

Minnesota Board of Animal Health

Notice of Intent to Adopt Rules under the Good Cause Exemption, Minnesota Statutes Section 14.388, Subdivision 1, Clause 1

Amendments to Rules Governing Farmed Cervidae, Minnesota Rules, 1721.0420, subpart 3, Chronic Wasting Disease, Revisor's ID Number R-04699

TO: ALL INTERESTED PERSONS

In accordance with Minnesota Statutes, section 14.388, subdivision 2, this Notice is being sent to all persons who have registered their name with the agency under Minnesota Statutes, section 14.14, subdivision 1a. This notice is also posted on the website of the Board of Animal Health.

PLEASE TAKE NOTICE that the above-cited rules proposed for adoption will be submitted to the Office of Administrative Hearings on the date of this notice, April 26, 2021. A copy of the rule modification is attached to this notice.

Introduction: The Minnesota Board of Animal Health (Board) intends to adopt amendments to rules under the good cause exemption rulemaking process in the Administrative Procedure Act, Minnesota Statute 14.388, subdivision 1, clause 1, and the rules of the Office of Administrative Hearings, Minnesota Rule, part 1400.2400. This rule amendment is being proposed in order to address a serious threat to public health, safety, or welfare.

All interested persons have five business days after the date of this notice to submit comments to the Office of Administrative Hearings via its eComments website at <https://minnesotaoah.granicusideas.com/discussions> or 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620.

Good Cause Exempt Rulemaking Process: The Board intends to use the good cause exempt rulemaking process provided in Minnesota Statute, section 14.388, subdivision 1, clause (1) to amend Minnesota Rule, part 1721.0420, subpart 3.

Subject of the Exempt Rules and Statutory Authority: The Board is using the good cause exemption process under Minnesota Statutes, section 14.388, subd. 1, clause (1), to address a serious and immediate threat to the public health, safety, or welfare caused by Chronic Wasting Disease (CWD). *Minnesota Statutes*, section 35.03, requires the Board to adopt rules necessary to protect the health of the state's domestic animals; and *Minnesota Statutes*, section 35.155, requires the Board to adopt rules necessary to implement that section regarding farmed Cervidae and to otherwise provide for the control of diseases affecting Minnesota livestock.

Minnesota Rule 1721.0420, subpart 3, provides that when CWD is identified in the wild, the ten mile area surrounding the confirmed case is designated by the Board as a CWD endemic area. Farmed Cervidae within the CWD endemic area are subject to movement restrictions.

Currently, subpart 3(A) & (B) of this rule provides for an exception to the movement restriction and allows for farmed Cervidae herds located in the CWD endemic areas to be excluded from the CWD endemic area if the herd owner prevents commingling. Based on evidence the Board has

gathered from its most recent epidemiological investigation of CWD-positive farmed Cervidae herds, the Board believes the exceptions in subpart 3(A) & (B), are inadequate. Specifically, the exception allowing movement if the farm has prevented commingling does not effectively prevent all routes of exposure to farmed Cervidae directly or indirectly from CWD infected wild cervids, and allows for apparently healthy but CWD infected and contagious farmed cervids to be legally moved to other locations in Minnesota. With this latest evidence, the Board believes it is now unreasonable and contrary to the Board's statutory mission for the movements allowed under the exceptions to this rule to continue.

In addition, per the Board's authority in Minn. R. 1721.0420, Subp. 3, to "designate larger geographic areas of the state as part of a CWD endemic area if necessary to prevent the spread of CWD," this radius was changed from ten to fifteen miles in March 2019, after the Board's five member citizen board unanimously voted at a regularly scheduled board meeting to increase this radius, and has been the Board's practice since that time. Since March 2019, all locations within fifteen miles of a confirmed case of CWD in the wild have been designated by the Board as a CWD endemic area. The rule language regarding the radius of a CWD endemic area needs to be changed because all farmed Cervidae premises located within a fifteen mile radius of a confirmed case of CWD will be impacted by the elimination of the exceptions under the current rule, and to give notice to interested parties that a Board designated CWD endemic area is fifteen miles.

It is contrary to public health, safety or welfare to amend this rule through the normal rulemaking process of Chapter 14 as potentially CWD infected and contagious animals will continue to legally move during the time it will take the Board to complete its normal rulemaking and amend this rule.

The proposed exempt rule will amend Minnesota Rule, part 1721.0420, subpart 3, in order to:

- (1) eliminate the current exclusion in this rule that allows individual farmed Cervidae herds where animals are kept on premises within a Board-determined CWD endemic area to not be considered part of a CWD endemic area if the herd has been maintained in such a way that commingling of farmed Cervidae and wild Cervidae is prevented; and
- (2) increase the radius of a Board-determined endemic area from "10 miles" to "15 miles" in order to include all farmed Cervidae premises currently located in a Board-determined 15 mile radius CWD endemic area that will be affected by the elimination of the exclusion in this rule.

The Board finds that the use of the good cause rulemaking process is an effective use of resources to implement the changes in as expedient a manner as possible and necessary in order to prevent the spread of CWD from farmed Cervidae within a Board-determined CWD endemic area to farmed Cervidae outside of a CWD endemic area.

A copy of the proposed amendments are attached to this notice. In accordance with Minnesota Statute § 16E.07, the proposed amendments may also be viewed on the Board's rulemaking page of its website, at: <https://www.bah.state.mn.us/public-rule-making/>

Public Comment: You have until 4:30 p.m. on May 3, 2021, to submit comments to the Office of Administrative Hearings (OAH) in support of or in opposition to the proposed good cause

exempt rule, or to address the legality of the proposed amendments. Comments are encouraged. Your comments must be in writing and received by OAH by the deadline. Submit written comments via the OAH Rulemaking eComments website at <https://minnesotaoah.granicusideas.com/>. All comments received are public and will be available for review at OAH.

Agency Contact Person. The Board's contact person(s) for this rulemaking are:

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Alternative Format. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the agency contact person(s) at the address or telephone number listed above.

Review and Adoption of Exempt Rules: The rules and supporting documents have been submitted to OAH for a review of its legality. The Administrative Law Judge has 14 days to approve or disapprove the rule. If the rule is approved the Board will adopt the rule and publish notice of its adoption in the *State Register*.

Dated: April 26, 2021

Dr. Beth S. Thompson, Executive Director
Minnesota Board of Animal Health

1.1 **Board of Animal Health**1.2 **Adopted Exempt Temporary Rules Relating to Chronic Wasting Disease Endemic**
1.3 **Areas**1.4 **1721.0420 CHRONIC WASTING DISEASE (CWD).**1.5 *[For text of subparts 1 and 2, see Minnesota Rules]*

1.6 Subp. 3. ~~Determining~~ Designating boundaries of CWD endemic areas in the
1.7 state. ~~If the board determines that CWD is endemic in the state, all locations within ten~~
1.8 ~~miles of a confirmed case of CWD in wild Cervidae in the state must be designated as part~~
1.9 ~~of the endemic area. If CWD is confirmed in wild Cervidae, the board must designate a~~
1.10 CWD endemic area in the state if, in the board's judgment, the area is necessary to prevent
1.11 the spread of CWD to farmed Cervidae. The board must designate the boundary of the CWD
1.12 endemic area by including all locations within 15 miles of a confirmed case of CWD in
1.13 wild Cervidae. The board shall designate larger geographic areas of the state as part of a
1.14 CWD endemic area if necessary to prevent the spread of CWD. ~~Individual farmed Cervidae~~
1.15 ~~herds where animals are kept on premises within a designated CWD endemic area shall be~~
1.16 ~~excluded from and not considered to be a part of a CWD endemic area if one of the following~~
1.17 ~~conditions is met:~~

1.18 A. ~~the herd has been maintained in such a way that commingling of farmed~~
1.19 ~~Cervidae and wild Cervidae has been prevented for a continuous period of time that began~~
1.20 ~~no later than 180 days following the initial designation of the area as CWD endemic; or~~

1.21 B. ~~the herd has been maintained in such a way that commingling of farmed~~
1.22 ~~Cervidae and wild Cervidae has been prevented for at least 36 consecutive months.~~

1.23 **EFFECTIVE DATE.** The amendments to Minnesota Rules, part 1721.0420, subpart 3,
1.24 are effective for a period of two years from the date of their publication in the State Register.