

STATE OF MINNESOTA

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BOARD OF ANIMAL HEALTH

ADMINISTRATIVE
HEARINGS

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

STATEMENT OF NEED
AND REASONABLENESS

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

I. GENERAL NEED AND AUTHORITY FOR RULES.

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

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

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

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

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

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

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

II. LEGISLATIVE DIRECTIVE

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

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

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

III. PSEUDORABIES ADVISORY COMMITTEE.

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

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

1. The spread of pseudorabies in Minnesota constitutes a serious condition threatening the economic well being and health of Minnesota's swine industry;
2. Pseudorabies will not go away under current regulation and every indication is that the problem will be worse in the future;
3. Vaccination as presently performed has not stopped the spread of pseudorabies in foreign countries;

4. Total eradication of the disease at this time is not feasible or economically practical;
5. Procedures must be adopted to reduce the spread of pseudorabies until such time that total eradication does become feasible.

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

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

IV. FRAMEWORK FOR THE PROPOSED RULE

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

A. Federal Regulation

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

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

1. All swine infected with or exposed to pseudorabies must be quarantined;
 2. A breeding swine moved interstate must be negative to an official pseudorabies test or be from a Qualified Pseudorabies Negative Herd or a Pseudorabies Controlled Vaccinated Herd;
 3. Swine showing clinical evidence of Pseudorabies may not move interstate;
 4. Infected or exposed swine may be moved for slaughter under specified conditions and to quarantined feedlots under certain conditions;
 5. Vaccinated swine may be moved interstate under certain conditions.
- 9 CFR § 85.7(b)(4).

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

B. Current Minnesota Regulation

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

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

2. The quarantine of all known infected herds when diagnosed based upon a clinical or laboratory diagnosis;
3. Movement of quarantined swine only to slaughter accompanied by a shipping permit or to quarantined feedlots until moved to slaughter;
4. Procedures for the release of quarantines;
5. The establishment and control of Qualified Pseudorabies Negative Herds.
6. The establishment of Pseudorabies Controlled Vaccinated Herds.

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

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

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

These minimal regulations were essentially mandated by the U.S. Department of Agriculture's regulations in order to assure that Minnesota swine may move interstate and conversely that swine from other states may enter Minnesota.

The proposed rule restates many of these requirements and is consistent therewith.

C. Regulations of Other States

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

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

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

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

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

A. Definitions.

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

1. "Board": the "Board" is referred to throughout the rule.
2. "Breeding herd": This term is necessary to identify the group of swine which would be subject to one quarantine. For the control of the disease, it is important to be able to identify swine as composed of groups which do not interchange amongst themselves or which do not have contact with other animals beyond those in a particular herd. A quarantine must encompass all animals having contact with or exposed to each other.
3. "Infected herd" identifies which herds will be subject to quarantine under the rules. The definition encompasses all three types of diagnosis and is consistent with 3 MCAR § 2.061 which requires quarantine in all three instances.
4. "Isolation" this term is necessary so that livestock owners will know what steps must be taken when isolation is required in order to maintain qualified pseudorabies negative herd status under subpart "I" of the rule and to apprise livestock owners of what steps must be taken when livestock are returned from an exhibit to the exhibitor's home herd under subpart "L" of the rule.
5. "Official Pseudorabies Test" defines the tests currently and generally accepted in the industry for the detection of pseudorabies. At the present time, new tests and procedures are being developed and experimented with which may lead to additional tests being approved by the USDA for utilization in disease control. It is anticipated that such tests will be more cost effective in the event that they are approved for use by practicing veterinarians. The Board desires to be able to approve such tests under the existing rule and in the absence of an amendment to the rule. It should be noted that this definition does not open the gate for unbridled discretion on the part of the agency since under current LSB Rule 55, no antigen or other

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

6-11 Remaining Definitions

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

B. Pseudorabies Test Procedures

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

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

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

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

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

C. Disease Reporting

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

D. Infected Herd; Procedures

Section D-1.

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

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

Section D-2.

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

Section D-3.

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

Section D-4.

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

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

Section D-5.

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

E. Release of Quarantine

Section E-1.

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

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

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

Section E-2.

This section deals with the problems caused by vaccination.

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

Section E-3.

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

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

Section E-4.

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

F. Pseudorabies Traced Back to Source Herd

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

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

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

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

G. Intrastate Movement of Breeding Swine

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

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

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

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

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

H. Intrastate Movement of Feeder Pigs

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

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

I. Qualified Pseudorabies Negative Herd Procedures

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

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

J. Pseudorabies Controlled Vaccinated Herd Procedures

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

Section J-1.

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

Section J-2.

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

Section J-3.

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

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

Section J-4.

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

Section J-5.

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

Section J-6.

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

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

K. Community Notification of Pseudorabies Infection in a Neighborhood

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

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

L. Exhibition of Swine

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

M. Transportation of Pseudorabies Infected or Exposed Animals

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

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

V. IMPACT ON SMALL BUSINESS

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

1. The owner of a quarantine herd must furnish certain information, including lists of purchases and sales for the preceding year.
2. All breeding swine moved intrastate must be accompanied by a health certificate or test chart provided by the seller,

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

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

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

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

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

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

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

Dated: _____

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Room
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St. Paul, MN 55107

unless their origin is a qualified pseudorabies negative herd;

3. All feeder pigs are restricted movement feeder pigs subject to the restrictions of part "G"; and
4. Health certificates must accompany all swine exhibited or sold at exhibitions.

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

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

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

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

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

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