

Meeting Minutes (Meeting #8): Advisory Committee for Farmed Cervidae Rule Amendments

Date: 01/22/2021, 10:00 a.m. to 12:30 p.m.
Minutes prepared by: Erin Crider
Location: Virtual on Microsoft Teams

Attendance

Farmed Cervidae Advisory Committee Members Present:

- Kelly Anderson, Minnesota Department of Agriculture (MDA)
- Amy Cordry, Member of the public
- Brenda Hartkopf, Minnesota Elk Breeders Association
- Rich Meech, Minnesota Deer Farmers Association
- Dr. Stephan Schaeferbauer, United States Department of Agriculture Veterinary Services (USDA-VS)
- Daryl Simon, Non-native Minnesota Cervidae species producers
- Dr. Joni Scheftel, Minnesota Department of Health (MDH)
- Dr. Jerry Torrison, Minnesota Veterinary Diagnostic Laboratory (MVDL)

Farmed Cervidae Advisory Committee Members Not Present:

- Representatives of Minnesota Tribal members: Miles Falck and Philomena Kebec
- Representative of Minnesota Cervid Veterinarians: Dr. Joel Ihnen
- At-large livestock producer (other than farmed Cervidae producer): Dan Miller
- At-large representative of Minnesota farmed cervid producers: Robert Ernst
- Representative of Minnesota Department of Natural Resources: Dr. Michelle Carstensen
- Representative of Minnesota Deer Hunters Association: Craig Engwall
- Representative of Minnesota Association of Counties: Steve Notch

Minnesota Board of Animal Health (Board) staff:

- Dr. Beth Thompson, Executive Director and State Veterinarian
- Dr. Linda Glaser, Farmed Cervidae Program
- Dr. Courtney Wheeler, Farmed Cervidae Program
- Annie Balghiti, JD, Rules Coordinator

Welcome

Annie Balghiti began by taking a roll call of members. She then welcomed the committee members and said the Board of Animal Health (Board) would like to discuss specific areas of the rules and to highlight the major changes in the new rules draft (<https://www.bah.state.mn.us/media/BAH-2.09.21-DRAFT-changes-for-Minnesota-Rules-Chapter-1721.0370-to-1721.0420.pdf>). She noted the questions provided to committee

members yesterday (Jan. 21, 2021) to help them prepare for a productive discussion during the meeting. She said each person would get 2-3 minutes to raise questions and offer feedback on specific areas of the rules.

She noted this is likely to be the last advisory committee meeting before the Board publishes its Notice of Intent to Adopt the rules. After this meeting, the Board will consider today's discussion and make changes to the draft rules. This new draft will be shared with advisory committee members and will also likely be the draft presented to Board members for review and approval. Once the Board enters the next phase of the process, if there is a reason to reconvene the committee, the Board will do so. She also noted that participation on the advisory committee is only one avenue of participation in the rule making process. The Board also seeks comments from all individuals and groups. She encouraged members to continue spreading the word to others interested in the rulemaking process. She then introduced Dr. Beth Thompson, State Veterinarian and Executive Director of the Board.

Dr. Thompson reiterated comments from Ms. Balghiti's January 21 email. She noted the Board is on the fifth draft of the rules, and this advisory committee has been meeting for at least five months. The Board has received comments directly from the public, through the Office of Administrative Hearings eComments website; public listening sessions; meetings with tribal groups; from Board field staff and office staff; and from the USDA [United States Department of Agriculture]. The advisory committee is one part of a bigger process.

Dr. Thompson made note of the proposal to suspend the rule making process until the advisory committee could meet in person. While the Board understands this request, they will not be postponing the rulemaking process. There is no timeline for when in-person meetings will be possible, and as a state agency, the Board needs to continue to conduct business. The process needs to move forward with virtual communication, as stated in Ms. Balghiti's email, "Although the virtual format is not ideal, it does allow for everyone to see and hear each other in real time, and everyone may engage in the same amount of dialogue and discussion in this format as could be achieved by engaging at an in-person meeting."

Dr. Thompson stated that Board staff and this committee have put in significant time and energy into the process already. There is an idea that this group votes on rule making decisions. While members don't vote, the Board values the group's comments and voices. The Board also needs the rules to change to align with the 2019 statutory changes to improve the Board's ability to fulfill its statutory obligations. There will be a second comment period that will open once the Notice of Intent to Adopt is published. If any comments warrant feedback from this committee, the group will meet again. She thanked everyone for their time and patience in these efforts.

Proposed Rules Draft (01.19.21) Review and Discussion

Dr. Wheeler presented the [latest rules draft \(https://www.bah.state.mn.us/media/BAH-01.19.21-DRAFT-changes-for-Minnesota-Rules-Chapter-1721.0370-to-1721.0420.pdf\)](https://www.bah.state.mn.us/media/BAH-01.19.21-DRAFT-changes-for-Minnesota-Rules-Chapter-1721.0370-to-1721.0420.pdf). She covered the significant changes made in this draft. In the definitions section (1721.0370), the Board added a definition for a CWD exposed animal: "CWD exposed animal" means an animal that is part of a CWD positive herd, or that has been exposed to a CWD positive animal or contaminated premises within the previous five years.

Dr. Wheeler explained this was added to clarify language used later in the rules regarding quarantine for CWD exposure and CWD confirmation. She said the Board made minor changes for clarification in the Registration section (1721.0380, subpart 2).

Dr. Wheeler moved on to Minn. Rule 1721.0380, subpart 6, Running at large prohibited. Based on comments received, the Board added language for clarification of statute changes: “If a farmed Cervidae facility experiences more than one escape incident in any six-month period, the board may revoke the facility owner’s registration and order the owner to remove or destroy the animals as directed by the board.”

Dr. Wheeler noted the Board also edited the language in the Farmed Cervidae Program Surveillance Standards (https://www.bah.state.mn.us/media/DRAFT-Farmed-Cervidae-Program-CWD-Surveillance-Standards_2.5.21.pdf), which she would go over following the rules draft overview, time permitting.

Dr. Wheeler stated that language was added to part 1721.0420, subpart 2(C), where there is a reference to CWD exposed animals. She noted the additions to subpart 2(D) based on comments from this group and constituents:

- (1) The board may require a herd owner of a CWD infected herd to take measures to minimize commingling of the herd with wild Cervidae until the herd is depopulated.
- (2) All carcasses of animals determined to be infected with CWD must be disposed of according to the direction of an agent of the board.
- (3) The herd owner shall maintain enclosure fencing for five years from the date of detection and post biohazard signs as directed by the board.
- (4) The premises owner may not possess farmed Cervidae on the premises for a period of 5 years from the date the cleaning and disinfection is approved by an agent of the board as complete.

Dr. Wheeler noted the Board proposes maintaining all the language previously added to subpart 3, including the 15-mile designation in (A) and all proposed language added to (B) regarding exceptions for herds that find themselves in a CWD management zone but do not have any CWD exposed or infected animals.

Dr. Wheeler then presented changes to the Farmed Cervidae Program Surveillance Standards, which were sent to committee members this morning. The Board primarily made changes to clarify expectations for the surveillance program. She said they added to the “Status is not impacted” statement to say herd status is not impacted when “one test-eligible animal is not successfully tested in the surveillance period, but all test-eligible animals were successfully tested for CWD in the previous 36 months.” She explained that if a herd owner had three years of successful testing, the Board would not suspend the herd status for one unsuccessful test in the fourth year. The Board also updated the statement on substitute animals to match the language in the proposed rules.

Dr. Glaser noted the examples at the end of the Surveillance Standards document and highlighted how a previous 36 months of successful testing removes the impact to the herd owner’s status level in Examples 1, 2, and 5. Adding this criterion to the standards makes a significant difference for herd owners. Dr. Wheeler agreed, saying the Board wants to reward herd owners who have a record of continued successful surveillance.

Dr. Wheeler called on individual committee members for comments and feedback. Amy Cordry began, noting as a public citizen, she sees the Board moving in a better direction. She was concerned that, while the farmed cervid inspection process has improved, inspections and violations are not transparent enough. If the process is not transparent, the public may perceive the process as underhanded. She commended the Board for their consistency in assigning an inspector to each herd, but she said the public needs to know when a herd receives an inspection or violation.

Ms. Cordry also said the Board’s herd status level system needs to be restructured based on the data the Board is gathering. In addition, she would like to see the Board focus on changing the way animal movements are

regulated based on scientific findings and recommendations. This may be something to address in the future. Finally, she noted the Board has made progress in addressing the recommendations from the 2018 Office of the Legislative Auditor (OLA) program audit and encouraged the Board to keep working toward addressing more of the recommendations.

Dr. Wheeler thanked Ms. Cordry for her comments. She stated data privacy laws determine what premises information the Board can share with the public. She said they have plans to post and update online the number of violations issued. She noted last year's numbers are listed in the [2020 Annual Report](#).

Ms. Cordry asked if the online information would include inspection reports with the protected data redacted. Dr. Wheeler said she would have to discuss this with Ms. Balghiti to determine what would be allowed under the data privacy statute.

Next, Daryl Simon shared his comments. Mr. Simon mentioned he had a question from an individual about the deletion of the sentence in Part 1721.0420, subpart 1(H), regarding a herd owner's right to request a contested case hearing. Dr. Wheeler said that language is already in statute and did not need to be repeated in the rules. Dr. Glaser also noted the language is in the Registration section (1721.0380, subpart 2).

Mr. Simon asked Board staff to clarify the new language in the escapes section (1721.0380, subpart 6, Running at large prohibited). He asked if a herd has a second animal escape in six months, could the Board tell the owner to have to have their animals destroyed? Dr. Wheeler said yes, the rules language was changed to match the updates made to the statutes in 2019.

Mr. Simon said he felt forcing a producer to put down his herd because he had two escapes within six months of each other is an extreme measure. Dr. Wheeler clarified that the statute says "may," not "must." She said it is rare that a herd has more than one animal escape in a six-month period. Dr. Glaser agreed and said the language is in statute under fencing (Section 35.155, subdivision 4), and it was recommended the Board add it to the "Running at large" section of the rules to highlight this as a consequence for escapes.

Mr. Simon then commented on the 14-day period herd owners have to construct a double fence to be excluded from quarantine in a CWD management zone (1721.0420, subpart 3 (B)(3)). He said he was glad to see the Board added the 14 days [time] back into the language, but he recommended the time period be extended, as most CWD cases in the wild are found in winter, when weather adds difficulties to fence building.

Dr. Wheeler clarified that the requirement is for exclusionary fencing, not necessarily double fencing, which gives herd owners more options to save on time and cost. She encouraged Mr. Simon to provide a suggestion and justification for a reasonable time frame for exclusionary fencing construction.

Mr. Simon said, assuming the double fencing construction requirements set years ago are used, he could do it on his reindeer farm in 14 days. He had talked to another cervid producer who said 14 days was not enough time because he has a large facility with many miles of fencing. Dr. Wheeler said the Board would take his comments under consideration and asked Mr. Simon to have the producer contact the Board directly to share their comments and recommendations.

Brenda Hartkopf said she did not think she could order and have all the fencing materials at her farm within 14 days, as they are not materials local stores have in large supply on site. She said she would send the Board some suggestions for more reasonable time frames. She also suggested adding examples of exclusionary fencing

methods to help producers understand what is allowed. Dr. Wheeler said they would take that under consideration, but the Board has documentation that details what is allowable as exclusionary fencing.

Ms. Hartkopf drew attention to the CWD quarantine section (1721.0420, subpart 2 (D)) and the wording, “If no appraisal is required or requested” for depopulation of a CWD infected herd. She asked in what situation an appraisal would not be required. Dr. Glaser said there are some situations where owners do not want an appraisal and choose to put down the animals themselves.

Ms. Hartkopf then requested the Board have a meeting with farmed cervid producers to discuss the rule changes, as producers are the ones directly impacted by the rules. Producers do not agree with some of the rule changes as written. She pointed to rules language on status suspensions, CWD management zones, and forced depopulation. Dr. Wheeler said she appreciated her comments and would work with Ms. Balghiti to provide another way to receive comments from farmed cervid producers. She said she hoped industry representation on this advisory committee was helpful [there are four farmed cervid representatives on the committee], but the Board can find an additional avenue of communication for producers.

Ms. Hartkopf said she felt there was not enough back-and-forth dialogue during the advisory committee meetings, citing that Board staff often respond to comments with, “Thank you for your comments.” She expressed frustration at not knowing what changes the Board proposes to make until the next rules draft is released. She also noted that the surveillance standards draft was sent out an hour before the meeting, so industry representatives did not have time to prepare comments or get feedback from other producers.

Dr. Wheeler apologized for the timing of sending out the surveillance standards. She also said anyone is welcome to email the Board with comments at any time, and there will be a second open comment period in which to give feedback and recommendations when the Notice of Intent is published.

Ms. Balghiti said the Board can consider providing a listening session for farmed cervid producers before the Notice of Intent is published. She noted that the Board goes through and considers all the comments they have received every time they work on a section of the rules draft. She added that until Board staff discusses and reviews the comments we receive, including comments from advisory committee members during meetings, the Board does not know what changes it will make to the rules draft. The Board also must be careful about making promises about what will go into the proposed rules draft and following rulemaking procedures outlined in statute.

Dr. Glaser disagreed with Ms. Hartkopf about the lack of dialogue, saying industry representatives have shared what changes they like and dislike in rules drafts and have asked questions in the advisory committee meetings. Dr. Glaser stated she has explained in these meetings why proposed changes were made and provided more detailed explanations for justification when requested. She said she would be happy to meet with cervid producers separately to go over the proposed rule changes again.

Dr. Jerry Torrison was next to offer comments. He referred to the Surveillance Standards document and noted that there is not strong scientific reasoning for substituting a live animal when the producer has a missed CWD test. The goal has been targeted surveillance. Dead animals are strong targets for CWD testing; a substitute live animal is not an equivalent target. He said he supported the addition of a successful testing history as a criterion for not impacting herd status. He stated historical testing can give reasonable assurance of no disease and allow the producer to move forward and test more animals.

Dr. Torrison then referred to the CWD management zone restrictions (1721.0420, Subpart 3(D)), and said it has been mentioned that some species of cervids do not interact along the fence line in a meaningful way. He asked if the Board could determine which animals are at a lower risk of exposure, and if farms with these animals would be subject to all the same management zone restrictions. He felt there could be room for changes to this section.

Finally, Dr. Torrison asked if any management zone restrictions would be lifted if ongoing CWD testing of wild deer yielded no additional positive cases in a certain time period.

Dr. Wheeler responded, saying the Board is considering guidelines for lower risk herds and species but is waiting for the rules language to be finalized and for results from ongoing University of Minnesota studies that are examining CWD risks factors. The Board wants to take into account all factors in determining the overall risk level for a herd.

Referring to Dr. Torrison's last question, Dr. Wheeler stated the language changes in the rules, including renaming "endemic area" to "management zone," will allow the Board the flexibility to remove restrictions if that is warranted.

Dr. Glaser clarified that when the Board finds CWD on a farm, the DNR does more surveillance in the area. The Board does not place restrictions on other farms if CWD is only found on a farm. They establish an endemic area (soon to be called a "management zone") when CWD is found in the wild. She said in the 2009 Pine Island case, the Board removed the endemic area after three years of DNR surveillance found no additional CWD. The Board established the endemic area in Crow Wing County after a dead wild deer tested positive. If there are no other deer found with CWD after three years of surveillance, the Board will consider removing the endemic area.

Rich Meech was next to comment. He said he appreciated this opportunity for dialogue, and that he had not had enough time to review the rules draft or the surveillance standards. He echoed Ms. Hartkopf's request for the Board to meet with farmed cervid producers to discuss the rule changes and come to an understanding. He expressed disagreement with the rule changes, stating eighty to ninety percent of cervid farmers he has spoken with think the Board wants to put them out of business. He cited the revocation of registration for an escaped animal, calling it an "unfunded mandate."

Both Ms. Balghiti and Dr. Thompson asked Mr. Meech if he had research on or suggestions for changing specific rules. He agreed with Ms. Hartkopf and Mr. Simon that the 14-day time frame to build exclusionary fencing (1721.0420, subpart 3 (B)(3)) was unreasonable, especially in winter. He also questioned the 120-inch fence height requirement for new producers (1721.0380, Subpart 5(B)). He asked for scientific evidence to justify these changes. Dr. Wheeler said that some of the items Mr. Meech mentioned were statutes that the Board cannot change. Dr. Glaser added that the escapes statute (35.155 subdivision 4, Fencing) does not require science; it is a law set in statute by the legislature, giving the Board the regulatory authority to cancel registration if a herd owner has two animals escape in a six-month period, which is against the law.

Mr. Meech said he feels the rules leave farmed cervid producers no room for error. Producers are not considered in the changes while they have the most at stake. He would welcome the chance to discuss his thoughts one-on-one with Board staff.

Ms. Balghiti asked for feedback on Mr. Meech's comments. Ms. Cordry said the wildlife of Minnesota belongs to the people of Minnesota. Minnesota has a lot of wild deer, so the public has a large stake in the rule changes. She said she understands farmed cervid producers' fears over the economic impact the rules could have on

individual farms. However, she feels CWD is a larger issue than just cervid farms. The rules need to change, as CWD affects wild and farmed cervids, as well as the public.

Mr. Meech stated cervid producers understand that if CWD is found on their farm, their herd will be quarantined and depopulated. He said that quarantining farms and halting their businesses because a wild deer was found with CWD is unreasonable. He also expressed the rules reflect a belief that CWD infections originate on cervid farms

Mr. Simon agreed, saying the rules seem to be formulated based on the assumption that farmed cervids are the cause of CWD. He said the Board has statistics on where CWD has been found in the wild adjacent to deer farms. He asked if there was evidence that CWD came from the farm or elsewhere. He noted that CWD has also been detected in places where there are no nearby cervid farms.

Ms. Balghiti thanked everyone for their feedback and asked Dr. Wheeler to call for comments from other committee members. She called on Stephan Schaeffbauer for her comments. Dr. Schaeffbauer said any comments she had were addressed through comments from USDA field staff, and she had nothing further to add.

Joni Scheftel offered her comments. She stated the reason this advisory committee was put together and why the Board is changing the rules is because there is political and social will to get CWD spread under control. It will never be under full control because Minnesota is surrounded by states with CWD infection. However, CWD is a concern for public health, and everyone must make sacrifices. Tightening these rules is an important way to do that. The legislature and the public were not satisfied with them as they were written. She stated that she thought these rule changes are reasonable.

Kelly Anderson said as she listened to all the comments, she noticed parallels with COVID-19. Both CWD and COVID-19 are hands that were dealt to us, and we have to deal with the consequences. She empathized with cervid farmers, recognizing they are not at fault for CWD and were in business long before the disease was detected. However, she agreed with Dr. Scheftel that everyone needs to make concessions to help control CWD spread. This is not an easy task.

Ms. Anderson referred to the rule on designating CWD management zones (1721.0420, subpart 3(A)) and proposed, "at the most, 15 miles" instead of, "at least 15 miles" to reduce subjectivity in the rule. She supported the change to remove the language about animals being declared lost and no longer the property of the producer.

Ms. Anderson referred to subpart 3(B)(3) and agreed with cervid producer representatives that the 14-day time frame for completion of exclusionary fencing is too short. She suggested "initiation of construction," perhaps defining that as purchasing the materials, within 14 days or another defined timeline.

Dr. Wheeler stated that all members in attendance had offered comments.

Dr. Thompson asked farmed cervid producers if they could have site-specific biosecurity or CWD plans in place, perhaps identifying a double-fenced pen where their herds would go if they happened to find themselves in a CWD management zone. This would be similar to plans swine and poultry producers have for their facilities in the event of a foreign animal disease outbreak. She recognized this was outside of the rules discussion but encouraged everyone to think "outside the box" in problem solving.

Ms. Anderson agreed, stating that swine and poultry biosecurity plans play a role in qualifying for indemnity payments. In the future, this could be valuable when considering the consequences of escapes or other issues.

Mr. Meech said that the group can come up with ideas, but the difficulties the rule changes will add to farmed cervid businesses remain. The regulations are discouraging to producers just starting in the farmed cervid business. He said he felt that most of the comments show that others do not care if cervid farms exist in the state.

Ms. Balghiti recognized that Mr. Meech had brought up unintended consequences of the rule changes, as requested. She asked him for any solutions for the issues he had identified. Mr. Meech reiterated that he did not have enough time to formulate any specific thoughts or communicate with other producers, as the rules draft and the surveillance standards were sent out very close to the meeting.

Dr. Glaser asked how he would like to address rules with cervid farmers and share their suggestions. He expressed that cervid producers do not feel they are being heard and that the Board has not given adequate explanations as to why they are making certain regulatory changes, such as the 120" fence height, 14 days to build exclusionary fencing, and substituting animals for missed CWD tests.

Dr. Glaser said she had responded to questions Mr. Meech had emailed to the Board and asked if the answers were sufficient. He said they were not, but they were the answers he expected. He said he has been speaking with senators about the rulemaking process, and he will continue to do so.

Dr. Wheeler noted that the Board has had multiple listening sessions with different groups. The Board does not make changes independently; they were driven to these changes based on multiple comments received. The Board represents the entire state of Minnesota, which makes it difficult to find middle ground.

Ms. Balghiti apologized again for the late release of the draft documents. [Note: the proposed rules draft under review was emailed to the committee members on January 8, one week before the meeting; an email with the updated board surveillance standards and a copy of the rules draft with four changes was sent to the committee the day before the meeting.] She said the Board has held several public listening sessions with different groups and the Board is required to review and consider all comments it receives. She said this depends on people participating and the Board cannot consider or incorporate comments if they do not receive them.

Mr. Meech stated the Board is forgetting their mission statement to protect domestic animals. Dr. Thompson clarified the Board's mission is to protect the HEALTH of domestic animals; the Board is not a marketing agency or a lobbyist group. Mr. Meech said the Board cannot protect the health of domestic animals if they kill commerce in the process.

He asked for examples of when cervid farmers have not followed the rules currently in place. Dr. Glaser offered to share a list of herds not able to follow the current rules, including the nine herd cancellations issued this year. Mr. Meech said those were compliance and enforcement issues that had to be dealt with. He said the Board should not put "blanket" rules in place for all cervid farms.

Ms. Balghiti called for comments on the 120" (10') fence height requirement for new producers (1721.0380, subpart 5(B)). Dr. Glaser noted this is not a requirement for existing producers; it is for new white-tailed deer producers as of January 1, 2022.

Ms. Cordry said she would defer to those with substantial data that shows this height is necessary. Ms. Anderson agreed, saying she didn't know how high deer can jump. She looked up fence requirements in Minnesota for orchards, which is an 8' (96") height. She appreciated that this requirement applies only to new farms.

Dr. Glaser said the fencing the DNR constructs to keep deer from destroying agricultural crops is 120". There are different iterations of that fencing, but the DNR is constructing them to a 10' height.

Ms. Hartkopf said the only state with a 120" (10') fence height requirement is Michigan. The Board has no record of deer escaping by jumping over a fence, so she questioned why the Board wanted to make 120" the requirement.

Mr. Simon said he has not seen any documentation that a wild white-tailed deer have jumped over a 96" (8') fence. He recalled a United States Animal Health Association meeting, where a researcher presented a study in which they had a fence in the middle of a white-tailed deer pen. They kept raising the fence, and they could not get a white-tailed deer to jump it at 96". He said that wildlife agencies state they have witnessed white-tailed bucks jumping over a 96" fence. He has raised reindeer for 28 years and is out by his fences several times a day. He has never seen a deer jump over the fence. He said he did not see a reason to raise the minimum fence height to 120". That said, he stated that if he were a new cervid producer, he would put up the 120" fence, as required.

Mr. Meech agreed with Ms. Hartkopf, saying there is not research to recommend changing the fence height to 120".

Dr. Schaeffbauer said she thought the 120" requirement was "forward thinking" for new producers. She stated she had not seen sustained data that would recommend a need for fences higher than 96". She would like to see estimates showing the cost difference in building an 8' fence versus building a 10' fence. Mr. Meech said his research showed a 25 to 40 percent increase in cost to build a 10' fence.

Ms. Anderson said she had been doing some research online and could not find any fence height requirements over 8'. She said the increased cost may be prohibitive and would not recommend the 10' height requirement.

Ms. Balghiti asked for comments on part 1721.0420, subpart 3, Determining the boundaries of CWD management zones in the state. Dr. Wheeler noted that committee members have said 14 days to construct exclusionary fencing is not long enough, and the Board proposes that 180 days (the current requirement) is too long. The Board would like suggestions for an acceptable timeline. Ms. Balghiti encouraged everyone to provide suggestions with supporting justifications after the meeting.

Dr. Wheeler referred to 1721.0420, subpart 2, Quarantine procedures, and said there had been a request for the Board to clearly define what happens when a herd is infected with or exposed to CWD. The Board added this language to the current draft. She asked for feedback on the new language and any additional suggestions for this section.

Mr. Meech referred to the first part of subpart 2:

"The board must immediately quarantine a farmed Cervidae herd that is ~~determined~~ suspected to be infected with or exposed to CWD."

He asked what it means for a herd to be “suspected to be infected with or exposed to CWD.” Dr. Wheeler explained when the Board receives CWD suspect test results from the VDL, they will proceed as if the herd is infected.

Mr. Meech suggested adding language to the rules saying the herd is suspected because of suspect test results. Dr. Glaser stated the Board’s first indication of CWD in a herd is from suspect test results from the VDL. Mr. Meech said he felt the existing draft language is too vague. Dr. Glaser said the Board has CWD investigation and exposed herds as well, outlined in the third section (2C). “Exposed” and “suspected” are two different terms used in the rules. Mr. Meech said he would still like this language more defined. Dr. Wheeler asked him to provide a suggestion for this addition after the meeting.

Ms. Anderson asked if the word, “suspected” referred to a specific suspect positive test result. Dr. Wheeler said yes. Ms. Anderson recommended the Board add language to clarify that, as she understood the current language to mean that the Board suspected the herd of being CWD exposed. She suggested adding, “that has a suspect test result.” Ms. Cordry agreed.

Dr. Glaser asked if dividing up “suspected to be infected” and “known to be exposed” would clarify the language. Ms. Anderson said she thought it would.

Todd Miller, a non-committee member and cervid farmer, identified his farm as currently under quarantine as a CWD-infected farm. He stated he has had almost 40 of his animals tested for CWD in the past few months, and all results have been CWD not detected. The quarantine restrictions are still in place, and his business cannot function. Dr. Wheeler said that the Board needs to differentiate between “exposed” and “suspected,” as this is a difference that people do not understand. Mr. Miller agreed.

Dr. Glaser said Mr. Miller’s herd is part of an ongoing CWD-positive investigation, and the herd is quarantined following the CWD program standards from the USDA for the investigation. This is a separate situation outside of the rules. If a herd is exposed, the Board would quarantine it and follow the program standards to follow through.

Mr. Simon referred to 1721.0420, subpart 2(D)(3) and asked why producers are required to post biohazard signs. Dr. Wheeler said that was a change made by the legislature to the statute in 2019 so the requirement cannot be removed from the rules.

Referring to the first part of subpart 2(D), Ms. Hartkopf said that “determined” was a better word than “suspected,” and suggested adding, “suspected test.”

She then referred to subpart (D)(1), regarding efforts to minimize commingling of farmed and wild Cervidae. She felt this language is too broad and that herd owners may not be able to comply with the Board’s requirements.

Dr. Wheeler pointed out that the language says the Board “may require” these efforts. The Board added this language to not only protect the wild population, but also any other herds in the area if the situation warrants it. Ms. Hartkopf said this would place a financial strain on a herd owner who is already faced with depopulating their herd. Dr. Wheeler stated the Board would mostly consider exclusionary fencing. Ms. Hartkopf said she still had concerns about the responsibilities this could put on a cervid producer already faced with depopulating their herd.

Ms. Balghiti asked Ms. Hartkopf if she thought any of the rules had improved over the drafting period. Ms. Hartkopf said the intent of this process was to add to the rules language to match the statute for transparency. She said some of that wording has been added, and some has not been added because the Board has said it did not have to be repeated. She suggested adding the language concerning the Board's authority to revoke a producer's license if they have more than one escape in a six-month period (1721.0380, subpart 6). While she does not agree with the regulation, she said it added transparency to the rules.

She expressed that she sees the Board making these changes to requirements for farmed cervid producers, but no one is asking wildlife management or hunters to make changes. She said butcher plants are no longer taking deer, so hunters are bringing whole carcasses home to process, and no one knows how they are disposing of the offal. She said that everyone - not just farmed cervid producers - needs to have a part in preventing the spread of CWD.

Ms. Cordry said Craig Engwall (not present) would have information on what practices have been put in place for hunters. She said, as a landowner in an endemic area, hunters have taken a large number of deer and have complied with CWD sampling procedures over the past three years.

Public Comments

Dr. Glaser called for any public comments. Jim Byrne said Dr. Thompson testified this week that the Board has already sent the rules draft to the Revisor's Office to get it ready to present to the Board members for approval. He expressed concern that the version sent to the Revisor's Office does not include many of the changes in the current draft, which will cause delays in the process. He asked for an explanation of the process.

Ms. Balghiti explained that when the Board publishes the Notice of Intent to Adopt, they must also publish a Revisor's draft of the rules, which is developed by the Revisor's Office. Creating a Revisor's draft takes time, so the Board sent the 1.19.21 proposed draft of the rules to the Revisor's Office as (1) a courtesy to let them know a request for a Revisor's draft will be coming from the Board, and (2) to ask how long it would take them to develop the Revisor's draft when the Board officially requests one. The 1.19.21 proposed rules draft was sent to the Revisor's Office at their request so they could review and provide an estimate on how much time it will take their office to produce a Revisor's draft, based on the current length of the proposed rules draft and the general number of proposed changes. She said when the Board is ready with the final proposed draft, the advisory committee will know what it looks like before it is sent to the Revisor's Office.

Mr. Byrne asked if the final draft were approved today, would it then go to the Revisor's Office. Ms. Balghiti stated the final draft and the Notice of Intent would first need to be approved by the five-member citizen board of the Board of Animal Health, and then the Board would submit these to the Revisor's Office, who would create a Revisor's draft of the rules for publishing.

Mr. Meech asked for clarification on the surveillance standards regarding the process for reinstating a suspended herd. Dr. Glaser stated the suspension would be lifted after the determined timeline had passed. These are outlined in the surveillance standards document: The Board can issue a six or twelve-month suspension, or, if the rate of unsuccessful testing is over 50 percent for all test-eligible animals in the surveillance period, then the herd is suspended until further testing is completed. The Board would discuss those testing requirements with the producer.

Mr. Meech asked if there was anything a producer could do to shorten a suspension. Dr. Glaser said the Board would evaluate the herd's CWD surveillance over the previous 12 months to determine if the herd will be suspended. She also pointed out the exception of substituting an animal to fulfill the testing requirement.

Mr. Meech asked what would happen if he did not have an animal of a similar age on his farm. He stated producers would have to keep additional animals as potential substitutes, which would add to production costs.

Dr. Wheeler asked Mr. Meech to submit any suggestions concerning substitute animals. He said it would be more valuable to issue a civil penalty than to offer the option of a substitute animal. Dr. Wheeler replied it was never her intent that producers keep extra animals as substitutes. Mr. Meech said producers will have to do so to have this option available.

Dr. Wheeler pointed out that most producers conducting routine surveillance requirements do not have a problem meeting requirements.

Adjournment

Ms. Balghiti stated the meeting had reached the end of its allotted time. She encouraged everyone to send the Board their comments and feedback, as discussed. She reiterated that this committee is a piece of the larger rulemaking process. The Board will share another proposed rules draft with the committee before the final rules draft and Notice of Intent are approved and sent to the Revisor's Office.

Dr. Thompson stated that the Board considers all comments. She said Drs. Glaser and Wheeler and Ms. Balghiti have looked and re-looked at all the comments received since the rule making process began in June 2020. She asked Ms. Balghiti for a timeline for the next steps in the process. Ms. Balghiti stated that by the end of next week (February 5, 2021), the Board would update the proposed rules draft based on this meeting's discussion and the post-meeting feedback from the committee members, and will look into scheduling a listening session with farmed cervid producers.