3. A quarantine on livestock other than swine ~~may~~ must be released 21 days after the diagnosis or exposure if there are no signs of pseudorabies in the herd. HE 32

4. Pseudorabies tests conducted on a quarantined premises are at the owner's expense.

5. A state or federal regulatory veterinarian must make the final determination on quarantine release.

F. Pseudorabies traceback to source herd.

1. The owner of a herd in which pseudorabies has been diagnosed shall furnish the following information to the board:

a. a list of sources of purchases of feeding or breeding swine during the preceding year; and

b. a list of sales of feeding or breeding swine during

the preceding year.

2. a. If pseudorabies is diagnosed in breeding or feeding swine which have been purchased from another swine producer within the preceding 12 months, the board ~~may~~ shall require a pseudorabies test of ten percent of the breeding herd of the seller or ten percent of the progeny over four months of age of a vaccinated herd.

HE 34

b. If pseudorabies titres are disclosed on a test conducted pursuant to a. or the owner refuses to test, the herd must be considered to be an infected herd ~~until the purchased swine are tested and found negative~~.

HE35

c. Testing pursuant to a. or b. must be done at the swine owner's expense.

G. Intrastate movement of breeding swine.

1. No person may sell, lease, or loan breeding swine within the state of Minnesota unless the swine are accompanied by a health certificate or test chart provided by the seller which includes:

HE 45

a. identification by ~~an~~ a yellow metal eartag, tattoo, brand, or ear notch recognized by a breed association; and

b. a negative pseudorabies test conducted within 30 days prior to the sale, except for swine from a qualified pseudorabies negative herd or a pseudorabies controlled vaccinated herd.

HE 56

2. a. Breeding swine sold through a swine concentration point where they could come in contact with feeder pigs, market hogs, or other untested swine, are restricted movement breeding swine.

b. Restricted movement breeding swine must be identified at the swine concentration point by a ~~one-half-inch diameter hole punched~~ yellow metal eartag in the right ear ~~and an eartag~~.

HE45

c. Restricted movement breeding swine must be moved from the swine concentration point to the herd of destination accompanied by a ~~document~~ certificate explaining the restricted movement breeding swine status. A copy of this restricted

HE46

movement certificate must be retained for two years at the swine concentration point and one copy must be submitted to the board. At the herd of destination they must be maintained in the herd until they have farrowed and then must be sold for slaughter. Restricted movement breeding swine may not be resold for breeding purposes except pursuant to f. HE 46

d. Restricted movement breeding swine purchased at a swine concentration point by a livestock dealer for resale purposes must be:

(1) maintained separately from other swine until resold;

(2) accompanied to the farm of destination by a document explaining the restricted movement breeding swine status; and

(3) maintained on the farm of destination, farrowed, and sold in the manner set forth in c.

e. Restricted movement breeding swine may be sold for slaughter as cull sows or boars through any livestock marketing channel. They may not, however, be sold through a marketing facility at which breeding stock is sold unless the facility maintains separate chutes, pens, and scales for breeding swine.

f. The restricted movement breeding swine classification may be removed from swine by a negative pseudorabies test conducted at least 30 days after movement of the swine through the swine concentration point.

g. All swine which are maintained in contact with restricted movement breeding swine in the herd of destination are also restricted movement swine. ~~and must be handled accordingly.~~ HE 47

Swine classified as restricted movement swine because of exposure to restricted movement breeding swine may not be resold except to slaughter unless they are tested negative to pseudorabies.

H. Intrastate movement of feeder pigs.

1. ~~a.~~ All feeder pigs sold in Minnesota through a swine concentration point are must be classified as restricted

movement feeder pigs. Restricted movement feeder pigs are not eligible for resale through a second swine concentration point except as provided in 4.

~~b.~~ 2. Restricted movement feeder pigs must be identified at the swine concentration point by a one-half inch diameter hole punched in the right ear ~~and an~~ or by a yellow metal eartag. ~~They are not eligible for resale through a second~~ The choice of identification is made by the management of the swine concentration point.

~~c.~~ 3. Restricted movement feeder pigs bearing a yellow metal eartag must be moved from the swine concentration point to the herd of destination accompanied by a ~~document~~ certificate explaining the restricted movement feeder pig status. A copy of this restricted movement certificate must be retained for two years at the swine concentration point and one copy must be submitted to the board. Feeder pigs bearing the one-half inch ear punch need not be accompanied by a certificate. At the herd of destination ~~they~~ all restricted movement feeder pigs must be maintained in ~~separation~~ isolation from breeding swine until they are sold for slaughter. They may not be used for breeding purposes or resold for breeding purposes except pursuant to ~~f.~~ 6.

~~d.~~ 4. Restricted movement feeder pigs purchased at a swine concentration point by a livestock dealer for resale purposes must be:

~~(1)~~ a. maintained separately from other swine until resold;

~~(2)~~ b. accompanied to the farm of destination by a document explaining the restricted movement feeder pig status; and

~~(3)~~ c. maintained on the farm of destination, fed out, and sold pursuant to ~~e.~~ 5.

~~e.~~ 5. Restricted movement feeder pigs may be sold as market hogs through any livestock marketing channel. They may not, however, be sold through a marketing facility at which breeding stock is sold unless the facility maintains separate chutes, pens, and scales for breeding swine.

f. 6. The restricted movement feeder pig classification may be removed from swine by a negative pseudorabies test conducted at least 30 days after movement of the swine through the swine concentration point.

I. Qualified pseudorabies negative herd procedures.

1. To qualify a herd for qualified pseudorabies negative herd status:

(a) the herd must have been free of pseudorabies for the previous 12 months;

(b) all breeding stock six months of age or older must have passed an initial negative pseudorabies test; and

(c) the herd owner must sign a herd agreement of compliance.

2. Following the receipt by the board of a report of the initial negative herd test and the signed herd agreement, the board shall issue a numbered qualified herd certificate. The initial qualification is valid for 90 days or until the next scheduled requalification test.

3. The pseudorabies status of a qualified pseudorabies negative herd must be monitored and its status maintained by having a negative test of at least 25 percent of the breeding herd every 80 to 100 days. All breeding swine must be subject to at least one official test once a year. No swine may be tested twice in one year to comply with the 25 percent test requirement.

If there are ten or fewer swine at least six months of age in the herd at any quarterly requalification test, all swine at least six months of age must be tested.

If the breeding herd is maintained on more than one premises, 25 percent of the animals on each premises must be tested for each requalification.

4. The board shall cancel qualified pseudorabies negative herd status if any swine show a positive test or are diagnosed as having pseudorabies, if herd additions are made contrary to 5., or for failure to comply with 3.

Swine herds which have lost their qualified pseudorabies

negative herd status may regain that status by being free of pseudorabies for a period of 12 months and by following the herd qualification procedure outlined in 1.

5. a. All purchased additions, except those purchased pursuant to b., must have a negative test for pseudorabies within 30 days prior to movement, and must be isolated and retested negative at least 30 and within 45 days from the date of their receipt upon the premises.

b. Additions may be purchased directly from a qualified pseudorabies negative herd or a pseudorabies controlled vaccinated herd without the negative 30-day test prior to movement. These animals, however, must be isolated and tested negative at least 30 and within 45 days after their receipt. Purchased additions are not considered to be part of the herd for monitoring pursuant to 3. until 30 days after the test.

c. Swine returned to qualified pseudorabies negative herds from exhibitions or which are otherwise commingled with swine from herds not qualified must be kept in isolation upon return for 30 days and have a negative official pseudorabies test before rejoining the herd.

6. Swine from a qualified pseudorabies negative herd may be sold in Minnesota for breeding or feeding purposes without further testing or restriction of movement unless they are sold through a swine concentration point.

J. Pseudorabies controlled vaccinated herd procedures.

1. Progeny of a pseudorabies controlled vaccinated herd do not need to be vaccinated until they enter the breeding herd.

2. To maintain and monitor the status of a pseudorabies controlled vaccinated herd, at least 25 percent of the progeny between the ages of four and five months must have a negative pseudorabies test every 90 days.

3. All purchased additions to a pseudorabies controlled vaccinated herd must be tested negative for pseudorabies within 30 days prior to their arrival or must originate from a qualified pseudorabies negative herd.

All purchased additions, however, must be isolated and retested negative in not less than 30 nor more than 45 days and then vaccinated for pseudorabies within 15 days of the test.

4. Progeny from a pseudorabies controlled vaccinated herd may be sold in Minnesota for breeding or feeding purposes without further testing.

Vaccinated animals from a pseudorabies controlled vaccinated herd may be sold for breeding purposes only with a negative test within 30 days prior to the sale. HE 56

5. If a pseudorabies controlled vaccinated herd is determined to be infected with pseudorabies, the herd must be quarantined and the owner must comply with D. to have the quarantine released.

6. If one of the herd monitoring tests discloses low titres (1:8 or less) in one or more animals which may be caused by vaccination maternal antibodies, an epidemiological evaluation ~~may~~ must be conducted by the district veterinarian which may include~~,-without-limitation,~~ a retest of the titred swine in 30 days and a test of 20 other unvaccinated animals over four months of age. HE 57

During the process of this epidemiological evaluation, swine from this herd are temporarily ineligible for sale except to slaughter.

Failure to allow this evaluation will result in herd quarantine and the loss of controlled vaccinated herd status.

The final determination of the status of the herd must be made by the district veterinarian involved.

K. Community notification of pseudorabies infection in a neighborhood. Within 14 days of declaration of a quarantine or approval of quarantined feedlot status, the district veterinarian shall notify livestock owners within a one-mile radius of the infected herd or quarantined feedlot. The district veterinarian shall also notify the clerk of the township board of the affected township in writing.

L. Exhibition of swine.

1. Swine may be exhibited at fairs, livestock

exhibitions, or consignment sales if they are in compliance with a. or b.

a. All swine exhibited or sold, except at exhibitions described in b., must be accompanied by a health certificate showing:

(1) a negative pseudorabies test within 30 days prior to the start of the exhibition or origination from a qualified pseudorabies negative herd or a pseudorabies controlled vaccinated herd; and

(2) a statement that the swine did not originate from a herd that has had pseudorabies during the previous 12 months.

b. Health certificates are not required for swine exhibited:

(1) at a terminal show or slaughter class where swine are exhibited under the following conditions:

(a) where exhibited swine are sent directly to slaughter after the exhibition;

(b) where no other species are housed in the same show barn at the same time; and

(c) where swine are unloaded at a separate chute from other species; or

(2) at an untested terminal swine show held at the end of the exhibition after other species have gone home.

2. No swine from a quarantined herd may be exhibited at any type of exhibition.

3. Swine returning to the exhibitor's home herd or to a purchaser's herd from exhibitions or consignment sales must be isolated and retested negative for pseudorabies not less than 30 nor more than 60 days after return from the exhibit.

4. Rule LSB 40 contains other swine exhibition requirements.

? non-rule.

5. Out-of-state swine, when exhibited in Minnesota, must meet Minnesota's importation requirements, Minnesota Rules, parts 1700.2600 to 1700.3000, and the exhibition requirements of this rule.

HE 60

M. Transportation of pseudorabies infected or exposed animals.

1. All vehicles used as public carriers for livestock known to be infected with or exposed to pseudorabies must:

(a) contain a shipping permit or owners notice of shipment when quarantined livestock are being transported; and

(b) be cleaned and disinfected pursuant to 2. before being used for transportation of other livestock.

2. A vehicle must be cleaned by thorough removal of all litter, manure, and refuse, and disinfected by the use on all floors, interior walls, and the vehicle chassis of a disinfectant approved by the United States Department of Agriculture.

Provision must be made for the disposition of all manure, litter, and refuse removed from vehicles into an area where other livestock cannot come in contact with it.

N. Experimental use of diagnostic biological products. Notwithstanding the quarantine provisions of this rule and Minnesota Rules, parts 1720.0580 to 1720.0640, in order to promote and encourage the research on new diagnostic biological products, the board shall authorize the limited experimental use of diagnostic biological products for testing for pseudorabies if the use is part of a research project sponsored by the University of Minnesota, College of Veterinary Medicine. The research project must be conducted under conditions and limitations, including restrictions on swine movement, which the board determines are adequate to prevent the spread of disease.

No quarantine will be issued on pseudorabies infected herds disclosed on tests conducted during a board approved field research on biological products if:

1. all herds proposed to be tested during the research projects are identified to the board;

2. full disclosure of all test results from each research herd are promptly reported to the board; and

3. herd owners agree that swine from positive herds will only be sold to slaughter.

HE62

Repealer. Rule 3 MCAR S 2.024 is repealed.

APPROVED AS TO LEGALITY

July 6, 1984

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Jerry D. Jarvis
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUL 6 1984
Joan Anderson
Secretary of State

2:00 P.M.

To: Larry.
Date: 6.28.84
Re: Board of Animal Health: Control of Swine Pseudorabies

Rules as Adopted

p.1, line 31 - 026 A.5

This section contains the double discretion which was approved in the PCA rule - "the agency may if it finds ...." O.K. - w/in Agency's inherent discretion to and charge to control animal health, plus stds. are delineated to guide a reviewing ct. (i.e. reliability, etc.) - LDS

.026 L.4. Appears to be a non-rule - merely a statement of fact. O.K. Needed for guidance to other rules setting out req.'s - LDS.

Late comments received and reviewed and called T. Murphy (7-15-84) who stated that author and org. participated at the hearing and presented their arguments, agency considered same but decided health threat to swine industry outweighed economic harm to hog producers. This falls squarely w/in their (the agency's) statutory authority to quarantine (§35 M.S.) and w/in the state's police power as construed under the Constitution.

- LDS 7/6/84

Approved 7/5/84, reconsidered w/comments and formally approved 7/6/84, one day late so that would reflect consideration of comments. - LDS

Rules as Proposed (all new material)

3 MCAR S 2.026 Pseudorabies control.

A. Definitions. As used in this rule, the terms defined in this part have the meanings given them.

1. "Board" means the Board of Animal Health.

2. "Breeding herd" means all swine on one premises which are at least six months old, which are maintained for breeding purposes, which are kept separated from all swine from other sources, and for which care personnel and equipment are not interchanged with other herds.

3. "Infected herd" means a swine herd in which pseudorabies has been diagnosed in one or more animals by an official test, clinical diagnosis by a veterinarian, or laboratory diagnosis. The final determination of the herd status must be made by a state or federal district regulatory veterinarian.

4. "Isolation" means maintenance of swine in a manner which will ensure (1) that the swine have no physical contact with other domestic animals on the premises, (2) that all drainage of organic waste is handled to prevent it from having contact with any other swine on the premises, and (3) that the swine are separated from other animals by a lot or road or are held in a confinement building.

5. "Official pseudorabies test" means the serum neutralization test or other test approved by the board.

6. "Pseudorabies controlled vaccinated herd" means a breeding herd in which all animals over six months old have been tested negative for pseudorabies and then officially vaccinated within 15 days under the direction of the board and monitored pursuant to J.2.

7. "Qualified pseudorabies negative herd" means a herd of swine which has been free of pseudorabies for the previous 12 months, in which all swine over six months old have been initially tested negative for pseudorabies, and for which the procedures in I. have been followed.

8. "Quarantined herd" means an infected herd which is

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maintained on the quarantined premises so as not to have contact with animals belonging to other owners.

9. "Restricted movement swine" means breeding or feeding swine of unknown pseudorabies status which are sold in Minnesota through a swine concentration point.

10. "Slaughter-only market" means a state and federally approved slaughter market for swine in which all swine moving through the facility are consigned directly to a slaughter establishment or sold for direct reassignment to a recognized slaughter establishment.

11. "Swine concentration point" means a facility or location where swine are assembled for sale or resale for feeding, breeding, or slaughter purposes and where contact may occur between groups of swine from various sources. "Swine concentration point" includes, without limitation, a public stockyard, auction market, street market, state or federal market, untested consignment sales location, buying station, and livestock dealer's yard, truck, and facility.

B. Pseudorabies test procedures. Blood samples drawn in administering an official pseudorabies test must be drawn by an accredited veterinarian, and serological tests must be conducted by a state and federally approved laboratory or other laboratory approved by the board.

Animals tested must be individually identified by eartag, tattoo, registration number, or standard ear notch. The identification procedure must be recorded on the test form.

C. Disease reporting. When clinical or laboratory evidence indicates the presence of pseudorabies in an individual animal or herd, the veterinarian or laboratory shall report that diagnosis to the board within two business days.

D. Infected herd; procedures.

1. The board shall immediately quarantine an infected herd, as authorized by Minnesota Statutes, section 35.05.

2. Livestock other than swine which are infected with pseudorabies or exposed to animals infected with pseudorabies must be quarantined. The board shall lift the quarantine 21

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

days after the diagnosis or exposure if there are no signs of pseudorabies in the quarantined livestock.

3. When species of animals other than swine have been diagnosed as having pseudorabies, the state or federal district veterinarian shall conduct an epidemiological investigation of any swine on the premises. The investigation must include blood testing of ten percent of the older swine made up of a minimum of ten head selected randomly. The owner shall pay the laboratory fees associated with this testing. If pseudorabies reactors are disclosed, or if the owner refuses to cooperate in carrying out the test, the swine herd must be quarantined in accordance with the quarantine procedures of this rule.

4. Livestock from an infected herd may be disposed of pursuant to a. or b.

a. Market or breeding swine or other infected or exposed species may only be sold to slaughter via a federally approved slaughter market, public stockyard, packer buying station, or directly to a slaughter plant accompanied by a shipping permit or an owner's notice of shipment.

b. Feeder pigs may only be sold to a quarantined feedlot accompanied by a shipping permit or an owner's notice of shipment. The quarantined feedlot must be a feedlot where purchased quarantined swine can be fed out in isolation from other domestic animals and where:

(1) no breeding swine are on the premises;

(2) the feedlot owner agrees to sell all the swine from the feedlot directly for slaughter accompanied by a shipping permit or owner's notice of shipment; and

(3) prior to its approval as a quarantined feedlot, the lot is inspected for compliance by a state or federal regulatory veterinarian.

5. No person may sell swine which are known to be infected with or have been exposed to pseudorabies, except directly to slaughter or, in the case of feeder pigs, to a quarantined feedlot.

E. Release of quarantine.

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1. Swine herd quarantine release may be accomplished by any of the methods in a.-c.

a. The entire herd may be sold to slaughter accompanied by a shipping permit. The premises must be cleaned and disinfected under the direction of the board. The quarantine may be released 30 days after completion of the cleaning and disinfection.

b. All swine positive to an official test may be removed from the premises. All remaining swine in the breeding herd must then pass a negative official test at least 30 days after the removal of the infected swine and a second negative official test of the breeding herd at least 30 days after the first negative official test before the quarantine is released.

c. Progeny may be weaned, isolated from a quarantined herd under direction and supervision of the board, and pass two negative official tests of 100 percent of these pigs at least 30 days apart.

2. When an epidemiological evaluation and herd history indicate that a tentative diagnosis of pseudorabies is the result of a vaccination reaction, the quarantine may be released. The epidemiological evaluation must be conducted by the district veterinarian and must include at least the items in a.-d.

a. The herd owner shall submit a signed statement that the animal diagnosed as having pseudorabies was either vaccinated for pseudorabies or was the progeny of a vaccinated animal and of an age when maternal antibodies would normally be present. The owner shall also state that, to the best of his knowledge, he has not seen any indication of psuedorabies in the herd.

b. The attending veterinarian shall submit a signed statement that he has not seen symptoms of pseudorabies in the herd.

c. Evidence must be submitted to document the use of pseudorabies vaccine in the herd. Acceptable evidence includes purchase records, owner vaccination request forms, and other

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relevant items.

d. A negative pseudorabies test must be conducted, at the owner's expense, on at least 20 unvaccinated swine over four months of age. If necessary, additional testing may be conducted at the discretion of the state or federal veterinarian.

3. A quarantine on livestock other than swine may be released 21 days after the diagnosis or exposure if there are no signs of pseudorabies in the herd.

4. Pseudorabies tests conducted on a quarantined premises are at the owner's expense.

5. A state or federal regulatory veterinarian must make the final determination on quarantine release.

F. Pseudorabies traceback to source herd.

1. The owner of a herd in which pseudorabies has been diagnosed shall furnish the following information to the board:

a. a list of sources of purchases of feeding or breeding swine during the preceding year; and

b. a list of sales of feeding or breeding swine during the preceding year.

2. a. If pseudorabies is diagnosed in breeding or feeding swine which have been purchased from another swine producer within the preceding 12 months, the board may require a pseudorabies test of ten percent of the breeding herd of the seller or ten percent of the progeny over four months of age of a vaccinated herd.

b. If pseudorabies titres are disclosed on a test conducted pursuant to a. or the owner refuses to test, the herd must be considered to be an infected herd until the purchased swine are tested and found negative.

c. Testing pursuant to a. or b. must be done at the swine owner's expense.

G. Intrastate movement of breeding swine.

1. No person may sell, lease, or loan breeding swine within the state of Minnesota unless the swine are accompanied by a health certificate or test chart provided by the seller which includes:

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a. identification by an eartag, tattoo, brand, or ear notch recognized by a breed association; and

b. a negative pseudorabies test conducted within 30 days, except for swine from a qualified pseudorabies negative herd or a pseudorabies controlled vaccinated herd.

2. a. Breeding swine sold through a swine concentration point where they could come in contact with feeder pigs, market hogs, or other untested swine, are restricted movement breeding swine.

b. Restricted movement breeding swine must be identified at the swine concentration point by a one-half inch diameter hole punched in the right ear and an eartag.

c. Restricted movement breeding swine must be moved from the swine concentration point to the herd of destination accompanied by a document explaining the restricted movement breeding swine status. At the herd of destination they must be maintained in the herd until they have farrowed and then must be sold for slaughter. Restricted movement breeding swine may not be resold for breeding purposes except pursuant to f.

d. Restricted movement breeding swine purchased at a swine concentration point by a livestock dealer for resale purposes must be:

(1) maintained separately from other swine until resold;

(2) accompanied to the farm of destination by a document explaining the restricted movement breeding swine status; and

(3) maintained on the farm of destination, farrowed, and sold in the manner set forth in c.

e. Restricted movement breeding swine may be sold for slaughter as cull sows or boars through any livestock marketing channel. They may not, however, be sold through a marketing facility at which breeding stock is sold unless the facility maintains separate chutes, pens, and scales for breeding swine.

f. The restricted movement breeding swine classification may be removed from swine by a negative

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pseudorabies test conducted at least 30 days after movement of the swine through the swine concentration point.

g. All swine which are maintained in contact with restricted movement breeding swine in the herd of destination are also restricted movement swine and must be handled accordingly.

Swine classified as restricted movement swine because of exposure to restricted movement breeding swine may not be resold except to slaughter unless they are tested negative to pseudorabies.

H. Intrastate movement of feeder pigs.

1. a. All feeder pigs sold in Minnesota through a swine concentration point are restricted movement feeder pigs.

b. Restricted movement feeder pigs must be identified at the swine concentration point by a one-half inch diameter hole punched in the right ear and an eartag. They are not eligible for resale through a second swine concentration point.

c. Restricted movement feeder pigs must be moved from the swine concentration point to the herd of destination accompanied by a document explaining the restricted movement feeder pig status. At the herd of destination they must be maintained in separation from breeding swine until they are sold for slaughter. They may not be used for breeding purposes or resold for breeding purposes except pursuant to f.

d. Restricted movement feeder pigs purchased at a swine concentration point by a livestock dealer for resale purposes must be:

(1) maintained separately from other swine until resold;

(2) accompanied to the farm of destination by a document explaining the restricted movement feeder pig status; and

(3) maintained on the farm of destination, fed out, and sold pursuant to e.

e. Restricted movement feeder pigs may be sold as market hogs through any livestock marketing channel. They may

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not, however, be sold through a marketing facility at which breeding stock is sold unless the facility maintains separate chutes, pens, and scales for breeding swine.

f. The restricted movement feeder pig classification may be removed from swine by a negative pseudorabies test conducted at least 30 days after movement of the swine through the swine concentration point.

I. Qualified pseudorabies negative herd procedures.

1. To qualify a herd for qualified pseudorabies negative herd status:

(a) the herd must have been free of pseudorabies for the previous 12 months;

(b) all breeding stock six months of age or older must have passed an initial negative pseudorabies test; and

(c) the herd owner must sign a herd agreement of compliance.

2. Following the receipt by the board of a report of the initial negative herd test and the signed herd agreement, the board shall issue a numbered qualified herd certificate. The initial qualification is valid for 90 days or until the next scheduled requalification test.

3. The pseudorabies status of a qualified pseudorabies negative herd must be monitored and its status maintained by having a negative test of at least 25 percent of the breeding herd every 80 to 100 days. All breeding swine must be subject to at least one official test once a year. No swine may be tested twice in one year to comply with the 25 percent test requirement.

If there are ten or fewer swine at least six months of age in the herd at any quarterly requalification test, all swine at least six months of age must be tested.

If the breeding herd is maintained on more than one premises, 25 percent of the animals on each premises must be tested for each requalification.

4. The board shall cancel qualified pseudorabies negative herd status if any swine show a positive test or are diagnosed

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as having pseudorabies, if herd additions are made contrary to 5., or for failure to comply with 3.

Swine herds which have lost their qualified pseudorabies negative herd status may regain that status by being free of pseudorabies for a period of 12 months and by following the herd qualification procedure outlined in 1.

5. a. All purchased additions, except those purchased pursuant to b., must have a negative test for pseudorabies within 30 days prior to movement, and must be isolated and retested negative at least 30 and within 45 days from the date of their receipt upon the premises.

b. Additions may be purchased directly from a qualified pseudorabies negative herd or a pseudorabies controlled vaccinated herd without the negative 30-day test prior to movement. These animals, however, must be isolated and tested negative at least 30 and within 45 days after their receipt. Purchased additions are not considered to be part of the herd for monitoring pursuant to 3. until 30 days after the test.

c. Swine returned to qualified pseudorabies negative herds from exhibitions or which are otherwise commingled with swine from herds not qualified must be kept in isolation upon return for 30 days and have a negative official pseudorabies test before rejoining the herd.

6. Swine from a qualified pseudorabies negative herd may be sold in Minnesota for breeding or feeding purposes without further testing or restriction of movement unless they are sold through a swine concentration point.

J. Pseudorabies controlled vaccinated herd procedures.

1. Progeny of a pseudorabies controlled vaccinated herd do not need to be vaccinated until they enter the breeding herd.

2. To maintain and monitor the status of a pseudorabies controlled vaccinated herd, at least 25 percent of the progeny between the ages of four and five months must have a negative pseudorabies test every 90 days.

3. All purchased additions to a pseudorabies controlled

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vaccinated herd must be tested negative for pseudorabies within 30 days prior to their arrival or must originate from a qualified pseudorabies negative herd.

All purchased additions, however, must be isolated and retested negative in not less than 30 nor more than 45 days and then vaccinated for pseudorabies within 15 days of the test.

4. Progeny from a pseudorabies controlled vaccinated herd may be sold in Minnesota for breeding or feeding purposes without further testing.

Vaccinated animals from a pseudorabies controlled vaccinated herd may be sold for breeding purposes only with a negative test within 30 days.

5. If a pseudorabies controlled vaccinated herd is determined to be infected with pseudorabies, the herd must be quarantined and the owner must comply with D. to have the quarantine released.

6. If one of the herd monitoring tests discloses low titres (1:8 or less) in one or more animals which may be caused by vaccination maternal antibodies, an epidemiological evaluation may be conducted by the district veterinarian which may include, without limitation, a retest of the titred swine in 30 days and a test of 20 other unvaccinated animals over four months of age.

During the process of this epidemiological evaluation, swine from this herd are temporarily ineligible for sale except to slaughter.

Failure to allow this evaluation will result in herd quarantine and the loss of controlled vaccinated herd status.

The final determination of the status of the herd must be made by the district veterinarian involved.

K. Community notification of pseudorabies infection in a neighborhood. Within 14 days of declaration of a quarantine or approval of quarantined feedlot status, the district veterinarian shall notify livestock owners within a one-mile radius of the infected herd or quarantined feedlot. The district veterinarian shall also notify the clerk of the

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township board of the affected township in writing.

L. Exhibition of swine.

1. Swine may be exhibited at fairs, livestock exhibitions, or consignment sales if they are in compliance with a. or b.

a. All swine exhibited or sold, except at exhibitions described in b., must be accompanied by a health certificate showing:

(1) a negative pseudorabies test within 30 days prior to the start of the exhibition or origination from a qualified pseudorabies negative herd or a pseudorabies controlled vaccinated herd; and

(2) a statement that the swine did not originate from a herd that has had pseudorabies during the previous 12 months.

b. Health certificates are not required for swine exhibited:

(1) at a terminal show or slaughter class where swine are exhibited under the following conditions:

(a) where exhibited swine are sent directly to slaughter after the exhibition;

(b) where no other species are housed in the same show barn at the same time; and

(c) where swine are unloaded at a separate chute from other species; or

(2) at an untested terminal swine show held at the end of the exhibition after other species have gone home.

2. No swine from a quarantined herd may be exhibited at any type of exhibition.

3. Swine returning to the exhibitor's home herd or to a purchaser's herd from exhibitions or consignment sales must be isolated and retested negative for pseudorabies not less than 30 nor more than 60 days after return from the exhibit.

4. Rule LSB 40 contains other swine exhibition requirements.

5. Out-of-state swine, when exhibited in Minnesota, must

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meet Minnesota's importation requirements and the exhibition requirements of this rule.

M. Transportation of pseudorabies infected or exposed animals.

1. All vehicles used as public carriers for livestock known to be infected with or exposed to pseudorabies must:

(a) contain a shipping permit or owners notice of shipment when quarantined livestock are being transported; and

(b) be cleaned and disinfected pursuant to 2. before being used for transportation of other livestock.

2. A vehicle must be cleaned by thorough removal of all litter, manure, and refuse, and disinfected by the use on all floors, interior walls, and the vehicle chassis of a disinfectant approved by the United States Department of Agriculture.

Provision must be made for the disposition of all manure, litter, and refuse removed from vehicles into an area where other livestock cannot come in contact with it.

Repealer. Rule 3 MCAR S 2.024 is repealed.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD466

Agency: Board of Animal Health

Division:

Agency Contact: Dr. Mackey

Rule Numbers: 3 MCAR S 2.026; Repealing 3 MCAR S 2.024

Title: Proposed Rule Governing Pseudorabies Control and Repealing 3 MCAR S 2.024

Type of Rules: Permanent

Incorporations by Reference: None
Rule Number: Material Incorporated:

Duplication of Statutory Language: None
Rule Number: Statutory Section Duplicated:

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Craig E. Lindeke
Assistant Revisor
Phone: 296-0946
Date: January 9, 1984

APPROVED AS TO LEGALITY

_____ 19____

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY_____
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA

BOARD OF ANIMAL HEALTH

RECEIVED
JAN 31 1984
ADMINISTRATIVE HEARINGS

In the Matter of the
Proposed Adoption of Rules of the
State Board of Animal Health
Governing the Control of
Pseudorabies (3 MCAR § 2.026)

STATEMENT OF NEED
AND REASONABLENESS

Board Exh. No. 10
File No. BAH-84-001-JL
Date 2-24-84

I. GENERAL NEED AND AUTHORITY FOR RULES.

The Minnesota Board of Animal Health (hereinafter referred to as the "Board"), under the provisions of Minn. Stat. § 35.03 (1982), is charged with the duty of protecting the health of the domestic animals of the State and is authorized to make rules it deems expedient to that end.

Consistent with that duty and authority, and in an attempt to stop the spread of pseudorabies in Minnesota, the Board in 1975, began a program of quarantining herds of swine known to be infected with pseudorabies. This program was conducted pursuant to the Board's general quarantine authority under Minn. Stat. § 35.05 (1982), and pursuant to rules subsequently adopted and codified as 3 MCAR § 2.024, "Control of Pseudorabies." The proposed rule is the second major step in this disease control program.

Pseudorabies is a serious viral disease that attacks the central nervous system (CNS) of most species of warm-blooded animals, except man. It is a very fatal disease in most species and is most commonly found in swine. Once contacted it generally results in death within 3 days. The disease has long existed in Europe and began to manifest itself as a serious problem about 20 years ago. It first became a serious problem in the United States in the early 1970's. It was rarely detected in Minnesota until 1975. It has increased in incidence and severity since then and is believed to accompany or result from the confinement raising of swine.

When the initial pseudorabies control program began in 1975, the Board quarantined four herds for pseudorabies. Quarantines have increased steadily since then.

In 1976, 18 herds were quarantined; in 1977, 26 herds were quarantined; in 1978, 21 herds were quarantined; in 1979, 53 herds were quarantined; and in 1980, 69 herds were quarantined. In 1981, a major increase occured and the number of herds quarantined increased from 69 to 132. In 1982, the Board quarantined an additional 101 herds and in 1983, 82 additional herds were placed under quarantine. The very serious implications of this rising disease incidence rate in Minnesota is made even more obvious when consideration is given to the fact that of the herds quarantined in 1983, 25% are seed stock herds or purebred herds that are raising breeding stock for sale.

The number of Minnesota farmers engaged in hog operations in Minnesota has decreased significantly in the last five years. In 1978, there were 31,000 hog farmers in Minnesota. That number has decreased each subsequent year. In 1982 there were 24,000 hog farmers and in 1983 the number was reduced to 22,000. see; "Minnesota Agricultural Statistics, 1983," U.S. Department of Agriculture Statistical Reporting Service at 3. In addition, the number of hogs and pigs on Minnesota's farms has decreased from 5,100,000 in 1981 to 3,900,000 in 1983. Id at 55.

A portion of this reduction is due to pseudorabies. Significantly, approximately 10% of all the seed stock herds in the State of Minnesota have been lost during the past two years due to pseudorabies. In addition, a statistical sampling conducted by the Board demonstrates that pseudorabies is costing the Minnesota livestock industry approximately 1 million dollars a month in losses. This sampling demonstrated that each commercial hog producer loses an average of $23,500.00, and the average purebred breeding swine producer loses approximately $128,000.00 when pseudorabies attacks a herd.

II. LEGISLATIVE DIRECTIVE

Due to the severity of the pseudorabies epidemic, the 1983 Legislature mandated a more effective pseudorabies control program. Minn. Laws 1983, Chapter 367, § 1, entitled "Pseudorabies Program; Rules" provides:

> The Board of Animal Health shall adopt rules to implement a program to control pseudorabies in swine, including pseudorabies testing of breeding swine and restricted movement of feeder pigs.

The proposed rule is intended to implement this clear and specific legislative directive.

III. PSEUDORABIES ADVISORY COMMITTEE.

In an attempt to obtain active participation and input by the livestock industry in the development of a new pseudorabies rule, the Board appointed a PSEUDORABIES ADVISORY COMMITTEE composed of 24 members, which included representatives of the Pork Producers Association, the Livestock Producers Association, the livestock marketing agencies, the livestock packing industry, the United States Department of Agriculture, the University of Minnesota, and the Board of Animal Health. A complete list of the members appointed to this Committee who participated in the development of the proposed rule is attached hereto and incorporated herein as Exhibit "A".

The Pseudorabies Advisory Committee met on five different occasions over a period of a year and a half. It thoroughly researched and discussed the pseudorabies situation in Minnesota and developed the proposed rule based upon the following conclusions:

1. The spread of pseudorabies in Minnesota constitutes a serious condition threatening the economic well being and health of Minnesota's swine industry;

2. Pseudorabies will not go away under current regulation and every indication is that the problem will be worse in the future;

3. Vaccination as presently performed has not stopped the spread of pseudorabies in foreign countries;

4. Total eradication of the disease at this time is not feasible or economically practical;

5. Procedures must be adopted to reduce the spread of pseudorabies until such time that total eradication does become feasible.

A full and complete copy of the minutes of the five meetings of the Pseudorabies Advisory Committee are attached hereto and incorporated herein by reference as Exhibit "B".

The Pseudorabies Advisory Committee approved a proposed pseudorabies control rule which was then presented to the Board of Animal Health. Following the Board's review and approval with several minor changes, the Pseudorabies Advisory Committee endorsed the proposed rule in essentially the form being proposed in this proceeding.

IV. FRAMEWORK FOR THE PROPOSED RULE

Within the realm of animal health programs, the regulation of pseudorabies as proposed in the rule is not a novel regulatory scheme, either in Minnesota or in other states. In addition to the medical and scientific expertise provided by the Board of Animal Health's staff, the board members themselves and the advisory committee members, the board had available to it the regulatory experiences of other states, the federal government and its own. In considering the need and reasonableness of the proposed rule, the board relied upon this existing expertise and gave careful consideration to existing rules and regulations.

A. Federal Regulation

The Secretary of the United States Department of Agriculture has been granted broad authority to make regulations and take measures that are deemed necessary to prevent the introduction or dissemination of, contagious, infectious, or communicable diseases of animals and live poultry in interstate commerce. See 21 U.S. Code, § 111. The Department's general restrictions on the interstate movement of all animals prevents the interstate movement of any animal affected with any communicable disease. 9 CFR, § 71.3(a), (b).

Based upon a finding that pseudorabies may exist in every state of the United States, in 1979, the Department of Agriculture adopted specific regulations to prevent the spread and dissemination of the disease and to protect the livestock of the United States. Those regulations are set forth in 9 CFR § 85.1 et. seq., a copy of which is attached hereto and incorporated herein as Exhibit "D". The federal regulations generally require that:

1. All swine infected with or exposed to pseudorabies must be quarantined;

2. A breeding swine moved interstate must be negative to an official pseudorabies test or be from a Qualified Pseudorabies Negative Herd or a Pseudorabies Controlled Vaccinated Herd;

3. Swine showing clinical evidence of Pseudorabies may not move interstate;

4. Infected or exposed swine may be moved for slaughter under specified conditions and to quarantined feedlots under certain conditions;

5. Vaccinated swine may be moved interstate under certain conditions.

9 CFR § 85.7(b)(4).

The proposed rule is intended in part to complement the federal rule by extending its requirements to the intrastate movement of swine.

B. Current Minnesota Regulation

In 1979, the federal government advised the Minnesota Board of Animal Health that it must adopt a control program consistent with federal rules in order to allow for the interstate shipment of swine. The current Minnesota rule, codified as 3 MCAR § 2.024, "Control of Pseudorabies, a copy of which is attached hereto and incorporated herein as Exhibit "C", was adopted to effectuate that need. It generally requires:

1. The reporting by veterinarians of all cases of pseudorabies;

2. The quarantine of all known infected herds when diagnosed based upon a clinical or laboratory diagnosis;

3. Movement of quarantined swine only to slaughter accompanied by a shipping permit or to quarantined feedlots until moved to slaughter;

4. Procedures for the release of quarantines;

5. The establishment and control of Qualified Pseudorabies Negative Herds.

6. The establishment of Pseudorabies Controlled Vaccinated Herds.

Many of the provisions of the proposed rule are merely a re-adoption of the current Minnesota rule. The board considered it to be cost effective and less confusing to re-adopt a complete new rule rather than attempt to "cut and paste" in order to incorporate into the existing rule those provisions which are totally new and those provisions which merely restate or expand upon the existing rule. Significant additions to the current rule will be identified in the part of this statement which addresses each specific rule provision.

In addition to the above rule, 3 MCAR § 2.005, entitled "Importation of swine into Minnesota", was adopted to prohibit the importation of quarantined swine except to slaughter This rule further provides that all swine entering Minnesota must be accompanied by a health certificate and individual identification, that breeding swine be tested negative to brucellosis and pseudorabies prior to entry, and that all swine except those going to slaughter be quarantined on arrival for 30 days.

3 MCAR § 2.061 was adopted on June 16, 1980. This rule expanded the scope of required quarantines to require that all livestock affected with or which show symptoms of disease or which have been exposed to a disease determined by the board to be a dangerous, infectious communicable disease, to be quarantined and isolated from all other unexposed livestock.

These minimal regulations were essentially mandated by the U.S. Department of Agriculture's regulations in order to assure that Minnesota swine may move interstate and conversely that swine from other states may enter Minnesota. The proposed rule restates many of these requirements and is consistent therewith.

C. Regulations of Other States

In the course of its deliberations over the proposed rule, the Board contacted a number of other states for information regarding their state regulations on pseudorabies. In developing its rule, it considered the current rules of the states of Indiana, Iowa, California, Wisconsin, Pennsylvania, Missouri, South Dakota, Illinois, and Alaska. Illustrative of the rules of other states are Illinois' regulations relating to the Swine Disease Control and Eradication Act, a copy of which is attached hereto and incorporated herein as Exhibit "E", and Indiana's State Board of Animal Health Regulation 79-1, a copy of which is attached hereto and incorporated herein by reference as Exhibit "F". Also attached and incorporated herein by reference as Exhibit "G," is a summary of the basic requirements of all the states whose rules were studied, which was compiled by the Board in the course of its deliberations. Full and complete texts of the other states' rules are on file at the Board of Animal Health for review by any interested person.

The proposed rule is tailored from the experiences of these other states and in many instances provides similar requirements.

D. Summary: The Rule is Necessary and Reasonable Based on the Experiences of other Animal Disease Control Programs.

As indicated herein, the proposed rule is modeled after the current Minnesota rule, federal law and the rules of other states. Based thereon, it conforms to the practices and procedures generally accepted under animal disease control programs as necessary to control the spread of a national disease. The rule, therefor, is reasonable in light of the experience of other governmental entities. Further, the proposed rule is derived from the substantial experience and expertise of the Board's veterinarians, who have drawn upon their respective backgrounds in the area of veterinary science and medicine and the support of a cross-section of the livestock industry as represented on the Pseudorabies Advisory Committee.

V. NEED OF REASONABLENESS OF EACH RULE PROVISION: PROPOSED 3 MCAR § 2.026, A THROUGH M

A. Definitions.

This section defines the terms which have distinct and acceptable meanings when used within the realm of the livestock industry and under pseudorabies disease control programs. The definitions do not repeat verbatim any state statutory definition but rather, clarify and distinguish certain key terms which are utilized throughout the rule.

1. "Board": the "Board" is referred to throughout the rule.

2. "Breeding herd": This term is necessary to identify the group of swine which would be subject to one quarantine. For the control of the disease, it is important to be able to identify swine as composed of groups which do not interchange amongst themselves or which do not have contact with other animals beyond those in a particular herd. A quarantine must encompass all animals having contact with or exposed to each other.

3. "Infected herd" identifies which herds will be subject to quarantine under the rules. The definition encompasses all three types of diagnosis and is consistent with 3 MCAR § 2.061 which requires quarantine in all three instances.

4. "Isolation" this term is necessary so that livestock owners will know what steps must be taken when isolation is required in order to maintain qualified pseudorabies negative herd status under subpart "I" of the rule and to apprise livestock owners of what steps must be taken when livestock are returned from an exhibit to the exhibitor's home herd under subpart "L" of the rule.

5. "Official Pseudorabies Test" defines the tests currently and generally accepted in the industry for the detection of pseudorabies. At the present time, new tests and procedures are being developed and experimented with which may lead to additional tests being approved by the USDA for utilization in disease control. It is anticipated that such tests will be more cost effective in the event that they are approved for use by practicing veterinarians. The Board desires to be able to approve such tests under the existing rule and in the absence of an amendment to the rule. It should be noted that this definition does not open the gate for unbridled discretion on the part of the agency since under current LSB Rule 55, no antigen or other

biological product used in the detection and diagnosis of any communicable, infectious disease of domestic animals may be utilized in the state, unless it is licensed by the United States Department of Agriculture. The tests that have been approved by the Department of Agriculture for utilization in the diagnosis of pseudorabies are set forth in 9 CFR § 85.1(q). Leaving room for the approval of additional tests is consistent with other programs in Minnesota, see for example; "Eradication of bovine and bison brucellosis"; 3 MCAR § 2.011-B-5, and "Swine Brucellosis", 3 MCAR § 2.021-A-5, and is consistent with the rules of other states. see; Indiana Reg. 79-1; Illinois Regulation VI; Wisconsin Administrative Code, "Ag. 10.01"

6-11 Remaining Definitions

Breeding swine and feeder pigs pose different problems and concerns with respect to the spread of pseudorabies and both require individual attention. In addition, distinctions must be made between quarantined or infected herds; those herds that may have had contact with pseudorabies through the vaccination process; and those herds who qualify for special treatment by being, essentially, pseudorabies free. Different restrictions or requirements apply, depending upon the status of the swine. Therefore, it is necessary in the definitions to identify and define these distinctions so that they can be properly approached in the main body of the rule. The definitions of "pseudorabies controlled vaccinated herd", "qualified pseudorabies negative herd", "quarantined herd", "restricted movement swine", and the general definitions covering state and federal markets for swine are necessary to make these distinctions. They are consistent with the definitions contained in the federal rules, see 9 CFR § 85.1 and the rules governing State-Federal Approved Markets for Swine, 3 MCAR § 2.042.

B. Pseudorabies Test Procedures

This section is necessary to assure that only properly licensed veterinarians administer official pseudorabies tests and that tests be properly analyzed in qualified laboratories. It is consistent with the use of antigens as regulated under Rule "LSB" 55.

State and federally approved laboratories are those laboratories identified in Title 9 CFR part 85.1. Prior to the approval of a laboratory, the Department

of Agriculture makes a determination that the laboratory has personnel trained at the Veterinary Service Diagnostic Laboratory located in Ames, Iowa to supervise the tests; that standard test protocol is followed; that the laboratory meets check-test proficiency requirements; and that the laboratory assures that it will report all test results to all state and animal health officials.

Any blood test would be meaningless if it did not relate the test to a specific animal being tested. Each animal must be properly identified in some manner. This section sets forth the generally accepted methods for identification; eartag, tatoo, registration number, or standard earnotch.

The requirement of this section conform to similar requirements under other established disease control programs.

C. Disease Reporting

This section requires veterinarians to report all cases of pseudorabies to the Board. It is a requirement which is presently embodied in Chapter 35. Under Minn. Stat. § 35.06, every person who knows or has reason to suspect that a contagious or infectious disease exists in any domestic animal must immediately notify the Board. This section provides notice to Minnesota's veterinarians of that duty and fulfills the requirement of 9 CFR 85.7(4) for movement out of state. The Board chose two days as a reasonable time period within such reports should be submitted to it in order to take appropriate action as soon as possible.

D. Infected Herd; Procedures

Section D-1.

This section outlines the conditions under which a herd will be quarantined. The necessity for quarantine is quite obvious, without a quarantine there would be no effective means to control the spread of the disease. Under Minn. Stat. § 35.05 and 35.063 the Board has the discretionary authority to quarantine any animals affected with or which have been exposed to any contagious or infectious

dangerous disease. The proposed rule makes the Board's duty mandatory with respect to pseudorabies and encompasses all infected herds whereas the current rule 3 MCAR § 2.024B authorizes mandatory quarantines only on herds in which a clinical diagnosis or a laboratory diagnosis is made. The Board believes better results will be effectuated through the mandatory quarantining of all herds which show evidence of infection whether that infection has been diagnosed by an official test, a clinical diagnosis by a veterinarian, or a laboratory diagnosis. The requirement to do so is already embodied in 3 MCAR § 2.061.

Section D-2.

In addition to swine which are quarantined, other livestock exposed to the swine are equally capable or susceptible of contacting pseudorabies. The justification for quarantining such other animals is therefore self-apparent.

Section D-3.

In the event other animals have been diagnosed as having pseudorabies, an epidemiological investigation of the swine on the premises is necessary to determine whether they have contacted the disease. The Board believes a test of 10% of the swine will provide a medically acceptable statistical sampling. The burden has been placed upon the owner to pay his veterinarian for these tests. The burden to do so is consistent with other disease control programs. see, Brucellosis tests - 3 MCAR § 2.011-B-3-c, 3 MCAR § 2.021-B-4-C and Anaplasmosis testing, 3 MCAR § 2.012-B-2. Due to the high probability of exposure between the swine and other animals on the premises, the Board believes it reasonable to assume that they are infected if the owner does not cooperate with testing. In such event, quarantine will assure that the assumption does not become reality.

Section D-4.

This section sets forth the manner in which livestock in an infected herd may be disposed of. It, in essence, readopts the existing provisions of 3 MCAR § 2.024-B-6, but clarifies what type of quarantine feedlots that feeder pigs may be transferred to. The purpose of the additional restriction is to assure that no breeding swine will be exposed to the feeder pigs which are infected.

Under the current rule, where quarantined herds only produce pigs for sale as feeders, the feeders may be sold for movement for finishing under quarantine on premises where there are no breeding swine, provided there is no clinical sign of pseudorabies in the herd. The proposed rule is more liberal than the present rule in that any feeder pigs from an infected herd, whether or not the livestock owner can see clinical signs of pseudorabies, may be shipped to a quarantined feedlot. Assurance that the disease will not be spread by these swine is provided by the requirement that they may only move from the quarantined premises to slaughter. It should be noted that the general regulation of, and criteria for approval of quarantined feedlots is currently provided for under 3 MCAR § 2.057.

Section D-5.

This section prohibits the sale of infected or exposed swine except to slaughter. There will, no doubt, be instances where an owner of livestock discovers the existence of pseudorabies prior to the time the disease is reported to the Board and a quarantine issued. Any owner, of course, has the duty to report that disease under Minn. Stat. § 35.06. In the event an owner fails to report in order to avoid quarantine, it is reasonable to prohibit any sale of the swine except to slaughter or to a quarantined feedlot in order to assure that the livestock buyer does not spread the disease further.

E. Release of Quarantine

Section E-1.

This section sets forth the procedures for the release of a quarantine. As with any other livestock disease, once a herd has been infected with pseudorabies and is subject to quarantine, there are essentially only two avenues out of that quarantine: 1) sell the animals for slaughter or 2) remove positive reactor animals from the herd on a continuing basis until such time that no remaining animals in the herd show signs of pseudorabies. This section outlines the procedures by which the owner of a quarantined herd may clean up his herd and thus cause the quarantine to be released. They are consistent with generally accepted testing procedures and the procedures adopted by the Board for other

diseases; see for example: 3 MCAR § 2.011, cattle brucellosis, 3 MCAR § 2.021, swine brucellosis, and LSB 30, diseases of poultry.

The proposed rule, in general, re-adopts 3 MCAR § 2.024B(6) and (7). However, the present rule authorizes a release of quarantine where the breeding herd has passed a negative official test at least 30 days after the removal of the infected swine. The proposed rule adds an additional second test to be made at the end of another 30 days in order to totally assure that the disease has been cleared from the herd. It is consistent with other regulatory programs. See for example; Wisconsin Rule, "Ag. 10.57". Unlike the existing rule, the proposed rule allows exceptions for the progeny of the quarantined herd. They may be isolated and individually determined to be pseudorabies free through two negative tests. This will allow the progeny to be removed and sold from the herd even though the adult animals would not be able to clear quarantine. It may also avoid the spread of the disease to the younger animals.

Section E-2.

This section deals with the problems caused by vaccination.

When blood testing swine for pseudorabies, it is not uncommon to disclose blood reactions (titres) which are caused by pseudorabies vaccination. Since the animals bearing such vaccination titres constitute no threat to the spread of pseudorabies, it would be unfair to quarantine animals of that kind. This section outlines the procedures by which it is possible to differentiate between vaccination titres and the titres found in infected animals. Where so determined, the herd would not be quarantined. The proposals basically provide for assurances from the herd owner that the animals were in fact vaccinated; that pseudorabies did not exist in his herd; and documentation of the actual vaccination. Testing a statistical sample of non-vaccinated animals will assure that no animals in the herd do, in fact, have pseudorabies. The Board believes that a test of 20 of the unvaccinated swine over 4 months of age will adequately demonstrate whether or not pseudorabies exists in the herd.

Section E-3.

This section provides for the release of quarantines on animals other than

swine. It generally repeats the language currently contained in 3 MCAR § 2.024-B-9.

Section E-4.

This section repeats the existing rule's requirement that pseudorabies tests be conducted at the owner's expense. State funds have not been provided by the Legislature for testing animals in infected herds at the present time. Thus, it is necessary that herd owners be required to bear this expense. Ultimately, it will be to their advantage to obtain a release of the quarantines. Having the owner bear the expense of testing is consistent with general practices currently being followed today and consistent with similar obligations placed upon livestock owners for the testing for brucellosis, 3 MCAR § 2.011-B-3-C; the testing for anaplasmosis, 3 MCAR § 2.012B-2; and the testing for swine brucellosis, 3 MCAR § 2.021B-4-C.

F. Pseudorabies Traced Back to Source Herd

The current Minnesota pseudorabies rule makes no provision for determining how an infected herd became infected. It is important that this information be known so that steps can be taken to prevent the spread of the infection and to prevent that source from spreading pseudorabies to the herds of other livestock producers. This section outlines procedures by which it is possible to determine if an infection was contracted from a suspected herd; if it is determined that the pseudorabies did come from that suspected herd, such a herd would be placed under quarantine and thus, prevent further spread of the disease.

This section is necessary in order to determine whether a particular infected herd received that disease from another herd which the Board may not be aware is infected. It provides the means to get to the origin of the disease. Requiring the owner of an infected herd to provide a list of purchases for the preceding year would not amount to a severe burden upon a livestock owner. It is consistent with the Board's authority under Minn. Stat. § 35.06, which authorizes the Board to examine under oath all persons believed to have knowledge of the existence of a threatening disease and authorizes the Board to take depositions and compel witnesses to attend and testify regarding such diseases. Requiring a list

of purchases and sales falls far short of the existing authority statutorily granted to the Board. In addition, the reporting requirements are less stringent than the federal record keeping imposed upon any consignors of "healthy" swine. Under 9 CFR § 85.11, all consignors of swine not vaccinated for pseudorabies and not known to be infected by pseudorabies which are moved interstate directly to a feedlot, quarantined feedlot, quarantined herd, or to an approved livestock market, must maintain records for two years under which individual swine can be traced back to the farm of origin. Such records would no doubt be part of the livestock owner's business records.

This section also creates a presumption of infection in the seller's herd in the event a livestock owner refuses to authorize a test or if pseudorabies titres are disclosed on a test of the seller's herd. In this respect it is reasonable to suspect the seller of the livestock to have pseudorabies in his herd based upon the appearance of the disease in the buyer's herd. It is both reasonable and practical for an effective control program to attempt to trace back to the herd of origin, in order to ensure that all possible sources of pseudorabies have been identified. Where a seller refuses to test, a quarantine is the only assurance that the seller's herd cannot further spread the disease.

G. Intrastate Movement of Breeding Swine

Experience has shown that many cases of pseudorabies has been spread by the sale of nontested, infected breeding swine. Because of this experience, the Minnesota Legislature expressly mandated that the pseudorabies program include the pseudorabies testing of all breeding swine and restricted movement of feeder pigs. The law, in effect, mandated that all breeding swine sold within Minnesota be tested for pseudorabies prior to sale. This section attempts to implement that directive.

It provides a new requirement that all breeding swine sold, leased or loaned within the state be accompanied by a health certificate or test chart provided by the seller. This requirement is similar to requirements existing in other disease control programs such as brucellosis and anaplasmosis which require test charts for all types of sales and with federal requirements regarding interstate movement of swine. It is also is consistent with other states'

rules which impose similar requirements. see for example, Wisconsin Rule, "Agr 10.56"; Indiana Rule 79-1, Title III; Illinois Rule VI.

This section also identifies what has been termed, "restricted movement breeding swine." It has been determined by a United States Department of Agriculture study that approximately eight percent of all the market hogs in Minnesota are carrying pseudorabies titres. It has also been determined that livestock which have moved through swine concentration points where they come in contact with other swine very frequently become infected with pseudorabies. Also, there will be instances where non-breeding swine will be at these markets and their status with respect to pseudorabies is unknown. As a result of this, the Board believes that cautions must be taken to prevent the spread of pseudorabies by animals potentially exposed by moving through swine concentration points. They have been identified as restricted movement swine and subpart 2 of this section outlines how such swine must be identified and the conditions under which they may be sold to slaughter after their use as breeding swine has been fulfilled. The status of restricted movement breeding swine means that the animals may essentially only be moved for slaughter unless it is demonstrated through negative testing that they have not contracted pseudorabies. In essence, this rule imposes a burden upon the purchaser of restricted breeding swine to either assure that pseudorabies does not exist or else be restricted in the ability to resell the swine as breeding stock. Implementation of this provision is essential to an effective program of control of pseudorabies spread and to comply with Minn. Laws 1983, Chapter 367 Sec. 1.

Through recent experiments, the Board is satisfied that ear holes provide a suitable method for permanent identification of restricted movement breeding swine and make the paperwork associated with issuing a quarantine on all breeding swine passing through a swine concentration point unnecessary.

H. Intrastate Movement of Feeder Pigs

Feeder pigs, like breeding swine which are moved through a swine concentration point, also create a threat to the spread of pseudorabies. Under the rule, such feeder pigs are also classified as "restricted movement feeding swine".

To insure that they do not become a further threat to the spread of pseudorabies, the rule proposes that they be identitfied and maintained on the premises of the buyer until they are fed out and sent to slaughter. Both sections G and H are designed to make it possible to move breeding swine and feeder pigs through swine concentration points and yet prevent them from spreading pseudorabies. It is the intent of these two sections to allow movement with minimal interruption or interference with the conduct of the sale of the livestock through swine concentration points. It is essential to the program to assure that all suspect swine are kept from contact with known healthy swine until they either are tested negative to the disease or sent to slaughter. The restrictions of G and H will provide that assurance.

I. Qualified Pseudorabies Negative Herd Procedures

As previously indicated, certain exceptions from the general restrictions are made for qualified pseudorabies negative herds. A qualified pseudorabies negative herd is a swine herd that has been so classified, based upon the fact that the breeding herd has been tested and found negative to pseudorabies testing. The qualification is voluntary on the part of a livestock owner. Obtaining it however allows the movement of swine intrastate under this rule and interstate under federal rule relatively free of restriction. To assure that such a herd maintains this clean standard, it must be monitored every 90 days by a negative test of 25% of the breeding herd. By so doing, the owner avoids the requirement of a negative test on each animal prior to sale or movement. This section outlines the procedures for attaining qualified pseudorabies negative herd status; how such a status will be monitored; how animals can be added to such a herd; and the conditions under which the animals may be sold. This section is designed to accommodate purebred livestock producers and to make clean breeding swine available throughout the swine industry. It, in essence, re-adopts the current provisions of 3 MCAR § 2.024-C and is consistent with federal law and the rules of other states. Having achieved qualified pseudorabies negative herd status, the rule provides that they may be sold in Minnesota for breeding or feeding purposes without further testing or restriction of movement unless they are sold through a concentration point. The reason why they can't move freely through a swine concentration point is the potential that at such sales,

they would come in contact with swine whose pseudorabies status is unknown, therefore jeapordizing the pseudorabies free status.

J. Pseudorabies Controlled Vaccinated Herd Procedures

Many purebred swine producers realize the value of vaccination in protecting their herds from severe losses, due to a pseudorabies outbreak. These same producers are also aware that if they blood test any of the vaccinated swine, positive titre results will be disclosed and the herds may be subject to quarantine. This section makes it possible for such herds to be tested and to be found negative for pseudorabies and then vaccinated. Such herds are proposed to be classified as pseudorabies controlled vaccinated herds and the offspring from such vaccinated breeding animals can be sold from such a herd without further negative testing. The requirements follow the federal definition of a controlled vaccinated herd and is similar to the requirements imposed by Indiana's rules.

Section J-1.

This section provides that the offspring of the vaccinated herd need not be vaccinated prior to entry to the breeding herd. The progeny or offspring of vaccinated animals will receive some protection or immunity from the sow which will last up to approximately 4-5 months of their age. Even in the event they do contact pseudorabies it will not be fatal to them.

Section J-2.

Once the herd is vaccinated, titres will show up in the vaccinated herd members. Consequently, to monitor the status of the herd it is necessary to leave the progeny or offspring unvaccinated and to periodically test those progeny to determine whether the herd still remains free from pseudorabies. Testing 25% every 90 days is a procedure generally accepted in the animal disease control industry.

Section J-3.

The provisions of this part are intended to assure that no affected animals

enter the vaccinated herd. Since an animal could test negative prior to arrival but subsequently demonstrate signs of disease, a subsequent test will assure that the swine are healthy.

Section J-4.

This section allows the offspring from a vaccinated herd to be sold in Minnesota for breeding or feeding purposes without further testing. These animals would not appear to pose a threat to the spread of pseudorabies.

Section J-5.

The restriction contained in this section is obvious; if a vaccinated herd is subsequently determined to be infected, the herd must be quarantined.

Section J-6.

This section provides that in the event a positive test occurs which is due to vaccination rather than infection, an evaluation may be conducted by additional testing of members of the herd to determine whether the herd is infected or not. Its provisions will assure that the positive test was due to vaccination rather than infection.

In general, the procedures set forth in section J provide a mechanism by which it can be determined whether animals in the herd are carrying vaccination titres or actually affected with pseudorabies. It is proposed in order to accomodate livestock producers and make it possible for them to have available clean, disease-free breeding stock through vaccination without jeopardizing the ability to sell or move that stock.

K. Community Notification of Pseudorabies Infection in a Neighborhood

The Board has often received complaints from land owners adjacent to a quarantined herd that the Board should provide some form of notification to them so that they can devise means by which to protect their own herds. At the present

time there is no requirement, with respect to pseudorabies, that neighboring herd owners be made aware of the presence of infected herds. If a neighborhood was made aware of the presence of pseudorabies in the area, precautions could be taken to protect the neighboring herds from serious losses, due to this disease. Section K makes it mandatory that swine producers be notified of the presence of infected herds within a one mile distance from their farm. The neighbors then can, take action to protect their herds. This notification requirement is similar to the requirement under the cattle brucellosis program, 3 MCAR § 2.011-C-3, which requires similar community notification of brucellosis affected herds.

L. Exhibition of Swine

At present, LSB 40, generally regulates the public exhibition of all livestock at fairs, exhibitions or consignment sales. Past experience has demonstrated a severe potential for the spread of disease at such exhibitions since swine with unknown status leave their herds of origin, go to an exhibition where they are in contact with numerous other swine whose pseudorabies status is also unknown and, subsequently, return to their home farms thus creating the potential for spreading the disease. Section K sets forth restrictions intended to reduce the potential for a spread of pseudorabies at exhibitions. It requires either a negative test prior to exhibition, or origination from a qualified herd or controlled vaccinated herd. No health certilficate is required in those instances where the potential for spreading disease are minimal. Subpart 2 of this section, prohibits any swine from a quarantined herd from being exhibited at any type of exhibition under the reasonable presumption that such swine had been exposed to or are infected with the disease. Swine returning from an exhibition to the home herd must be isolated and retested negative. This provides total assurance to the livestock owner that he has not brought pseudorabies back into his herd of origin.

M. Transportation of Pseudorabies Infected or Exposed Animals

It is possible to spread pseudorabies via transportation vehicles. This happens when infected animals are carried to market in trucks, trailers, or other vehicles.

Other animals transported at a latter time can become infected from contaminated vehicles. To reduce the chances of the spread of the disease by this method, section M provides that vehicles used as public carriers of known infected animals be cleaned and disinfected prior to reuse for the transportation of other livestock. It outlines the procedures for cleaning and disinfecting such vehicles in ordinary terms and specifies that disinfectants utilized must be approved by the United States Department of Agriculture. The requirement is identical to the federal requirement regarding interstate movement of pseudorabies infected or exposed livestock under 9 CFR § 85.12. That section identifies the approved disinfectants; those registered under the Federal Insecticide, Fungicide and Rodenticide Act, 7 US Code, § 135 et. seq..

V. IMPACT ON SMALL BUSINESS

In November 1983, the Minnesota Agricultural Statistics Service issued a "Farm Income Supplement" to its "AGRI-VIEW" periodical which indicated that the average realized gross income of Minnesota's farms in 1982, was $73,058.00. (Average net income was $10,554.00). Thus for the purposes of Minnesota Laws 1983, ch. 188, the Board has assumed that all Minnesota's swine producers fall within the definition of "small business" as defined in that statute. (Fewer than 50 employees or gross annual sales less than $4,000,000.00). In one fashion or another, the proposed rule will impact upon all Minnesota's swine producers and the livestock markets. The impact of parts "B" through "E" and "I" remains essentially the same as the "impact" of the current pseudorabies rule. At present all livestock owners are subject to quarantine. In the event of quarantine, the swine owner bears the cost of testing under the current rule. In order to obtain a release of quarantine, the new rule does however, require an additional test. The steps to establish a herd as a qualified pseudorabies negative herd remains essentially the same. The impact of the new sections of the rule are generally as follows:

1. The owner of a quarantine herd must furnish certain information, including lists of purchases and sales for the preceding year.

2. All breeding swine moved intrastate must be accompanied by a health certificate or test chart provided by the seller,

statutory objectives and directives which form the basis of the proposed rule. Any exemption from the requirements of the rule would have an impractical and counter productive effect. Pseudorabies can only be controlled if pursued in a uniform fashion, making it applicable to all herds of swine. Any exemption could result in the spread of the disease which would negate the proposed benefit of the rule. At issue, in essence, is whether the rule as a whole imposes too stringent or too much of a burden upon Minnesota's swine producers not whether some of those producers should be subject to less stringent standards. The Board believes that the benefits of a program to control pseudorabies with the ultimate goal of eliminating the disease in Minnesota, benefitting all Minnesota livestock producers, far outweighs the added cost and restrictions it imposes.

The Board has attempted to encourage the participation of Minnesota's farmers in the rulemaking process by publishing a letter indicating the impact of the proposed rule which has been mailed to all livestock organizations known to the Board, auction markets and other concentration points where swine would be sold, all Minnesota's veterinarians and has provided notices in its periodic newsletter. It is assumed that any objection to the rule by livestock producers will be set forth and presented at the hearing.

In addition to ch. 188, the Board has given consideration to the provisions of Minn. Stat. § 14.11 (1982) and has determined that the adoption of the rule will not increase any costs of local public bodies and that the rule will not impact upon agricultural land. Its intent is to regulate and control the disease of swine in accordance with the legislative direction.

In accordance with 9 MCAR § 2.104, the Board intends to introduce this Statement of Need and Reasonableness as an exhibit into the record as though read. The following individuals will be present and prepared to respond to questions or testimony:

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

Walter J. Mackey, D.V.M.
Assistant Secretary

Robert G. Pyle, D.V.M.
Imports and Markets Division

Dated:_____

MINNESOTA BOARD OF ANIMAL HEALTH
Room
90 West Plato Boulevard
St. Paul, MN 55107

unless their origin is a qualified pseudorabies negative herd;

3. All feeder pigs are restricted movement feeder pigs subject to the restrictions of part "G"; and

4. Health certificates must accompany all swine exhibited or sold at exhibitions.

Thus the new rule will impact upon Minnesota's swine producers through additional pseudorabies testing costs in certain instances and restrictions on intrastate movement which didn't exist before. Costs of testing by a private veterinarian vary, depending on travel time and the size of the herd. Very roughly, an average test and laboratory analysis would not exceed $10.00 per hog.

In assessing the overall impact on the industry, it should be noted that the burdens imposed are essentially no greater than those imposed on Minnesota's cattle producers under brucellosis control program set forth under 3 MCAR § 2.011. Ultimately the pseudorabies control program as set forth in the proposed rule will benefit all of Minnesota's swine producers through the control of the deadly and serious disease. The program is established for their benefit and for the survival of the swine industry as a whole.

In considering the impact this rule will have, the Board gave consideration to the methods for reducing the impact of the rule on small business as set forth in Minn. Law 1983, Chapter 188, subd. 2. Several of those considerations, subparts (b), (c) and (d) do not appear applicable at all. The remainder essentially deal with establishing less stringent compliance or reporting requirements or exemption from any or all requirements.

As indicated, the rule is directed at all "small businesses" since all those impacted by it fall under the definition of the term. Thus, the purpose of this proceeding is to determine whether the rule as a whole is a necessary and reasonable impact upon those small businesses. The board believes it is. To consider any exceptions thereto under ch. 188, would be contrary to the

statutory objectives and directives which form the basis of the proposed rule. Any exemption from the requirements of the rule would have an impractical and counter productive effect. Pseudorabies can only be controlled if pursued in a uniform fashion, making it applicable to all herds of swine. Any exemption could result in the spread of the disease which would negate the proposed benefit of the rule. At issue, in essence, is whether the rule as a whole imposes too stringent or too much of a burden upon Minnesota's swine producers not whether some of those producers should be subject to less stringent standards. The Board believes that the benefits of a program to control pseudorabies with the ultimate goal of eliminating the disease in Minnesota, benefitting all Minnesota livestock producers, far outweighs the added cost and restrictions it imposes.

The Board has attempted to encourage the participation of Minnesota's farmers in the rulemaking process by publishing a letter indicating the impact of the proposed rule which has been mailed to all livestock organizations known to the Board, auction markets and other concentration points where swine would be sold, all Minnesota's veterinarians and has provided notices in its periodic newsletter. It is assumed that any objection to the rule by livestock producers will be set forth and presented at the hearing.

In addition to ch. 188, the Board has given consideration to the provisions of Minn. Stat. § 14.11 (1982) and has determined that the adoption of the rule will not increase any costs of local public bodies and that the rule will not impact upon agricultural land. Its intent is to regulate and control the disease of swine in accordance with the legislative direction.

In accordance with 9 MCAR § 2.104, the Board intends to introduce this Statement of Need and Reasonableness as an exhibit into the record as though read. The following individuals will be present and prepared to respond to questions or testimony:

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

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Imports and Markets Division

Dated:_____

MINNESOTA BOARD OF ANIMAL HEALTH
Room
90 West Plato Boulevard
St. Paul, MN 55107

STATE OF MINNESOTA

BOARD OF ANIMAL HEALTH

In the Matter of the Proposed Adoption
of Rules of the State Board of Animal Health
Governing 3 MCAR § 2.024 Control of Pseudorabies
(Renumbered 3 MCAR § 2.026)

"ORDER ADOPTING RULES"

The above-entitled matter came on for hearing before Hearing Examiner John Lunde on the 24th day of February, 1984, at 9:00 A.M., in the State Office Building Auditorium, St. Paul, Minnesota after proper notice required by Minnesota Statutes section 14.05 was served upon all persons, associations, and other interested groups registered with the State Board of Animal Health for that purpose.

After affording interested persons an opportunity to present written and oral data, statements, and arguments, hearing all of the testimony, considering all of the evidence adduced and upon the records, files, and proceedings herein and applicable statutory standards or criteria, and confirming the need for and reasonableness of the above-captioned rules.

NOW, THEREFORE, IT IS ORDERED that these rules identified as 3 MCAR § 2.026 Control of Pseudorabies are adopted this 8th day of June, 1984, pursuant to authority vested in me by Minnesota Statutes section 35.03.

STATE OF MINNESOTA

Dr. C. H. Contag, President
Board of Animal Health

STATE OF MINNESOTA

BOARD OF ANIMAL HEALTH

In the Matter of the Proposed Adoption
of Rules of the State Board of Animal Health
Governing 3 MCAR § 2.026 Control of Pseudorabies

ORDER FOR HEARING

IT IS ORDERED this 12th day of December , 1983, that a public hearing on the proposed rules captioned above be held in the State Office Building Auditorium, Rm. 83, St. Paul, Minnesota on Wednesday, February 24, 1984, commencing at 9:00 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 persons who have registered their names with the State Board of Animal Health for that purpose and be published in the State Register.

STATE OF MINNESOTA

Dr. G. Flint
Executive Secretary
Board of Animal Health

STATE OF MINNESOTA

BOARD OF ANIMAL HEALTH

In the Matter of the Proposed Adoption of Rules of the State Board of Animal Health, Governing the Control of Swine Pseudorabies, to be Codified as 3 MCAR § 2.026

NOTICE OF HEARING

Notice is hereby given that a public hearing will be held pursuant to Minnesota Statutes, 1982, section 14.14, subd. 1, in the above-entitled matter in the State Office Building, Room 83, 435 Park Street, St. Paul, Minnesota, on February 24, 1984, commencing at 9:00 a.m. and continuing until all representatives of associations or other interested groups of persons have had an opportunity to be heard concerning adoption of the proposed rules.

Statements may be made orally and written material may be submitted and recorded in the hearing record by mailing the material to Hearing Examiner Jon Lunde, Office of Administrative Hearings, 400 Summit Bank Building, 310 South 4th Avenue, Minneapolis, Minnesota, 55415, telephone (612) 341-7645, either before the hearing or within five working days after the close of the hearing unless the hearing examiner orders a longer period of time not to exceed 20 calendar days. The proposed rules are subject to change as a result of the rule hearing process. The Board of Animal Health therefore strongly urges those who may be affected in any manner by the substance of the proposed rules to participate in the rule hearing process.

Minnesota Laws 1983, Chapter 367, codified as Minn. Stat. § 35.255, directed the Board of Animal Health to adopt rules to implement a program to control pseudorabies in swine, including pseudorabies testing of breeding swine and the restricted movement of feeder pigs. The proposed rules are intended to implement this statutory mandate and provide for the reporting by veterinarians of incidents of pseudorabies; reporting requirements where pseudorabies has been diagnosed in a specific herd, testing procedures for pseudorabies infected herds, the disposal of pseudorabies infected herds; the release of quarantines on infected herds; the issuance of qualified herd certificates, the intrastate movement of breeding swine and feeder pigs, and the exhibition of swine at fairs, livestock exhibits or consignment sales. A copy of the proposed rules is attached to this notice and additional copies of the proposed rules are available and may be obtained by writing to the Minnesota Board of Animal Health, 90 West Plato Boulevard, Attention Doctor W. J. Mackey, St. Paul, Minnesota 55107, telephone (612)296-3592. Copies will also be available at the door on the date of the hearing.

Ultimately, the adoption of these rules should benefit all owners of breeding swine, whether or not such owners are defined as a "small business" under the provisions of Minnesota Laws 1983, Chapter 188, through the control and eventual eradication of pseudorabies in Minnesota's breeding stocks. In the short run, however, these rules will have an impact upon small businesses in that they will require certain testing and reporting requirements which costs will be borne primarily by the owners of swine. The costs borne by the owners of swine where testing is necessary under the rules will include the responsibility for the cost of such tests to be performed by

veterinarians. In addition, certain restrictions on the movement of pseudorabies infected swine will impact upon all owners whose herds contain infected swine. Small businesses are therefore encouraged to participate in the rulemaking process and to express their views regarding implementation of the proposed rules. In addition, the Board has taken into consideration the requirements of Minn. Stat. § 14.11 (1982), and has found and determined that the proposed rule will not require the expenditure of public moneys by local public bodies and will not have a direct or substantial impact on agricultural land.

Minn. Stat. Ch. 10A requires each lobbyist to register with the Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1979 Supp.) as any individual:

(a) Engaged for pay or other consideration or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota, 55155, telephone (612) 296-5148.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the department may not take any final action on the rules for a period of five working days. Any person may request notification of the date of which the hearing record has been submitted (or resubmitted) to the Attorney General by the department. 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 Board (in the case of the Board'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 Board and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all the evidence and arguments which the Board anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rule or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative hearings at a minimal charge.

The rule hearing procedure is governed by Minn. Stat., 1982, 14.05-14.20, as amended, and by 9 MCAR § § 2.101-2.113 (Minnesota Code of Agency Rules). Any questions about procedure may be directed to the Hearing Examiner.

Dated: December 28th, 1983

J. G. Flint
Executive Secretary
Minnesota Board of Animal Health

STATE OF MINNESOTA

BOARD OF ANIMAL HEALTH

In the Matter of the Proposed Adoption
of Rules of the State Board of Animal Health
Governing 3 MCAR § 2.024 Control of Pseudorabies
(Renumbered 3 MCAR § 2.026)

FINDINGS OF FACT
AND CONCLUSIONS

The above-entitled matter came on for hearing before Hearing Examiner Jon Lunde on the 24th day of February, 1984, at 9:00 A.M. in the State Office Building Auditorium, St. Paul, Minnesota after proper notice required by Minnesota Statutes §14.05 was served upon all persons, associations, and other interested groups registered with the State Board of Animal Health for that purpose.

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 upon the records, files, and proceedings herein, I find the following:

1) Authority to promulgate this rule is contained in Minn. Statutes § 35.03 (1980)

2) Adoption of this rule will provide the Board with a means of controlling the spread of pseudorabies.

3) The Hearing Examiner has recommended the proposed rule be adopted after determining that the rule is reasonable and necessary, and that the Board has fulfilled the procedural requirements of Minn. Statute § 14.14 and all other procedural requirement of law or rule.

4) The Report of the Hearing Examiner dated April 6, 1984, it's Findings of Fact, Conclusions and Recommendation are hereby adopted and incorporated herein as part of these Findings of Fact and Conclusions.

5) That the Hearing Examiner's recommendation to provide the option of either a ear hole or ear tag for purposes of Section 2.026 G. 2 b. is reasonable and will best serve the interests of the swine industry;

6) The rule is in the best interest of the livestock industry, the public and the State of Minnesota.

STATE OF MINNESOTA

J. G. Flint

Dr. J. G. Flint
Secretary and Executive Officer

Date 6-15-84

CERTIFICATE OF BOARD'S

RESOLUTION ADOPTING RULES

I, Dr. C. H. Contag, do hereby certify that I am a member and the President of the Board of Animal Health, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board of Animal Health, duly and properly called and held on the 8th day of June, 1984, that a quorum was present at said meeting, that a majority of those present voted for the resolution, and 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 § 2.026 Control of Pseudorabies be and they hereby are approved and adopted, pursuant to authority vested in us by Minnesota Statutes § 35.03 and that Dr. C. H. Contag, the President of the Board of Animal Health, be and hereby is authorized to sign an order adopting these rules and further is authorized to perform the necessary acts to provide that these rules shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 8th day of June, 1984.

Dr. C. H. Contag, President
Board of Animal Health

Attest by one other Board member

STATE OF MINNESOTA

BOARD OF ANIMAL HEALTH

In the Matter of Proposed Rule Adoption
3 MCAR § 2.026 Control of Pseudorabies

AFFIDAVIT OF MAILING

1. I am Dr. W. J. Mackey, Assistant Secretary of the Board of Animal Health.

2. On January 18, 1984, I mailed the "Notice of Intent to Adopt Rules With a Public Hearing" to all persons who registered with the Board of Animal Health to receive such notices. In addition, this list was sent to the following livestock oriented organizations and publications;

   Minnesota Livestock Breeders Association
   Minnesota Berkshire Association
   Minnesota Duroc Breeders Association
   Minnesota Poland China Breeders Association
   Minnesota Chester White Breeders Association
   Minnesota Landrace Breeders Association
   Minnesota Purebred Swine Breeders Association
   Minnesota Hampshire Breeders Association
   Minnesota and North Dakota Spot Breeders Association
   Minnesota Livestock Markets Association
   Dean College of Veterinary Medicine (U of MN)
   Minnesota Pork Producers Association
   Minnesota Livestock Market Institute
   The Editor of The Farmer Magazine
   The Editor of The National Hog Farmer Magazine
   The American Pig Development Co.
   Every Minnesota Livestock Auction Market

   Every Veterinarian in Minnesota was notified of this rule change via the December '83 Board of Animal Health Newsletter. And this notice was published in the State Register on January 23, 1984.

3. This additional publication was intended to notify small farming businesses of the proposed rule change in accordance with Minnesota Laws 1983, Chap. 188, Sec. 1 (4) (6).

W. J. Mackey DVM

W. J. Mackey, DVM
Assistant Secretary
Board of Animal Health

Subscribed and sworn to before me
this 31 day of January, 1984

Marian S. Comford

MARIAN S. COMFORD
Notary Public, Ramsey County, Mn.

(8)

BOARD OF ANIMAL HEALTH

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE OF MAILING LIST

In the Matter of the Proposed Adoption
of Rules of the State Board of Animal Health
Governing Control of Pseudorabies, 3MCAR § 2.026

RECEIVED
JAN 31 1984
ADMINISTRATIVE
HEARINGS

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Stat. § 15.0412, subd. 4, that their names be placed on file with and maintained by the State Board of Animal Health for the purpose of receiving notice of the proposed adoption of rules by this State Agency is accurate and complete as of 10:00 A.M., this 18th day of January, 1984.

Dr. W. J. Mackey
Assistant Secretary
Board of Animal Health

Board Exh. No. 5
File No. BAH 84-001-JL
Date 2-24-84

Proposed PRV Rules
Pg 1705

Board Exh. No. 7
File No. BAH-84-001-JL
Date 2-24-84

STATE REGISTER

STATE OF MINNESOTA

RECEIVED
JAN 31 1984
ADMINISTRATIVE HEARINGS



VOLUME 8, NUMBER 30

January 23, 1984

Pages 1701-1770

Pursuant to Minn. Stat. of 1980, §§ 14.21, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.13-14.20 which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 14.29, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Board of Animal Health

Proposed Adoption of Rules of the State Board of Animal Health, Governing the Control of Swine Pseudorabies, to be Codified as 3 MCAR § 2.026

Notice of Hearing

Notice is hereby given that a public hearing will be held pursuant to Minnesota Statutes, 1982, section 14.14, subd. 1, in the above-entitled matter in the State Office Building, Room 83, 435 Park Street, St. Paul, Minnesota, on February 24, 1984, commencing at 9:00 a.m. and continuing until all representatives of associations or other interested groups of persons have had an opportunity to be heard concerning adoption of the proposed rules.

Statements may be made orally and written material may be submitted and recorded in the hearing record by mailing the material to Hearing Examiner Jon Lunde, Office of Administrative Hearings, 400 Summit Bank Building, 310 South 4th Avenue, Minneapolis, Minnesota, 55415, telephone (612) 341-7645, either before the hearing or within five working days after the close of the hearing unless the hearing examiner orders a longer period of time not to exceed 20 calendar days. The proposed rules are subject to change as a result of the rule hearing process. The Board of Animal Health therefore strongly urges those who may be affected in any manner by the substance of the proposed rules to participate in the rule hearing process.

Minnesota Laws 1983, Chapter 367, codified as Minn. Stat. § 35.255, directed the Board of Animal Health to adopt rules to implement a program to control pseudorabies in swine, including pseudorabies testing of breeding swine and the restricted movement of feeder pigs. The proposed rules are intended to implement this statutory mandate and provide for the reporting by veterinarians of incidents of pseudorabies; reporting requirements where pseudorabies has been diagnosed in a specific herd, testing procedures for pseudorabies infected herds, the disposal of pseudorabies infected herds; the release of quarantines on infected herds; the issuance of qualified herd certificates, the intrastate movement of breeding swine and feeder pigs, and the exhibition of swine at fairs, livestock exhibits or consigment sales. A copy of the proposed rules is attached to this notice and additional copies of the proposed rules are available and may be obtained by writing to the Minnesota Board of Animal Health, 90 West Plato Boulevard, Attention Doctor W. J. Mackey, St. Paul, Minnesota 55107, telephone (612) 296-3592. Copies will also be available at the door on the date of the hearing.

Ultimately, the adoption of these rules should benefit all owners of breeding swine, whether or not such owners are defined as a "small business" under the provisions of Minnesota Laws 1983, Chapter 188, through the control and eventual eradication of pseudorabies in Minnesota's breeding stocks. In the short run, however, these rules will have an impact upon small businesses in that they will require certain testing and reporting requirements which costs will be borne primarily by the owners of swine. The costs borne by the owners of swine where testing is necessary under the rules will include the responsibility for the cost of such tests to be performed by veterinarians. In addition, certain restrictions on the movement of pseudorabies infected swine

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will impact upon all owners whose herds contain infected swine. Small businesses are therefore encouraged to participate in the rulemaking process and to express their views regarding implementation of the proposed rules. In addition, the Board has taken into consideration the requirements of Minn. Stat. § 14.11 (1982); and has found and determined that the proposed rule will not require the expenditure of public moneys by local public bodies and will not have a direct or substantial impact on agricultural land.

Minn. Stat. Ch. 10A requires each lobbyist to register with the Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1979 Supp.) as any individual:

(a) Engaged for pay or other consideration or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota, 55155, telephone (612) 296-5148.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the department may not take any final action on the rules for a period of five working days. Any person may request notification of the date of which the hearing record has been submitted (or resubmitted) to the Attorney General by the department. 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 Board (in the case of the Board'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 Board and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all the evidence and arguments which the Board anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rule or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative hearings at a minimal charge.

The rule hearing procedure is governed by Minn. Stat., 1982, 14.05-14.20, as amended, and by 9 MCAR §§ 2.101-2.113 (Minnesota Code of Agency Rules). Any questions about procedure may be directed to the Hearing Examiner.

December 28th, 1983

J. G. Flint
Executive Secretary
Minnesota Board of Animal Health

Rules as Proposed (all new material)

3 MCAR § 2.026 Pseudorabies control.

A. Definitions. As used in this rule, the terms defined in this part have the meanings given them.

1. "Board" means the Board of Animal Health.

2. "Breeding herd" means all swine on one premises which are at least six months old, which are maintained for breeding purposes, which are kept separated from all swine from other sources, and for which care personnel and equipment are not interchanged with other herds.

3. "Infected herd" means a swine herd in which pseudorabies has been diagnosed in one or more animals by an official test, clinical diagnosis by a veterinarian, or laboratory diagnosis. The final determination of the herd status must be made by a state or federal district regulatory veterinarian.

4. "Isolation" means maintenance of swine in a manner which will ensure (1) that the swine have no physical contact with other domestic animals on the premises, (2) that all drainage of organic waste is handled to prevent it from having contact with any other swine on the premises, and (3) that the swine are separated from other animals by a lot or road or are held in a confinement building.

5. "Official pseudorabies test" means the serum neutralization test or other test approved by the board.

6. "Pseudorabies controlled vaccinated herd" means a breeding herd in which all animals over six months old have been tested negative for pseudorabies and then officially vaccinated within 15 days under the direction of the board and monitored pursuant to J.2.

7. "Qualified pseudorabies negative herd" means a herd of swine which has been free of pseudorabies for the previous 12 months, in which all swine over six months old have been initially tested negative for pseudorabies, and for which the procedures in I. have been followed.

8. "Quarantined herd" means an infected herd which is maintained on the quarantined premises so as not to have contact with animals belonging to other owners.

9. "Restricted movement swine" means breeding or feeding swine of unknown pseudorabies status which are sold in Minnesota through a swine concentration point.

10. "Slaughter-only market" means a state and federally approved slaughter market for swine in which all swine moving through the facility are consigned directly to a slaughter establishment or sold for direct reassignment to a recognized slaughter establishment.

11. "Swine concentration point" means a facility or location where swine are assembled for sale or resale for feeding, breeding, or slaughter purposes and where contact may occur between groups of swine from various sources. "Swine concentration point" includes, without limitation, a public stockyard, auction market, street market, state or federal market, untested consigment sales location, buying station, and livestock dealer's yard, truck, and facility.

B. Pseudorabies test procedures. Blood samples drawn in administering an official pseudorabies test must be drawn by an accredited veterinarian, and serological tests must be conducted by a state and federally approved laboratory or other laboratory approved by the board.

Animals tested must be individually identified by eartag, tattoo, registration number, or standard ear notch. The identification procedure must be recorded on the test form.

C. Disease reporting. When clinical or laboratory evidence indicates the presence of pseudorabies in an individual animal or herd, the veterinarian or laboratory shall report that diagnosis to the board within two business days.

D. Infected herd; procedures.

1. The board shall immediately quarantine an infected herd, as authorized by Minnesota Statutes, section 35.05.

2. Livestock other than swine which are infected with pseudorabies or exposed to animals infected with pseudorabies must be quarantined. The board shall lift the quarantine 21 days after the diagnosis or exposure if there are no signs of pseudorabies in the quarantined livestock.

3. When species of animals other than swine have been diagnosed as having pseudorabies, the state or federal district veterinarian shall conduct an epidemiological investigation of any swine on the premises. The investigation must include blood testing of ten percent of the older swine made up of a minimum of ten head selected randomly. The owner shall pay the laboratory fees associated with this testing. If pseudorabies reactors are disclosed, or if the owner refuses to cooperate in carrying out the test, the swine herd must be quarantined in accordance with the quarantine procedures of this rule.

4. Livestock from an infected herd may be disposed of pursuant to a. or b.

a. Market or breeding swine or other infected or exposed species may only be sold to slaughter via a federally approved slaughter market, public stockyard, packer buying station, or directly to a slaughter plant accompanied by a shipping permit or an owner's notice of shipment.

b. Feeder pigs may only be sold to a quarantined feedlot accompanied by a shipping permit or an owner's notice of shipment. The quarantined feedlot must be a feedlot where purchased quarantined swine can be fed out in isolation from other domestic animals and where:

(1) no breeding swine are on the premises;

(2) the feedlot owner agrees to sell all the swine from the feedlot directly for slaughter accompanied by a shipping permit or owner's notice of shipment; and

(3) prior to its approval as a quarantined feedlot, the lot is inspected for compliance by a state or federal regulatory veterinarian.

5. No person may sell swine which are known to be infected with or have been exposed to pseudorabies, except directly to slaughter or, in the case of feeder pigs, to a quarantined feedlot.

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E. Release of quarantine.

1. Swine herd quarantine release may be accomplished by any of the methods in a.-c.

a. The entire herd may be sold to slaughter accompanied by a shipping permit. The premises must be cleaned and disinfected under the direction of the board. The quarantine may be released 30 days after completion of the cleaning and disinfection.

b. All swine positive to an official test may be removed from the premises. All remaining swine in the breeding herd must then pass a negative official test at least 30 days after the removal of the infected swine and a second negative official test of the breeding herd at least 30 days after the first negative official test before the quarantine is released.

c. Progeny may be weaned, isolated from a quarantined herd under direction and supervision of the board, and pass two negative official tests of 100 percent of these pigs at least 30 days apart.

2. When an epidemiological evaluation and herd history indicate that a tentative diagnosis of pseudorabies is the result of a vaccination reaction, the quarantine may be released. The epidemiological evaluation must be conducted by the district veterinarian and must include at least the items in a.-d.

a. The herd owner shall submit a signed statement that the animal diagnosed as having pseudorabies was either vaccinated for pseudorabies or was the progeny of a vaccinated animal and of an age when maternal antibodies would normally be present. The owner shall also state that, to the best of his knowledge, he has not seen any indication of pseudorabies in the herd.

b. The attending veterinarian shall submit a signed statement that he has not seen symptoms of pseudorabies in the herd.

c. Evidence must be submitted to document the use of pseudorabies vaccine in the herd. Acceptable evidence includes purchase records, owner vaccination request forms, and other relevant items.

d. A negative pseudorabies test must be conducted, at the owner's expense, on at least 20 unvaccinated swine over four months of age. If necessary, additional testing may be conducted at the discretion of the state or federal veterinarian.

3. A quarantine on livestock other than swine may be released 21 days after the diagnosis or exposure if there are no signs of pseudorabies in the herd.

4. Pseudorabies tests conducted on a quarantined premises are at the owner's expense.

5. A state or federal regulatory veterinarian must make the final determination on quarantine release.

F. Pseudorabies traceback to source herd.

1. The owner of a herd in which pseudorabies has been diagnosed shall furnish the following information to the board:

a. a list of sources of purchases of feeding or breeding swine during the preceding year; and

b. a list of sales of feeding or breeding swine during the preceding year.

2. a. If pseudorabies is diagnosed in breeding or feeding swine which have been purchased from another swine producer within the preceding 12 months, the board may require a pseudorabies test of ten percent of the breeding herd of the seller or ten percent of the progeny over four months of age of a vaccinated herd.

b. If pseudorabies titres are disclosed on a test conducted pursuant to a. or the owner refuses to test, the herd must be considered to be an infected herd until the purchased swine are tested and found negative.

c. Testing pursuant to a. or b. must be done at the swine owner's expense.

G. Intrastate movement of breeding swine.

1. No person may sell, lease, or loan breeding swine within the state of Minnesota unless the swine are accompanied by a health certificate or test chart provided by the seller which includes:

a. identification by an eartag, tattoo, brand, or ear notch recognized by a breed association; and

b. a negative pseudorabies test conducted within 30 days, except for swine from a qualified pseudorabies negative herd or a pseudorabies controlled vaccinated herd.

2. a. Breeding swine sold through a swine concentration point where they could come in contact with feeder pigs, market hogs, or other untested swine, are restricted movement breeding swine.

b. Restricted movement breeding swine must be identified at the swine concentration point by a one-half inch diameter hold punched in the right ear and an eartag.

c. Restricted movement breeding swine must be moved from the swine concentration point to the herd of destination

accompanied by a document explaining the restricted movement breeding swine status. At the herd of destination they must be maintained in the herd until they have farrowed and then must be sold for slaughter. Restricted movement breeding swine may not be resold for breeding purposes except pursuant to f.

d. Restricted movement breeding swine purchased at a swine concentration point by a livestock dealer for resale purposes must be:

(1) maintained separately from other swine until resold;

(2) accompanied to the farm of destination by a document explaining the restricted movement breeding swine status; and

(3) maintained on the farm of destination, farrowed, and sold in the manner set forth in c.

e. Restricted movement breeding swine may be sold for slaughter as cull sows or boars through any livestock marketing channel. They may not, however, be sold through a marketing facility at which breeding stock is sold unless the facility maintains separate chutes, pens, and scales for breeding swine.

f. The restricted movement breeding swine classification may be removed from swine by a negative pseudorabies test conducted at least 30 days after movement of the swine through the swine concentration point.

g. All swine which are maintained in contact with restricted movement breeding swine in the herd of destination are also restricted movement swine and must be handled accordingly.

Swine classified as restricted movement swine because of exposure to restricted movement breeding swine may not be resold except to slaughter unless they are tested negative to pseudorabies.

H. Intrastate movement of feeder pigs.

1. a. All feeder pigs sold in Minnesota through a swine concentration point are restricted movement feeder pigs.

b. Restricted movement feeder pigs must be identified at the swine concentration point by a one-half inch diameter hole punched in the right ear and an eartag. They are not eligible for resale through a second swine concentration point.

c. Restricted movement feeder pigs must be moved from the swine concentration point to the herd of destination accompanied by a document explaining the restricted movement feeder pig status. At the herd of destination they must be maintained in separation from breeding swine until they are sold for slaughter. They may not be used for breeding purposes or resold for breeding purposes except pursuant to f.

d. Restricted movement feeder pigs purchased at a swine concentration point by a livestock dealer for resale purposes must be:

(1) maintained separately from other swine until resold;

(2) accompanied to the farm of destination by a document explaining the restricted movement feeder pig status; and

(3) maintained on the farm of destination, fed out, and sold pursuant to e.

e. Restricted movement feeder pigs may be sold as market hogs through any livestock marketing channel. They may not, however, be sold through a marketing facility at which breeding stock is sold unless the facility maintains separate chutes, pens, and scales for breeding swine.

f. The restricted movement feeder pig classification may be removed from swine by a negative pseudorabies test conducted at least 30 days after movement of the swine through the swine concentration point.

I. Qualified pseudorabies negative herd procedures.

1. To qualify a herd for qualified pseudorabies negative herd status:

(a) the herd must have been free of pseudorabies for the previous 12 months;

(b) all breeding stock six months of age or older must have passed an initial negative pseudorabies test; and

(c) the herd owner must sign a herd agreement of compliance.

2. Following the receipt by the board of a report of the initial negative herd test and the signed herd agreement, the board

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shall issue a numbered qualified herd certificate. The initial qualification is valid for 90 days or until the next scheduled requalification test.

3. The pseudorabies status of a qualified pseudorabies negative herd must be monitored and its status maintained by having a negative test of at least 25 percent of the breeding herd every 80 to 100 days. All breeding swine must be subject to at least one official test once a year. No swine may be tested twice in one year to comply with the 25 percent test requirement.

If there are ten or fewer swine at least six months of age in the herd at any quarterly requalification test, all swine at least six months of age must be tested.

If the breeding herd is maintained on more than one premises, 25 percent of the animals on each premises must be tested for each requalification.

4. The board shall cancel qualified pseudorabies negative herd status if any swine show a positive test or are diagnosed as having pseudorabies, if herd additions are made contrary to 5., or for failure to comply with 3.

Swine herd which have lost their qualified pseudorabies negative herd status may regain that status by being free of pseudorabies for a period of 12 months and by following the herd qualification procedure outlined in 1.

5. a. All purchased additions, except those purchased pursuant to b., must have a negative test for pseudorabies within 30 days prior to movement, and must be isolated and retested negative at least 30 and within 45 days from the date of their receipt upon the premises.

b. Additions may be purchased directly from a qualified pseudorabies negative herd or a pseudorabies controlled vaccinated herd without the negative 30-day test prior to movement. These animals, however, must be isolated and tested negative at least 30 and within 45 days after their receipt. Purchased additions are not considered to be part of the herd for monitoring pursuant to 3. until 30 days after the test.

c. Swine returned to qualified pseudorabies negative herds from exhibitions or which are otherwise commingled with swine from herds not qualified must be kept in isolation upon return for 30 days and have a negative official pseudorabies test before rejoining the herd.

6. Swine from a qualified pseudorabies negative herd may be sold in Minnesota for breeding or feeding purposes without further testing or restriction of movement unless they are sold through a swine concentration point.

J. Pseudorabies controlled vaccinated herd procedures.

1. Progeny of a pseudorabies controlled vaccinated herd do not need to be vaccinated until they enter the breeding herd.

2. To maintain and monitor the status of a pseudorabies controlled vaccinated herd, at least 25 percent of the progeny between the ages of four and five months must have a negative pseudorabies test every 90 days.

3. All purchased additions to a pseudorabies controlled vaccinated herd must be tested negative for pseudorabies within 30 days prior to their arrival or must originate from a qualified pseudorabies negative board.

All purchased additions, however, must be isolated and retested negative in not less than 30 nor more than 45 days and then vaccinated for pseudorabies within 15 days of the test.

4. Progeny from a pseudorabies controlled vaccinated herd may be sold in Minnesota for breeding or feeding purposes without further testing.

Vaccinated animals from a pseudorabies controlled vaccinated herd may be sold for breeding purposes only with a negative test within 30 days.

5. If a pseudorabies controlled vaccinated herd is determined to be infected with pseudorabies, the herd must be quarantined and the owner must comply with D. to have the quarantine released.

6. If one of the herd monitoring tests discloses low titres (1:8 or less) in one or more animals which may be caused by vaccination maternal antibodies, an epidemiological evaluation may be conducted by the district veterinarian which may include, without limitation, a retest of the titred swine in 30 days and a test of 20 other unvaccinated animals over four months of age.

During the process of this epidemiological evaluation, swine from this herd are temporarily ineligible for sale except to slaughter.

Failure to allow this evaluation will result in herd quarantine and the loss of controlled vaccinated herd status.

The final determination of the status of the herd must be made by the district veterinarian involved.

K. Community notification of pseudorabies infection in a neighborhood. Within 14 days of declaration of a quarantine or approval of quarantined feedlot status, the district veterinarian shall notify livestock owners within a one-mile radius of the

infected herd or quarantined feedlot. The district veterinarian shall also notify the clerk of the township board of the affected township in writing.

L. Exhibition of swine.

1. Swine may be exhibited at fairs, livestock exhibitions, or consignment sales if they are in compliance with a. or b.

a. All swine exhibited or sold, except at exhibitions described in b., must be accompanied by a health certificate showing:

(1) a negative pseudorabies test within 30 days prior to the start of the exhibition or origination from a qualified pseudorabies negative herd or a pseudorabies controlled vaccinated herd; and

(2) a statement that the swine did not originate from a herd that has had pseudorabies during the previous 12 months.

b. Health certificates are not required for swine exhibited:

(1) at a terminal show or slaughter class where swine are exhibited under the following conditions:

(a) where exhibited swine are sent directly to slaughter after the exhibition;

(b) where no other species are housed in the same show barn at the same time; and

(c) where swine are unloaded at a separate chute from other species; or

(2) at an untested terminal swine show held at the end of the exhibition after other species have gone home.

2. No swine from a quarantined herd may be exhibited at any type of exhibition.

3. Swine returning to the exhibitor's home herd or to a purchaser's herd from exhibitions or consignment sales must be isolated and retested negative for pseudorabies not less than 30 nor more than 60 days after return from the exhibit.

4. Rule LSB 40 contains other swine exhibition requirements.

5. Out-of-state swine, when exhibited in Minnesota, must meet Minnesota's importation requirements and the exhibition requirements of this rule.

M. Transportation of pseudorabies infected or exposed animals.

1. All vehicles used as public carriers for livestock known to be infected with or exposed to pseudorabies must:

(a) contain a shipping permit or owners notice of shipment when quarantined livestock are being transported; and

(b) be cleaned and disinfected pursuant to 2. before being used for transportation of other livestock.

2. A vehicle must be cleaned by thorough removal of all litter, manure, and refuse, and disinfected by the use on all floors, interior walls, and the vehicle chassis of a disinfectant approved by the United States Department of Agriculture.

Provision must be made for the disposition of all manure, litter, and refuse removed from vehicles into an area where other livestock cannot come in contact with it.

Repealer: Rule 3 MCAR § 2.024 is repealed.

Department of Commerce

Proposed Adoption of Amendments to Rules Relating to Workers' Compensation Competitive Rating

Notice of Intent to Adopt Amendments to Rules Without a Public Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled amendments to rules without a public hearing. The Commissioner of Commerce has determined that the proposed adoption of these amendments will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, section 14.21.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

BAH-84-001-JL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE BOARD OF ANIMAL HEALTH

In the Matter of the Proposed
Adoption of Rules of the State
Board of Animal Health Governing
the Control of Pseudorabies
(3 MCAR § 2.026)

ORDER OF THE CHIEF
ADMINISTRATIVE LAW JUDGE

WHEREAS, a hearing was held on February 24, 1984, before Jon L. Lunde, an Administrative Law Judge of the State Office of Administrative Hearings, on the above-entitled matter in compliance with the rule-making provisions of Minn. Stat. Ch. 14 (1982 and 1983 Supp.); and

WHEREAS, the Report of Administrative Law Judge made pursuant to Minn. Stat. § 14.50, was issued to the Board of Animal Health and;

WHEREAS, the Board of Animal Health has now determined to adopt rules; and

WHEREAS, the Board of Animal Health has submitted said rules to the Chief Administrative Law Judge for review pursuant to Minn. Stat. §§ 14.16, 14.51, and 9 MCAR § 2.111 as approved but prior to final adoption; and

WHEREAS, the Chief Administrative Law Judge finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the rules as submitted, as modified, will cure the defects in the rule as required.

NOW, THEREFORE, upon receipt of this Order, if the Board of Animal Health adopts the rules as submitted for review, the Board of Animal Health will have the responsibility of submitting the complete hearing record and the rules as adopted to the Attorney General and to publish in the State Register if approved by the Attorney General.

Dated: June 7th, 1984.

Duane R. Harves

DUANE R. HARVES
Chief Administrative Law Judge

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

BAH-84-001-JL

AFFIDAVIT BY PERSONAL SERVICE

JoAnn Barbato, being first duly sworn, hereby deposes and says:

That at the City of Minneapolis, county and state aforementioned, on the 7th day of June, 1984, she did serve the ORDER OF THE CHIEF ADMINISTRATIVE LAW JUDGE

upon Dr. W. J. Mackey, DVM, Assistant Secretary, Board of Animal Health by personally handing to Dr. W. J. Mackey,

said Order of the Chief Administrative Law Judge.

JoAnn Barbato
(Signature)

Subscribed and sworn to before me
this 7th day of June, 1984.

Joan H. Bailey
(Notary)

Joan H. Bailey
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
My commission expires Jan. 17, 1989

HG-00058-01

R.R.#1
Ghent, MN. 56239
June 28, 1984

Mr. John K. Murphy
Office of the Attorney General
240 Administration Building
50 Sherburne Ave.
St. Paul, MN. 55155

Dear Mr. Murphy;

Enclosed please find news clippings, meeting minutes, and other pertinent information to the actions being considered by our Pseudorabies Class Action Committee. The pseudorabies quarantine laws, hereafter referred to as PRV quarantine rules, have had a very damaging effect on our hog industry, and have had a devastating impact on the purebred breeders.

Our telephone conversation of June 21, 1984, was essentially a request that you take a serious look at the new PRV rules (MCAR #2.026) which the Board of Animal Health is trying to enforce.

We of the Pseudorabies Class Action Committee feel that the rules are very discriminatory, economically unjust, and essentially ineffective. For example, there is no way to differentiate between titers incurred as a result of the disease and those of the vaccination. The virus can also lie latent in the brain tissue of swine, giving a false reading on a test.

We realize that this law cannot be tested in court unless it has been enforced. How-
ever, we are strongly considering testing the present rules (3MCAR #2.024) in c
the State of MInnesota does not make an effort to reimburse hog producers
fered financial losses due to the method of quarantine implementation

We plan to argue that rule #2.024 is discriminatory and therefore, unc
Also, it has resulted in the confiscation of property without due proce
which violates the fourteenth ammendment.

The rule has also made a substantial economic impact on the value of agricultural land in instances where farmers have had to make an immediate sale due to the quarantine. This is in violation of rule #14.11 of Minnesota State Statutes. Breeding stock also, has had to be sold for a fraction of its real value. The quarantine has also had the same effect on the livestock of seed stock producers. Producers not only must bear the losses caused by the disease, but also the economic impact of the quarantine.

Although the quarantine was established ostensibly to protect other producers, nevertheless the Board of Animal Health states that only about 25% of PRV infected herds are detected and the other 75% are not reported.

We feel that the Board of Animal Health has been negligent, when they knowingly and maliciously maintain an ineffective quarantine that causes greater economic losses than the disease which it purports to control.

At this time we are attempting to compile and compute the financial losses accrued by quarantined producers.

I will personally be meeting in the next two weeks with officials at the University of MInnesota to review their computations on the PRV quarantine losses.

I will forward my claims and demands at a later date. In the meantime, I hope you will consider this information before making the final decision on the proposed rules, MCAR #2.026.

If you wish further information on this disease or the quarantine, please contact Dr. Eikson, New Ulm, MN 507-354-4949.
Dr. Eikson has consented to help in this manner.

Respectfully,
Lars Johansson
Lars Johansson

RECEIVED
JUL
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Ghent April 5.

Dear Dr Mackey!

I'm writing concerning P.R.V. quarantines on farms 'n the State of Minnesota.

I would be very thankfull if you would cooperate and send me the addressess over the quarantined heards and those that have ben under quarantine.

The reason for me is to be able to get in touch with those peaple, so we can hold a meeting in the future. We like to determine what action can be taken to solve the severe economic problem that has occured over.

I promise hereby that this record will be strictly confidential, to protect any individual that elect to be so. That means that the list will only be used to mail information to these people involved.

Thank you

Sincerely.

Lars Johansson.
RR 1 Ghent
Minn 56239.

This is how I obtained the list of farmers.

Pseudorabies Class Action Committee
Lars Johansson, President
R.R.#1
Ghent, Minn. 56239

Mrs. Matt DeBruyckere, Secretary
R.R.#2 Box 79
Minneota, Minn. 56264

June 6, 1984

Dear Congressman;

Enclosed is a copy of a letter which is being sent out to every farmer in Minnesota who is now, or has been, quarantined for pseudorabies. Since this quarantine has had a substantial impact, not only on the farmers involved, but on the finances of the entire state of Minnesota, we feel that it is imperative that our legislators be kept informed of the progress of our group.

In an effort to facilitate the disemination of pertinent information, we invite you to the state-wide meeting that will be held at the Holiday Inn in North Mankato, at 1:00 p.m., on June 18, 1984.

Your constituents need your interest and help in this situation, and we hope you will show your concern and support by attending this important meeting.

Sincerely,
Lars Johansson
Lars Johansson
By Donata DeBruyckere

Minutes

On Monday, June 18, 1984, the Pseudorabies Class Action Committee met at 1:30 p.m. at the Holiday Inn in North Mankato. President Lars Johannson opened the meeting with a welcome to producers, speakers and guests. He gave a brief sketch of his personal background and the history and clinical background information of the disease of pseudorabies.

Dr. Walt Mackey of the State Board of Animal Health spoke, telling us what the new rules, which are supposed to be implemented in July, are supposed to do and accomplish. He said that we are trying to prevent pseudorabies from becoming the serious problem in our state that it is in some foreign countries and in Iowa. There was discussion between him and Lars as to the comparability of the vaccine used in foreign countries and in the U.S. , with Lars maintaining that with the effectiveness of the modified live virus vaccine available in the U.S., more would be accomplished be a vigorous vaccination program than the haphazard quarantine program we are now using. He stated that we have a good eradication program going, but it was the eradication of the farmer, not the disease. Dr. Mackey stated that before the new rules were formulated they had held a hearing to which many different organizations, including Pork Producers, veterinarians, and sale barn people were invited.

Questions and answers followed.

Secretary Donata DeBruyckere read the minutes of the last meeting, at which Dr. Steer of Norden Laboratories had spoken.

Dr. Martin, a local veterinarian from the Nicollet and New Ulm Clinics was the next speaker. He stated that the modified live virus from Norden Laboritories is the only vaccine he considers effective. He stressed that it is imperative that we get a correct diagnosis of PRV trough lab testing. (although, most operations are very reluctant to do this because of the quarantine which follows a laboratry-confirmed PRV diagnosis) He suggested quarantined farmers use a good vaccination program and then test a small percentage of butchers every 6 months. When 2 tests, 30 days apart (total of 60 days) are negative, the quarantine can be lifted.

Questions and answers followed.

Lars spoke on the comparison between the way the Avian chicken flu outbreak was handled and the way the pseudorabies disease is handled. He stated that we need an indemity

program for quarantined farmers and low-cost loans to help them recover from their losses. Many lending institutions are very reluctant to make loans to farmers under quarantine because they know how financially devasting it can be.

The next speaker was Jack Delaney, president to the Minnesota CAttlemans Association. He said that since pseudorabies can strike cattle with very devasting, and always fatal, results, the cattle industry is very interested in the control of pseudorabies.

Senator GAry DeCramer spoke on legislation dealing with pseudorabies, and stressed the need for the producers to come to a consensus as to what they want done about the disease and programs to control it.

Todd Jerus, a representative from Congressman Vin Weber's office reviewed the goals of the organization and asked our opinions of the priorities of these goals.

Jim Haggerty from Congressman Tim Penny's office spoke, addressing the problem of importation of Canadian pork. It was stated from the audience that we are told that we must import Canadian pork, so we can export our machinery to them. The speaker said that it would be nice if our pork prices were not suppressed by imports and then we could afford to buy the machinery ourselves and it wouldn't have to be exported.

3:45 Break for Coffee

4:40 Meeting called to order and various speakers came forward with their opinions of what should be done. It was stated that since the mandate for pseudorabies control had come from the federal level, we must get federal help and be allowed input on the federal level. It was stated that a grave injustice had been done when several groups had been invited to the hearing before the present Minnesota laws were drawn up, but the ones most involved, the quarantined farmers, were not contacted for their input. Dr. Mackey apologized for the oversight. It was also stated that if indeed a quarantine is necessary, then the state should provide a testing program so that every infected herd could be discovered and quarantined, rather than only those farmers honest enough to test and report it as is done now. This program allows business as usual for the vast majority of infected herds, and discourages testing for the disease, which our veterinarians say is vital for the control of the disease.

Sen. DeCramer introduced the state legislators present, and three of them spoke, addressing the issue of what we can expect from state legislation.

Carl Johnson of the Pork Producers was introduced, who invited Bob Koehler to explain the pilot projects being conducted in Iowa and Illinois. He stated that the one in Illinois had been delayed because the researchers had been diverted to the Avian flu in the East Coast. Lars asked if a chicken is worth a lot more than a pig, or what was the reason for this diversion of funds and personal?

Dr. Robinson explained what had been done in England to make it what is now considered to be as PRV-free country. However, since pseudorabies can be a hidden disease, we should take a wait-and-see attitude toward this claim.

Questions and answers followed before the meeting was adjourned.

Sec. Donata DeBruyckere

TIMOTHY J. PENNY
1ST DISTRICT, MINNESOTA

COMMITTEES:
AGRICULTURE
VETERANS' AFFAIRS

Congress of the United States
House of Representatives
Washington, D.C. 20515

WASHINGTON OFFICE:
501 CANNON HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-2472

DISTRICT OFFICES:
PARK TOWERS
22 NORTH BROADWAY
ROCHESTER, MINNESOTA 55901
(507) 281-6053

BLUE EARTH COUNTY GOVERNMENT CENTER
P.O. BOX 3148
MANKATO, MINNESOTA 56001
(507) 625-6921

June 20, 1984

Floyd Stoner/ Legislative Director
501 Cannon House Office Building
Washington, D.C. 20515

Dear Floyd:

Included are four pages of information provided by Pseudorabies Class Action Committee. I attended the meeting and include some comments on that meeting.

1. As you read the information, you will see that hog producers, depending upon the hog enterprise they choose to operate, are affected differently and, therefore, there is no consensus by the hog industry as to appropriate action.

Even though P.R.V. is a reportable disease, Dr. Mackey estimates 750 infected herds that are unreported. The quarantine is applied only on reported herds and is, therefore, discriminatory.

3. Under a program of vaccination every 6 months, the disease is not a disease that creates an economic loss for anyone except a seed stock producer.

4. Compensation without an eradication program would be unending.

5. Blood testing of all hogs slaughtered or sold would be the only way to identify all infected herds. Cost would be astronomical. Reporting of all vaccine sales by veterinarians might be a better option for identifying infected herds.

6. U.S.D.A. has two pilot programs under way; one in Illinois, one in Iowa. No conclusions yet reported.

The state Board of Animal Health will promulgate new rules by July 1, 1984. Dr. Mackey will forward us a copy.

Sincerely,

Jim Hagerty

Jim Hagerty
Field Representative

JH/jw
cc: Lars Johannson

Henry J. Kalis
District 29B
Blue Earth-Faribault-Freeborn-Martin-
Waseca Counties
Committees:
Appropriations
Agriculture, Transportation and
Semi-State Division, Chairman
Agriculture
Transportation

Minnesota
House of
Representatives

Harry A. Sieben, Jr., Speaker

June 11, 1984

Mr. Matt H. DeBruyckere, Jr.
R. R. #2
Minnesota, MN 56264

Dear Matt:

Even though I have two other commitments for Monday, June 18, I will try my best to attend the meeting on pseudorabies. However, I have asked Dick Pfutzenreuter, Fiscal Analyst for the Division on Agriculture, Transportation and Semi-States, to attend; and he has put the date on his calendar.

Many thanks for the invitation.

Sincerely,

Henry

Henry J. Kalis
State Representative

kb

Reply to: ☐ 243 State Office Building, St. Paul, Minnesota 55155 Office: (612) 296-4240
Route 1, Box 55, Walters, Minnesota 56092 Home: [redacted] 294-3147

507

DON ANDERSON
Senator 12th District
703 So. Jefferson
Wadena, Minnesota 56482
Senate Office:
144 State Office Building
St. Paul, Minnesota 55155
(612) 296-6455

Senate
State of Minnesota

June 14, 1984

Dear Lars,

Senate District 12, That I Represent, is Entirely Agricultural. I'm interested in Every Thing Related To Farming.

Just Today a farmer called Me About Pseudo Rabies. He stated That his whole Hog operation is quarentined, And financially he is in Real Trouble.

I do have Two other Meetings Monday The 18th, So I Won't be Able To Attend your important informational Meeting.

Please Send me All Pertinent data So I may be kept informed.

Thanks

Don Anderson

COMMITTEES • Economic Development & Commerce • Education • Energy & Housing • Transportation

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RODERICK A. DeARMENT, CHIEF COUNSEL AND STAFF DIRECTOR
MICHAEL STERN, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON FINANCE
WASHINGTON, D.C. 20510

June 12, 1984

Lars Johansson
President
Pseudorabies Class Action Committee
Rural Route 1
Ghent, Minnesota 56239

Dear Lars:

Thank you for your letter and the articles on the controversy surrounding the pseudorabies quarantine.

I appreciate your thoughtfulness in keeping me up-to-date on this important agricultural issue. I want you to know that I'm extremely interested in any developments with the pseudorabies situation. Unfortunately, neither I nor my agricultural specialist, Lois Mack, will be in Minnesota on June 18. I hope, however, that you'll be able to provide me with a copy of the minutes and any additional documentation that you may receive at the hearing.

Please send this information to the following address:

Lois Mack
c/o Senator Dave Durenberger
1020 Plymouth Building
12 South Sixth Street
Minneapolis, Minnesota 55402

Thanks again for contacting me, Lars. Please stay in touch.

Sincerely,

Dave

Dave Durenberger
United States Senator

DD:dmc

RECEIVED
JUL 5 1984
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Livestock Conservation Institute
PRV Developments
8/3/81 (81-8-1-A)

This report will cover two subjects:

1. A summary of a speech by a West German scientist and researcher on PRV, and

2. Clarification of a point regarding subunit vaccines and latent carriers, about which there is some misunderstanding (see page 6 of this report).

1. Professor Gunther Wittman, director of the department of microbiology and immunology at the Federal Institute for Animals, Tubingen, Germany, spoke recently on pseudorabies (PRV) in Europe. His presentation was sponsored by Norden Laboratories. A summary of points covered follows:

Prevalence in Europe--Most European countries are affected. Only Finland, Norway, Luxembourg and Austria are free of the disease. Since PRV is a notifiable disease only in Denmark and West Germany, there are no official reports from the other countries and it is difficult to say anything about the degree of infection in those countries. However, Holland, Belgium, East Germany, Czecholsovakia, Hungary, Yugoslavia and Bulgaria are apparently the most severe infected areas, whereas Switzerland, England and Sweden have a low incidence of infection. The other countries are between these two extremes.

More outbreaks occur during cold, rather than during the warm season, however, the data available do not allow a definite statement.

Transmission--Across short distances, such as from farm to farm, transmission by man, implements and food is possible, but airborne transmission is also important. It was found that ventilators in infected pig stables blow virus to other stables more than 100 meters (109 yards) apart.

Transmission by insects or mice and rats generally is negligible and only occurs as an exception. The same is true for dogs and cats. Infected animals of these species do not excrete virus in such amounts which are necessary to infect other animals.

Transmission across wide distances is done by trade with seemingly healthy pigs from chronically infected farms.

Latently infected animals carry the viral genome many months, probably for life in the cells of the central nervous system. We could demonstrate this persistant virus infection for at least 15 months after experimental infection. After treatment with high doses of prednisolon (to produce stress) we could reactivate latent PRV infection to such a degree that clinical symptoms appeared 9 1/2 months after infection and virus was shed with titers up to $10^{3,5}TCD_{50}$ for up to 16 days.

Managing Mange Problems



By Ralph Vinson, D.V.M.

It appears as though the Creator made pigs and mange mites on the same day and they have been together ever since. This disease has caused pigs to itch and scratch since the beginning of time and producers and their veterinarians to scratch their heads attempting to find ways to get rid of the disease. We have been fighting mange with insecticide sprays, hog scratchers, dipping vats and pour-ons, to no avail. Whatever we do in a mange infested herd never seems to eliminate the disease.

Elimination of mange is one of the major advantages of restocking with SPF swine. If an SPF herd is kept isolated from direct contact with infected pigs, it will remain mange free.

I am one of those persons who strongly supports a government program to eradicate pseudorabies, but I must admit a government program to eradicate mange would have more beneficial effect on the swine industry. What can we do? We certainly cannot repopulate the entire U.S. swine population with SPF swine. Probably 95% or more of the herds in the country have mange to one degree or another. To eradicate mange from a herd requires chemical or chemotherapeutic means.

How serious is mange in a herd? Are poor managers the only ones who have trouble with mange in their herds? Mange has always been thought of as a sign of poor management. I hope that is not true, because I personally know of a lot of good managers with top-notch veterinarians who have a lot of mange problems in their herds.

In my practice I see a lot of mange in herds that use gestation crates. In those herds, a sow is in a farrowing or gestation crate 90% of the time. In my view, it is impossible to do an adequate job of spraying a sow in a crate unless one is going to spend an hour or two spraying each individual sow.

Several years ago, Dr. Steve Henry of Kansas suggested using a dipping vat to control mange. This works a lot better than spraying, but has the disadvantage of getting the sows mixed up while dipping and getting the dilution of insecticide at the proper level. Additionally, dipping the sows will not **eradicate** mange.

Mangy sows do not perform well. They are uncomfortable and therefore stressed. Sows that are stressed during gestation always have more MMA problems. If mange is eliminated the sows milk better. Most of the problems with Eperythrozoonosis are transmitted by mange mites. Sows without mange will have no problem with Epe.

I have a lot of trouble with baby pigs developing secondary greasy skin disease in herds with mange. This problem will usually exhibit itself at weaning time or shortly before. Dipping or spraying the pigs at weaning time will help, but in problem herds some greasy skin disease will occur in spite of diligent spraying or dipping.

Economically, perhaps the most damage caused by mange is in growing and finishing pigs. Mangy pigs can take two to four weeks longer to get to market. In one farrow-to-finish herd in which we experimentally eradicated mange, the feed required per lb. of gain was reduced from 3.70 lb. to 3.50 lb. of feed per lb. of gain. This feed conversion is counting the sow feed as well as pig feed.

In addition to a reduction in performance, there is the constant expense of insecticide when a herd is afflicted with mange. Then too, when using insecticides there is always a withdrawal problem. Most insecticides have a 30-day withdrawal period which is difficult to conform to with finishing hogs or sows. Cull sows are constantly being shipped. Therefore, if we could eradicate mange from a herd, everyone including the pigs would be happier.

Several years ago Dr. Al Leman of the Univ. of Minn. suggested the way to eliminate mange and lice was weekly sprayings of the entire herd five or six weeks in a row. This regimen did a good job of permanently eliminating lice from swine herds. I have done this with several herds and in most of them, mange symptoms were eliminated for six to eight months. In fact, if it were not for the residue and withdrawal problems with this regimen, this would probably be the best and most economical way to control mange. The problem is this program will not eradicate mange from the herd. It is impossible to kill every mite on the farm with this program.

Do we have the technology to eradicate mange from a swine herd? It appears we do. One of the major drug companies is marketing the drug ivermectin. In field trials where mange eradication was attempted using ivermectin, the results have been very good. Most of the herds have remained mange-free.

The major problems with using ivermectin for eradication is it requires that every pig be injected with the proper dosage. If a few of the pigs are left uninjected, they would harbor mange mites that would reinfest the entire herd over a period of time.

Mange is a serious enough disease that an attempt to eradicate the disease from your herd might be worth the expense and the risk of failure.

(Reprinted with permission, May issue of Hog Farm Management)

Pennsylvania still recovering from devastation of poultry virus

By Arthur Buckler
Associated Press

Columbia, Pa.
A potent virus that led to the deaths of millions of chickens is nearly eradicated in southern Pennsylvania, but the region's poultry industry still is struggling to recover from the disease's rampage.

Federal officials Thursday lifted a poultry quarantine intended to halt the spread of avian influenza from a 1,650-square-mile region west of the Susquehanna River, but the quarantine remains in effect on 3,850 square miles east of the river. No new cases have been found in the state in more than two months.

More than one-third of the farms struck by the flu still have empty hen houses, and a few farmers have decided to give up poultry raising for good.

Farmers who are back in business say they've learned a lesson from the epidemic — that a clean chicken is a healthy chicken — and are putting the devastation behind them.

"It moved in and moved out," said Warren Miller, 48, who said he lost 200,000 egg-laying hens and his savings to the flu but has filled three of his four chicken houses with new birds. "I've got to think that way."

"Psychologically, we're in much better shape than we have been in a long time, simply because we just see an end to it," said John Hoffman, president of the Pennsylvania Poultry Federation. "Economically, things haven't changed."

The virus, which does not harm people, first appeared in the area in a mild form more than a year ago. Last fall, a virulent strain appeared that destroyed flocks and wiped out egg production. To stop its spread, the federal government imposed, and later expanded, the quarantine and began killing flocks confirmed to have the disease.

Nearly 13 million turkeys and chickens in 319 Pennsylvania flocks — more than half located here in Lancaster County, which remains under quarantine — have been killed by suffocation in the "depopulation" program. An additional 30 flocks that had the mild form of the virus still are targeted for destruction.

The disease also has infected 68 flocks — mostly turkeys — in Virginia, where a quarantine still is in place on 2,200 square miles. One case was reported in New Jersey and three in Maryland.

The U.S. Department of Agriculture has spent $50 million battling the outbreak, including $36 million to reimburse farmers for destroyed birds.

Despite the reimbursements, Pennsylvania's farmers and the allied industry — from feed companies to banks — have lost up to $150 million to the outbreak, Hoffman said.

There have been no new cases of the flu in Pennsylvania since March 26. The last case in Virginia was reported May 22.

But the government still has all of Lancaster and Lebanon counties and parts of two other counties under a strict quarantine. Live birds and unsanitized eggs can't leave the area. No poultry products move within the zone without a permit.

Gerald Fichtner, director of the government's avian flu task force, said the remaining quarantine won't be lifted until at least September. In the meantime, the USDA will destroy the 30 flocks left with the mild virus and probably 50 other flocks whose birds have antibodies that signify they have had some contact with the virus, Fichtner said.



Farmers organize PRV committee

By Marlys Johnson
The Land Contributing Writer

A group of Minnesota hog producers whose herds have been placed under pseudorabies (PRV) quarantine met recently to organize The Pseudorabies Class Action Committee. The committee will investigate legal and political measures for recovering losses due to PRV quarantines. The members also are concerned about recently revised pseudorabies quarantine rules proposed by the Minnesota Board of Animal Health.. Doctor W.. J.. Mackey, a veterinarian with the state Board of Health, said the new, stricter rules are expected to be adopted sometime in May..

On Feb. 24, 1984, Lars Johansson, a hog producer from Ghent who is the president of the Pseudorabies Class Action Committee, testified before the state Board of Animal Health.. Johansson's herd was quarantined two years ago. In his testimony, he stated, "I was shocked to learn about the (new) rules.. I was also surprised that no copies of the rules were sent to hog producers or veterinarians.. Isn't it a disgrrace to bypass their views on such an extensive problem?"

Health board officials explained that to send out copies of the quarantine rules would have been too costly. Johansson said copies could have been channeled through county Extension offices.

Quarantine worse than disease

Johansson, who estimates a $200,000 loss, said the economic impact of the quarantine was worse than the disease itself..

In his testimony, Johansson also recommended a strong vaccination program and a pilot program for more scientific research.

The Pseudorabies Class Action Committee said it believes that everything that needs to be known about the PRV virus is not known, a view not held by the Board of Animal Health. Dr. Mackey said 26 top scientists across the nation were asked by the U..S.. Department of Agriculture whether enough information was known about PRV to control the disease.. They answered "Yes." However, no statement was given about how eradication would be accomplished..

For example, research in Europe has revealed that fox do not die two days after exposure to the virus, as has been believed in this country. Loss of hair and excessive licking may be the only signs a wild animal exhibits. Also there's no provision in the new quarantine rules for control of the spesad of PRV in meat scraps used for feed. European research has shown the virus ties to the protein, breaks up and attaches itself to the fat. Dr. Mackey said there's little evidence the virus can be spread through meat scraps in feed, but he's encouraging University of Minnesota researchers to do more testing on the subject..

Having the virus enter farms on the outside of feed bags also has been identified as a source of infection in Europe. Mackey said he believes it was possible an infected rat could get ground up with the grain, but he didn't see many other ways the feed could become contaminated..

Not all cases diagnosed

Johansson said 10 percent of the hog inventory in Minnesota is known to have PRV, but there may be a lot more infected hogs that haven't been reported. He said, "Farmers who are not under quarantine are vaccinating every six months as a precaution and not reporting it to the state, which is required by law."

In his Feb. 24 testimony, Johannson said, "I am very sad to see lawmakers avoid mentioning any indemnity plans of relief for the producers under quarantine."

State Senator Gary DeCramer said, "I know farmers are vaccinating and not reporting it because veterinarians are selling a lot of vaccine.."

The state Board of Animal Health is discouraging vaccination in an effort to pinpoint problem herds.. The Pseudorabies Class Action Committee said hog producers should not be required to take the kind of risk and economic loss they have been experiencing.

During the 1950s and 1960s, hog cholera was brought under control by using a strict vaccination program.. The Pseudorabies Class Action Committee said that also is the way to control pseudorabies. But, state Board of Animal Health officials said there always is a risk involved when working with a live virus.

Dr.. Mackey and Sen.. DeCramer said they believe the federal government should help states fund indemnity programs and research for pseudorabies.

Dr. Mackey said, "I'm confident that in just a few years we'll have this thing under control, but researchers, veterinarians, government and farmers are going to have to work together."

Questions surround PRV quarantine laws

By MARTY KOHLMEYER
Staff Writer

MARSHALL — Everything that needs to be known about the pseudorabies virus (PRV) is already known, according to Dr. W.J. Mackey, a veterinarian with the state Animal Board of Health.

Mackey said 26 top scientists across the nation were asked by the U.S. Department of Agriculture whether enough information was known about PRV to control the disease. The answer was a unanimous "Yes." The questionnaire didn't include a question about how that was to be accomplished, though.

The main problem, Mackey said, is that the hog industry has never come to the state board and asked for the eradication of the disease. The new, stricter quarantine laws that have been proposed (which Mackey believes will be adopted in May) are merely designed to control the spread of the disease.

Farmers under quarantine don't believe that the new quarantine laws are equitable. Only breeders are mandated to do blood testing to determine whether their herds are PRV-infected in order to do business. There are many ways around the quarantine for anybody with farrow-to-finish or feeder pig operations, the farmers say, thereby fostering the spread of the disease.

The new quarantine laws also don't take into consideration the new pseudorabies research that has been done in Europe, where the problem preceded the U.S. outbreak. Dr. Mike Healy, a Marshall veterinarian, said that the research on foxes in Europe is an example of that. It's been discovered that loss of hair and excessive licking may be the only signs a wild animal may exhibit, instead of dying two days after being exposed to the virus, as has been believed in this country.

There's no provisions in the new laws for control of the spread of PRV in meat scraps. Infected hogs can legally be sold for slaughter to be cut up for meat scraps, then fed to other hogs. European research has shown that the virus ties to the protein, breaks up and attaches to the fat. A seed stock farmer from Blue Earth County (which has the state's highest number of known infected herds) maintains that the first time he found PRV in his herd was five days after he switched to a new feed with a high meat scrap content.

Mackey admitted that there is "a tiny amount of evidence" that PRV can be spread through meat scraps, but he's encouraging the University of Minnesota to do more testing on the subject nevertheless. Mackey said the virus is not very hardy and he personally believes that the cooking process is sufficient to kill it. The virus may still be transmitted through the air, he said, but packing plants are careful about separating the incoming hogs from the outgoing product.

Having the virus enter farms on the outside of feed bags has also been identified as a source of herd infection in Europe. Mackey said he believed that it was possible that an infected rat could get ground up with the grain, but that he didn't see many other ways the feed could become contaminated.

Mackey maintained that 90 percent of the spread of the disease within the state of Minnesota was from direct pig-to-pig contact. Many quarantined farmers tend to disagree with that, since they have tested and retested pigs before introducing them into their herds and still ended up with an infected herd.

Pseudorabies first became a problem in Minnesota seven or eight years ago, before there were adequate quarantine laws. Infected pigs were brought in from Iowa, and so little was known about the disease that the first quarantine laws were ineffective. The federal government has mandated that each state determine its own quarantine laws, without which no hogs can travel in or out of the state.

Although the virus has been in the United States for 50 to 60 years, it was controlled quite well by the same vaccine that controlled the hog cholera epidemic in the 1950s and '60s. When the epidemic of hog cholera was under control and farmers stopped vaccinating, pseudorabies started spreading west in the United States.

At one time, veterinarians were to be required to report the amount of vaccine they sold to the state Animal Board of Health.

Europe hasn't seemed to get pseudorabies under control, Mackey said, although the modified live vaccine which is used in the United States isn't used in Europe by itself. Some researchers claim that there is a chance of the modified live vaccine converting to a positive reaction, although Healy said there has never been a documented case of that happening.

With researchers, veterinarians and farmers divided on how PRV is spread and controlled, the federal government has had a difficult time with regulating the disease. Several states, including Illinois and Wisconsin, have experimented with offering indemnity for farmers with infected herds, but Minnesota has no money for that, Mackey said.

Until the hog industry joins hands with the cattle industry, the federal government, the regulatory industry and the state Legislatures, Mackey said he doesn't see the likelihood of controlling PRV. There is a group of quarantined hog farmers who have come together to demand equitable treatment of all hog farmers and to eradicate the virus. For more information on the group, contact Lars Johansson at 532-9745.

The state Animal Board of Health has records of five known infected swine herds in Lyon County as of April 3, 14 in Redwood County, eight in Murray County, six in Pipestone County, one in Lincoln County and four in Yellow Medicine County. There are a total of 249 quarantined herds in Minnesota, with nine being diagnosed two weeks ago. Blue Earth County has 22 known infected herds, Martin County has 19 and Nobles County has 17.

But Mackey said that he realizes that those herds represent "only the tip of the iceberg."

Band together asking for fair treatment

By MARTY KOHLMEYER
Staff Writer

MARSHALL — It was a sober group of area men that gathered to discuss the impact of having their swine herds under quarantine for pseudorabies one evening last week.

Their financial losses were huge. No one wants to buy their breeding stock because of past problems, and they're being forced to sell breeding stock for feeder pig prices at a substantial loss. But what came through loud and clear was the inequity of the situation.

There's talk of a class-action lawsuit against the state of Minnesota to recoup their losses and to change the new quarantine laws.

Lars Johansson, who farms between Lynd and Ghent, knows all about the losses. He's estimated his losses at nearly $200,000, between the quarantine and the costly cleanup procedure. He's worried about the effects on other farmers.

"I might as well have syphilis for the way my neighbors are treating me," said one bitter young man. The others nodded their heads, saying that pseudorabies is being treated more like a social disease than the herpes virus that it is.

The virus is in the same family that causes chicken pox and cold sores, fever blisters and shingles in humans, but human beings are one of the few mammals that aren't affected by it.

That's one of the few things which has actually been verified about the disease. Unfortunately, what isn't known is where the hardship on the individual farmer comes in.

Preventing losses

Perhaps the most difficult thing to deal with is the fact that it's virtually impossible at this point to tell the difference between a carrier, a sick pig or one that's been vaccinated. Sophisticated tests are being developed to detect the difference, but the tests are very expensive and aren't on the market yet. For now, if a farmer suspects that his herd has been exposed to the virus, all he has to do is get out the syringe and shoot them full of vaccine.

Although it may not seem like a responsible thing to do, many farmers are forced to do just that to prevent heavy economic losses. "You guys are really the pioneers of this thing," said Dr. Mike Healy, a veterinarian from Marshall who was at the meeting. "You are the ones who were conscientious, had the disease diagnosed and reported it (which is required by law), and you are the ones who are suffering for it."

One man said when his herd tested positive, he thought he'd do his neighbor a favor and tell him about it, so the two could keep an eye on the dogs traveling between the farms. (Dogs and cats, as well as many wild animals, are suspected carriers.) "Heck," his neighbor said, "I had it last fall and just vaccinated them." His neighbor hadn't been placed under quarantine.

As a matter of fact, the consensus of those present was simple: Next time, they won't "take it to town." They'll just continue to vaccinate every six months. As one man said, "It's cheap insurance."

The men who had been under quarantine said the piece of paper lifting the quarantine was the most expensive piece of paper they'd ever owned. And the most worthless. Nobody will buy their stock for breeding, prompting one man to predict that the quality of the herds in the area would go down. "Nobody's going to take a chance and pay top dollar, have the herd infected all over again and lose their investment," he said.

Spreading the disease

If it were known just how the disease was spread, the producers wouldn't be quite so upset. So little is known about the disease, that even the most cautious farmer takes a chance with his pigs. To a man, each had tested the pigs before purchasing — and most had tested twice.

Two men had purchased disease-free breeding boars, only to have the herd infected nine months later.

Because of the lack of information about how the virus is spread, incorrect information has actually been disseminated at times. There was a time when it was thought that the disease could only be spread by pig-to-pig contact, and farmers made arrangements to [illegible] completely from other farm animals. Farmers still seemed to lose heifers, and it was discovered that the virus could be transmitted through the air, even through the exhaust ventilation systems of a barn.

Dogs and cats have often been blamed for the spread of the disease, but only one farmer had lost any cats. Another said he had to shoot his cats because they wouldn't die, but continued scratching themselves to the point of self-mutilation, a characteristic of the disease.

"I'm not so sure I ever had it," one farmer said. He'd followed precautions to the letter, was diagnosed as positive and placed under quarantine, but never lost an animal. Most of the farmers hadn't lost any of their herd.

Symptoms

The most likely time a pig will show symptoms is at farrowing time. A sow who's been infected may give birth to stillborn pigs, or the pigs may develop symptoms shortly after birth of loss of appetite, convulsions, vomiting and diarrhea. Older pigs may not show any signs of the disease, or may show only a listlessness and refusal to eat. Symptoms may mimic other diseases.

Other species tend to show more serious clinical signs, including an incessant scratching, bellowing, excessive salivating and grinding the teeth. Death usually occurs within 48 hours of the first signs of disease.

A major concern of the farmers who attended the meeting was that feed may be one of the ways the disease is most commonly spread. While the virus can live for up to four hours on dry skin and three days in manure, it can live up to six weeks in feed, because the protein fosters the virus. Several men were convinced that their herds had been infected that way, and studies in Europe support their thinking.

It's also not illegal for a pseudorabies-infected animal to be used in meat scraps fed to other animals. There's no control of that at all, something else the farmers complained about. The virus enters the animals' noses and travels to the brain, centering in the nervous system. The head is what's used in

Government reaction

And what's the government reaction?

Right now, the state is trying to discourage vaccination to try to pinpoint the problem herds. Obviously, very few people want to take that kind of risk and economic loss.

A second-generation veterinarian said he'd discussed the problem with his father, who had lived through the hog cholera epidemic in the 1960s. Hog cholera is one of the few viruses that has ever been brought under control, and that was accomplished, according to the elderly vet, by a strict and religious vaccination program. He's convinced that that's the way to go with pseudorabies, too.

The money that was supposed to go into pseudorabies research on the federal level has been diverted to chicken flu research instead. Furthermore, the chicken flu program also includes some compensation for the afflicted farmer, something that hasn't been available for the quarantined hog producer. "Do you mean to tell me that a chicken is worth more than a pig?" one man asked angrily.

"If the problem isn't serious enough to warrant government research, then why are we sitting under quarantine?" another demanded to know.

Although there is a new set of quarantine regulations that is coming up for a vote in the state Legislature, the producers aren't very happy with them, either. They believe that the new regulations won't help much, and that they're discriminating to the quarantined farmer. And neither the field vets nor the hog producers have been given copies, so they could have some input. That would be too costly, according to the state Board of Health.

The group of farmers — with support from some area vets — plans to meet again. They will hold a public meeting in the future, but would like to meet with other quarantined farmers (or those who have just come off quarantine) first. If anybody would like to attend a closed meeting for quarantined farmers and farmers who have had their quarantines lifted, they should contact Lars Johansson at

Vet: Pseudorabies quarantine rules unnecessarily strict

By MARTY KOHLMEYER
Staff Writer

MARSHALL — A veterinarian from Norden Laboratories thinks the pseudorabies quarantine laws are a case of putting the cart before the horse. The quarantine laws were put into effect before farmers and veterinarians completely understood the disease, said Dr. Stear of Lincoln, Neb.

The vet spoke to about 30 members of the Pseudorabies Class Action Committee at a meeting last week. Dr. Donald Hicks, district veterinarian for the State Board of Animal Health, also spoke, addressing the problems of enforcing and legislating the quarantine laws.

The biggest problem with pseudorabies, according to Stear, is that it's a hidden disease. Much as humans suffering from the herpes cold sore virus may have outbreaks when their bodies are stressed but show no signs of the virus at other times, so it is in swine herds.

The virus peaks 21 days after exposure, Stear said, then dwindles to the carrier stage. When the pig is subjected to a stressed environment, the virus may again shed. A herd may have a silent carrier or two for many years before showing symptoms.

Stear said that the disease has been around for many years — perhaps since the 1900s — but it was sheer coincidence that the modified vaccine was developed at the same time as the test for pseudorabies was developed.

A few years back, hog farmers in Indiana were losing entire herds of swine because of pseudorabies. They began pushing for — and got — federal quarantine laws. But the strain of the herpes virus was much more virulent than the strains which are found in Minnesota herds. Farmers nationwide are saddled with tough quarantine laws now for a milder strain of pseudorabies that's not nearly as serious a problem as other swine diseases.

Many times, Stear believes, pseudorabies has been called something other than what it really is. Misdiagnosed. But he believes that the virus is present in most herds in this country.

In Minnesota herds, the virus tends to smolder year after year, Stear said. A farmer may identify it only when dogs and cats begin showing symptoms or die. "It's a slow killer, knocking off maybe one or two pigs a year," he said. "It's the gumpy old pig that dies that a farmer isn't concerned about that's probably a carrier."

Preliminary findings from a pilot pseudorabies project in Iowa have given Stear the impression that no one's come up with a way to eradicate the disease. A complete immunization program in parts of Europe hasn't worked, either, he said. (He admits, however, that the vaccines that are used in Europe aren't the same as the vaccines used in the United States.)

The modified-live vaccine sufficiently stimulates an immune reaction to suppresses the virus from shedding, Stear said, but bad experiences from the hog cholera epidemic 10 years ago have made farmers wary of using a modified-live vaccine.

The kill vaccine isn't considered as effective in controlling the disease, and is the only kind of vaccine used in European eradication programs, according to Lars Johansson of Ghent. He's done research on pseudorabies eradication programs overseas.

According to Stear, scientists are still one to two years away from perfecting a sub-unit vaccine. In a sub-unit vaccine, only a portion of the virus is cultivated — just enough so that a pig's system can recognize the virus when it comes along and trigger an immune system response to fight it off. The advantage of the sub-unit vaccine is that it would test differently than a live virus. It's currently impossible to distinguish between a vaccinated pig, an infected pig and a carrier.

One of the biggest problems with the current pseudorabies quarantine laws, Stear said, is that once a farmer is on the quarantine list, the government doesn't give him much of a chance to get off of it. Iowa and Nebraska have the most lenient laws, he said.

Hicks claimed that there are a couple of reasons the pseudorabies problem in Minnesota is what it is today. First, he said, people in Minnesota who were studying pseudorabies have been pulled out and stationed elsewhere in the United States for research.

And secondly, there is a hiring freeze on and the retirement and transfer of two federal veterinarians have caused the vets in the area to be spread quite thin, with that much more territory to cover until the hiring freeze is over.

The new quarantine laws won't be in effect as soon as the State Board of Animal Health had anticipated either, he said, because the hearing examiner suggested several changes as the result of the new quarantine laws' hearing. The laws will be rewritten, then sent to the attorney general's office to be approved.

Dr. Michael Healy, a Marshall veterinarian, asked Hicks whether the truck cleanup laws will be enforced effectively. (One of the biggest culprits of the spread of the pseudorabies virus is thought to be trucks in which infected herds are transported. If the trucks are not disinfected, the virus can then be spread to uninfected herds later transported in the same truck.)

Hicks replied that they'd like to see strict compliance with the law, but that his department didn't have enough policemen to enforce the truck disinfection or other aspects of the quarantine.

Stear said that there is a federal movement to put a track back on point-of-origin pseudorabies-infected producers that should be in place in the next few months. "That's going to be a big surprise for a lot of producers who've been thinking that they're getting away with the disease."

The Pseudorabies Class Action Committee has elected temporary officers and has written bylaws for its constitution to be approved by its paid membership at a later date. The officers are Lars Johansson, Ghent, president; Rich Newton, Route 1 Box 69, Minneota, treasurer; and Danada DeBruyckere, secretary.

Dues for membership have been conditionally set at $50 and are payable to Newton. Application has been made for non-profit, tax-exempt status.

Farmers organize opposition to PRV rules

by John Ritter



Pseudorabies and a quarantine caused an

A NUMBER of Minnesota hog producers have banded together in opposition to new state pseudorabies (PRV) rules expected to go into effect this summer.

About 250 farmers whose herds are or have been quarantined for PRV have been invited to join the group, called the PRV Class Action Committee. Up to 50 have attended meetings and even more are expected at a meeting this month in Mankato.

"We need a program with rules, but the present rules are not the answer," says Lars Johansson, Ghent, president of the group. "There are too many problems."

Its goals are to:

- Persuade state or federal government agencies to reimburse hog producers for losses caused by quarantines.
- Obtain low-interest loans to help quarantined producers recover from disease losses.
- Find out why USDA diverted funds and personnel from PRV studies to the study and eradication of Avian flu virus in chickens.
- Study the economic impact that PRV quarantines have had on individual farmers and state revenues.
- Establish legislation prohibiting the quarantine of livestock unless compensatory funds are made available to compensate owners.
- Ask USDA to determine if PRV can be controlled or eradicated, and if it can, determine if quarantines are the most effective and economical method.
- Ask USDA to become actively involved in the development of tests and vaccines which will effectively control and/or eradicate PRV.

Johansson says the group first will push for legislative action. If that fails, litigation against the State of Minnesota may be the next step.

But a division of opinion among producers is a major problem in addressing concerns legislatively, says state Sen. Gary DeCramer. DeCramer introduced a bill in the last session that would have established a state hog checkoff to generate PRV program funds. Producer reaction to the proposed rules and to his funding proposal was mixed.

He says the problem must be addressed nationwide since it's not a problem just in Minnesota. And farmers can help by urging Congressional action, he adds.

A February 1982 quarantine was an "economic and emotional disaster" for Johansson, who lost about $200,000 from the disease. He has since depopulated his 125-sow herd and is back in business.

Unable to secure financing to plant this year's crops, he rented out his land. He's on the brink of bankruptcy, and plans to return to Sweden, his native country, if he loses his farm.

"I hope and pray that in the future we will be able to spare farmers and producers from such unfair disaster," says Johannson. "I'm very sad to see our lawmakers avoid mentioning any indemnity plans of relief for producers under quarantine."

The cost of cleanup, renting facilities on another farm, and repopulating, is prohibitive for many producers.

"I don't think state officials expected people like us to speak out," Johansson declares. "But somebody's got to take



an estimated $200,000 loss in Lars Johansson's Ghent, MN operation.

a stand. Farmers have had the wool pulled over their eyes."

He says quarantines "hurt a few people and let everyone else slip through."

One of the new committee's first goals is to identify losses caused by PRV quarantines. They have mailed a two-page questionnaire to owners of herds under quarantine to help them figure losses.

Dr. Walt Mackey of the Minnesota Board of Animal Health has estimated that the disease is costing state hog producers $1 million per month. He's working with the University of Minne-

Rule changes significant for hog industry

NEW PSEUDORABIES (PRV) rules will go into effect this summer in Minnesota and several significant changes will be noticed by the hog industry.

That's the prediction by Minnesota Board of Animal Health officials who have been working on proposed rule changes the past two years.

Following a public hearing last February, the board on June 1 approved rule revisions. The hearing examiner must approve the revisions, then they will be forwarded to the state attorney general's office for review and publication in the state register.

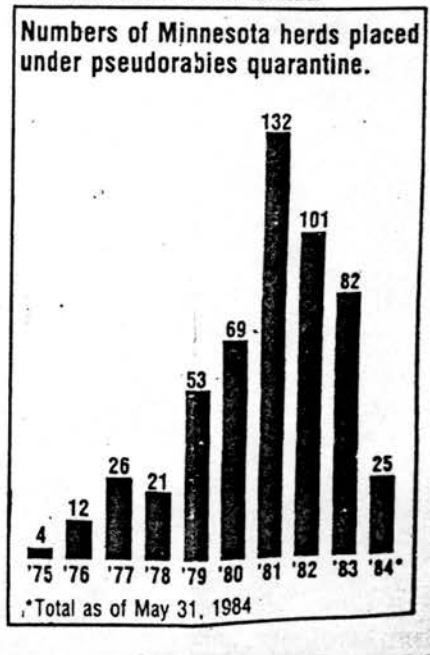
"The rules will be adopted but they won't be easy to implement," says Dr. Walt Mackey, board veterinarian in charge of PRV control.

"I'm optimistic that the rules will be approved," says Jon Murphy, attorney for the board.

Among changes from current rules, the new rules would:

- Provide for traceback of PRV infections to herds of origin.
- Allow tracing of source of infection on an infected farm.
- Permit lifting of a quarantine when vaccination titers are suspected.
- Control movement of breeding swine and feeder pigs through swine concentration points. Each would have to be identified with a yellow metal eartag or a hole in the right ear.
- Classify a "street sale" as a swine concentration point, along with auction

Source: Minnesota Board of Animal Health



sota on a more complete loss survey.

Although the proposed rules have been under review by an advisory committee for more than two years, these farmers only recently voiced their opposition publicly. They've been afraid to speak out because of the social stigma attached to PRV, says Donata DeBruyckere, Minneota, committee secretary.

"We've been hiding in a closet," she states. "We've been more concerned about protecting our pride than speaking out and saying, 'This is an injustice.' Quarantines discourage producers from testing. They don't test so they're sweeping the problem under the rug."

Johansson believes a strong vaccination program is needed, with testing at slaughter points of a certain percentage of each producer's hogs. "All market hogs should be identified," he says. "That way we could gradually depress the virus and an eradication program with indemnity could be enforced."

Mackey embraces most of the group's goals: "I don't disagree with what they're saying. We want to see PRV cleaned up. We'd like to see producers join us in going to the legislature to get funds."

Mackey adds: "We didn't invent the quarantine. It's a technique used relatively often to stop diseases. The federal law says the animals have to be quarantined or they can't be sold interstate."

He says quarantines are used to protect other producers. Technically, the disease itself — not quarantines — causes losses, says Mackey. ■

barns, public stockyards, dealer collection facilities and others.

- Require community notification within a one-mile radius of infected and quarantined lots.
- Require negative PRV tests of swine at shows.
- Require truckers to clean and disinfect trucks after hauling infected hogs.

Mackey says the new rules largely would be self-enforcing, since the potential for lawsuits would be greatly increased.

Nonetheless, the board is seeking $131,000 from the Legislative Advisory Committee to add a full-time veterinarian, one law compliance officer and one clerk to handle the increased workload. Mackey says the funding request is a "bare bones" proposal to assist district veterinarians.

The PRV Class Action Committee (see above story) argues that the proposed rules contradict a current state statute (MS 14.11) regarding "adverse impact" on agricultural land. The group hopes to convince the state to delay adoption of the rules until their concerns are addressed.

Mackey says PRV contamination does have an impact on land values, but not a permanent one. The contamination, he says, can be cleaned up. ■

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Pseudorabies meeting brings forth varie

By Carlienne Frisch
The Land Editor

When Lars Johansson, a Ghent farmer, learned that his swine herd had pseudorabies (PRV), he had a lot of questions about the disease and its spread. After seeking answers, he still has questions, but he also has suggestions — mostly for the federal legislature. Johansson, a naturalized American citizen who grew up in Sweden, said he believes that placing a quarantine on a producer's herd violates the farmer's constitutional rights.

"The 14th amendment to the U.S. Constitution says the state cannot deprive anyone of livelihood without due process of law," Johansson said. "I feel the government has deprived us — devalued our property with the quarantine.

"I read that 26 top veterinarians in the USDA said they know all about pseudorabies," Johanssón said. "I'm surprised at how this has been handled. The big question is if we can control it. I have a closed herd. The boars were brought in 9-1/2 months before we got pseudorabies, and no livestock was moved in after that. How did it come in?

"I lost $180,000, basically in clean-up procedures. The neighbors told me I was dumb to test my pigs. Right now I agree with them," Johansson said.

In Minnesota, a veterinarian is legally bound to report obvious PRV symptoms or positive PRV test results. Many farmers with production herds choose to innoculate their herds if they suspect PRV rather than have tests and find themselves quarantined. Under the quarantine, purebred producers also are forbidden to sell stock other than to slaughter.

In young pigs, the pseudorabies herpes virus affects the central nervous system, causing lack of coordination, wobbling, falling and seizure-like motions, as well as respiratory problems. Vaccination stops abortions and baby pig deaths, but it does not stop the spread of PRV because a vaccinated animal that has been infected can be a carrier.

State law requires quarantine of a diagnosed herd until the hogs are shipped to market and a continued quarantine of facilities for 30 days after depopulation.

An alternate method of having the quarantine removed without depopulating is to test 4-5-month-old gilts from an infected, innoculated herd. Those that test negative should be moved to a farm isolated from the infected herd and retested at 30 and 60 days. If they continue to test negative, the producer has the start of an uninfected, unquarantined herd, according to Dr. Bob Martens, a Nicollet County veterinarian. Once the home facility has been cleaned up and left vacant for 30 days, the new herd can be moved back home, he said.

Class action committee

Dr. Martens was a speaker at a June 18 meeting in Mankato that was sponsored by the Pseudorabies Class Action Committee, of which Johansson is president. The purpose of the meeting was to inform other producers about the current situation and politics regarding PRV. Johansson presented proposals he said the committee wants federal officials to consider. The proposals are as follows:

1) Reimburse hog producers with quarantined herds for losses caused by the quarantine. Review and study the economic impact of a PRV quarantine on individual farmers. Establish legislation prohibiting a quarantine of livestock unless compensatory funds are made available to those producers who suffer economic loss as a result of the quarantine.

2) Establish a low-interest loan program to help quarantined producers recover from the losses, similar to an economic emergency loan program for crop losses. This program would help in rebuilding the herd and in re-establishing a line of credit that may have been lost as a result of the quarantine.

3) Investigate the reasons and circumstances behind the diverting of funds and personnel from PRV studies to the study and eradication of avian (chicken) flu.

4) Study pseudorabies to see if it can be controlled and/or eradicated, and if so, if a quarantine is the most cost-effective way.

7) Become actively involved in development of tests and vaccines that will eradicate or control pseudorabies.

Most herds not reported

Dr. W. Mackey, a veterinarian on the Minnesota Board of Animal Health said the number of infected herds reported in Minnesota is 251, which probably is about 25 percent of the true number. "There probably are about 1,000 infected herds of the 25,000 herds in the state," Dr. Mackey said. "But that's 4 percent infected, 96 percent clean.

"Numbers of cases in the state are going down," he said, "but that's probably due to less reporting. In the last two years, we've lost 10 percent of all our seed stock producers in Minnesota — three producers in the past year," Dr. Mackey said. "It's serious on a statewide basis. But Iowa, which owns 25 percent of all U.S. hogs, has 43 percent of the PRV cases."

Dr. Mackey said the state Board of Animal Health has received $60,000 from the state legislature to put into effect a new program based on recommendations made last fall by a pseudorabies advisory committee that included veterinarians and purebred and production hog farmers. It is not associated with the Pseudorabies Class Action Committee headed by Johansson.

"But that ($60,000) is not necessarily enough," Dr. Mackey said. "Th

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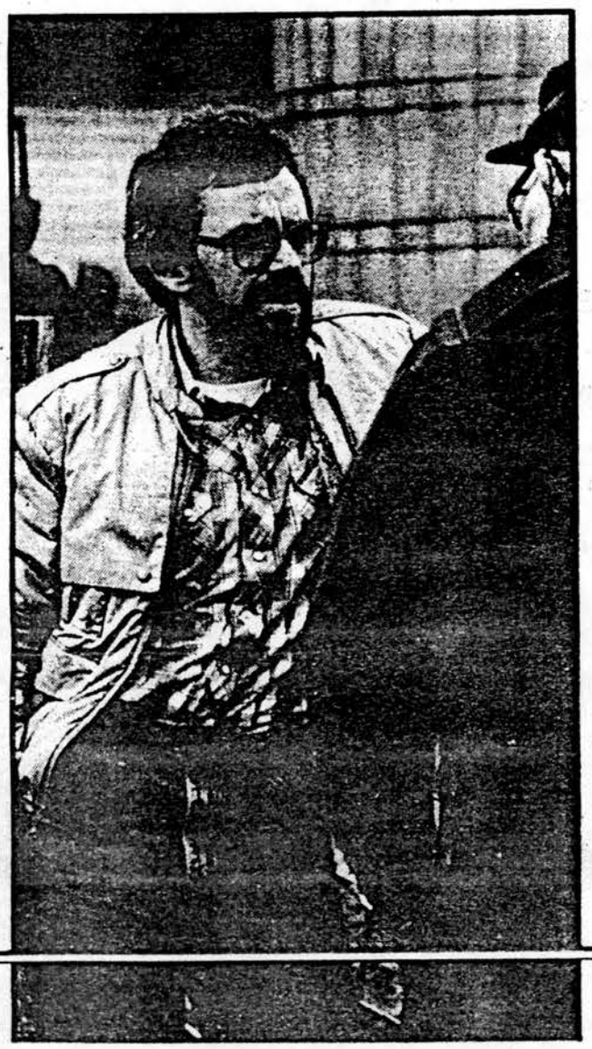

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ed viewpoints

recommendations of the committee, now awaiting the approval of the Minnesota Attorney General before being put into effect this summer, are as follows:

1) That control of PRV be given priority, with eradication efforts to follow,

2) That all breeding stock moving within Minneosta be tested,

3) That all sows and feeder pigs going through auction be headed for market rather than into a breeding herd,

4) That the community be notified of pseudorabies in local herds,

5) That hauling equipment used with infected stock be cleaned up before its next use.

In addition to probably needing more funds to put the program into effect, Dr. Mackey said the Board of Animal Health now is seeking funds to finance PRV tests. Currently, producers must pay for tests on their herds.

Testing is the first step to control, according to Dr. Martens. "Test!" he said. "Don't shut your eyes and vaccinate in hopes of not finding out. It's worse thinking you have pseudorabies than knowing you have it." One reason Nicollet County had a high reported PRV herd count is that the area veterinarians encouraged farmers to test, he explained.

Dr. Martens also recommends regular PRV innoculations in production herds. "The modified live virus made by Norden Labs is the only one I believe is effective," he said. "It has helped control the disease in Nicollet County, and now the numbers of infected herds is dropping," he explained.

Because the disease also can affect cattle and sheep, and because it can be carried by cats, dogs or other wandering animals, vaccination is critical, he said. Care should be exercised with other stock on the farm and regarding other possible carriers.

Dead cattle all over

"One farmer was farrowing and milking in the same barn," Dr. Martens said. "He lost some of his dairy herd. If you have cattle and hogs running together, I feel you'll have dead cattle all over if you get a pseudorabies outbreak in your hogs. You can lose dogs, cats, squirrels, mice and rats — that's not the way to clean it up.

"Then there are the infected herds where you lose only a couple of baby pigs. And the problem becomes apparent only when the herd stress increases," Dr. Martens said.

One of the reasons there currently is no effective control or eradication program, according to state senator Gary DeCramer, who represents the 27th District, is that "within the swine industry, there's no concensus on the solutions for the pseudorabies problem."

"And politically, when there's no consensus, there's nothing you can do," DeCramer said.

Johansson, who seems to have been working on getting farmers worked up on the issue, said he believes he can make a difference. "I think I might sue the government," he said.

ORIG

BAH-84-001-JL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA BOARD OF ANIMAL HEALTH

In the Matter of the Proposed
Adoption of Rules of the State
Board of Animal Health Governing
the Control of Pseudorabies
(3 MCAR S2.026)

REPORT OF THE CHIEF HEARING EXAMINER

The above-entitled matter came on for review by the Chief Hearing Examiner pursuant to the provisions of Minn. Stat. § 14.15, subds. 3 and 4 (1982), as amended by Minn. Laws 1983, Ch. 210, §§ 6 and 7, which provide:

> Subd. 3. Finding of substantial change. If the [hearing examiner's] report contains a finding that a rule has been modified in a way which makes it substantially different from that which was originally proposed, or that the agency has not met the requirements of sections 14.13 to 14.18 it shall be submitted to the chief hearing examiner for approval. If the chief hearing examiner approves the finding of the hearing examiner, the chief hearing examiner shall advise the agency and the revisor of statutes of actions which will correct the defects. The agency shall not adopt the rule until the chief hearing examiner determines that the defects have been corrected.
>
> Subd. 4. Need or reasonableness not established. If the chief hearing examiner determines that the need for or reasonableness of the rule has not been established pursuant to section 14.14, subdivision 2, and if the agency does not elect to follow the suggested actions of the chief hearing examiner to correct that defect, then the agency shall submit the proposed rule to the legislative commission to review administrative rules for the commission's advice and comment. The agency shall not adopt the rule until it has received and considered the advice of the commission. However, the agency is not required to delay adoption longer than 30 days after the commission's receipt of the agency's submission. Advice of the commission shall not be binding on the agency.

Based upon a review of the record in this proceeding, the Chief Hearing Examiner hereby approves the Report of the Hearing Examiner in all respects.

In order to correct the defects enumerated by the Hearing Examiner, the agency shall either take the action recommended by the Hearing Examiner or reconvene the rule hearing if appropriate. If the agency chooses to reconvene

the rule hearing, it shall do so as if it is initiating a new rule hearing, complying with all substantive and procedural requirements imposed on the agency by law or rule.

If the agency chooses to take the action recommended by the Hearing Examiner, it shall, prior to submitting the rules to the Attorney General for review, submit to the Chief Hearing Examiner a copy of the rules as initially published in the State Register, a copy of the rules as proposed for final adoption in the form required by the State Register for final publication, and a copy of the agency's Findings of Fact and Order Adopting Rules. The Chief Hearing Examiner will then make a determination as to whether the defects have been corrected and whether the modifications in the rules are substantial changes.

Should the agency make changes in the rules other than those recommended by the Hearing Examiner, it shall also, prior to submitting the rule to the Attorney General, submit the complete record to the Chief Hearing Examiner for a review in regard to substantial changes.

Dated: April 10th, 1984.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNNESOTA BOARD OF ANIMAL HEALTH

In the Matter of the Proposed
Adoption of Rules of the State
Board of Animal Health Governing
the Control of Pseudorabies
(3 MCAR § 2.026)

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Jon L. Lunde, duly appointed Hearing Examiner, commencing at 9:00 a.m. on Friday, February 24, 1984, at the State Office Building, Room 83, 435 Park Street, St. Paul, Minnesota, pursuant to an Order for Hearing dated December 12, 1983. This hearing was held pursuant to Minn. Stat. § 14.14 to determine whether the rules proposed by the Board are authorized, necessary and reasonable and should be adopted.

Jon K. Murphy, Special Assistant Attorney General, 90 West Plato Boulevard, St. Paul, Minnesota 55107, appeared as counsel on behalf of the Board of Animal Health (the "Board"). Also appearing on behalf of the Board were Dr. J. G. Flint, the Board's Executive Secretary; Dr. W. J. Mackey, the Board's Assistant Secretary; Dr. Robert Pyle, of the Board's Imports Division; and Dr. Robert L. Mersch, the Board's President. In addition to these Board members and employees, approximately 95 other interested persons attended the hearing and 64 of them signed the hearing register. The hearing continued until all interested persons, groups and associations had an opportunity to be heard concerning the adoption of the proposed rules. In addition to the testimony heard at the public hearing, 17 timely written comments were submitted to the Hearing Examiner from interested persons. Six other public comments were submitted late. The Board's written response to some issues raised by the public was filed on March 14, 1984.

The Board must wait at least five working days before taking any final action on the rules; during that period, this Report must be made available to all interested persons upon request.

Pursuant to the provisions of Minn. Stat. § 14.15, subd. 3 (1982), as amended by Minn. Laws 1983, Ch. 210, § 6, this Report has been submitted to the Chief Hearing Examiner for his approval. If the Chief Hearing Examiner approves the findings of this Report, he will advise the Board of actions which will correct the defects and the Board may not adopt the rule until the Chief Hearing Examiner determines that the defects have been corrected. However, in those instances where the Chief Hearing Examiner identifies defects which relate to the issues of need or reasonableness, the Board may either adopt the Hearing Examiner's recommendations to cure the defects or, in

the alternative, if the Board does not elect to adopt the recommendations, it may submit the proposed rule to the Legislative Commission to Review Administrative Rules for the Commission's advice and comment. Provisions relating to this submission to the Commission may be found in Minn. Stat. § 14.15, subd. 4 (1982), as amended by Minn. Laws 1983, Ch. 210, § 7.

If the Board elects to adopt the recommendations of the Hearing Examiner and makes no other changes and the Chief Hearing Examiner determines that the defects have been corrected, then the Board shall submit the rule to the Attorney General for review of form and legality. If the Board makes changes in the rule other than those recommended by the Hearing Examiner, then it shall submit the rule, with the complete record, to the Chief Hearing Examiner for a review of the changes before adopting it and submitting it to the Attorney General. Procedures relating to this subsequent review by the Chief Hearing Examiner are set forth in Minn. Stat. § 14.16 (1982).

When the Board submits the rule to the Attorney General, it shall give notice on the day of submission to all persons who requested that they be informed of the submission to the Attorney General.

Based upon all the testimony, exhibits and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On December 15, 1983, the Board filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules.
(b) The Order for Hearing and a certificate of the Board's resolution authorizing its Executive Secretary to order a hearing.
(c) The Notice of Hearing proposed to be issued.
(d) A Statement of the number of persons expected to attend the hearing and estimated length of the Board's presentation.

2. On Monday, January 23, 1984, more than 30 days prior to the hearing, a Notice of Hearing and a copy of the proposed rules were published at 8 State Register 30, pages 1705 - 1711.

3. On January 18, 1984, more than 30 days prior to the hearing, the Board mailed the Notice of Hearing to all persons and associations who had registered their names with the Board for the purpose of receiving such notice.

4. On January 31, 1984, the Board filed the following documents with the Hearing Examiner:

(a) The Notice of Hearing as mailed.
(b) The Agency's certification that its mailing list was accurate and complete.

(c) The Affidavit of Mailing the Notice to all persons on the Agency's list.
(d) The Statement of Need and Reasonableness.
(e) The names of the Board members and personnel to represent it at the hearing together with the names of other witnesses solicited by it to appear on its behalf.
(f) A copy of the State Register containing the proposed rules.
(g) An Affidavit of Additional Notice.

The documents were available for inspection at the Office of Administrative Hearings from the date of filing to the date of the hearing.

5. The record remained open through March 12, 1984, for the receipt of written comments and statements from the public, the period having been extended by order of the Hearing Examiner to 17 calendar days following the hearing. The record remained open for the filing of the Board's response to public comments for an additional 3 days and closed on March 16, 1984, 20 calendar days after the hearing was held.

Designated Statutory Authority

6. In its Notice of Hearing, the Board cited Laws of Minnesota, 1983, Ch. 367, as its authority to adopt the rules proposed. That law, to be codified as Minn. Stat. § 35.255, reads as follows:

> The board of animal health shall adopt rules to implement a program to control pseudorabies in swine, including pseudorabies testing of breeding swine and restricted movement of feeder pigs.

This law which became effective on June 15, 1983, makes the adoption of pseudorabies control rules mandatory. Therefore, it authorizes the adoption of the rules proposed and generally establishes their need.

Background

7. The pseudorabies virus (PRV) is highly contagious and infectious disease affecting swine and other livestock. The virus can live for up to two weeks in moist conditions. It is ususally fatal and is most commonly found in swine. It became a serious problem in Europe approximately 20 years ago, and became a serious problem in the United States ten years later. In 1975 it started to regularly appear in Minnesota. Since that time its incidence has snowballed. It is now the closest thing to a pandemic infection in the swine industry since Hog Cholera was rampant.

Based on investigations conducted by the Board within the state, it has estimated that the spread of pseudorabies can be attributed to the recent movement of untested breeding swine (30%), the recent movement of feeder pigs (40%), or to other causes, many unknown (30%).

8. The spread of pseudorabies is demonstrated by the number of reported outbreaks in the state. In 1977, 32 cases of pseudorabies were reported in Minnesota. In 1981, 133 cases were reported. Likewise, the number of swine herds under quarantine in the state has increased dramatically. In 1975, the Board quarantined only 4 herds. Since that time, through 1983, an additional 497 herds are known to have become infected and have been quarantined. At the present time, 223 swine herds in Minnesota are known to be infected. The United States Department of Agriculture (USDA) estimates that this represents only 25% of the actual number of infected herds in the state.

9. Between 1975 and 1981, 14 seedstock herds were lost in Minnesota due to pseudorabies. In 1982 alone, 15 seedstock herds were lost and in 1983 alone, 18 herds were lost. Within the past year, 10% of the seedstock herds in Minnesota were lost due to pseudorabies. The average economic loss to a farrow to finish operator amounts to $23,500 per outbreak, while the loss to a seedstock herd would be closer to $129,000. The economic loss to hog producers has been estimated by the Board to be approximately $1 million per month in the state of Minnesota and $100 million annually in the United States.

The number of Minnesota farmers engaged in hog operations in Minnesota has decreased significantly in the last five years. In 1978, there were 31,000 hog farmers in Minnesota. That number has decreased each subsequent year. In 1982 there were 24,000 hog farmers and in 1983 the number was reduced to 22,000. In addition, the number of swine on Minnesota's farms decreased from 5,100,000 in 1981 to 3,900,000 in 1983.

10. The Board has been working on the pseudorabies problem for the last six or seven years. Approximately two years ago, it appointed a 20-member advisory committee to assist it in the adoption of the rules currently proposed. The Pseudorabies Advisory Committee, which was composed of representatives of all segments of the swine industry, met approximately five times during the past one-and-one-half years and drafted a proposed set of rules accompanied by the following conclusions:

1. The spread of pseudorabies in Minnesota constitutes a serious condition threatening the economic well being and health of Minnesota's swine industry;

2. Pseudorabies will not go away under current regulation and every indication is that the problem will be worse in the future;

3. Vaccination as presently performed has not stopped the spread of pseudorabies in foreign countries;

4. Total eradication of the disease at this time is not feasible or economically practical;

5. Procedures must be adopted to reduce the spread of pseudorabies until such time that total eradication does become feasible.

11. The rules proposed by the Advisory Committee were adopted by the Board with only one substantial modification. They repeal 3 MCAR § 2.024 (now Minn. Rule 1705.2060 et seq.), which pertains to swine quarantines, the establishment and maintenance of qualified pseudorabies negative herds, and pseudorabies controlled vaccinated herds. The new rules were to be codified as 3 MCAR § 2.026, but will actually be recodified under a different numbering system recently adopted by the Revisor of Statutes. The rules regulate pseudorabies test procedures, disease reporting, quarantines, traceback provisions, the intrastate movement of breeding swine and feeder pigs, qualified pseudorabies negative herd procedures, pseudorabies controlled vaccinated herd procedures, community notification procedures, swine exhibitions, and swine transportation requirements. The rules, when adopted, make 3 MCAR § 2.024 redundant and unnecessary.

13. The rules do not duplicate statutory language or contain any incorporations by reference. The Board's Statement of Need and Reasonableness (SONR) discusses the impact of the proposed rules on small businesses in the swine industry.

14. With one major exception, all segments of the swine industry generally support the adoption of the rules. The only major point of criticism involves eartagging and punching a hole in the right ear of a all feeder pigs and breeding swine passing thru a swine concentration point. The Board's SONR and public testimony presented at the hearing establish the need for and the reasonableness of the noncontroversial provisions of the proposed rules, some of which are merely reenactments of existing rules. Those noncontroversial rules are not discussed unless they raise legal issues or grammatical problems requiring consideration.

Substantive Provisions

15. Section 2.026 A. This Section contains 11 definitions. The need and reasonableness of the definitions is adequately supported by an affirmative presentation of facts in the Board's SONR and the definitions were not subject to any adverse public comment. However, one of the definitions contains language that must be clarified.

16. 2.026 A. 5. This subsection defines an "official pseudorabies test" as "the serum neutralization test or other test approved by the board." In its SONR (pages 8-9) the Board discussed the need to approve additional tests in the future, stating in part as follows:

> . . . At the present time, new tests and procedures are being developed and experimented with which may lead to additional tests being approved by the USDA for utilization in disease control. It is anticipated that such tests will be more cost effective in the event that they are approved for use by practicting veterinarians. The Board desires to be able to approve such tests under the existing rule and in the absence of an amendment to the rule . . . .

The Hearing Examiner is persuaded that the Board needs a mechanism whereby new tests may be approved without amending this rule. However, the language used to permit the Board to do that fails to make the rule specific for purposes of Minn. Stat. § 14.02, subd. 4, as consistently construed by the Attorney General. As now written, the rule permits the Board to approve or disapprove additional tests without any criteria for making its decision and without any procedure for giving notice to the industry of the tests approved. When an agency seeks to regulate tests, intending to approve some and to reject others, it is required by due process to make its selections pursuant to ascertainable standards. Historic Green Springs, Inc. v. Bergland, 497 F.Supp. 839, 854-855 (E.D.Va. 1980); Can Mfrs. Institute, Inc. v. State, 289 N.W.2d 416, 423 (Minn. 1979). Thus, Monk & Excelsior, Inc. v. Minn. State. Bd. of Health, 225 N.W.2d 821 (Minn. 1975), the Minnesota Supreme Court stated (p. 825):

> . . . A person dealing with the department is entitled to proper notice of what regulations are being promulgated and are applicable to him. The purpose of the Administrative Procedure Act is to ensure that we have a government of law and not of men. Under that Act, administrative officials are not permitted to act on mere whim, nor their own impulse, however well-intentioned they might be, but must follow due process in their official acts and in the promulgation of rules defining their operations.

Since the rule gives the Board unfettered discretion in its approval of pseudorabies tests, it is a substantive violation of the requirements of the Administrative Procedure Act (APA) as construed by the Attorney General and the courts. The Hearing Examiner is not persuaded that the Board's discretion is limited to a permissible degree by the fact that no antigen used in the detection and diagnosis of communicable or infectious diseases may be used in this state unless it is licensed by the USDA under Minn. Rule LSB 55 (now 1720.0580 et seq.).

To correct this defect, it is suggested that the words "other test approved by the Board" be deleted and that the following or similar language be added in its place:

> "other tests approved by the United States Department of Agriculture may be approved by the board if it finds that they are appropriate for the detection of pseudorabies. In approving additional tests the board shall consider scientific evidence of their reliability, the opinions of experts, experience with their use, their cost effectiveness, and their hazards, if any. A list of approved tests shall be maintained by the board and available to the public."

This language contains identifiable criteria for the approval of additional tests and requires that a list of the tests approved be maintained and

available to the public, so that the public can determine what tests have been approved and what standards will be applied for approval.

17. Section 2.026 B. This section pertains to the taking of blood samples from swine and their subsequent testing. It provides, in part, that "serological tests must be conducted by a state and federally approved laboratory or other other laboratory approved by the board." The quoted language violates Minn. Stat. § 14.02, subd. 4, because it fails to identify those laboratories which are "state and federally approved" and fails to set forth standards for the approval of other laboratories which may not be so approved. As was previously mentioned, any rule which leaves an agency with unfettered discretion in exercising its authority or which fails to clearly state what it means violates the APA.

To correct this substantive defect, the Board must clarify those laboratories which are "state and federally approved" and specify the criteria for the approval of other laboratories. If the rule is meant to recognize the laboratories approved by particular state or federal agencies it should say so, and the new language should provide that a list of other laboratories approved by the Board shall be maintained by it and available for public inspection.

In its SONR, the Board noted that state and federally approved laboratories are those identified in 9 C.F.R. § 85.1. Under subsection (q) of that regulation, designated officials of the USDA may approve state, federal or university laboratories meeting certain criteria. For that reason, the Board should consider changing the words "state and federally approved laboratory" to "laboratory approved by the United States Department of Agriculture". The SONR does not specifically state that this subsection is intended to authorize the Board to approve other laboratories. Assuming that it is, ascertainable standards for approval must be included. If those standards are contained in another existing rule, the defect can be cured by citing that rule. If the Board does not intend to approve additional laboratories under this subsection, the defect may be cured by deleting the reference to "other laboratory approved by the board."

18. Section 2.026 D. Under this section of the rule, the Board is required to immediately quarantine an infected herd pursuant to Minn. Stat. § 35.05. Under the statute, quarantines may be imposed upon any domestic animals infected with or exposed to a contagious and infectious dangerous disease. In its SONR, the Board discusses the quarantining requirement in subsection D. 1., stating in part as follows:

> . . . The proposed rule makes the Board's duty mandatory with respect to pseudorabies and encompasses all infected herds whereas the current rule 3 MCAR § 2.024B authorizes mandatory quarantines only in herds in which a clinical diagnosis or a laboratory diagnosis is made. The Board believes better results will be effectuated through the mandatory quarantining of all herds which show evidence of infection whether that infection has been diagnosed by an official test, a clinical diagnosis by a veterinarian, or a laboratory diagnosis. The requirement to do so is already embodied in 3 MCAR § 2.061.

The intention to require the quarantining of all swine herds which show evidence of infection whether or not the infection has been diagnosed is not apparent in the plain language used. The rule (2.026 D. 1.) requires the quarantining of an "infected herd" which, by definition, is one in which pseudorabies has been diagnosed by an official test, clinical diagnosis by a veterinarian, or laboratory diagnosis (3 MCAR § 2.026A.3.). The definition does not permit quarantining where the herd merely shows evidence of an infection. Therefore, if the Board intends to quarantine swine herds which show evidence of infection, whether or not that infection has been diagnosed, the rule should be rewritten to properly reflect that intent. The language used could follow that currently contained in 3 MCAR § 2.061 (now 1720.1030 et seq.), which permits the quarantining of livestock "which are affected with or which show symptoms of, or have been exposed to" pseudorabies.

19. 2.026 D. 2. Under this subsection, livestock other than swine which are infected with pseudorabies or which are exposed to animals infected with pseudorabies must be quarantined. The quarantine shall be lifted 21 days after the diagnosis or exposure if there are no signs of pseudorabies in the quarantined livestock. The word "infected" is not defined in the rules and it is not immediately apparent whether livestock other than swine must be quarantined when they show evidence of infection or are exposed to animals showing evidence of infection, as the Board interprets that term for purposes of subsection D. 1.; or whether livestock other than swine must be quarantined only if their infection has been diagnosed or if they have been exposed to animals known to be infected. The second sentence of subsection D. 2. indicates that the quarantine will be lifted 21 days after the "diagnosis" or exposure if there are no signs of pseudorabies. This indicates that the infection referred to in the first sentence is an infection that has been diagnosed by an official test, a clinical diagnosis by a veterinarian or a laboratory diagnosis, and not one based merely on evidence of infection. The Board should reexamine the language used here to make sure that it reflects the intended requirements.

20. 2.026 D. 3. This subsection requires an epidemiological investigation of any swine on the premises where species of animals other than swine have been "diagnosed" as having pseudorabies. The words "species of animals" rather than the words "livestock" or "domestic animal" indicate that the requirements of this subsection apply when any animal, including a bat, dog or skunk, is diagnosed as having pseudorabies and that the rule is not limited to diagnosed pseudorabies in livestock. Again, since the rule uses the word "diagnosed", the Board apparently intends to limit this subsection to those cases where pseudorabies is diagnosed by a veterinarian, an official test or a laboratory. If that is not its intent, the rules should be clarified.

When a species of animal has been diagnosed as having pseudorabies, the subsection requires blood testing of at least 10% of the "older swine" or a minimum of 10 head selected randomly. If pseudorabies reactors are disclosed in those tests or if the owner refuses to cooperate in testing, the swine herd must be quarantined in accordance with the rule. This is a necessary and reasonable requirement. As noted in the Board's SONR, there is a high probability of exposure between swine and other animals on the premises and if

the owner does not cooperate with testing, it is reasonable to assume that the swine are infected. In Juster Bros. v. Christgau, 214 Minn. 108, 7 N.W.2d 501, 507 (1943), the Minnesota Supreme Court held that agencies may adopt presumptions in their rules so long as they are rebuttable. Here the rule creates a reasonable presumption which is rebuttable by an owner's compliance with the testing procedures. The Board should consider replacing the words "older swine" with a specific age factor, however.

21. 2.026 D. 4. This subsection deals with the disposal of livestock from an infected herd. Among other things, the subsection regulates the sale of feeder pigs and requires that they be sold only to a quarantined feedlot. The quarantined feedlot must be one where quarantined swine can be fed out in isolation from other domestic animals. Quarantined feedlots must also meet the following requirements:

(1) no breeding swine are on the premises;

(2) the feedlot owner agrees to sell all the swine from the feedlot directly for slaugher accompanied by a shippping permit or owner's notice of shipment; and

(3) prior to its approval as a quarantined feedlot, the lot is inspected for compliance by a state or federal regulatory veterinarian.

In the third criteria, the words "inspected for compliance" are ambiguous. It is unclear what the feedlot must be in compliance with. In its SONR (p. 12), the Board noted that the general regulation and the criteria for approval of quarantined feedlots is governed by 3 MCAR § 2.057. However, subsection A. 2. of that rule defines a quarantined feedlot as a confinement area for feeding cattle. The rule does not mention swine. The Hearing Examiner can find no existing regulations governing the approval of quarantined feedlots for feeder pigs. This ambiguity is not violative of the APA, but it should be clarified. The Board should also clarify the purposes of the inspection alluded to in subsection D.4.b.(3). If portions of 3 MCAR § 2.057 are intended to apply to the approval process, the relevant portions should be incorporated into the rule by reference or specifically set out.

22. Mark Moenning, a producer of purebred boars and open gilts, suggested that subsection D.4.b.(3) be amended by requiring that only quarantined feedlots receiving the approval of all livestock producers within a three-mile radius be approved. The Board has declined to adopt that amendment and its decision to do so is a reasonable one. The Board is not required to delegate its rulemaking authority, and indeed, it is prohibited from doing so. In Muehling v. School Dist. No. 31 of Stearns County, 244 Minn. 432, 436, 28 N.W.2d 655, 658 (1947), the Minnesota Supreme Court held that an agency may not redelegate its powers to another person or agency. Accord, State ex rel. Foster v. City of Minneapolis, 255 Minn. 249, 97 N.W.2d 273 (1959), prohibiting a municipal corporation from restricting property uses under zoning ordinance without the consent of adjoining property owners. If

quarantined feedlots should be restricted to certain areas, those restrictions should be duly adopted and promulgated by rule. They cannot rest with the individual discretion of the persons living in the vicinity of the proposed feedlot.

23. Section 2.026 E. This section of the rules prescribes the two methods by which quarantines may be released: sale of the herd for slaughter or removal of positive reactor stock on a continuing basis until the remaining stock show no signs of disease. Special provisions govern the isolation and testing of herd progeny and the release of quarantines when a tentative diagnosis of pseudorabies results from a vaccination reaction. The need and reasonableness of this section is adequately supported by the SONR and public comments. However, some subsections leave too much unfettered discretion in the agency.

24. 2.026 E.1.a. This subsection provides that when the entire quarantined herd is sold, the quarantine of the premises "may" be released 30 days after the premises are cleaned and disinfected. The word "may" gives the Board unfettered discretion in the release of quarantines where the entire herd is sold and constitutes a substantive violation of Minn. Stat. § 14.02, subd. 4, as consistently construed by the Attorney General. It implies that the Board may refuse to release quarantines even though all requirements of the rule have been met.

To correct this defect, the word "may" must be changed to "shall". If there are conditions or criteria when release would not be appropriate after the premises are cleaned and disinfected, they may be added to the last sentence. Thus, the last sentence could read:

> ". . . The quarantine shall be released 30 days after completion of the cleaning and disinfection unless . . . ."

25. Subsection E.1.a. also requires that the cleaning and disinfection of the premises be "under the direction of the Board." This language is different from that used in subsection E.1.c., which requires that progeny be weaned and isolated under the "direction and supervision of the board". The SONR does not describe the distinction, if any, between mere direction and direction and supervision. If the Board intends to retain authority to actually oversee the cleaning and disinfection of the premises, it should use the words "direction and supervision" throughout.

26. At least three rules require that some action be performed under the "direction" or the "direction and supervision" of the Board. See Section A.6., pertaining to vaccinations; Section E.1.a., pertaining to the cleaning and disinfection of infected premises; and Section E.1.c., pertaining to the isolation and weaning of quarantined herd progeny. These words empower the Board to order that certain things be done and supervise their performance. As such, the Board retains discretion to require acts not specifically required by the rules. As was mentioned, rules which give unfettered discretion to agency personnel are generally violative of the APA.

Nonetheless, in the sections cited, it is concluded that the discretionary language used is permissible. In Can Mfrs. Institute, Inc. v. State, 289 N.W.2d 416, 423 (Minn. 1979), the Minnesota Supreme Court held that in cases where flexibility is needed, where circumstances might vary from case to case, and where important public policy in involved, rules need not be precise where it is not feasible to make them so.

The manner in which progency should be isolated from a quarantined herd, like the manner in which infected premises should be cleaned and disinfected will depend on the circumstances of each particular case. The sources of contamination and the layout and type of buildings and equipment will vary and will likely require safeguards individually designed for each different situation. Since specificity is not feasible, the general requirement used is permissible.

That should not deter the Board from specifying uniform requirements it intends to impose. For example, if it wants particular cleaning or disinfecting agents to be used, those agents should be specified as they are in 2.206 M.2. Likewise, for vaccinations of pseudorabies controlled negative herds under subsection A.6., the Board should specify the reports or verifications it will require or the types of vaccines which may be used. While the Board does not intend to restrict the use of vaccines generally, those vaccines acceptable to qualify for certified herd status should be specified.

no change 5.2

27. E.1.c. This subsection specifies the manner by which the progency of a quarantined herd may be removed from quarantine. Mark Moenning, suggested that the rule be amended so that the weaning and isolation of herd progeny be under the direction of a local licensed veterinarian instead of the Board. The Board refused to adopt the suggested change and its decision is within the reasonable scope of its discretion. The Board has authority to adopt rules to control pseudorabies in swine and is not required to leave the implementation of its rules to third party veterinarians. It can reasonably require the involvement of its own employees. The rule proposed is necessary and reasonable.

Moenning also suggested that the following language be added to the end of this subsection:

> ". . . that will be sold as breeding swine or used to restock a seedstock herd. The restocking of commercial farms must pass two negative official tests of 100% of those pigs to be used as sow herd replacement at least 30 days apart. This isolation and testing may occur on the same farm if adequate isolation from the quarantined or infected stock is assurred."

The Board has not accepted this change. Its rejection is within the broad scope of its policy-making discretion and does not affect the need or reasonableness of the rules proposed.

28. 2.026 E.2. This subsection relates to the release of quarantines when the tentative diagnosis of pseudorabies is the result of a vaccination reaction. It reads, in part, as follows:

> 2. When an epidemiological evaluation and herd history indicate that a tentative diagnosis of pseudorabies is the result of a vaccination reaction, the quarantine may be released. The epidemiological evaluation must be conducted by the district veterinarian and must include at least the items in a. - d.

While the language of this section is necessary and reasonable, it contains impermissible discretionary language. The word "may" indicates that the release of quarantines is discretionary even when all criteria in the rule are satisfied. Likewise, the words "at least" imply that additional criteria can be imposed. The quoted language leaves the Board with impermissible discretion for purposes of § 14.02, subd. 4, as consistently construed by the Attorney General. To correct this defect, the discretionary language must be eliminated. This could be done by rewriting the subsection to read as follows:

> When an epidemiological evaluation and herd history establish that a tentative diagnosis of pseudorabies is the result of a vaccination reaction, the quarantine shall be released. The epidemiological evaluation must be conducted by the district veterinarian and must include all the items in a. - d.

29. The criteria which must be met to obtain quarantine release under subsection E.2. include a signed statement from the owner that the animal diagnosed as infected was either vaccinated for pseudorabies or was the progeny of a vaccinated animal and of an age when maternal antibodies would normally be present. Lars Johansson objected to this criteria because an owner might lie. However, the fact that an isolated person may submit a false statement does not make the rule unnecessary or unreasonable. Many people are honest and will not lie on official forms, and for those persons the requirement serves a necessary and legitimate function.

30. 2.026 E.2.c. This subsection requires the owner to submit evidence that his herd was vaccinated for pseudorabies. Acceptable evidence includes purchase records, owner vaccination request forms, and "other relevant items". The quoted words would include any kind of verification documenting an owner's prior use of pseudorabies vaccine in his herd. Since the kind of evidence that might be available could vary considerably from case to case, the Board's failure to specifically list all the possible kinds of reliable evidence is permissible. Can Mfrs. Institute, Inc. v. State, 289 N.W.2d 416, 423 (Minn. 1979); Thompson v. City of Minnepolis, 300 N.W.2d 763, 768 (Minn. 1980). However, since the rule does not require that the evidence be reliable, it is recommended that the Board consider deleting the words "and other relevant items" and replacing them with "other reliable evidence that so replaced p.5

the owner has vaccinated his herd for pseudorabies." The Board should also consider changing the language "and of an age when maternal antibodies would normally be present" to a specific age factor. Thus, the rule could state "and less than four months of age."

31. 2.026 E.2.d. This subsection requires that a negative pseudorabies test of at least 20 unvaccinated swine over four months of age must be conducted before the quarantine will be released. It also provides that "[i]f necessary, additional testing may be conducted at the discretion of the state or federal veterinarian." This section permits a state or federal veterinarian to conduct additional tests when he determines that it is necessary. A necessity standard is reasonable here. If there is any basis for believing that the tests given are inconclusive or any reasonable doubt about the status of the herd, further testing should be made. However, it is unclear whether the additional tests, if any, that are conducted will be at the owner's expense or the Board's expense. The subsection itself indicates that the owner only pays for the tests performed on at least 20 unvaccinated swine over four months of age. However, under subsection E.4. any pseudorabies test conducted on a quarantined premises are at the owner's expense. The Board should clarify this.

32. 2.026 E.3. This subsection provides that a quarantine on livestock other than swine "may" be released 21 days after the diagnosis or exposure if there are no signs of pseudorabies in the herd. In its present form this subsection is a substantive violation of Minn. Stat. § 14.02, subd. 4, as consistently construed by the Attorney General, because the word "may" leaves the Board with unfettered discretion in determining whether the quarantine should or should not be released after expiration of the 21-day period. To correct this defect, the word "may" must be replaced with "shall". The rule may state the circumstances when a quarantine will not be released if 21 days have expired and there are no signs of pseudorabies in the herd.

33. Section 2.026 F. This section outlines the procedures by which the Board may trace a pseudorabies infection back to other infected herds. It received strong public support and is a necessary and integral provision of the proposed rules. It generally requires the owner of an infected herd to list all sources of purchases and sales of breeding swine during the preceding year. The rule enables the Board to require the seller of swine becoming infected within the subsequent 12 months to test 10% of his breeding herd or 10% of the progeny over four months of age in a vaccinated herd. If pseudorabies titres are disclosed on these tests, or if the owner refuses to test, the seller's herd will be considered infected and will be quarantined. The rule is necessary and reasonable as proposed and the presumption of an infection when an owner refuses to test is reasonable as was discussed previously (See Finding 20).

34. 2.026 F. 2.a. This subsection, which requires the seller of swine to test 10% of his breeding herd or 10% of the progeny over four months of age of a vaccinated herd, was subject to three public comments. Lars Johansson questioned the need for this requirement when all breeding stock must be tested anyway. It is clear from the record, however, that a negative test of

the swine sold does not assure that the herd is not infected. Therefore, the mandatory testing requirement on traceback is a necessary and reasonable measure to control the spread of pseudorabies.

Mark Moenning suggested that this subsection be amended by adding the following language at the end:

> This traceback testing would not be required if purchased animals originated from a herd of certified status [qualified pseudorabies negative herds and pseudorabies controlled vaccinated herds].

Moenning would exempt "certified herds" from the testing requirements on traceback because those herds are required to be tested on a quarterly basis to maintain their certified status. In a pseudorabies controlled vaccinated herd at least 25 % of the progeny between four and five months must have a negative pseudorabies test every 90 days under § 2.026 J. 2. In a qualified pseudorabies negative herd, 25 % of the herd must be tested negative every 80 to 100 days under § 2.026 I. 3. Monte McCaw, D.V.M., of the University of Minnesota, School of Veterinary Medicine, also supported the adoption of limitations on the traceback testing requirements. He proposed that there be quarterly or monthly limits.

The SONR does not discuss whether compliance with the 10% testing requirement would be in addition to the testing requirements imposed upon qualified pseudorabies negative herds under 2.026 I. or pseudorabies controlled negative herds under 2.026 J. Perhaps it did not intend to test swine subject to other testing requirements. That would explain the Board's use of the discretionary word "may" in subsection F.2.a. However, the Board failed to show that it is unable to articulate a standard for determining when tests will be required and when they will not. Consequently the use of the discretionary word "may" constitutes a substantive violation of Minn. Stat. § 14.02, subd. 4. It leaves the Board with unfettered discretion in imposing testing requirements. To correct this substantive defect, the Board must require testing and the word "may" should be replaced with the mandatory word "shall". If the Board wishes to adopt exceptions to the mandatory testing requirement, they should be spelled out in the rules, as Moenning suggested. Thus, the Board could exempt testing of pseudorabies controlled negative herds, pseudorabies controlled vaccinated herds, or other herds which have been recently tested or which are under quarantine.

35. 2.026 F.2.b. This subsection states that the owner of a herd suspected as the source of pseudorabies will be considered infected "until the purchased swine are tested and found negative." The underlined language is confusing. Apparently it refers to the swine belonging to the purchaser whose herd is diagnosed as having pseudorabies. However, that herd is already diagnosed as infected. The SONR indicates that the seller's herd is to be considered infected until he tests. If that is the intended result, the words "the purchased swine are" should be replaced with the words "his herd is". Also, since the Board intends to quarantine the herd of a seller who refuses to test, the rule should be amended to say so.

36. Section 2.026 G. This section regulates the intrastate movement of breeding swine. It is needed to control the spread of pseudorabies among breeding swing and to implement the legislative directive that the Board adopt rules for that purpose. In addition to mandating the testing of breeding swine, the rule contains detailed provisions regulating the identification and sale of breeding swine sold through swine concentration points. Whenever breeding swine go through a concentration point where they could come in contact with feeder pigs, market hogs or other untested swine, they become restricted movement breeding swine. The rule requires that all such breeding swine be identified with a one-half inch hole punched in their right ear and an ear tag, and that their subsequent movement be restricted unless they are tested negative for pseudorabies at least 30 days after going through the swine concentration point.

37. 2.026 G.2.b. This subsection specifically requires that all breeding swine sold through a swine concentration point (i.e. restricted movement breeding swine) be identified by a one-half-inch diameter hole punched in their right ear and an ear tag. The ear-punch requirement in this subsection, and especially its corollary in subsection 2.026 H.1.b. pertaining to feeder pigs, was the most controversial rule proposed by the Board and was the subject of most of the adverse public comments made. Under the published version of the rules, both breeding swine and feeder pigs passing through a swine concentration point would require an ear tag and a one-half-inch diameter hole punched in their right ear. At the hearing, the Board proposed to delete the ear-tag requirement for feeder pigs but not for breeding swine. The objections of the feeder pig industry were, therefore, directed at the ear-hole requirement. However, it appears that they are opposed to either form of identification and want such swine to be identified only on a document provided to the purchaser.

38. Although the manner in which pseudorabies is spread was not established with scientific certainty, USDA studies have shown that approximately 8% of all market hogs in Minnesota carry pseudorabies titres. Moreover, based on the complaints the Board has received, it has estimated that 40% of all pseudorabies infections were caused by a recent movement of feeder pigs, and 30% by the recent movement of untested breeding swine. Consequently the Board determined that those breeding swine and feeder pigs going through swine concentration points are likely to become exposed to pseudorabies and should be identified.

39. Dr. Mackey pointed out at the public hearing that the Board wanted to devise a marking system that would identify potentially exposed swine so that they could be recognized in the industry as pigs that should be fed out and sent to slaughter. Mackey noted that some states, like Illinois and Indiana, quarantine swine moving through concentration points and identify them with ear tags and a series of forms -- ultimately five separate forms for each pig. While the system in those states works, it is expensive and difficult to enforce and police. Since 2 million feeder pigs move in Minnesota every year, the Board desired to devise an identificatin system that would not involve a massive amount of paperwork or a quarantine. After much discussion, the Board determined that all restricted movement breeding swine should be identified with a one-half-inch diameter hole punched in their right ear and an ear tag,

and that all restricted movement feeder pigs be identified with a one-half-inch diameter hole. This would eliminate the need for the paperwork used in Indiana and Illinois and would provide for the permanent identification of possibly infected swine. The Board's policy decision to require that swine passing through a concentration point be permanently identified is necessary and reasonable in order to make them readily identifiable to all persons and in order to permit the Board to monitor compliance with the rule without quarantining those animals and tracing millions of documents. Although no other states require an ear-hole, ear tagging is commonly required. Currently, most feeder pigs in Minnesota must be ear tagged.

40. Breeding swine require both an ear tag and an ear hole after passing through a swine concentration point. An ear-tag requirement for such swine was not generally criticized and is necessary and reasonable. It permits such swine to be readily identifiable and makes the traceback of infections easier. Ear tags frequently become lost, however, and they can be removed; consequently, requiring an ear punch in addition to an ear tag is necessary and reasonable for breeding swine. In order to test the efficacy of the ear punch, members of the Board, including Dr. Robert Pyle, punched holes in a sample of somewhat less than 100 swine to determine how the ear punch would work. Pyle and his colleagues were careful not to hit veins in the ears of the swine tested and, when carefully administering the ear punch, found that while there was some blood, it was not significant. On the test sample, there was no cannibalism after the ear punching, no infections developed, and the holes stayed open. Consequently, the Board decided that the ear punch was the best way to identify restricted movement swine.

41. The proposal to require a one-half-inch diameter hole in the ears of all swine, especially feeder pigs, passing through a swine concentration point was vehemently challenged by hog farmers, various livestock marketing associations and others. The comments of Gary Schnell, a member of the Minnesota Livestock Marketing Association, which is the trade association of livestock markets and dealers in Minnesota, were generally endorsed by all of the persons opposed to the ear punch requirement. Schnell opposes the use of an ear punch because it does not permit the traceback of infections to their source, is time-consuming and expensive, and the wound created provides a means of transmitting diseases. He also argued that the test sample used by Dr. Pyle was inadequate and testified that, to his knowledge, a one-half-inch punch tool is not now available. As an alternative, Schnell recommended that the buyer of any feeder pigs or breeding swine from a swine concentration point be notified with a statement from the dealer that the swine can be sold only for slaughter unless they are tested and retested for pseudorabies or unless they are sold with the permission of the Board, as where the owner runs out of feed or faces other financial emergencies. Those supporting Schnell's position also expressed concerns about infection and cannibalism if the ear hole requirement is retained and pointed out that the ear punching procedure would place stress on the pigs arising from excessive handling. They were also fearful that an ear punch would have a negative financial effect on the industry.

42. The negative financial effects envisioned by commentators include increased costs, lower sales prices and potential marketing problems. Undoubtedly the ear-hole requirement will require a certain amount of time and expense. However, no projected cost figures for compliance were cited and there is no evidence that the costs will begin to compare to the savings which the industry will gain if pseudorabies is effectively controlled. The expense of compliance does not, therefore, affect the need and reasonableness of the ear-hole requirement.

Some commentators were concerned that the ear hole may become equated with an infected animal in other states where it is not required. If it does, they are concerned that Minnesota swine will become stigmatized and unmarketable. This too is a legitimate concern. However, the rule does not equate the ear hole with an infection and any confusion that arises can easily be clarified. Moreover, the stigma, if any, that develops should not be any greater than would occur if the swine were quarantined, as they are in some other states.

Other commentators believe that in the process of punching holes some pigs are bound to bleed, soiling other members of the heard and detracting from their appearance. When that happens, especially in a herd of white pigs, sales prices are likely to drop. The Board's test of the ear punch, however, caused little bleeding. It is true that the sample was small (under 100) and that it was performed more carefully than would occur in actual practice, but the small amount of bleeding which occurred shows that excessive bleeding can be eliminated. Moreover, as Dr. McCaw noted, a cautery-type punch could be used to eliminate the bleeding problem. Therefore, the bleeding potential does not make the hole-punch requirement unreasonable or unnecessary.

43. As was mentioned, many commentators opposed the ear-hole requirement because it is stressful for the swine, provides a potential for the spread of infections, and may lead to cannibalism. However, the adverse results of stress, the likelihood of infections and the risk of cannibalism were not quantified or explained in any meaningful detail. In the Board's test sample none of these factors appeared. No cannibalism occurred and no infections developed. Kern Schwartz, D.V.M., of Worthington, noted that the hole required by the rule is not much different than that required for an ear tag and was less likely to become infected. Therefore, it is concluded that these potential problems do not make the ear hole unreasonable or unnecessary.

44. The feeder pig industry is opposed to both ear tags and ear holes but clearly prefers the former if restricted movement swine are to be identified with something more than a document tendered to the purchaser. An ear tag does have advantages over an ear hole. Ear tags permit the traceback of infections. In addition, they are commonly used in Minnesota and other states and would not have a potential for stigmatizing Minnesota swine. Finally, their use could reduce industry costs and the stress factors involved in punching holes. If restricted movement swine could be identified with a distinctively colored ear tag, which meets the requirements of other rules, most feeder pigs would not be subject to any additional stress and no

additional costs would be incurred. One tag could serve two purposes thereby making the ear hole redundant. Ear tags do have an important disadvantage: they are not permanent. They frequently fall out as a result of an animal's ordinary activities or growth and they can be deliberately removed.

45. Under the circumstances, it is concluded that the Board has established the need for and the reasonableness of the ear hole requirement. In determining whether a rule is reasonable, the Board is not required to adopt the most reasonable alternative. As the Minnesota Supreme Court recently pointed out in Manufactured Housing Institute v. Pederson, ---W.2d---, Docket C7-83-124, March 23, 1984, the reasonableness of an agency's rules is to be reviewed by the traditional "arbitrary and capricious test" and will be upheld if the agency's action has a rational basis. The agency must only explain on what evidence it is relying and on how that evidence connects rationally with the agency's choice of action to be taken. In this case, the Board has demonstrated that the identification of swine coming through a swine concentration point is necessary because those swine may likely have come in contact with other swine infected with pseudorabies and must be readily identifiable within the industry. The Board also established that the ear punch requirement has a rational basis because it is readily apparent, is a permanent means of identification, and eliminates the need for quarantine and a great deal of paperwork. Having established a rational basis for its decision to require an ear hole rather than a ear tag or no identification at all, the proposed rule is reasonable. That decision is for the Board and not for the Hearing Examiner to make and its decision is entitled to deference. However, in light of the firm opposition expressed to the ear-hole requirement and the advantages which ear tags offer, the Board should carefully consider replacing the ear-hole requirement with an ear tag, or making the ear tag an option. Either alternative would be necessary and reasonable and would not constitute a substantial change for purposes of 9 MCAR § 2.111. It is recommended, however, that the rationale for the identification system ultimately adopted be clearly expressed in the Board's final Order Adopting Rules.

46. 2.026 G.2.c. This subsection prohibits the resale of restricted movement breeding swine for breeding purposes unless they are tested for pseudorabies, and requires that they be maintained in the herd of destination until they have farrowed. It is similar to the limitations in 2.026 H.1.c. Both subsections are necessary and reasonable to protect breeding herds from infection when cull sows and boars or feeder pigs are diverted to breeding channels. The limitations of the two subsections do contain some differences. Restricted movement breeding swine may not be resold for breeding, but restricted movement feeder pigs can be neither resold nor used for breeding purposes. Moreover, restricted movement breeding swine must be maintained in the herd of destination while feeder pigs must be "maintained in separation". The Board should make sure these differences are intended. Moreover, the Board should clarify the words "in separation" (page 7, line 22). If isolation is intended here that word should be used.

47. 2.026 G.2.g. This subsection provides that swine maintained in contact with restricted movement breeding swine also become restricted movement breeding swine and "must be handled accordingly". The quoted words fail to make the requirements of the rule specific and constitute a

substantive violation of the APA. To correct this defect the language used must be clarified. This can be done by referencing the rule provisions which will become applicable when contact is maintained.

48. 2.026 G.2.e. This subsection permits restrictive movement breeding swine to be sold for slaughter through any livestock marketing channel but prohibits their sale through a marketing facility at which breeding stock is sold unless the facility maintains separate chutes, pens, and scales for breeding swine. Gary Schnell of the Minnesota Livestock Marketing Association objected to the restriction on sales through marketing facilities where breeding stock are sold. He noted that breeding stock automatically become restricted movement breeding swine if they come in contact with feeder pigs, market hogs or other untested swine under subsection G.2.a. He argued that it is not necessary to further restrict the movement of these restricted movement swine unless they are known to be infected or exposed.

Although the SONR does not specifically discuss the provisions of this particular subsection, it is clear that it is designed to eliminate contacts between breeding swine and other swine whose pseudorabies status is unknown. Thus, in 2.026 H.1.e., restricted movement feeder pigs may not be sold through a marketing facility at which breeding stock is sold unless separate chutes, pens and scales for breeding swine are maintained. Since swine concentration points are believed to be a source of the spread of pseudorabies, the Board's decision to prohibit contact between breeding swine and swine whose pseudorabies status is unknown is necessary and reasonable.

49. Section 2.026 H. This section of the rule regulates the intrastate movement of feeder pigs. It contains requirements almost identical to those applicable to the intrastate movement of breeding swine through swine concentration points, the identification of feeder pigs commingled at swine concentration points by a one-half-inch diameter hole punched in their right ear and the subsequent sale of restricted movement feeder pigs. For the reasons previously discussed, it is concluded that the requirement for an ear hole punch on feeder pigs is necessary and reasonable.

50. 2.026 H.1.b. In this subsection the Board proposed at the hearing to eliminate the requirement for an ear tag in addition to the requirement for a hole punched in a feeder pig's ear at a swine concentration point. The Board's decision to eliminate a duplicate means of identification of feeder pigs who have gone through a swine concentration point is a necessary and reasonable one and does not constitute a substantial change for purposes of 9 MCAR § 2.111.

51. Section 2.026 I. This section governs a herd's classification as a "qualified pseudorabies negative herd". It replaces 3 MCAR § 2.024 C. (now Minn. Rule 1705.2104 et seq.). Essentially, such a herd is one that has been tested and found negative to pseudorabies. The qualification is voluntary on the part of swine owners. Once the criteria for such classification are met, the swine so classified can be moved intrastate relatively free of restriction. To qualify for such a classification, the herd must have been free of pseudorabies for the prior 12 months, all breeding stock over six months old must have passed an initial negative pseudorabies test, and the owner must sign a herd agreement of compliance. Thereafter, to retain the

classification, the owner must test 25% of the herd every 90 days with tests performed on different swine within the herd. This rule is a reenactment of 3 MCAR § 2.024 C. which is to be repealed and the need and reasonableness of most of these provisions has been previously established.

52. Mark Moenning questioned the requirement that to qualify for classification as a qualified pseudorabies negative herd, the herd must have been free of pseudorabies for the previous 12 months. The SONR does not contain an affirmative presentation of facts supporting the 12-month requirement. However, where a rule requirement is being reenacted, such an affirmative presentation is not required. Under 9 MCAR § 2.104, an agency that is proposing amendments to existing rules need not demonstrate the need for and the reasonableness of existing rules not affected by the proposed amendments. In this case, the agency is, in fact, amending existing rules even though it is repealing those rules in their entirety and reenacting them with additional provisions. In substance, the agency is amending existing rules and the provisions of 9 MCAR § 2.104 are applicable. Under 3 MCAR § 2.024 C.2.a., to qualify for a qualified pseudorabies negative herd at this time, the herd must have been free of pseudorabies for the previous 12 months. This requirement is not being amended but merely reenacted and its need and reasonableness does not have to be demonstrated anew by the agency.

Moenning also proposed that the requirement in subsection I.1.(b) be changed by requiring two initial negative pseudorabies tests 30 days apart rather than one test as the Board proposed. Again, the requirement for one test is a mere reenactment of existing provisions in 3 MCAR § 2.024 C. 2. and must be considered necessary and reasonable. That does not preclude the Board from considering Moenning's comments before it adopts its final version of the rules.

53. Moenning's proposed changes to subsection I.1. are designed to make it easier to recertify a qualified pseudorabies negative herd following quarantine. As was pointed out by Lars Johansson, and others, quarantines have a devastating economic impact on hog producers. To ease that impact Moenning would, as was mentioned, replace the 12-month requirement with two negative tests of the herd. Thereafter, he would recertify the herd when it also passed the initial requalification test. His proposal changes the criteria for recertification to ease the financial effects of quarantine.

Federal regulations [9 C.F.R. § 85.1 (ee)] governing qualified pseudorabies negative herds do not contain the 12-month requirement. However, those regulations do not control the classification of swine moved intrastate or preempt the Board's discretion to adopt more rigorous standards. The Board has authority to determine what those criteria should be and discretion in weighing the safeguards necessary for recertification against the hardship they might cause. It may still exercise that discretion and adopt Moenning's proposals, but it is not required to do so.

54. The requirement that a pseudorabies negative herd be free from disease for the prior 12 months is reiterated in I.4., pertaining to the requalification of swine herds which have lost their status, and in L.1.a.(2) regarding swine to be exhibited at fairs, livestock exhibitions or consignment sales. Mark Moenning also questioned the 12-month requirement in these

sections. Based on the record, it is concluded that the need and reasonableness of these two provisions was established. If a herd must be free from pseudorabies for 12 months to initially qualify for classification as a qualified pseudorabies negative herd, it is reasonable to impose the same requirement when that status has been lost because some swine show a positive reaction to testing or are diagnosed as infected. Since the 12-month period has been adopted, it is reasonable to uniformly apply that requirement whenever qualified pseudorabies negative herds are specifically mentioned.

55. Section 2.026 J. This section pertains to the certification of pseudorabies controlled vaccinated herds. It replaces 3 MCAR § 2.024 D (now Minn. Rule 1705.2240 et seq.). The rule closely parallels federal regulations applicable to such herds and was subject to no adverse public comment. It is necessary and reasonable as proposed.

56. 2.026 J.4. Under this subsection the progeny of a pseudorabies controlled vaccinated herd may be sold in Minnesota without further testing; however, vaccinated herd members may be sold for breeding purposes only if they have been tested negative for pseudorabies "within 30 days." The quoted language is ambiguous and should be clarified. It could mean that the test must be conducted within 30 days prior to sale or within 30 days after the sale. If the former construction was intended, this subsection conflicts with 2.026 G.1.b. Therefore, it is recommended that the Board examine the language used and amend the quoted language to read "within 30 days after the sale" or correct the inconsistency noted.

57. 2.026 J.6. Under this subsection, a pseudorabies controlled vaccinated herd may be required to submit to an epidemiological evaluation if any members of the herd having low titres (1:8 or less) when tested for pseudorabies. It provides, in part:

> ...an epidemiological evaluation may be conducted by the district veterinarian which may include, without limitation a retest of the titred swine in 30 days and a test of 20 other unvaccinated animals over four months of age [underlining added]

As written, this subsection gives the district veterinarian unfettered discretion to require and structure epidemiological tests. This constitutes a substantive violation of Minn. Stat. § 14.02, subd. 4, as consistently construed by the Attorney General. To correct this defect the word "may" must be replaced with the mandatory word "shall" unless some standard for the exercise of discretionary testing is adopted. Moreover, the words "without limitation" must be deleted. The subsection could provide:

> ...an epidemiological evaluation must be conducted by the district veterinarian unless.... The evaulation may include a retest of the titered swine in 30 days or a test of 20 other unvaccinated animals over four months of age or both.

58. 2.026. K. This section requires the district veterinarian to notify all livestock owners within a one-mile radius of any premise placed under

quarantine for pseudorabies. It was suggested that this radius be extended to three miles. A one-mile radius is necessary and reasonable but the Board could extend it as suggested.

59. Section 2.026 L. At present Minn. Rule LSB 40 (now 1715.0010 et seq.) generally regulates the public exhibition of all livestock at fairs, exhibitions or consignment sales. Past experience has demonstrated a severe potential for the spread of disease at such exhibitions since swine with unknown status leave their herds of origin, go to an exhibition where they are in contact with numerous other swine whose pseudorabies status is also unknown and, subsequently, return to their home farms. This creates a potential for spreading the disease. This section sets forth restrictions to reduce the potential for spreading of pseudorabies at exhibitions and requires either a negative test prior to exhibition, or origination from a qualified herd or controlled vaccinated herd. No health certificate is required in those instances where the potential for spreading disease are minimal. Subsection L.2. prohibits any swine from a quarantined herd from being exhibited at any type of exhibition under the reasonable presumption that such swine had been exposed to or are infected with the disease. Swine returning from an exhibition to the home herd must be isolated and retested negative. This provides total assurance to the livestock owner that he has not brought pseudorabies back into his herd of origin. It is necessary and reasonable as proposed.

60. Although not affecting the need or reasonableness of the rule, it would be appropriate to cite 3 MCAR § 2.005 (now 1700.2600 et seq.)in subsection L.5. That would help interested persons locate the rule alluded to. This would not constitute a substantial change for purposes of Minn. Stat. § 14.05, subd. 2 (1982), and 9 MCAR § 2.111.

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61. Section 2.026 M. It is possible to spread pseudorabies via transportation vehicles. This happens when infected animals are carried to market in trucks, trailers, or other vehicles. Other animals transported at a later time can become infected from contaminated vehicles. To reduce the chances of the spread of the disease by this method, this section provides that vehicles used as public carriers of known infected animals be cleaned and disinfected prior to reuse for the transportation of other livestock. The section outlines the procedures for cleaning and disinfecting such vehicles in ordinary terms and specifies that disinfectants utilized must be approved by the U.S.D.A. The requirement is identical to the federal requirement regarding interstate movement of pseudorabies infected or exposed livestock under 9 C.F.R. § 85.12. That section identifies the approved disinfectants, which are those registered under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 35.

Lars Johansson questioned the need and reasonableness of these requirements noting that they impose additional hardships on producers under quarantine. He suggested that the Board should provide quarantined producers with financial assistance to comply. The Board has no authority to give economic assistance to swine producers under quarantine. Until the Board is

authorized to provide such assistance, swine producers will be required to bear the economic burdens of a quarantine. These burdens do not affect the need or reasonableness of § 2.026 M. or the other rules proposed.

62. In response to the request of many individuals at the hearing, the Board proposes to adopt a variance provision to the quarantine requirements of the rule in connection with the experimental use of pseudorabies tests. The proposed new rule reads as follows:

> Notwithstanding the quarantine provisions of this rule and the provisions of Rule LSB 55, in order to promote and encourage the research on new diagnostic biological products, the Board shall authorize the limited experimental use of diagnostic biological products for testing for pseudorabies provided that such use is part of a research project sponsored by the University of Minnesota, College of Veterinary Medicine. The research project must be conducted under conditions and limitations, including restrictions on swine movement, which the Board determines are adequate to prevent the spread of disease.
>
> CRITERIA FOR GRANTING VARIANCE:
>
> No quarantine will be issued on pseudorabies infected herds disclosed on tests conducted during a Board approved field research on biological products providing:
>
> (a) That all herds proposed to be tested during such research projects must be identified to the Board.
>
> (b) That full disclosure of all test results from each research herd must be promptly reported to the Board.
>
> (c) That herd owners agree that swine from positive herds will only be sold to slaughter.

The variance provision is needed to encourage the development of new, cost-effective tests for pseudorabies, like the RIDEA test now being tested. Some herd owners are reluctant to use experimental tests because a positive reading will result in a quarantine, which can cause, by itself, a substantial economic loss. Removal of the threat of quarantine for positive readings on experimental tests will encourage their use and speed up their development. Since the rule contains safeguards to prevent the spread of disease and had no critics, it should be adopted as proposed. The Board must retain discretion to impose movement restrictions appropriate for any particular research project proposed.

The amendment is authorized by Minn. Stat. § 14.05, subd. 4 and does not constitute a substantial change for purposes of 9 MCAR § 2.111. It does not result in a fundamentally different rule than was proposed, impose additional

burdens on persons who might have otherwise participated in the hearing or go to a new subject matter of significant substantive effect. The Board should note, however, that the reference to Minn. Rule LSB 55 will have to be changed to reflect the new numbering system adopted by the Revisor of Statutes.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. That the Board gave proper notice of the hearing in this matter.

2. That the Board has fulfilled the procedural requirements of Minn. Stat. § 14.14, subds. 1, 1a and 2 (1982), as amended by Minn. Laws Ch. 210, § 4 and Ch. 301, § 64, and all other procedural requirements of law or rule.

3. That the Board has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 14.15, subd. 3, as amended by Minn. Laws 1983, Ch. 210, § 6, and 14.50 (i) and (ii)(1982), except as noted at Findings 16, 17, 24, 28, 32, 34, 47 and 57.

4. That the Board has documented the need for and reasonableness of its proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 2 and 14.50 (iii) (1982).

5. That the amendments and additions to the proposed rules which were suggested by the Board after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 14.15, subd. 3 (1982), as amended by Minn. Laws 1983, Ch. 210, § 6, and 9 MCAR §§ 2.110 A. and 2.111 (1980 Ed.).

6. That the Hearing Examiner has suggested action to correct the defects cited in Conclusion 3 as noted at Findings 16, 17, 24, 28, 32, 34, 47, and 57.

7. That due to Conclusion 3, this Report has been submitted to the Chief Hearing Examiner for his approval pursuant to Minn. Stat. § 14.15, subd. 3 (1982), as amended by Minn. Laws 1983, Ch. 210, § 6.

8. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

9. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Board from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

It is hereby recommended that the proposed rules be adopted except where specifically otherwise noted above.

Dated this 6th day of April, 1984.

JON L. LUNDE
Hearing Examiner

ATTORNEY GENERAL'S OFFICE
RECEIVED
APR 9 1984
STATE OF WASHINGTON

In the Matter of the Proposed Adoption
of Rules of the State Board of Animal Health
Governing 3 MCAR § 2.026 Control of Pseudorabies

AFFIDAVIT OF
MAILING NOTICE OF
SUBMISSION TO THE
ATTORNEY GENERAL

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Dr. W. J. Mackey, being first duly sworn, deposes and says:

That on the 18th day of June, 1984, in the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Submission to the Attorney General by depositing in the United States mail at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Dr. W. J. Mackey

Subscribed and sworn to before me
this 27th day of June, 1984.

Eugene H. Kirchoff

EUGENE H. KIRCHOFF
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
My commission expires Sept. 16, 1986

STATE OF MINNESOTA
BOARD OF ANIMAL HEALTH
160 AGRICULTURE BLDG.
90 W. PLATO BLVD.
ST. PAUL, MN 55107
(612) 296-2942

NOTICE OF
SUBMISSION TO THE
ATTORNEY GENERAL

Dear

The proposed rule, 3 MCAR § 2.026 Control of Pseudorabies, has been approved as reasonable and necessary by Mr. Jon Lunde, the Hearing Examiner from the Office of Administrative Hearings. The Board of Animal Health has adopted the rule on June 8, 1984 and it has been submitted to the Attorney General for his approval on June 18, 1984.

You attended the public hearing on that rule on February 24, 1984 and asked to be notified of the date of submission to the Attorney General. Consider this that notification.

If this rule is approved by the Attorney General it should go into effect on approximately July 15, 1984.

Sincerely,

Dr. W. J. Mackey
Board of Animal Health

WJM/pma

In the Matter of the Proposed Adoption
of Rules of the State Board of Animal Health
Governing 3 MCAR § 2.026 Control of Pseudorabies

STATEMENT OF
COMPLIANCE WITH
RULEMAKING PROCEDURES

I, Jon Murphy, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

(Special Assistant
Attorney General)

Dated: June 15, 1984