

## Advisory Committee Report

### Farmed Cervidae Rulemaking

On June 29, 2020, the Minnesota Board of Animal Health (Board) published a Request for Comments and embarked on a rulemaking project to amend its rules governing farmed Cervidae, Minnesota Rules chapters 1721.0370 to 1721.0420.

The Board formed an advisory committee under Minnesota Statutes, section 14.101, subdivision 2, to provide advice to the agency on its development of the rules. The Board's decision to form this committee for its rulemaking was voluntary and not required by the Administrative Procedure Act. The goal of the committee was for members to work cooperatively with each other and with agency staff to advise on farmed Cervidae regulations, and help the Board develop effective and well-supported amendments. The 15 committee members were chosen by the Board to represent the diversity of views, interests, and values associated with Cervidae in Minnesota and included both proponents and opponents of the proposed farmed Cervidae rules.

This Report does not attempt to capture all comments and feedback the Board received from its advisory committee members; the Board will let the meeting notes and written feedback from committee members speak to those. Rather, this Report is intended to discuss the areas where the advisory committee were unable to reach consensus, particularly as these areas tended to be the most controversial areas of the proposed rules.

#### Advisory Committee Members

- Kelly Anderson, Minnesota Department of Agriculture (MDA)
- Michelle Carstensen, Minnesota Department of Natural Resources (DNR)
- Amy Cordry, At-large member of the public
- Craig Engwall, Minnesota Deer Hunters Association (MDHA)
- Robert Ernst, At-large Minnesota farmed cervid producer
- Miles Falck, Philomena Kebec (sharing responsibilities), Minnesota Tribal member
- Dr. Joel Ihnen, Minnesota farmed cervid veterinarian
- Mark Luedtke, Brenda Hartkopf (alternate), Minnesota Elk Breeders Association (MNEBA)
- Rich Meech, Minnesota Deer Farmers Association (MDFA)
- Dan Miller, At-large livestock producer (other than farmed Cervidae producer)
- Steve Notch, Association of Minnesota Counties
- Dr. Stephan Schaeffbauer, United States Department of Agriculture (USDA)
- Dr. Joni Scheftel, Minnesota Department of Health (MDH)
- Daryl Simon, Producer, Non-native Minnesota Cervidae species
- Dr. Jerry Torrison, University of Minnesota Veterinary Diagnostic Lab (VDL)

## Committee Meetings

Starting in August 2020, the Board met with the advisory committee eight times to discuss the proposed rulemaking and the Board's proposed rules drafts.<sup>1</sup> The dates of each meeting and meeting notes for every meeting are available on the Board's Farmed Cervidae Rulemaking Advisory Committee webpage (<https://www.bah.state.mn.us/farmed-cervidae-rulemaking-advisory-committee/>). The Board posted the agenda and minutes of each meeting on the rulemaking page of Board's website (<https://www.bah.state.mn.us/public-rule-making/>). In addition to formal meetings, advisory committee members emailed each other and Board staff informally to discuss concerns that were in turn reviewed at formal advisory committee meetings. Every advisory committee meeting was open to the public, and members of the public were allowed to post comments via the Microsoft Teams chat feature, and to make comments during the last 15 minutes of each meeting.

Between August 2020 and January 2021, the Board published six proposed rules drafts on its website and circulated a copy to advisory committee members prior to each meeting. After the last meeting was held in January, the Board published six post-meeting proposed rules drafts on its rulemaking page. The Board requested written feedback from the advisory committee members on five of the post-meeting rules drafts; Board rulemaking staff created the sixth post-meeting rules draft (dated July 14, 2021) in response to written comments committee members made to the fifth post-meeting proposed rules draft (dated June 18, 2021).

At its November 13, 2020, advisory committee meeting, to address comments and concerns the public and the committee members raised during previous meetings and in their feedback on rules drafts, the Board invited presenters to the formal meeting: (1) Dr. Courtney Wheeler, Director of the Board's Compliance Program, presented on the Board's compliance goals and policies, as well as presenting data regarding the total number of Notices of Violation and Correction Orders and Civil Penalties issued to farmed Cervidae producers, and the number of herd registrations that the Board cancelled for violations of farmed Cervidae program requirements in calendar year 2020 to date; (2) Dr. Joni Scheftel, State Public Health Veterinarian, presented an overview of human health concerns associated with Chronic Wasting Disease (CWD), specifically how CWD prions are and aren't related to illness in humans; (3) Dr. Peter Larsen, Director of the Minnesota Center for Prion Research and Outreach (MNPRO), presented an overview of environmental contamination of CWD prions and risks to cervids, highlighting his laboratory's research, specifically the use of a testing method known as RT-QuIC to detect CWD.

## Attendance and Participation

Between the first meeting in August 2020 and the final meeting in January 2021, advisory committee member attendance and participation declined, including written feedback on rules drafts—particularly on the drafts produced after the final meeting in January. The Board sought review and feedback from the committee members in July 2021 on its ninth proposed rules draft that was be presented to its board members for approval. The Board received written feedback from six of its fifteen advisory committee members. Board rulemaking staff produced a tenth rules draft based on the advisory committee members' comments and will present this tenth rules draft to the board members for approval at a Special Meeting scheduled for July 28, 2021.

## View of Committee Make Up

Due to the broad range of representation, advisory committee members had a wide range of familiarity with and understanding of the Board's purpose, requirements for participation in the Farmed Cervidae Program, and existing rules regulating farmed Cervidae. As the meetings progressed, the Board recognized that an education

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<sup>1</sup> Due to Governor Walz's emergency orders regarding the pandemic that were in effect at the time, these meetings were held virtually.

process regarding farmed Cervidae was at work. This education process covered not only amendments to program requirements through the proposed farmed Cervidae rules, but also the difference between statutory changes made by the legislature and proposed rule changes under the Board's authority. The Board also noted that disagreement amongst committee members regarding the make-up of the advisory committee, with members directly associated with the farmed Cervidae industry expressing that they felt under-represented (with 5 representative members out of 15), and other committee members, including members of the general public, expressing concerns that the farmed Cervidae industry was overly represented on and created a bias in the committee.

### **Advisory Committee Comments by Topic**

Due to the wide and divergent range of interests represented by the advisory committee members, there were several areas of the rules that the Board identified as contentious/controversial and where consensus on the proposed rules would not be reached by the committee. These areas are discussed immediately below. In these areas, the Board considered members' comments, as well as comments received from the public, while ultimately relying on its expertise and consideration of its statutory mission to make the final rules draft decision. Rationale to support the Board's amendments is included in the Board's Statement of Need and Reasonableness (SONAR) for this rulemaking.

The following are general sections of the proposed rules where consensus was not reached. Each section includes a summary of relevant discussion that occurred during committee meetings and/or related comments received from committee members outside of committee meetings.

#### **Herd Registration**

The Board proposed amendments to current rule language pertaining to registration which gives the Board discretion to refuse to allow a person to re-register a farmed Cervidae herd after registration revocation.

##### ***Minn. Rule 1721.0380, Subp. 2***

*Current language:*

*To be registered with the board, the owner of farmed Cervidae must have the owner's herd inspected by a representative of the board and demonstrate that the owner has fulfilled all the requirements for farmed Cervidae in parts [1721.0370](#) to [1721.0420](#). The owner must also sign and submit to the board a registration agreement in which the owner agrees to maintain the owner's herd in compliance with this part. The failure of the owner to comply with this part or to pay a civil penalty assessed by the board pursuant to Minnesota Statutes, section [35.95](#), for failure to comply with the requirements of this part shall constitute grounds for the board to cancel the registered status of a farmed Cervidae herd. In accordance with Minnesota Statutes, section [35.155](#), subdivision 9, the board shall notify the herd owner of the right to request a contested case hearing regarding the board's determination under the Administrative Procedure Act, Minnesota Statutes, chapter 14.*

*Proposed language:*

*To be registered with the board, the owner of farmed Cervidae must have the owner's herd inspected by a representative of the board and demonstrate that the owner has fulfilled all the requirements for farmed Cervidae in parts 1721.0370 to 1721.0420. The owner must also sign and submit to the board a registration agreement in which the owner agrees to maintain the owner's herd in compliance with this part.*

*A. The failure of the owner to comply with this part or to pay a civil penalty assessed by the board pursuant to Minnesota Statutes, section 35.95, for failure to comply with the requirements of this part shall constitute grounds for the board to cancel the registered status of a farmed Cervidae herd.*

*B. In accordance with Minnesota Statutes, section 35.155, subdivision 9, the board shall notify the herd owner of the right to request a contested case hearing regarding a registration revocation under the Administrative Procedure Act, Minnesota Statutes, chapter 14, within 30 days of the revocation notice.*

C. The board may refuse to register a premises or person that has had their herd registration revoked by the board, by taking into consideration the factors that lead to the revocation, including repeated failure to comply with this part and the board's compliance efforts prior to the revocation.

#### Advisory Committee Member Comments

Committee members made recommendations to add language detailing revocation factors. A request was made to omit (C) and consider each case be evaluated uniquely. Supporting members acknowledged the amount of time and effort the Board invests into noncompliant herd owners before revoking a registration. There was one comment that a herd owner who has had their registration revoked under (C) should never be allowed to re-register. Opposing members suggested this proposed language gave the Board “unfettered discretion.”

#### Escapes and Running at Large

The Board proposed language that requires that all escaped farmed Cervidae that are killed or found dead be tested for CWD, regardless of age. Proposed amendments also included statutory changes made by the Minnesota Legislature in 2019.

#### **Minn. Rule 1721.0380, Subp. 6**

##### *Current Language:*

*Running at large prohibited. An owner may not allow farmed Cervidae to run at large. The owner must make reasonable efforts to return escaped farmed Cervidae to their enclosures as soon as possible. The owner must notify the commissioner of natural resources and the board of the escape of farmed Cervidae if the farmed Cervidae are not returned to their enclosures or euthanized by the owner within 24 hours of their escape.*

##### *Proposed Language:*

*Running at large prohibited. A farmed Cervidae owner may not allow farmed Cervidae to run at large. The owner must make reasonable efforts to return escaped farmed Cervidae to the herd enclosure as soon as possible. The owner must notify the board and the commissioner of natural resources of the escape of farmed Cervidae and create and maintain a record documenting the escape event, if the farmed Cervidae are not returned to the herd enclosure or euthanized by the owner within 24 hours of the escape.*

*A. All escaped farmed Cervidae that are killed or found dead must be tested for CWD, regardless of age.*

*B. As required by section 35.155, subdivision 4, if a farmed Cervidae facility experiences more than one escape incident in any 6-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.*

#### Advisory Committee Member Comments

There was a significant amount of discussion and disagreement over who “owns” a farmed cervid after it escapes. Suggestions were made to add language that producers continue to have ownership over escaped/running at large animals indefinitely. Opposing members suggested that a hunter who harvests an escaped animal should have legal rights to claim ownership. Representatives from the Board stated that they did not have the authority to determine who owns an animal running at large but reasserted their animal health authority to require that the animal be tested for CWD.

#### Fencing

The Board proposed amendments to include statutory changes made by the Minnesota Legislature in 2019 including requirements for high tensile fencing repairs, installation of redundant gates, and compliance for fence deficiencies.

#### **Minn. Rule 1721.0380, Subp. 5. (Fencing)**

##### *Current Language:*

*Farmed Cervidae must be confined in a manner designed to prevent escape. Perimeter fences for farmed Cervidae must be at least 96 inches in height and be constructed and maintained in a way that prevents the escape of farmed Cervidae or entry into the premises by wild Cervidae.*

*Proposed Language:*

- A. Farmed Cervidae must be confined in a manner designed to prevent escape. Perimeter fences for farmed Cervidae must be at least 96 inches in height and be constructed and maintained in a way that prevents the escape of farmed Cervidae or entry into the farmed Cervidae enclosure by wild Cervidae.*
- B. All fencing installed or repaired after July 01, 2019, must be constructed of high tensile material, or a material that is equivalent to or more effective in preventing ingress or egress of Cervidae than high tensile material, as determined by the board.*
- C. Entry areas for farmed Cervidae enclosures must have redundant gates. Redundant gates must allow all personnel and equipment used regularly to feed, manage, or handle farmed Cervidae to get completely inside the enclosure between the gates, and must allow the outer gate to be secured before opening the inner gate and gaining entrance to the enclosure. If an entry does not require redundant gating per part 1721.0370, subpart 15, then the gate to the entry must be secured with two mechanisms that keep the gate closed when not in use.*
- D. As required by section 35.155, subdivision 4, if the facility fails to correct a fencing deficiency found during an inspection, the board may revoke the facility's registration and order the owner to remove or destroy the animals as directed by the board. If the board revokes a facility's registration, the commissioner of natural resources may seize and destroy animals at the facility.*

Advisory Committee Member Comments

Committee members had opposing views related to fence height, exclusionary or double fencing, and fencing construction materials. Members made recommendations to require double fencing for all facilities and to increase required fence height stating that the current height requirement of 96 inches is “inadequate.” Members opposing these changes disputed the effectiveness of increased fence height and cited that there no examples of Minnesota farmed Cervidae jumping over a fence to escape. Members who raise Cervidae that are not white-tailed deer commented that fence line contact between wild white-tailed deer and domestic elk and reindeer is extremely rare. Furthermore, adding height to a fence would result in a significant increase in building costs.

Statutory changes that require all fencing installed or repaired to be constructed of high tensile material met opposition from farmed Cervidae producers and industry representatives. They made recommendations to allow more effective materials in lieu of high tensile fencing for fence construction especially in “high pressure areas.”

Chronic Wasting Disease

The Board proposed omitting the definition for “CWD contaminated premises.”

***Minn. Rule 1721.0370, Subp. 6***

*Current Language:*

*CWD contaminated premises. "CWD contaminated premises" means a premises on which a CWD positive animal has been identified. A CWD contaminated premises is further categorized depending on the degree of contamination as follows:*

- A. A premises shall be categorized as having minimal environmental contamination if there is no evidence that there has been transmission of CWD on the premises and there is no evidence of long-standing infection of the herd. The number of positive animals identified on a premises of this type must be three or fewer. This category shall be used in cases where history and records indicate that the positive animal*

likely contracted the disease on another premises. Positive animals on a premises in this category must be preclinical at the time of CWD diagnosis or very early in the clinical course of the disease.

- B. A premises shall be categorized as having moderate to severe environmental contamination if there is evidence that transmission of CWD has occurred or where a positive animal dies of CWD or is euthanized late in the clinical course of the disease.

*Proposed Language:*

~~Subp. 6. CWD contaminated premises. "CWD contaminated premises" means a premises on which a CWD positive animal has been identified. A CWD contaminated premises is further categorized depending on the degree of contamination as follows: A. A premises shall be categorized as having minimal environmental contamination if there is no evidence that there has been transmission of CWD on the premises and there is no evidence of long-standing infection of the herd. The number of positive animals identified on a premises of this type must be three or fewer. This category shall be used in cases where history and records indicate that the positive animal likely contracted the disease on another premises. Positive animals on a premises in this category must be preclinical at the time of CWD diagnosis or very early in the clinical course of the disease. B. A premises shall be categorized as having moderate to severe environmental contamination if there is evidence that transmission of CWD has occurred or where a positive animal dies of CWD or is euthanized late in the clinical course of the disease.~~

#### Advisory Committee Member Comments

Board representatives explained to committee members that the current definition for "CWD contaminated premises" is outdated and not applicable due to new science. When a farmed cervid tests positive for CWD, the premises is immediately considered contaminated and the entire herd is quarantined. Committee members expressed concerns about omitting language that quantifies the level of contamination.

#### Quarantine

The Board proposed amended language to clarify when a farmed Cervidae herd is quarantined, requirements for quarantine release and requirements for CWD infected herds, including relevant statutory changes made by the Minnesota Legislature in 2019.

#### **Minn. Rule 1721.0420, Subp. 2**

*Current Language:*

*Quarantine procedures. The board must immediately quarantine a farmed Cervidae herd that is determined to be infected with or exposed to CWD.*

- A. *Unless a permit is obtained from the board, farmed Cervidae may not be moved into or out of a quarantined herd. The board may allow farmed Cervidae from quarantined herds to be moved under permit directly to a state or federally licensed slaughtering establishment, to an approved veterinary diagnostic laboratory, or to another location if that movement is determined by the board not to endanger the health of other animals in the state.*
- B. *The owner of a herd determined to be infected with or exposed to CWD must, upon request, furnish to the board a list of sources of Cervidae during the preceding five years and a list of movements of Cervidae to other locations during the preceding five years.*
- C. *Farmed Cervidae herds shall be released from quarantine by any of the following methods:*
  - (1) *Depopulation. To release a quarantine by depopulation, all Cervidae in the herd must be euthanized and tested with an official CWD test. If the premises has no environmental contamination and all CWD tests are negative, the quarantine shall be released immediately. If the premises has minimal environmental contamination, the quarantine shall be released one year after depopulation and cleaning and disinfection. If the premises has moderate to severe*

*environmental contamination, the quarantine shall be released five years after depopulation and cleaning and disinfection;*

*(2) Test of exposed animals. If a premises has no environmental contamination and all CWD exposed animals on the premises are tested and are found to be CWD negative, the quarantine shall be released;*

*(3) Test for five years. If any animal that dies or is slaughtered from the herd is tested, regardless of age, with an official CWD test for a period of 60 months, and no positive animal is identified, the quarantine shall be released; or*

*(4) Other procedures. Quarantines may be released by procedures in addition to those in subitems (1) to (3) if they are approved by the board and are equally reliable and effective as the other methods in this item.*

- D. CWD contaminated premises must be cleaned and disinfected prior to quarantine release by a method approved by the board.*

*Proposed Language:*

- A. Quarantine procedures. The board must immediately quarantine a farmed Cervidae herd that is determined suspected to be infected with CWD based on a suspect test result or if the herd is known to be exposed to CWD. Unless a permit is obtained from the board, farmed Cervidae may not be moved into or out of a quarantined herd. The board may allow farmed Cervidae from quarantined herds to be moved under permit directly to a state or federally licensed slaughtering establishment, to an approved veterinary diagnostic laboratory, or to another location if that movement is determined by the board not to endanger the health of other animals in the state.*
- B. The owner of a farmed Cervidae herd determined to be infected with or exposed to CWD must, upon request from the board, furnish to the board a list of sources of farmed Cervidae, during the preceding five years and a list of movements of farmed Cervidae to other locations, and all records pertaining to escapes.*
- C. Farmed Cervidae herds with CWD exposed animals shall be released from quarantine when:*
- (1) all CWD exposed animals that currently reside or resided in the herd have a CWD test result of not detected, or*
  - (2) it has been five years since the animals were exposed to a CWD infected animal and the board verifies that any remaining CWD exposed animals are alive and still in the herd.*
- D. Farmed Cervidae herds with CWD infected animals must be depopulated by the herd owner in accordance with Minnesota Statutes section 35.155, subdivision 11. If an indemnification application is not submitted, then the herd owner must depopulate the herd in a timely manner.*
- (1) The board may require a herd owner of a CWD infected farmed Cervidae 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 farmed Cervidae herd owner must maintain enclosure fencing for 5 five years from the date of detection and post biohazard signs as directed by the board.*
  - (4) The farmed Cervidae premises must be cleaned and disinfected in a manner approved by the board.*
  - (5) The premises owner may not possess farmed Cervidae on the premises for a period of 5 years from the date the cleaning and disinfection of the premises is approved by an agent of the board as complete.*

Advisory Committee Member Comments

Committee members made recommendations to increase the amount of time fences must be maintained from 5 to 10 years citing a research paper regarding Scrapie in sheep where prions were detected over 16 years after depopulation of the infected flock.

Those who disputed this stated that requiring fencing to be maintained ~~a herd to be quarantined~~ any longer than five years is “construed as a taking.” Opponents added that under current federal regulations, when flocks are depopulated in response to Scrapie, animals can immediately be repopulated on the same premises.

### Chronic Wasting Disease

The Board proposed language to amend the designated boundaries of a CWD farmed Cervidae management zone, increasing the size of zone from 10 miles to 15 miles. The Board also proposed eliminating the exception in current rule that allows herds to not be considered part of a CWD farmed cervid management zone if commingling of farmed and wild Cervidae is prevented.

#### ***Minn. Rule 1721.0370, Subp. 7, Minn. Rule 1721.0420, Subp. 3***

##### *Current Language:*

*CWD endemic area. "CWD endemic area" means a geographic area as determined by the board where CWD is present in wild Cervidae populations.*

*Determining boundaries of CWD endemic areas in the state. If the board determines that CWD is endemic in the state, all locations within ten miles of a confirmed case of CWD in wild Cervidae in the state must be designated as part of the endemic area. The board shall designate larger geographic areas of the state as part of a CWD endemic area if necessary to prevent the spread of CWD. Individual farmed Cervidae herds where animals are kept on premises within a designated CWD endemic area shall be excluded from and not considered to be a part of a CWD endemic area if one of the following conditions is met:*

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

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

##### *Proposed Language:*

*CWD farmed Cervidae management zone. "CWD farmed Cervidae management zone" means a geographic area as determined by the board where CWD is confirmed in wild Cervidae populations.*

*Designating boundaries of CWD farmed Cervidae management zones in the state. If CWD is confirmed in wild Cervidae, the board must designate a CWD farmed Cervidae management zone in the state if, in the board's judgment, the zone is necessary to prevent the spread of CWD to farmed Cervidae. The board must designate the boundary of the CWD management zone by including all locations within 15 miles of a confirmed case of CWD in wild Cervidae. The board shall designate larger geographic areas of the state as part of a CWD endemic area farmed Cervidae management zone if necessary to prevent the spread of CWD.*

#### Advisory Committee Member Comments

Committee members representing the farmed Cervidae industry opposed this proposed language. They proposed maintaining the current rule language for a 10 mile radius around a confirmed case of CWD in wild Cervidae as written in current rule (even though, since March 2019, a 15 mile radius has been the Board's practice after the board members exercised their authority under the current rule to designate a larger geographic area to prevent the spread of CWD). Some of these members also made an argument to omit requirements for designating a management zone entirely. Some members conceded that if the Board maintains language for designating a management zone, producers must be given an exemption so that they are not immediately “put out of business through no fault of their own”. A commenter offered a compromise to decrease the allowance to erect exclusionary fencing from 180 day to 120 days. A committee member illustrated their point by stating that, “A producer could have been successfully testing for 20 years and never missed a test and would still be subject to this restriction. These producers deserve time to adjust”. Another committee

member argued the current 180 days is needed for herd owners to adequately prepare and prevent commingling, and with a confirmed case of CWD in the wild “there is no reason to believe that the herd has already been exposed to CWD.”

Farmed Cervidae industry representatives expressed their opinion that quarantining farms and halting their businesses based on a single wild deer infected with CWD is unreasonable. Producers added that restricting their ability to move animals within the state for up to three years would be detrimental to their income and rules like this appear to be based on the belief that “CWD infections always originate from cervid farms.”

Committee members discussed amending this section to allow for alternate restrictions for producers with species other than white-tailed deer. Elk and reindeer producer committee members had stated that non-white tailed deer species of cervids do not interact along the fence line in a way that would allow transmission of CWD. It was requested that the Board consider determining which species were at a lower risk of CWD exposure and develop less restrictive measures for herds with these species within a designated management zone.

Committee members supporting the Board’s proposed amendments acknowledged the uncertainty in CWD science both in spread and detection, stating that “research needs to be a priority, but uncertainty should not be an excuse to promote lax regulations that put a public resource [white-tailed deer] at risk.” Changing the definition of “endemic area” to “management zone” offers consistency with terms utilized by the Minnesota DNR. The term management zone distinguishes an area where CWD has been found in a single animal, from an area where CWD is endemic, or “consistently found/self-sustaining in the population.” The point was also made that a radius of 15 miles around a positive animal is consistent with the Minnesota DNR’s data on deer movement.

Other proponents of the proposed language commented that no movement of farmed Cervidae should be allowed out of a farmed Cervidae management zone “under any circumstance.”

### **Farmed Cervidae CWD Surveillance Standards**

The Board proposed amendments to the State’s CWD herd certification/CWD surveillance program developing “Farmed Cervidae Program Surveillance Standards” that outline consequences to a farmed cervid herd’s status when evaluating missed CWD surveillance in a herd. The proposed standards include the option to substitute animals of the same species that have been members of the herd for the same duration as animals not tested for CWD.

#### ***Minn. Rule 1721.0420, Subp. 1***

*Current Language:*

*CWD herd certification program.*

- A. The owner of a farmed Cervidae herd must be enrolled in the CWD herd certification program and must comply with all the requirements of this part.*
- B. The owner of a farmed Cervidae herd must sign and submit to the board a CWD herd certification program agreement in which the owner agrees to comply with the requirements in this part.*
- C. When farmed Cervidae that are officially identified die or are slaughtered, the owner must report the age, sex, and official identification numbers of the animals to the board within 14 days.*
- D. Animals from farmed Cervidae herds that are 12 months of age and over that die or are slaughtered must be tested for CWD with an official CWD test. Samples to be tested for CWD must be submitted to a laboratory approved by the board within 14 days of sample collection. Other testing protocols may be used if they are approved by the board and are equally effective for the detection of CWD in farmed Cervidae herds. Testing must be completed at owner expense unless state or federal funds are available for this purpose.*

*The CWD surveillance period for a herd is the continuous length of time the herd has been enrolled in the program and the owner has met all the requirements of this part.*

*Herd status is divided into six levels based on the period of time the herd has been under continuous CWD surveillance without evidence of CWD or a determination that the herd has been exposed to CWD. Progression from one level to the next is based on successful program participation for a continuous period of time as follows:*

- (1) level 1 is from time of enrollment to 12 months;*
- (2) level 2 is from 12 months to 24 months;*
- (3) level 3 is from 24 months to 36 months;*
- (4) level 4 is from 36 months to 48 months;*
- (5) level 5 is from 48 months to 60 months; and*
- (6) level 6 (certified herd) is greater than 60 months.*

*Proposed Language:*

*State CWD herd certification program. The owner of a farmed Cervidae herd must be enrolled in the CWD herd certification program and must comply with all the requirements of this part.*

*A. When farmed Cervidae that are officially identified die or are killed, the owner must report the age, sex, and all identification numbers of the animals to the board within 14 days.*

*B. Animals from farmed Cervidae herds that are 12 months of age and over that die or are killed must be tested for CWD with an official CWD test. Samples to be tested for CWD must be collected by an authorized CWD sample collector and submitted to a laboratory approved by APHIS within 14 days of sample collection. Other testing protocols for the detection of CWD in farmed Cervidae may be used if they are approved by the board. Testing must be completed at owner expense unless state or federal funds are available for this purpose.*

*For each animal not successfully tested and/or recurring missed samples of test-eligible animals, in accordance with the APHIS-Veterinary Services CWD Program Standards the board shall implement consequences to herd status based on risk-based assessments of a farmed Cervidae owner's herd. The risk-based assessment the board will apply to a farmed Cervidae herd shall be in accordance with the board's farmed Cervidae CWD surveillance standards, which the board must make available and kept updated on the board's website.*

*Consequences to a herd's CWD status level include:*

*1) A direct suspension of herd status for a designated period. (At the end of the designated period, the suspension will be lifted, and the status returned to the level before the suspension.)*

*2) A reduction in herd status (ex. from CWD Level 6 to Level 5 or below) which requires a minimum of a year to regain one level in status.*

*3) Consideration of an animal substitute approved by the Board to replace missed or poor-quality samples. The substitute animal must be an animal of the same species and from the same location within the herd that has resided in the herd at least as long as the untested animal(s).*

*For all herd sizes, impacts to CWD status level are outlined as below:*

*a. Status is not impacted when: one animal is not successfully tested in the surveillance period and all animals were successfully tested for CWD in the previous 36 months; or the number of animals not successfully tested is 10% but 35% but 50% of the total number of animals that died or were harvested during the surveillance period.*

*b. Status is suspended for 6 months when the number of animals not successfully tested for CWD is >10% but 35% but 50% of the total number of animals that died or were harvested during the surveillance period.*

*c. Status is suspended for 12 months when the number of animals not successfully tested for CWD is >35% but <50% of the total number of animals that died or were harvested during the surveillance period.*

*d. Status is suspended until additional surveillance is completed when the number of animals not successfully tested for CWD is >50% of the total number of animals that died or were harvested during the surveillance period.*

*A sample can be submitted as a substitution for an unsuccessful test, the animal to be sampled must be approved by the Board as a substitute test-eligible animal of the same species that has resided in the same location in the herd, for at least as long as the unsuccessfully tested animal.*

*Advisory Committee Member Comments*

Representatives of the farmed Cervidae industry commented that the Board's proposed surveillance standards are "draconian," too punitive and that most farmed Cervidae producers don't want to sacrifice another animal for testing to regain herd status. A member gave an example that if the movement of animals out of a herd is restricted at the time of year when producers are moving bucks, they could be severely economically impacted.

Farmed Cervidae industry representatives argued that standards must be in rules to prevent the Board from having "unfettered discretion and being able to change program requirements at will" and emphasized that they would not support amendments to program surveillance status language unless an option for live animal testing was included. Suggested language, "CWD tests conducted to fulfill this requirement may include testing of dead animals and testing of live animals using rectal biopsy, tonsil biopsy, saliva, blood or other tissue approved by the board."

Representatives from the Board and the VDL explained that, although the state of Texas recognizes live animal testing in the form of rectal or tonsil biopsy, under current CWD program standards, rectal and tonsil biopsy are not approved for routine surveillance in farmed cervid herds. Current live animal samples are not easy to collect, require sedation, and a limited number of lymph follicles are required for pathologist review. Novel live animal testing platforms are not approved at this point and regulations must be written in the event a new test is developed.

Extensive discussion was focused on the Board's proposed language to allow an animal to be substituted for an unsuccessfully tested animal. Comments included that there is not strong scientific reasoning for substituting a live animal as equivocal when the producer has a missed CWD test. Representatives of the farmed Cervidae industry expressed concerns that the VDL improperly processing or reading a test could negatively impact their status. The director of the VDL noted that "several factors are at play" when a sample submitted to the laboratory cannot be satisfactorily tested, most commonly among these is submission of the wrong tissues, or wrong anatomical site and degradation of tissues in the environment.

Supporters of the proposed language commented that the Board was "moving in the right direction" with stricter testing standards, with other commenters saying the proposed surveillance standards were not strict enough.

### **Movement of Farmed Cervidae**

The Board proposes amendments to language regulating movement of farmed Cervidae within the state. Namely, the Board proposes that a herd must achieve at least a level 6 in the state's CWD herd surveillance program to move animals. In addition, in early drafts of the proposed rule amendments the Board suggested allowing movement of farmed Cervidae out of CWD management zones to "terminal hunt facilities."

#### ***Minnesota Rule 1721.0410, [New] Subps. 3 and 6***

*Current Language:*

*Restriction on herd additions. Farmed Cervidae may not be moved into a farmed Cervidae herd unless the herd is registered with the board and has achieved at least level 4 of the CWD herd certification program.*

*Movement into, within, and out of CWD endemic areas.*

- A. Farmed Cervidae that originate from a CWD endemic area may not be moved to other locations in the state unless they move directly to a slaughtering establishment having state or federal inspection. A shipping permit must be obtained from the board prior to movement of farmed Cervidae from a premises located within a CWD endemic area.*
- B. Farmed Cervidae may not be moved into a CWD endemic area unless they move directly to a slaughtering establishment having state or federal inspection. A shipping permit must be obtained from the board prior to movement of farmed Cervidae into a CWD endemic area.*

- C. *Farmed Cervidae carcasses may not be moved from a CWD endemic area to other locations in the state, except for cut and wrapped meat, quarters or other portions of meat with no part of the spinal column or head attached, antlers, hides, teeth, finished taxidermy mounts, and antlers attached to skull caps that are cleaned of all brain tissue.*

*Proposed language:*

*Subp. 3. CWD Herd Surveillance status.*

- A. *An animal originating from a herd that has achieved level 6 herd status under the board's CWD herd certification program may move to any location within the state.*
- B. *An animal originating from a herd that has achieved level 4 or 5 herd status under the board's CWD herd certification program may not be moved to another location in the state other than directly to a slaughtering establishment having state or federal inspection, unless they animals meet the requirements of subpart 2, items A and B, and the owner has obtained a permit from the board prior to movement.*
- C. *An animal from a registered herd that has only achieved a level 1, 2, or 3 status under the board's CWD herd certification program may not be moved to another location in the state unless the owner has obtained a permit from the board prior to movement.*

*Subp. 6. Movement into, within, and out of CWD farmed Cervidae management zones.*

- A. *Farmed Cervidae and farmed Cervidae semen that originate from a CWD farmed Cervidae management zone may not be moved to other locations in the state unless permitted by the board prior to movement. With a permit obtained from the board, farmed Cervidae that originate from a CWD farmed Cervidae management zone may only be moved to:  
(1) other registered farmed Cervidae premises within the same CWD farmed Cervidae management zone; or  
(2) a slaughtering establishment having state or federal inspection; or  
(3) another location with testing approved by the board to verify that the animal is not infected with CWD.*
- B. *Farmed Cervidae may not be moved into a CWD farmed Cervidae management zone unless the herd owner has obtained a permit from the board and moves the animal directly to a slaughtering establishment having state or federal inspection.*
- C. *Farmed Cervidae carcasses may not be moved from a CWD farmed Cervidae management zone to other locations in the state, except for cut and wrapped meat, quarters, or other portions of meat with no part of the spinal column or head attached, or unless permitted by the board. Antlers, hides, teeth, finished taxidermy mounts, and antlers attached to skull caps that are cleaned of all brain tissue may be moved to other locations in the state*

*\*An earlier draft of proposed rule language allowed movement of animals out of a CWD farmed Cervidae management zone to a terminal hunt facility outside of the management zone that is double fenced. "Terminal hunt facility" was defined as a facility at which all farmed Cervidae in the facility are killed on the premises and the carcasses removed by the end of the calendar year in which they were moved to the facility*

#### Advisory Committee Member Comments

*Subpart 3: Discussion related to intrastate movement primarily focused on the status of the herd of origin. Most committee members agreed with the Board's proposed amendment to only allow movement from facilities that have achieved a status level 6 under the Board's CWD herd surveillance program. Public representatives supported the amended language by stating that "we should be more concerned about an escape from a level 1 facility over a level 6 facility."*

*Representatives from the farmed Cervidae industry stated that, for clarification, less than 10 herds in the state have achieved a status level less than 6. Another committee member commented that "9 herds in the state of*

Minnesota had achieved a status level 6 by the time they were identified as positive, illustrating that status level is not a guarantee that a herd is free from disease”. Rebuttal from farmed Cervidae industry representatives included questioning the source of infection in these level 6 herds. A representative of the public stated that “if a level 6 herd has a positive animal, that’s a problem” and “it is apparent based on history of CWD in the state that this system is not allowing us to be more confident that these herds do not have CWD.” Representatives from the Board and USDA stated that, “certification means that these herds have met all requirements over the years. It is exhibition of disease risk status; it does not mean disease freedom.”

*Subpart 6:* There was significant discussion regarding movement into, within, and out of a CWD management zone. Representatives from the farmed Cervidae industry questioned, “why we don’t seem to have problem with wild deer crossing our borders.” Representatives from the farmed Cervidae industry also proposed allowing an exception for movement by adding language from the current rules (which the proposed rules strikes entirely and which is controversial among the committee membership) that herds in CWD management zones be exempt from movement restrictions if “the herd has been maintained in such a way that commingling of farmed cervidae and wild cervidae has been prevented for a continuous period of time beginning no later than 180 days following its initial inclusion in a CWD endemic area or for at least 36 consecutive months.”

Other commenters, including the public, DNR, and tribal representatives, opposed allowing any exception, including those allowed under the proposed language. These commenters stated that no farmed Cervidae movement of any kind should be allowed into or out of a farmed Cervidae management zone; “farmed cervid within a CWD Management Zone are at risk of disease exposure and should not be allowed to move out of the zone alive under any circumstance”; and “Farmed Cervidae that originate from a CWD farmed Cervidae management zone should not be moved to other locations in the state. All of the exceptions increase the risk of spreading the disease until an approved live CWD test is developed.”

There were varying opinions regarding the addition of “terminal hunt facility” which the Board proposed with the intent of allowing farmed Cervidae producers another option for moving animals off of their premises when located in a designated management zone. The majority of committee members, including representatives of the farmed Cervidae industry, were opposed to proposed language that would allow this type of movement, so the language was removed by the Board. Comments submitted after termination of advisory committee meetings on behalf of the Minnesota Deer Farmer’s Association requested that the term be added back into the rules as an option for farmed Cervidae to be moved out of a designated management zone. At the same time, the Minnesota Deer Farmer’s Association also submitted a comment that questioned whether the proposed rules would restrict deer farmers moving “S marker deer” (deer that some research has shown to have genetic resistance to CWD) into their herds and “genetically protect[ing] their herds from CWD”. At the November 13, 2020, advisory committee meeting, Dr. Peter Larsen briefly discussed the topic of cervid genetics and CWD when he took questions following his presentation.

## **Conclusion**

While the Advisory Committee met the goal of working cooperatively with each other and agency staff, they unfortunately did not reach consensus on all topics in the proposed rules. Despite this, the Board learned from their diverse opinions and the areas where consensus was unachievable. The committee provided valuable insight into shaping the rules and assistance to the Board in developing the proposed rules draft. We sincerely thank them for volunteering their time to serve on this committee, their dedication, and for sharing their expertise and advice on the proposed rules.