

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA BOARD OF ANIMAL HEALTH

In the Matter of the Proposed
Amendments to Rules Governing
Pseudorabies, Minnesota Rules,
Importation of Swine 1700.2590-
1700.3010, Pseudorabies Control
1705.2400-1705.2530, Pseudorabies
Requirements for Exhibition 1715.0105,
Sale of Swine at Markets and Other Sales
1715.0550, Sale of Swine at State-Federal
Markets 1715.0705, Sale of Swine at
Public Stockyards 1715.1450.

**REPORT OF THE
ADMINISTRATIVE LAW JUDGE**

The above-entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick on September 18, 1998, at 9:30 a.m. in the St. James Room, Best Western Hotel and Conference Center, 111 Range Street, North Mankato, Minnesota.

This Report is part of a rulemaking proceeding held pursuant to Minn. Stat. §§ 14.131 to 14.20, to hear public comment, to determine whether the Minnesota Board of Animal Health ("Board") has fulfilled all relevant substantive and procedural requirements of law applicable to the adoption of the rules, whether the proposed rules are needed and reasonable and whether or not modifications to the rules proposed by the Board after initial publication are impermissible substantial changes.

Paul A. Strandberg, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, Minnesota 55101, appeared on behalf of the Board. The Board's hearing panel consisted Dr. Paul L. Anderson, Swine Disease Division Director; Dr. John C. Landman, Pseudorabies Division Director; and Dr. Thomas J. Hagerty, Executive Secretary of the Board of Animal Health.

Approximately nine persons attended the hearing. Six persons signed the hearing register. The hearing continued until all interested persons, groups or associations had an opportunity to be heard concerning the adoption of these rules.

The record remained open for the submission of written comments for five working days following the date of the hearing, to September 21, 1998. Pursuant to Minn. Stat. § 14.15, subd. 1 (1996), five working days were allowed for the filing of responsive comments. At the close of business on September 28, 1998, the rulemaking

record closed for all purposes. The Administrative Law Judge received two written comments from interested persons during the comment period. The Board submitted written comment responding to matters discussed at the hearings. No changes were proposed to the rules.

This Report must be available for review to all interested persons upon request for at least five working days before the Board takes any further action on the proposed amendments. The Board may then adopt a final rule, or modify or withdraw its proposed amendments.

When the Board files the rule with the Secretary of State, it shall give notice on the day of filing to all persons who requested that they be informed of the filing.

Based upon all the testimony, exhibits, and written comments, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural Requirements

1. The Board filed the following documents with the Administrative Law Judge at the hearing:

- a) The Board's Certificate of Authorizing Resolution (Exhibit 1);
- b) the Board's Request for Comments as published at 22 *State Register* 1260 and as mailed to persons likely to be interested in the proposed rule (Exhibit 2);
- c) the certification that the Request for Comments was mailed to the Board's mailing list and other identified persons or groups (Exhibit 3);
- d) the Board's notice to the Commissioner of Agriculture that the proposed rules will affect farming operations (Exhibit 4);
- e) a copy of the proposed rules certified by the Revisor of Statutes (Exhibits 5a and 5b);
- f) the Statement of Need and Reasonableness (SONAR) (Exhibit 6);
- g) copies of the transmittal letter and certificate of mailing the SONAR to the Legislative Reference Library (Exhibit 7);
- h) the dual Notice of Hearing as mailed and published at 22 *State Register* 2003 (Exhibit 8);

- i) the certification of the Department's mailing list as accurate and correct, a copy of the list, certification of mailing to that list, and certification of mailing according to the Board's Notice Plan (Exhibit 9);
- j) the responses received by the Board to the published Notice of Hearing (Exhibit 10);
- k) the Notice of Hearing published at 23 *State Register* 230, a copy of the notice mailed to those persons who requested a hearing in this matter and were identified in the Notice Plan (Exhibit 11);
- l) the Board's certifications of publication and mailing the Notice of Hearing (Exhibit 12);
- m) a General Statement for Public Hearing, explaining the reasons for the modifications to the proposed rule (Exhibit 13); and
- n) a publication of the U.S. Department of Agriculture (USDA) entitled *Pseudorabies Eradication State-Federal-Industry Program Standards Effective January 1, 1998 (Program Standards)*(Exhibit 14).

2. On June 30, 1998, the Board requested that the Chief Administrative Law Judge schedule a hearing for the proposed amendments to the rules governing pseudorabies. On July 8, 1998, the Board requested that the location of the hearing be changed from St. Paul to North Mankato. The change in location was needed to comply with Minn. Stat. § 14.14, subd. 1b, which requires rules affecting farming operations adopted with a public hearing to hold at least one hearing in an agricultural area of the state.

3. On January 27, 1998, the Board mailed the Request for Comments to all persons and associations who had registered their names with the Department for the purpose of receiving such notice and groups the Board believed would be interested in the proposed rules.¹

4. On May 4, 1998, the Board mailed the Dual Notice of Hearing to all persons and associations who had registered their names with the Department for the purpose of receiving such notice.²

5. On May 18, 1998, the Board published a copy of the proposed rules and the Dual Notice of Hearing at 22 *State Register* 2280.³

6. The Board received requests for hearing from more than twenty-five persons, thereby triggering the requirement that a hearing be held.⁴ On July 8, 1998, the Board

¹ Exhibit 3.
² Exhibit 7.
³ Exhibit 8.
⁴ Exhibit 10.

mailed the Notice of Hearing to all persons and associations who had registered their names with the Department for the purpose of receiving such notice, the list of persons and groups thought to be interested, and to all persons who requested a hearing.⁵

7. The Board published a Notice of Hearing on July 27, 1998, at 23 *State Register* 230.⁶

Statutory Authority.

8. In its Dual Notice of Hearing and Notice of Hearing, the Board cites Minn. Stat. §§ 35.03 and 35.225 as its statutory authority to adopt the proposed rules.⁷ Minn. Stat. § 35.03 states:

35.03 Powers, duties, and reports.

The board shall protect the health of Minnesota domestic animals and carry out the provisions of this chapter. The board shall make rules necessary to protect the health of domestic animals. The board shall meet at least quarterly. Officers must be elected each April. On or before November 1 of each year the board shall publish an annual report.

9. The citation to Minn. Stat. § 35.225 is in error. There is no such statute. In its SONAR⁸ the Board cites Minn. Stat. § 35.255, which states:

35.255 Pseudorabies program rules.

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.

10. The Board is expressly authorized to implement a pseudorabies control program and expressly authorized to adopt rules to carry out the Board's duties. The Administrative Law Judge concludes that the Board has the statutory authority to promulgate these rules.

Nature of the Proposed Rules.

11. Pseudorabies is a highly contagious disease that affects swine and other animals. The Board has previously adopted rules to participate in the national effort to eradicate this disease. In this rulemaking, the Board seeks to modify its existing

⁵ Exhibit 12.

⁶ Exhibit 11.

⁷ Exhibits 8 and 11.

⁸ Exhibit 6, at 2.

rules to address changes in the sampling protocols, address movement of swine within multiple site production systems, and allow movement of swine between areas that are pseudorabies-free but under surveillance (Stage IV) and areas that are declared pseudorabies-free (Stage V).⁹ The Minnesota program is part of a national program that began in 1986. The national program, developed by the USDA, constitutes a minimum standard to be applied to any State choosing to participate.¹⁰

Cost and Alternative Assessments in SONAR.

12. Minn. Stat. § 14.131 provides that state agencies proposing rules must identify classes of persons affected by the rule, including those incurring costs and those reaping benefits; the probable effect upon state agencies and state revenues; whether less costly or less intrusive means exist for achieving the rule's goals; what alternatives were considered and the reasons why any such alternatives were not chosen; the costs that will be incurred complying with the rule; and differences between the proposed rules and existing federal regulations.

13. The Board concluded that the rules will result in no additional cost to the Board or any other agency.¹¹ The persons or groups that the Board concludes will be most affected by the rules are swine producers, but they are likely to have their costs reduced from the level incurred under the existing rules.¹²

14. The Board's analysis did not indicate that any group would be adversely affected by the proposed rules. The Board perceived the rule as providing the same level of public protection at lower cost.¹³ The Board indicated that there were no less costly or less intrusive alternatives to the proposed rule.¹⁴ Alternatives that were discussed at the hearing (such as more extensive testing) were both more costly and intrusive than the rule proposed by the Board.

15. Any agency adopting rules must assess all differences between the proposed rule and existing federal regulations. The Board has indicated that there are no requirements in the rules in conflict with Federal standards.¹⁵

Effect on Farming Operations.

16. Minn. Stat. § 14.111 (1996), imposes an additional notice requirement when rules are proposed that affect farming operations. The proposed rules will affect

⁹ Exhibit 6, at 5.

¹⁰ Exhibit 14, at 1.

¹¹ Exhibit 6, at 3.

¹² Exhibit 6, at 2-3.

¹³ Exhibit 6, at 5.

¹⁴ Exhibit 6, at 3.

¹⁵ Exhibit 6, at 3.

farming operations and the Board provided the additional notice required under the statute.¹⁶

Standards for Analyzing the Proposed Rule.

17. In a rulemaking proceeding, an administrative law judge must determine whether the agency has established the need for and reasonableness of the proposed rule by an affirmative presentation of facts.¹⁷ An agency need not always support a rule with adjudicative or trial-type facts. It may rely on what are called “legislative facts” — that is, general facts concerning questions of law, policy, and discretion. The agency may also rely on interpretations of statutes and on stated policy preferences.¹⁸ Here, the Board prepared a SONAR setting out a number of facts, statutory interpretations, and policy preferences to support the proposed rules. It also supplemented information in the SONAR with information presented both at the hearing and in written comments and responses placed in the record after the hearing.

18. Inquiry into whether a rule is reasonable focuses on whether the rulemaking record establishes that it has a rational basis, as opposed to being arbitrary. Minnesota law equates an unreasonable rule with an arbitrary rule.¹⁹ Agency action is arbitrary or unreasonable when it takes place without considering surrounding facts and circumstances or disregards them.²⁰ On the other hand, a rule is generally considered reasonable if it is rationally related to the end the governing statute seeks to achieve.²¹

19. The Minnesota Supreme Court has defined an agency's burden in adopting rules as having to "explain on what evidence it is relying and how the evidence connects rationally with the agency's choice of action to be taken."²² An agency is entitled to make choices between different approaches as long as its choice is rational. Generally, it is not proper for an administrative law judge to determine which policy alternative might present the "best" approach, since making a judgment like that invades the policy-making discretion of the agency. Rather, the question for an administrative law judge is whether the agency's choice is one that a rational person could have made.²³

¹⁶ Exhibit 4.

¹⁷ Minn. Stat. § 14.14, subd. 2, and Minn. Rule 1400.2100.

¹⁸ Manufactured Housing Institute v. Pettersen, 347 N.W.2d 238, 244 (Minn. 1984); Mammenga v. Department of Human Services, 442 N.W.2d 786 (Minn. 1989).

¹⁹ In re Hanson, 275 N.W.2d 790 (Minn. 1978); Hurley v. Chaffee, 231 Minn. 362, 367, 43 N.W.2d 281, 284 (1950).

²⁰ Greenhill v. Bailey, 519 F.2d 5, 10 (8th Cir. 1975).

²¹ Mammenga v. Department of Human Services, 442 N.W.2d 786, 789-90 (Minn. 1989); Broen Memorial Home v. Minnesota Department of Human Services, 364 N.W.2d 436, 444 (Minn. Ct. App. 1985).

²² Manufactured Housing Institute, *supra*, 347 N.W.2d at 244.

²³ Federal Security Administrator v. Quaker Oats Company, 318 U.S. 2, 233 (1943).

20. In addition to ascertaining whether proposed rules are necessary and reasonable, an administrative law judge must make other decisions — namely, whether the agency complied with the rule adoption procedure; whether the rule grants undue discretion to the agency; whether the agency has statutory authority to adopt the rule; whether the rule is unconstitutional or illegal; whether the rule constitutes an undue delegation of authority to another; and whether the proposed language is not a rule.²⁴ The SONAR contains information establishing the need for and reasonableness of most of the proposed rules, and the Board’s compliance with laws governing the rulemaking process is apparent in most cases. Moreover, a majority of provisions drew no unfavorable public comment. For these reasons, the Administrative Law Judge will not discuss every part and subpart of the proposed rules in this report. Rather, he finds that the Board has demonstrated the need for and reasonableness of all rule provisions not specifically discussed in this report. He also finds that all provisions not specifically discussed are authorized by statute and that there are no other problems that would prevent their adoption.

Standard for Analyzing Proposed Modifications

21. When an agency makes changes to proposed rules after it publishes them in the *State Register*, an administrative law judge must determine if the new language is substantially different from what the agency originally proposed.²⁵ The legislature has established standards for determining if the new language is substantially different.²⁶

Proposed Rule 1700.2950-1700.3010 - Importation of Swine.

22. Rule 1700.2950 governs importation of swine semen and embryos. The existing rule provides for the importation of this material after it tests negative for pseudorabies. The material is exempt from testing if it comes from members of a pseudorabies-negative herd. The proposed language expands the exempt category to swine semen and embryos that originate from a herd within a Stage IV or V state or area. Stage IV areas are those in which there have been no pseudorabies outbreaks for at least two years, surveillance testing has been conducted, and restrictions have been in place on the importation of swine.²⁷ Stage V areas have been certified pseudorabies-free.²⁸ The newly proposed language removes the limits on movement of swine semen and embryos from Stage IV and V areas, since those areas are not sources of pseudorabies. The amendment to Minn. Rule 1700.2950 is needed and reasonable.

²⁴ Minn. Rule 1400.2100.

²⁵ Minn. Stat. § 14.15, subd. 3.

²⁶ Minn. Stat. § 14.05, subd. 2.

²⁷ Exhibit 14, at 19-20.

²⁸ Exhibit 14, at 21-22.

23. Rule 1700.3010 restricts the movement of imported feeding swine and their movement from where they are to be fed. Other than movement to slaughter, the existing language allows for movement only if all pigs test negative to pseudorabies within 30 days prior to movement. The new language proposed by the Board provides an alternative to testing all of the pigs if the feeder pigs are moved for further feeding. The swine may be moved for further feeding if the herd tests negative within 30 days prior to movement using an official random sample test (95/10). The 95/10 test is designed to ensure that enough pigs are being tested to detect with 95% probability any incidence of infection in a herd in which at least 10% of the swine are infected.²⁹ The other option for moving swine for further feeding is if the herd is in a Stage III, IV, or V county and the swine originated from a Stage III, IV, or V county.

24. Katy Wortel, Julie Janson, and Stephanie Henricksen objected to statistical sampling as a weakening of the testing standards imposed on swine and increasing the likelihood of spreading pseudorabies to previously uninfected herds. The modification to the existing rule allows the swine to be moved for further feeding after successfully conducting the 95/10 test. The rule limits the movement to swine transferred within a single operation. Under this circumstance, the risk of infection is borne by the owner and not shared with other operators. Costs incurred through testing can be substantially reduced with sampling. The 95/10 test is statistically sound, used in the Program Standards, and will have the advantage of requiring fewer pigs to be tested by some owners. The use of statistical sampling (more fully discussed below) is a legitimate means of determining the presence of contagion, particularly since pseudorabies is quickly spread through swine. The new language for part 1700.3010 is needed and reasonable as proposed

25. Paul Sobocinski, Program Organizer for the Land Stewardship Project, objected to the movement of swine from Stage III counties to Stage IV or V counties as increasing the likelihood of pseudorabies exposure in Stage IV and V counties.³⁰ Mr. Sobocinski questioned whether the "changing needs of industry" constituted a showing of need by the Board.

26. Stage III is the mandatory cleanup level. At Stage III, infected premises are identified by testing done throughout the area and all swine within a 1.5 mile radius of such premises are subject to testing.³¹ The prevalence of infected herds found by the testing done throughout the Stage III county cannot exceed one percent.³² The Board noted that the Program Standards allow movement between Stage III, IV, and V areas.³³ The essential restrictions on movement in the Program Standards are that the swine originate from Stage IV or V areas, originate from pseudorabies-free herds, or test negative to the disease.³⁴ Pseudorabies-free herds outside of Stage IV and V

²⁹ Exhibit 14, at 6.

³⁰ Exhibit 16, at 4.

³¹ Exhibit 14, at 16-17.

³² Exhibit 14, at 17.

³³ Board Comment, at 2.

³⁴ Exhibit 14, at 20.

areas necessarily include Stage III areas. The Program Standards recognize that disease transmission is unlikely from these sources. The reduced likelihood of disease transmission is a reasonable basis for allowing the movement of swine between such areas. The rule is reasonable as proposed.

27. Where problems and circumstances differ, the need for rules change as well. The entire pseudorabies eradication program is based on the premise that the same areas will move from being identified as affected (Stage II), to mandatory cleanup (Stage III), and pseudorabies-free (Stages IV and V). Rodney Johnson, Chief Executive Officer of Genetipork USA (a large pork producer), indicated that the incidences of pseudorabies are significantly reduced due to the eradication program. Mr. Johnson also explained how the monitoring methods themselves can act to expose swine to the disease. The changes to the industry and reduced numbers of contaminated swine are appropriate considerations to adjust the Board's rules governing this program. The cost and alternatives assessment required of agencies in rulemaking³⁵ indicates a legislative intent that unnecessary costs not be imposed on the regulated public, where possible. The Board has considered the changes in the swine industry in proposing these rules and such changes do support a finding of need for the rules.

Proposed Rule 1705.2400-1705.2530 - Pseudorabies Control

28. Rule 1705.2400, subp. 5 changes the definition of isolation to remove the requirement that swine are separated from other animals by lot, road or confinement building. However, subp. 5(1) states that isolation means that the swine have no physical contact with other domestic animals. The Board states that this change is for housekeeping purposes only.³⁶ It does not substantially change the isolation requirements. Proposed rule 1705.2400, subp. 5 is needed and reasonable.

29. Rule 1705.2400, subp. 7c eliminates language that was redundant. Previous serologic testing could not differentiate between vaccinated and infected animals. New tests have this capability. The proposed changes in the rule reflect this change in testing technology and makes clear that a "qualified negative gene-altered vaccinated herd" is one in which the herd has been tested and is free of pseudorabies and has subsequently been vaccinated. Rule 1705.2400, subp. 7c is needed and reasonable as proposed.

30. Rule 1705.2434, subp.1(E) governs the disposal of dead swine. The new language removes the existing list of disposal methods (burying, burning, or rendering) and instead cites chapter 1719. Ms. Jansen, Mr. Sobocinski, and Ms. Henricksen objected to the new language as allowing for homogenization and extrusion as disposal methods.³⁷ The proposed language does not specify any method of disposal. The cited rule, chapter 1719, does not specifically allow homogenization or extrusion. Chapter 1719 provides for burying, burning, rendering, composting, and other methods

³⁵ Minn. Stat. § 14.131

³⁶ SONAR at 6.

³⁷ See, Exhibit 16, at 5.

that the Board may specifically approve by permit.³⁸ Prompt disposal of carcasses is necessary to prevent wildlife or other domestic animals from acting as means of transmitting the disease. There is no defect in citing the existing rule on disposal. One of the asserted problems arises with extrusion of chickens.³⁹ Issues arising from rules governing other animal species are outside the scope of this rulemaking and any changes on that basis would be substantially different from the rules as published in the *State Register*. Rule 1705.2434, subp. 1(E) is needed and reasonable as proposed.

31. Proposed rule 1705.2440, subp. 1(C) sets the requirements for release from quarantine applicable to all swine in all areas, rather than only during Stage I or II areas. Minnesota has no Stage I premises.⁴⁰ There are six counties in Stage II; the remaining counties are in Stage III.⁴¹ The proposed rule renders the testing requirements for release of quarantine applicable to a larger part of the state. The proposed language of Rule 1705.2440, subp. 1(C) also changes the official random sample test from a 95/10 to a 95/5. The 95/5 test detects with ninety-five percent accuracy whether a herd is infected where five percent of the herd is infected.⁴² By contrast, the 95/10 test has the same probability of accuracy only when twice the percentage of swine is infected. The proposed language is consistent with the current language that requires a 95/5 test in all Stage III releases. Since the Board is making the 95/5 test a requirement for all releases, the express language regarding Stage III releases is deleted as redundant. This change renders the rule more readable and does not lessen the degree of protection against the spread of pseudorabies. Rule 1705.2440 is needed and reasonable as proposed.

32. Rule 1705.2470, subp. 6 addresses the declassification of restricted-movement feeder pigs. The new language allows for testing by use of the 95/5 test. This test will accomplish the goal of determining when the herd is pseudorabies negative as effectively as the current testing requirement. Rule 1705.2470, subp. 6 is needed and reasonable as proposed.

33. Rule 1705.2470, subp. 7 states the requirements to move feeder pigs that have been resold within the state. Under the proposed language, either the pigs must be tested by 95/10 test before movement or both the feeder pigs and the herd of the buyer must be in a Stage III, Stage IV or Stage V area. Mr. Sobocinski expressed concern that allowing movement from Stage III into Stage IV or V increased the risk of spreading the disease. The 95/10 test is reliable and capable of accomplishing the goal of pseudorabies detection. This rule on resale of feeder pigs is consistent with existing rules on the sale of feeder pigs.⁴³ Thus, the rule does not impose any greater risk on herds than is already present under current Minnesota rules. Rule 1705.2470, subp. 7 is needed and reasonable as proposed.

³⁸ See, Minn. R. 1719.4000, subp. 1; 1719.0100, subp. 6b.

³⁹ Exhibit 17.

⁴⁰ General Statement at 3.

⁴¹ General Statement at 3; Exhibit 16.

⁴² See, General Statement at 4.

⁴³ See, Minn. R. 1705.2470, subp. 1(D).

34. Rule 1705.2476, subp. 8 proposes changes to testing requirements for quarantined herds. Under the proposed language, the owner of the herd has a shorter time in which to commit to a herd clean up plan (30 days as opposed to 90 days). The herd clean-up plan must be updated within shorter period of time (every 6 months as opposed to every 12 months). A more stringent test must be used to determine the pseudorabies contamination within the quarantined herd (95/5 versus 95/10). The more stringent requirements for quarantined herds are consistent with a goal of eradicating pseudorabies by the year 2000. As Stephanie Henricksen pointed out, 2000 is the year the federal funding for pseudorabies eradication is scheduled to expire. Rule 1705.2476, subp. 8, is needed and reasonable.

35. Rule 1705.2480, subp. 3 describes the procedures by which an owner must maintain the status of a qualified pseudorabies-negative herd. Under the current version of the rule, the status of a herd on a monthly testing schedule was maintained by testing 7% of that herd. The proposed language adds the option of using the 95/5 test.

36. Some commentators expressed concern that the 95/5 test did not detect pseudorabies as well as the existing sampling method (which takes a straight 7% sample of the entire herd). The commentators believed the effect of the rule was to relax requirements for larger producers who would not be required to test as many animals under the new 95/5 test. Jeff Zick, Chief Operating Officer of Genetipork, indicated that the time spent in testing under the existing rule could be better spent ensuring that herds are not exposed to the disease from other sources. Scott Dee, DVM, with the Swine Health Center, cited his experience working with Genetipork to support the scientific validity of the random sample testing process.

37. The Board expressed the view that the statistical support for the effectiveness of the rule was valid and that, for larger herds, the 7% sample test requires that more swine be tested without achieving greater reliability than the 95/5 test. This test is allowed in the Program Standards.⁴⁴ The Board has demonstrated that rule 1705.2480, subp. 3 is needed and reasonable as proposed.

Proposed Rule 1715.0105 - Pseudorabies Requirements for Exhibition

38. The proposed rule prohibits the exhibition of any swine that comes from a pseudorabies-quarantined herd, and allows exhibition of swine which come from Stage IV or V counties or areas without testing. Stage IV and V county areas are by definition pseudorabies-negative. The rule ensures that only likely sources of pseudorabies contamination are restricted from exhibitions. Rule 1715.0105 is needed and reasonable as proposed.

Proposed Rule 1715.0550 Sale of Swine at Markets and Other Sales **Proposed Rule 1715.0705 - Sale of Swine at State-Federal Markets**

⁴⁴ Exhibit 14, at 6 and 23.

Proposed Rule 1715.1450 - Sale of Swine at Public Stockyards

39. The current rule requires that breeding swine to be sold must either test negative for pseudorabies or originate from a pseudorabies negative herd or vaccinated herd. Proposed rule 1715.0550 allows breeding swine to fulfill the pseudorabies negative status requirement by originating from a Stage IV or V area. This is consistent with the goal of eradicating pseudorabies, since swine from those areas are unlikely to be able to spread the disease. The same standards are proposed for the rules governing sales in State-Federal markets (part 1715.0705) and public stockyards (part 1715.1450). No commentators indicated that these rule provisions were in any way inconsistent with controlling pseudorabies. Parts 1715.0550, 1715.0705, and 1715.1450 are needed and reasonable as proposed.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Minnesota Board of Animal Health ("Board") gave proper notice of this rulemaking hearing.

2. The Board has substantially fulfilled the procedural requirements of Minn. Stat. §§ 14.14, subds. 1, 1a and 14.14, subd. 2, and all other procedural requirements of law or rule so as to allow it to adopt the proposed rules.

3. The Board has demonstrated its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 14.15, subd. 3 and 14.50 (i) and (ii). The misattribution of the Board's statutory authority in the Notice of Hearing is a harmless error.

4. The Board has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 2 and 14.50 (iii).

5. The additions and amendments to the proposed rules which were suggested by the Board after publication of the proposed rules in the *State Register* do not result in rules which are substantially different from the proposed rules as published in the *State Register* within the meaning of Minn. Stat. § 14.15, subd. 3, and Minn. Rule 1400.1000, subp. 1 and 1400.1100.

6. Any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

7. A Finding or Conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Board from further modification of the proposed rules based upon an examination of the public

comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in the record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the proposed rules be adopted.

Dated this 26th day of October, 1998.

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Tape Recorded; No Transcript.