



MINNESOTA

BOARD OF ANIMAL HEALTH

Minnesota Board of Animal Health

STATEMENT OF NEED AND REASONABLENESS

In the Matter of Proposed Revisions of Minnesota Rule Chapter 1721 Amending
the Rules Governing Poultry and Mycoplasma Requirements in Turkeys

May 21, 2019

The *State Register* notice, this Statement of Need and Reasonableness (SONAR) and the proposed rule will be made available throughout the public comment period on the web site: <https://www.bah.state.mn.us/public-rule-making/>

Agency contact for information, documents, or alternative formats:

Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Dr. Shauna Voss at the Minnesota Board of Animal Health, P.O. Box 126, 622 Business Highway 71 NE, Willmar, MN 56201, phone 320-441-4055, fax 320-231-6071, shauna.voss@state.mn.us. TTY services are available by calling 711.

Minnesota Board of Animal Health

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendment to Rules Governing Poultry and Mycoplasma Requirements in Turkeys, Minnesota Rules:

1721.0270 Definitions

1721.0280 Importation of Hatching Eggs, Poultry, and Ratites

1721.0290 Poultry Dealers

1721.0300 Exhibition of Poultry

1721.0310 Community Sales

1721.0320 Hatcheries and Breeding Flocks

1721.0344 *Mycoplasma gallisepticum* and *Mycoplasma synoviae*

Revisor's ID Number [RD4533]

INTRODUCTION

The Board of Animal Health (Board) proposes to amend its current rules that relate to Mycoplasma requirements in turkeys because while the Mycoplasma requirements are critical to the commercial turkey industry, they are putting an unnecessary burden on small producers and hobbyists. As part of this rule change, the Board also provides a definition of commercial egg-type chicken, commercial meat-type chicken and commercial turkey. A commercial turkey is defined as a turkey bred, hatched, or raised for meat production. Commercial turkey does not include a turkey raised for an exhibition or hobby interest. The proposed rules amendments would remove the Mycoplasma testing and hatching requirement for small, backyard Minnesota producers and hobbyists who have an interest in raising heritage or exhibition breeds of turkeys. The amendment would also apply to people outside of Minnesota who wish to import the same types of turkeys into Minnesota. The current set of Board rules relating to Mycoplasma were promulgated and adopted in 2013. The proposed amendments only apply to poultry-specific Board rules (1721.0270 to 1721.0320, and 1721.0344).

The current rules for turkeys, turkey poult and turkey hatching eggs require additional testing for *Mycoplasma gallisepticum* (MG) and *Mycoplasma synoviae* (MS) or compliance with the NPIP U.S. Mycoplasma Gallisepticum Clean and U.S. Mycoplasma Synoviae Clean programs. Applying this requirement to small, backyard producers is more restrictive than other U.S. states' requirements, and it has prevented Minnesota backyard producers from obtaining unusual or rare breeds of turkeys from out-state hatcheries and producers. In addition, because many backyard turkeys are raised with other types poultry that are not subjected to the same Mycoplasma testing requirements, it has been difficult for backyard turkey flocks in Minnesota to maintain an MG and MS Clean status. The proposed amendment would still require commercial turkey hatcheries and breeding flocks to maintain an MG and MS Clean status, which is consistent with the requirements for commercial egg-type chicken and commercial meat-type chicken hatcheries and breeding flocks. The testing requirements for backyard turkeys would then be the same as what is required for backyard chickens, waterfowl, and gamebirds.

ALTERNATIVE FORMAT

Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Dr. Shauna Voss at the Minnesota Board of Animal Health, P.O. Box 126, 622 Business Highway 71 NE, Willmar, MN 56201, phone 320-441-4055, fax 320-231-6071, shauna.voss@state.mn.us. TTY services are available by calling 711.

STATUTORY AUTHORITY

This rulemaking is an amendment of rules for which the Legislature has not revised the statutory authority since and so Minnesota Statutes, section 14.125, does not apply.

The Board's statutory authority to adopt the rules is stated in Minnesota Statutes section 35.03, which provides: *The Board shall protect the health of Minnesota domestic animals and carry out the provisions of this chapter. The Board shall make rules necessary to protect the health of domestic animals.*

REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out eight factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (8) below quote these factors and then give the agency's response.

“(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule”

The classes of persons probably affected by the proposed rules amendments are people in Minnesota involved in poultry production, specifically small, backyard producers with an interest in raising heritage or exhibition breeds of turkeys and the people outside of Minnesota who wish to import the same types of turkeys into Minnesota. Mycoplasma testing is funded by the Board, while owners bear the expense of collecting samples and shipping them to an approved laboratory for testing. These classes will also benefit from the proposed amendment as relaxing the testing requirements will allow more individuals to participate in community sales and exhibitions and keep the requirements consistent across all poultry types. It will also allow out of state producers to meet our Minnesota import requirements which will allow Minnesota producers to obtain unusual or rare breeds of turkeys that is valuable for improving genetic diversity among flocks. The risk to the commercial poultry industry should not be any higher because the rules as currently written only apply the additional testing requirements to a subset of the backyard population and the commercial populations should have no more connections to backyard turkeys as they do to backyard chickens, waterfowl, and gamebirds.

“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues”

The probable cost savings to the Board is estimated to be approximately \$5,000.00 to \$10,000.00 per year in testing costs. There will also be some administrative cost savings to the Board by not having to enforce compliance with the testing requirements, as amended. There are no anticipated costs to other agencies nor anticipated effects on state revenue.

“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule”

The Board has determined that there are no less costly or less intrusive methods for achieving the purpose of the proposed rules amendments.

“(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule”

The Board has determined that there are no alternative methods for achieving the purpose of the proposed rules amendments.

“(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals”

The probable cost savings of complying with the proposed rules amendments will be significant to the producer in terms of reduced time, supplies and shipping costs that were associated with previously required testing. The University of Minnesota would see a probable loss of revenue roughly equivalent to the amount that the Board is saving as a result of testing services that would no longer be required.

“(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals”

The probable cost or consequence of not adopting the proposed rules amendments is an ongoing expense of approximately \$5,000.00 to \$10,000.00 per year for the Board, in addition to administrative costs of implementation and enforcement. The producers would also continue to have costs associated with sample collection time, supplies and shipping costs. If State funding is no longer available to cover the cost of testing, the producers would also have to cover those costs. In addition, the producers would be unable to obtain rare or unique breeds of backyard turkeys from out-state producers and, as a result, the genetic diversity of those lines in Minnesota would be affected.

“(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference”

With the proposed rule amendment, the Board rules will be consistent with existing federal and state regulations.

“(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule. . . . ‘[C]umulative effect’ means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.”

The National Poultry Improvement Plan (NPIP) is a cooperative Federal-State-Industry program through which new or existing diagnostic technology can be effectively applied to improve poultry and poultry products by controlling or eliminating specific poultry diseases. The NPIP consists of programs that identify states, flocks, hatcheries, dealers, and slaughter plants that meet specific disease control standards specified by NPIP. Many of the Board’s rules that relate to poultry disease control are mirrored after the NPIP. Minimum participation requirements for the NPIP are participation in the U.S. Pullorum-Typhoid Clean program, with other voluntary programs available for producer participation.

Although the Board is proposing amending its rules to remove the requirements for backyard turkey producers to participate in the additional U.S. *Mycoplasma Gallisepticum* Clean and U.S. *Mycoplasma Synoviae* Clean programs, this does not preclude the producers from voluntarily participating in those programs. By making participation in these programs voluntary, Minnesota is better aligned with how other states participate with the NPIP.

PERFORMANCE-BASED RULES

The proposed rule amendment will allow flexibility in the implementation of disease control and eradication programs, and the focus of resources on poultry populations with the biggest impact and greatest consequences. Maintaining backyard turkey flocks with a *Mycoplasma gallisepticum* and *Mycoplasma synoviae* clean status has not been practically or economically feasible, and the risk to the larger commercial poultry industry is minimal.

ADDITIONAL NOTICE

1. Persons on the Board’s rulemaking mailing list
2. Persons on the Boards “news release” notification list
3. The Minnesota House of Representatives Agriculture Policy and Finance Committee
4. The Minnesota Senate Agriculture, Rural Development, and Housing Policy and Finance Committees
5. Minnesota Department of Agriculture (MDA)
6. Minnesota Department of Health (MDH)
7. Minnesota Department of Natural Resources (DNR)
8. Minnesota Pollution Control Agency (PCA)
9. University of Minnesota College of Veterinary Medicine (UM-CVM)

10. University of Minnesota Veterinary Diagnostic Laboratory (UM-VDL)
11. Minnesota Veterinary Medical Association (MVMA)
12. The United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) Veterinary Services (VS), Minnesota Area Office
13. National Poultry Improvement Plan Office (NPIP)
14. Minnesota Turkey Growers Association (MTGA)
15. Chicken and Egg Association of Minnesota (CEAM)
16. All “Waterfowl, Exhibition, Gamebird and Backyard” (WEGBY) hatcheries and breeding flocks that are permitted by the Board in the State of Minnesota
17. All poultry dealers that are permitted by the Board in the State of Minnesota
18. All “Live Bird Market Operators” that are permitted by the Board in the State of Minnesota
19. All “Authorized Poultry Testing Agents” certified by the Board to test WEGBY birds
20. All “veterinarians and other key contacts with commercial poultry companies” in Minnesota
21. Minnesota Game Breeders and Shooting Preserve Association
22. Minnesota State Poultry Association
23. MN Waterfowl Association
24. Minnesota Poultry Emergency Disease Management Committee
25. All veterinary clinics in Minnesota
26. All veterinarians licensed in Minnesota
27. All County Fairs located in Minnesota
28. All “livestock markets” located in Minnesota

The Board’s Notice Plan also includes giving notice required by statute. The Board will mail the rules and the Notice of Intent to Adopt to everyone who has registered to be on the Board’s rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a. The Board will also give notice to the Legislature per Minnesota Statutes, section 14.116.

The Board’s Notice Plan includes notifying the Minnesota Commissioner of Agriculture because the rules affect farming operations per Minnesota Statutes, section 14.111. The Board met with the Commissioner on March 22, 2019, and notified him of the proposed amended rules.

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in a February 1, 2019, letter and Order by Administrative Law Judge Ann C. O’Reilly.

CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Board will consult with Minnesota Management and Budget (MMB). The Board will send MMB copies of the same documents it sends to the Governor’s Office for review and approval, and on the same day. The Board will do this before the Board publishes the Notice of Intent to Adopt. The documents sent to MMB will include: the Governor’s Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The Board will submit a copy of the cover correspondence and any response received

from MMB to OAH at a hearing, if held, or with the documents the Board submits for ALJ review.

The fiscal impact and benefits of the proposed rules amendments on local governments will not be significant. Implementation and enforcement of the rules are performed by the Board.

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

As required by Minnesota Statutes, section 14.128, subdivision 1, the Board has considered whether these proposed rules amendments will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The Board has determined that they will not be required to do so because implementation and enforcement of the rules are performed by the Board.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

As required by Minnesota Statutes, section 14.127, the Board has considered whether the cost of complying with the proposed rules amendments in the first year after the rules take effect will exceed \$25,000.00 for any small business or small city. Because the Board is proposing to eliminate some of the rules which only impact backyard turkey producers, there will be no additional costs to any small business or small city.

LIST OF WITNESSES

If these rules go to a public hearing, the Board anticipates having the following witnesses testify in support of the need for and reasonableness of the rules:

1. Dr. Shauna Voss, Senior Veterinarian, Board of Animal Health, will testify about the need and reasonableness of the rule amendment as it relates to both backyard and commercial poultry producers.
2. Dr. Beth Thompson, Executive Director, Board of Animal Health, will testify about the need and reasonableness of the rule amendment as it relates to general Board program activities.

RULE-BY-RULE ANALYSIS

The primary reason the following rules amendments are being proposed is that the requirements for additional testing for Mycoplasma in backyard turkeys has been impractical and an unnecessary component for overall disease control programs for poultry in Minnesota. The current rules cause hardship on small producers who wish to improve their genetic stock by obtaining birds sourced from out-state flocks and hatcheries. In amending the proposed rules, great care was taken to preserve the parts of the existing rules that are still relevant for the commercial turkey industry.

1721.0270 DEFINITIONS.

Subp. 6a. **Commercial egg-type chicken.**

Subp. 6b. **Commercial meat-type chicken.**

Subp. 6c. **Commercial turkey.**

In this section, a definition is added for commercial egg-type chicken, commercial meat-type chicken, and commercial turkey. This addition provides clarification on who would not be required to participate in the Mycoplasma testing requirements.

1721.0280 IMPORTATION OF HATCHING EGGS, POULTRY, AND RATITES.

Subp. 5. *Mycoplasma gallisepticum* and *Mycoplasma synoviae*. In this section, the Mycoplasma requirement for importation was changed to only require this specific disease requirement for turkey hatching eggs, poults, and turkeys from commercial turkey hatcheries or breeding flocks instead of all turkey hatching eggs, poults, and turkeys. This change provides consistency with the requirements for chickens being imported into Minnesota.

1721.0290 POULTRY DEALERS.

Subp. 4. *Mycoplasma gallisepticum* and *Mycoplasma synoviae*. In this section, the Mycoplasma requirement for poultry dealers was changed to only require this specific disease requirement for turkey hatching eggs, poults, and turkeys from commercial turkey hatcheries or breeding flocks instead of all turkey hatching eggs, poults, and turkeys. This change provides consistency with the requirements for chickens being acquired or distributed by poultry dealers in Minnesota.

1721.0300 EXHIBITION OF POULTRY

Subpart 4. *Mycoplasma gallisepticum* and *Mycoplasma synoviae*. This section will be removed since the proposed Mycoplasma requirements will now only apply to commercial flocks. Historically, the commercial industry does not participate in exhibitions of poultry.

1721.0310 COMMUNITY SALES

Subpart 4. *Mycoplasma gallisepticum* and *Mycoplasma synoviae*. This section will be removed since the proposed Mycoplasma requirements will now only apply to commercial flocks. Historically, the commercial industry does not participate in community sales of poultry.

1721.0320 HATCHERIES AND BREEDING FLOCKS

Subp. 3. *Mycoplasma gallisepticum* and *Mycoplasma synoviae*. In this section, the Mycoplasma requirement for hatcheries and breeding flocks was changed to only require this specific disease requirement for commercial turkey hatcheries or breeding flocks instead of all turkey hatcheries or breeding flocks. This change provides consistency with the requirements for chicken hatcheries or breeding flocks in Minnesota.

1721.0344 MYCOPLASMA GALLISEPTICUM AND MYCOPLASMA SYNOVIAE

Subpart 1. **Positive tests results.** In this section, clarification is provided that only commercial turkey breeding flocks with positive test results will require additional testing.

Subp. 2. **Quarantine.** In this section, clarification is provided that only commercial turkey breeding flocks determined to be infected with *Mycoplasma gallisepticum* or *Mycoplasma synoviae* will be quarantined and participate in an approved salvage program or disposed of in a manner approved by the board

LIST OF EXHIBITS (Optional)

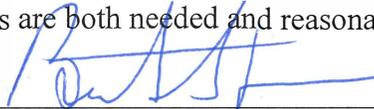
In support of the need for and reasonableness of the proposed rules, the Board anticipates that it will enter the following exhibits into the hearing record: None.

CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.

5.21.19

[Date]



[Name] Beth S. Thompson
[Title] State Vet / Ex. Director - BTH

This document is available for public review on June 24, 2019.