MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

DESCRIPTION

1347

2003 HOUSE AGRICULTURE

HB 1347

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1347

House Agriculture Committee

❑ Conference Committee

Hearing Date 1--31--03

Tape Number	Side A	Side B	Meter #
ONE	A		0.0 TO END
ONE		B	0.0 TO 16.0
Committee Clerk Signature	Edward D Ellefson		

Minutes:

CHAIRMAN NICHOLAS: Committee Members, we will open on HB 1347. Who would Like to start?

REPRESENTATIVE BOEHNING: I represent both Fargo and West Fargo. I rise in support of HB 1347. {{{PLEASE READ BOEHNING TESTIMONY}}} Also please see Amendment.

CHAIRMAN NICHOLAS: Stated he will hold bill until the amendments are ready.

REPRESENTATIVE ----------? I don't have any written testimony to give you. As a cat and dog owner. If I go to Minneapolis I sure don't want go and get a certificate to bring him home. I urge the committee ----------?

REPRESENTATIVE FROELICH: If I am reading this law right you would never be required to have a health permit for dogs or cats, and the amendments read for horses with some

variations. What protection is North Dakota going to have with animals brought in from other states that may have a disease?

REPRESENTATIVE .....? I understand what you are saying. The thing is we will become an island. On this issue I receive many E-mail's on this Bill. Support this Bill.

CHAIRMAN NICHOLAS: Any other questions. Any other legislators wanting to testify. At this time I am going to take testimony from a young man that is here this morning. John Dodson.

JOHN DODSON: Chairman Nicholas and Committee Members, my name is John Dodson. We have lots of pets. We have two dogs one cat and several other pets. We do not want to have to get a permit to take our pets on a trip. I urge a do pass on this bill.

CHAIRMAN NICHOLAS: Thank you John. Very good testimony. Ok, we will take additional testimony in support of this bill.

DUANE BOHNSACK: Stonegate pet Store. North Dakota Pet Retail Association. {{{PLEASE SEE TESTIMONY }}} I hope that HB 1347 with amendments will receive unanimous do pass from this committee.

CHAIRMAN NICHOLAS : Sir, one question I have. Dose any other state have anything comparable to rule that is proposed to be implemented by the BOAH and State Veterinarian? To your knowledge.

DUANE BOHNSACK: There are states that have different rules. Some have the blanket certificate. Minnesota's bird law states that you can bring birds in and out of Minnesota unless there is a quarantine. That rule fits the product. Blanket legislation like this is not going to solve where an animal that comes in has a disease.

CHAIRMAN NICHOLAS: Thank you sir for your testimony. Anyone else wishing to appear in support of this bill.

DR ROD GIGSTAD: I am from Grand Forks. I am a veterinarian at Petcetera Animal Clinic in Grand Forks. {{{PLEASE SEE PRINTED TESTIMONY}}

REP. FROELICH : What dose Canada require?

DR ROD GIGSTAD: You need a certificate to go up there. We have clients that go to Canada weekly. People that go to Canada say that coming back U.S. Authorities on way back usually ask for the paper. You don't need a health permit to go to Canada.

REPRESENTATIVE: KREIDT: Do you know who is on the Board of Animal Health?

DR ROD GIGSTAD: No I don't.

REP. WRANGHAM : In Minnesota is part of there state law or is governed by administrative rules?

DR ROD GIGSTAD. Did not know. There are Web sights that you can find out about other states. Florida for example.

CHAIRMAN NICHOLAS : Who would like to testify in favor of bill?

JACK SUND: House of Sund Pet Center, Bismarck ND. [[PLEASE READ TESTIMONY]] I urge a Do Pass on HB1347.

REP. MUELLER: We do have an issue big issue. What would be your answer to a out break of some disease.

JACK SUND: If outbreak occurs. The USDA are the first people to get involved. I know that they coordinate there efforts with state veterinarians office. I believe right now that there is emergency control in that area and contingency plans in the event of any livestock outbreak.

CHAIRMAN NICHOLAS: Any further support?

GARY PEARSON: DVD Jamestown, ND {{{PLEASE SEE PRINTED TESTIMONY}}

Stated regulation without representation

REPRESENTATIVE FROELICH: What you are proposing, because there is no dog and cat members on that board of animal health that they not be regulated in anyway.

GARY PEARSON: No I am not. I am testifying in favor of HB 1347 which exempts dogs and cats from implication from health certificate requirements. It dose not preclude emergency orders for specific situations. In fact the bill specifically requires vaccination for dogs and cats for rabies.

REP. FROELICH: What is the makeup of the nontraditional livestock board.

GARY PEARSON: It is an advisory committee to the board of animal health. It has no power other then advisory. It is basically composed of half representatives nontraditional livestock keepers and half government officials.

REPRESENTATIVE MUELLER: The advisory board that you just mentioned. Were they in any way of the rule making that did come from the BOAH'

GARY PEARSON: They were part of the process, yes. The non official advisory committee chaired by the Deputy State Vetinarion.

REPRESENTATIVE POLLERT: Is there not a Bill in the Senate. Dealing with putting a Person from your groupof people on the board of animal health? Has the Bill been heard? Can you give me a progress report?

GARY PEARSON: Yes, Senate Bill _____? I have been told they voted a do pass on the Bill. I don't who the representative will be going on that board.

CHAIRMAN NICHOLAS: How much more support on the Bill.

LAURN KITTELSON: I am a cow calf producer from south of Jamestown. I support this Bill I have two sons in the military. My sons serve this country. When my sons come back here with there pets, there are subject to that. I think our military deserves a little more respect then that from the Board of Animal Health. I support this bill.

CHAIRMAN NICHOLAS: We hope your sons return safely. We will take those in opposition to this bill.

LARRY SCHULER: Chairman Nicholas and Committee members, my name is Larry Schuler. I am the state veterinarian and executive officer of the State Board of Animal Health I am here to testify in opposition to HB 1347 which relates to importation permits for dogs and cats. {{{PLEASE SEE PRINTED TESTIMONY}}} I urge a DO NOT PASS on HB 1347

CHAIRMAN NICHOLAS: How come before this bill, why couldn't you have gotten this resolved some time ago. When do you propose to get the proper role put in place. To take care of this problem?

;ARRY SCHULLER: There was an error in the drafting and I have to take responsibility for that We need to go through the rule making process. The rule making process will go on until February fourteenth. We will look at those comments. I would expect action from the board when they meet the second Tuesday of March.

CHAIRMAN NICHOLAS: We need to keep this Bill alive until the second Wednesday of March.

LARRY SCHULLER: I would hope not.

REP. WRANGHAM : You state that the administrative rules has authority to not approve the final bill. My understanding is that the Administrative Rules Committee can only not approve a rule if procedural thoughts process has not been followed, that they actually don't have the authority to not approve a rule just on the merit of the rule?

LARRY SCHULLER: Actually the administrative rule has the authority to reject a rule based on ----------? If we have not gone through the proper procedures. There are other reasons that the Administrative Rules Committee can reject and that could possibly fall under that category.

REPRESENTATIVE POLLERT: Senate Bill 2196 is proposing to put a member on. What is your position on that.

LARRY SCHULLER: Actually the board has taken a neutral stance on that.

REP. MUELLER : Can you give me your vision the rule that this advisory group of nontraditional live stock. That advisory group that deals with what have they been doing? What is involvement with board of animal health?

LARRY SCHULLER: The nontraditional livestock advisory council was set up by the board of animal health to advise them on issues that they were not prepared for. The way it has been set up is Dr Keller is the Chairman of that committee. The committee reviews issues that we are dealing with. They provide input to the board of animal health and then the board deals with the issues based on the input from the advisory council and also with regards to the impact on other industries.

REP. MUELLER : What did they tell you about this one? The rule that was made regarding the importation permits?

LARRY SCHULLER: There always has been requirements on nontraditional livestock. The change when it was expanded to all species dogs and cats, there are permanent requirements on swine, sheep, cattle etc. The changes have been permit requirements on horses and dogs and cats. So it was not placed before the advisory council.

REP. MUELLER With the dogs and cats issue. You make comment in your testimony that you would be responsive to the wishes of the people. I realize the rule making process and the review period is not over. Can you give us a sense of where you see that going, What do you see happening with that particular set of rules.

LARRY SCHULLER: I can't really say exactly say what the board of health is going to do. It is there decision. There are several possibilities. One would be the withdrawal and revert back to what we we had prior to the rules going into effect which would take permit requirement away from the horse, dogs and cats. Another alternative would be to effect only animals In the state for more then a month. Those are all thing we will have to sort out. I can't say what we will do.

REP. FROELICH ; How man board members make up the nontraditional livestock. Who are they and how often do they meat.

LARRY SCHULLER: The nontraditional livestock advisory council meets two week before The board meeting so they have four meetings a year. On the advisory board there is a Representative from the Pet stores, Fur and feather, deer industry, live fur trader, birds, game and fish health department. USDA Dr. Keller is the chair.

REP. POLLERT: Can you expand a little on bio-terroism. How will this bill relate?

LARRY SCHULLER: I guess it is a reflection of the world we live in right now. Bio-terroism is a real possibility. Our office has been working on plans to respond to not only bio-terroism but disease introduction or an emerging a disease. This has been a high priority for this office. We work closely with the health department to deal with disease.

REP BOEHNING: Dr. Schuller, you say underneath this Bill that we are going to tie your hands you can't enforce contagious disease. The way I read Section 36-01-12 the powers of board may take such steps to control and sur press the disease. Under that rule would not One should be able to take care of a needed problem This bill would not interfere with that.

LARRY SCHULLER: When you have a bill that says tho shall not require those certificates we shall not require those certificates.

REP. BOEHNING: In an emergency situation, don't you have powers to go out and quarantine

LARRY SCHULLER: To go through an emergency situation you have to get a declaration of emergency by the Governor. It dose not allow us to act based on threats.
We try to practice preventive medicine.

CHAIRMAN NICHOLAS: Who else to testify.

NATHAN BOEHM: Mandan ND I am in opposition to this Bill. I am on board. We can't move on out breaks.

CHAIRMAN NICHOLAS: Neutral testimony.

CARROL TWO EAGLE: I don't want to see boards hands tied.

NANCY KOPP: I represent the North Dakota veterinary Medical Association.

I have two people with me this morning that will describe our position which is neutral.

On HB 1347. I'd like to introduce Tom Betterhauser and Jerry Buerotz.

JERRY B. I have complete confidence in there office in protecting against these contagious diseases but I by reading this I guess what I am looking at is I do not want there ability to be hampered. If there is an outbreak some where , another state, we should require To the stop of the flow from animals where there is infections outbreaks. Basically I am in favor of bill

TOM BETTERHAUSER: I am a small animal and large animal vet here in Bismarck so I can see both sides. We want to use logic in this situation. I don't think that we should tie the board of animal health in any way and I respect there position. I will go along with there decision. WE WILL CLOSE ON HB 1347.

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1347**

House Agriculture Committee

☐ Conference Committee

Hearing Date February 13, 2003

Tape Number	Side A	Side B	Meter #
1	X		0.1
Committee Clerk Signature			

Minutes:

REP. GENE NICHOLAS, CHAIRMAN Called the hearing to order.

DR. SCHULLER, STATE BOARD OF ANIMAL HEALTH, Submitted a draft of the administrative rules and proposed amendments. See attached copies.

REP. WRANGHAM Related to Page 6, stated he was confused by the language, referred to the day's an animal is in the state.

DR. SCHULLER Stated if the animal is imported and is here for more than thirty days, it would require a health certificate, if it is here just for a week's hunting, there is no certificate required. It is based on the amount of time the animal is in the state.

REP. WRANGHAM If I have a residence in Bismarck, or North Dakota, and I were to get an animal from a foreign country, England, and brought it in, after thirty days, I would have to get a certificate?

DR. SCHULLER That is not actually what is meant. It is meant that if the animal is being tended and was staying for more than thirty days, then a certificate is required before it comes into the state.

REP. BOEHNING In the boarding areas, when the dogs and cats come across for their rabies shots, Dr. Schuller would take a look at that area, for that three month period in there, otherwise he has done a good job at this and I commend him.

COMMITTEE ACTION

REP. KELSCH Made a motion for a **DO NOT PASS**

REP. FROELICH Second the motion. **MOTION CARRIED**

12 YES 0 NO 1 ABSENT

REP. UGLEM Was given the floor assignment.

HB 1347

Date:
Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House AGRICULTURE COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken DO NOT PASS

Motion Made By KELSCH Seconded By FROELICH

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN NICHOLAS	✓				
VICE CHAIRMAN POLLERT	✓				
REPRESENTATIVE BELTER	✓				
REPRESENTATIVE BOEHNING	✓				
REPRESENTATIVE KELSCH	✓				
REPRESENTATIVE KINGSBURY	✓				
REPRESENTATIVE KREIDT	✓				
REPRESENTATIVE UGLEM	✓				
REPRESENTATIVE WRANGHAM	✓				
REPRESENTATIVE BOE	✓				
REPRESENTATIVE FROELICH	✓				
REPRESENTATIVE MUELLER					
REPRESENTATAIVE ONSTAD	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment UGLEM

REPORT OF STANDING COMMITTEE (410)
February 13, 2003 4:44 p.m.

Module No: HR-28-2658
Carrier: Uglem
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1347: Agriculture Committee (Rep. Nicholas, Chairman) recommends **DO NOT PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1347 was placed on the Eleventh order on the calendar.

2003 TESTIMONY

HB 1347

GARY L. PEARSON, D.V.M.
1305 Business Loop East
Jamestown, North Dakota 58401
Telephone (701) 252-6036

I would rather be exposed to the inconveniences of too much liberty than to those of too small a degree of it. – Thomas Jefferson

Governments are instinctively, automatically and invariably tyrranical -- William B. Ruger

STATEMENT REGARDING THE NORTH DAKOTA BOARD OF ANIMAL HEALTH NOVEMBER 25, 2002 NOTICE OF INTENT TO AMEND ADMINISTRATIVE RULES PERTAINING TO THE IMPORTATION OF ANIMALS INTO NORTH DAKOTA

The North Dakota Board of Animal Health's November 25, 2002, Notice of Intent to Amend Administrative Rules proposes to amend Chapter 48 of the North Dakota Administrative Code to expand the Board's regulatory authority to encompass every animal of every species, from insects to elephants, entering the State of North Dakota at any time for any purpose, and they would empower the State Veterinarian to deny importation permit applications without substantiating evidence and to revoke valid permits issued for animals already legally imported into the State.

The importation permit requirement would include not only traditional domestic livestock, but also pets accompanying tourists, truck drivers and others traveling to and through the State, pets brought across the border from Minnesota for training, grooming or veterinary care in Fargo and Grand Forks, dogs and cats returning with their North Dakota owners after a weekend at the lake in Minnesota, North Dakota hunters returning from South Dakota or Montana with their dogs, and North Dakota citizens who drive to Fargo or Grand Forks with their pets and decide to cross the border to Moorhead or East Grand Forks.

Exemptions from the importation permit requirement are provided for bison, cattle, sheep and swine from adjacent states that originate from a producer's premises and are consigned directly to a licensed livestock auction market or state or federally inspected slaughterhouse. We are told that this exemption is necessary in order to allow normal business operations to proceed. We are not told why it is that the importation permit requirement would impose an unacceptable burden on the normal business operations of the domestic livestock interests who compose the Board of Animal Health, but would not impose a significant burden on the normal business operations of others involved with animals or on the general public.

Because most residents of other states will not be aware of North Dakota's importation permit requirement, their options will be (1) to stop at the border and attempt to locate a veterinarian who will call the office of the State Veterinarian to obtain an importation permit, (2) if it is a weekend or holiday, wait 1-3 days for the office of the State Veterinarian to open, (3) detour around North Dakota and vow never to come back, or most likely (4) say a few choice words about government in general and North Dakota in particular and ignore the importation permit requirement.

In order to enforce its Administrative Rules, the Board of Animal Health would have to increase its staff to station personnel at every road crossing the border to inspect vehicles for animals entering without the required importation permit. Indeed, even the State Veterinarian has admitted that the proposed importation permit requirement "would be impossible to enforce." Of course, failure to enforce the importation permit requirement uniformly would render it virtually useless as a disease control measure, and enforcing it selectively and arbitrarily would render it legally invalid.

The public is told that the importation permit is necessary to provide more timely tracing of animals than can be done through the existing health certificate requirement. However, instead of addressing its current health certificate requirement that doesn't work, the Board is proposing to impose another importation permit requirement that can't work.

It is obvious on its face that the Board's proposed requirement for importation permits for all animals entering North Dakota is unrealistic, unenforceable and of no material value in protecting the livestock industry from the introduction of infectious diseases. Unfortunately, instead of dealing realistically and substantively with the issue, the proposed amendment simply creates a false sense of security that, if anything, makes the livestock industry even more vulnerable to the introduction of diseases. Consequently, rather than protecting the livestock industry from contagious diseases, the proposed importation permit requirement simply creates the bureaucratic illusion—or more accurately, delusion—of "doing something," even if it is of no value and imposes substantial financial and regulatory burdens on the public.

The Board's proposed amendments provide that:

> *"Upon a determination that the import permit applicant is or has been in violation of the requirements of the subject permit or that the applicant has provided inaccurate information with respect to the permit request, the state veterinarian may deny, revoke, or suspend existing permit(s) issued pursuant to these rules."*

The Board does not cite the constitutional basis for revoking valid permits that already have been obtained legally, and the statutes cited as the authority for the amendments do not provide such authority. Nevertheless, the Board is attempting through the proposed amendments to bestow upon itself that power.

The proposed amendments do not specify what actions the Board may take upon revoking or suspending existing permits for animals that already have been legally imported into the State, but the most obvious would be to compel the owner to return the animals to the state of origin or for the Board to confiscate the animals.

The question is not whether or under what circumstances the State Veterinarian would revoke or suspend valid permits for animals already legally imported into the State or whether the Board would actually confiscate those animals. The question is why the Board would presume to bestow such powers on itself in the first place, and why it should be granted such arbitrary and authoritarian powers with the potential for that kind of abuse.

The proposed amendments also provide that:

> *"The state veterinarian may deny an import permit if the state veterinarian* ***believes or suspects*** *than an animal:"*

has not met the Board's importation requirements, may be infected with or exposed to a contagious disease, may originate from an area under quarantine for a contagious disease, or may be a threat to the health of the human or animal population of the State.

While any of these circumstances might constitute a legitimate basis for denying an importation permit, the provision for the State Veterinarian to deny an importation per it simply because he "believes or suspects" such circumstances might exist and without substantive evidence that they really do exist constitutes an abuse of authority and denial of due process.

The Board's Notice of Intent to Amend Administrative Rules asserts unequivocally that:

> *"None of the proposed rules and amendments are expected to have an impact on the regulated community in excess of $50,000.00. The proposed amendments will not limit the use of private real property."*

These statements are made without substantiation or consideration of the actual impacts of the proposed amendments, and they are demonstrably false.

The long distance telephone charges to call the office of the State Veterinarian to request importation permits for the thousands of animals that enter the State each year alone could approach $50,000. Add the loss of business resulting from people deciding not to go through the process required to import animals into North Dakota and the economic impacts become staggering.

Of course, it is ludicrous for the Board to claim that the denial or revocation of permits for animals "will not limit the use of private real property."

Through the proposed amendments, the Board would bestow upon itself broad and virtually unlimited control over literally every animal of every species entering North Dakota, regardless of whether it poses any real or imagined disease risk. In short, the proposed amendments seek to establish the Board of Animal Health as the czar of animal movement into the State.

Is the public to believe that it is the it is the intention to of the Board to confer such broad and unlimited authority on itself so that it may then exercise that unlimited authority in a very limited manner? Is the public to believe that the Board will not exercise its unbounded power in an arbitrary and autocratic manner?

Based upon my own personal experience with the Board's enforcement of its regulations, which is discussed in detail in my written comments, I can state unequivocally and with substantiating documentation that such an assumption would not simply be naïve, but foolhardy and unfounded. It would also be contrary to the evidence.

The Board of Animal Health's attempt to use intimidation to coerce compliance with an interpretation of its Administrative Rules which it knew to be erroneous and without legal foundation failed in this case, but it demonstrates, clearly and unequivocally, the arbitrary and autocratic regulatory philosophy of the Board and the Office of the State Veterinarian.

The amendments proposed by the Board of Animal Health pertaining to the importation of animals into the State of North Dakota raise disturbing questions about the Board's regulatory philosophy and its understanding of the basic principles of administrative law and public policy.

The most positive result of the proposed amendments would be if the public attention and indignation they generate prompt the legislative action required to implement the fundamental and comprehensive reforms in animal disease regulation in North Dakota that are necessary to create a responsible, accountable and professional animal health agency.

GARY L. PEARSON, D.V.M.
1305 Business Loop East
Jamestown, North Dakota 58401
Telephone (701) 252-6036

I would rather be exposed to the inconveniences of too much liberty than to those of too small a degree of it. - Thomas Jefferson

Governments are instinctively, automatically and invariably, tyrranical. -- William B. Ruger

COMMENTS REGARDING THE NORTH DAKOTA BOARD OF ANIMAL HEALTH NOVEMBER 25, 2002 NOTICE OF INTENT TO AMEND ADMINISTRATIVE RULES PERTAINING TO THE IMPORTATION OF ANIMALS INTO NORTH DAKOTA

Bismarck, North Dakota
January 14, 2002

The North Dakota Board of Animal Health's November 25, 2002, Notice of Intent to Amend Administrative Rules proposes to amend Chapters 48-02-01, 48-02-02, 48-12-01 and 48-14-02 of the North Dakota Administrative Code (NCAC) to expand the Board's regulatory authority to encompass every animal of every species from insects to elephants entering the State of North Dakota at any time for any purpose.

The proposed amendments originate from the Board of Animal Health's March 27, 2001, Order No. 2001-01 In the matter of Emergency Measures related to Foot and Mouth Disease, which was occurring in England at that time. The order contained four provisions. The first required an importation permit for all domestic and captive wild animals (nontraditional livestock) entering the State. The second prohibited the importation of equines into North Dakota from countries with foot and mouth disease until six months after the countries have been declared free of the disease. The third established quarantine and treatment measures for companion animals coming into the State from countries with foot and mouth disease. And the fourth provision prohibited the importation into North Dakota of cattle, sheep, swine and other cloven-hoofed animals from countries with foot and mouth disease until six months after the countries have been declared free of the disease. The requirement for importation permits for all animals entering the State and the quarantine and treatment measures for companion animals from countries with foot and mouth disease are incorporated in the proposed amendments of the Board of Animal Health's Administrative Rules, but the prohibitions against the importation of equines and cloven-hoofed livestock from countries with foot and mouth disease until six months after the countries have been declared to be free of the disease are omitted from the proposed amendments.

The Board of Animal Health's current importation permit requirements apply only to domestic sheep, swine, calves under four months of age, female cattle over a year of age, bison, captive elk, and certain other captive wildlife species. The proposed amendments would expand the Board's importation permit requirements to all animals entering the State, including domestic

livestock and pets, non-domestic animals and captive wild animals, and they would empower the State Veterinarian to deny importation permit applications without substantiating evidence and to revoke valid permits issued for animals already legally imported into the State.

The issues associated with the Board of Animal Health's proposed amendments of its Administrative Rules pertaining to the importation of animals are discussed below as follows:

Expansion of Importation Permit Requirements

The Board of Animal Health's attempt to extend its regulatory jurisdiction beyond traditional livestock species is demonstrated by its proposal to change the current title of Chapter 48-02-01 from "Importation – All Livestock" to "General Importation Requirements," and to replace the current prohibition in NDAC § 48-02-01-02 against the importation of animals or poultry (poultry also are animals) infected with infectious or transmissible diseases with the requirement that:

> "...no person may import any domestic animal or poultry without first obtaining an import permit from the office of the state veterinarian."

The Board also proposes to expand the importation permit requirements of NDAC Chapter 48-12-01, which currently apply to Category 3, 4, and 5 nontraditional livestock (i.e,, captive wildlife that pose a health risk to wild or domestic animals or are inherently or environmentally dangerous), by adding § 48-12-01-02.1, which would require that:

> "... no person may import any nontraditional livestock without first obtaining an import permit from the office of the state veterinarian."

NDAC § 48-12-01-02 defines Nontraditional Livestock as:

> "...any wildlife held in a cage, fence, enclosure, or other manmade means of confinement that limits its movement within definite boundaries, or an animal that is physically altered to limit movement and facilitate capture."

The Board's Administrative Rules do not define "wildlife," but according to North Dakota Century Code § 20.1-0-02-43:

> "'Wildlife' means **any member of the animal kingdom** including any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, or other invertebrate, and includes any part, product, egg, or offspring thereof or the dead body parts thereof..." (Emphasis added)

Thus, the proposed amendments to the Board's Administrative Rules would expand its regulatory jurisdiction literally to include the requirement for an importation permit for every animal of every species from insects to mammals entering the State of North Dakota at any time for any purpose. This includes not only traditional domestic livestock coming into the state, but also pet dogs and cats accompanying tourists and truck drivers traveling through the State, pets brought across the border from Minnesota for grooming or veterinary care in Fargo or Grand Forks, pet dogs and cats returning with their North Dakota owners from a weekend at the lake in Minnesota, North Dakota hunters returning from South Dakota or Montana with their dogs, and North Dakota citizens who drive to Fargo or Grand Forks with their pets and decide to cross the border to Moorhead or East Grand Forks.

Exemptions from the importation permit requirement are provided for bison, cattle, sheep and swine from Montana, Minnesota and South Dakota that originate from a producer's premises and are consigned directly to a licensed livestock auction market or a state or federally inspected slaughterhouse in North Dakota. According to the State Veterinarian (*Minot Daily News*, January 9, 2003), this exemption is necessary in order to allow normal business operations to proceed without creating additional concern about diseases. The State Veterinarian has not explained how it is that the proposed importation permit requirement would impose an unacceptable burden on the normal business operations of the domestic livestock interests represented on the Board of Animal Health, but would not impose a significant burden on the normal business operations of the owners of other animals or on the general public.

Paradoxically, what these exemptions mean is that a rancher could haul a truckload of cattle from South Dakota to a livestock auction in North Dakota without an importation permit, but he would be in violation of the Board's rules if he doesn't have an importation permit for his dog in the cab

Because, most residents of other states will not be aware of North Dakota's importation permit requirement for their pets, their options will be (1) stop at the border and locate a veterinarian who will call the office of the State Veterinarian to obtain a permit, (2) if it is a weekend or holiday, wait until the office of the State Veterinarian opens 1 to 3 days later, (3) detour around North Dakota and vow never to come back, or (4) ignore the requirement and proceed in violation of the Board's Administrative Rules.

In order to enforce its amended Administrative Rules, it will be necessary for the Board of Animal Health to expand its staff to place personnel at every road entering the State to inspect every vehicle that might be carrying any animals of any kind that do not have the required importation permit from the Board. Perhaps the National Guard can be mobilized to assist in enforcing the importation permit requirement during especially busy times, such as weekends, holidays and the fall hunting season. Indeed, the State Veterinarian has admitted that the proposed importation permit requirement "would be impossible to enforce" (*Minot Daily News*, January 9, 2003).

Despite the acknowledged impossibility of enforcing the importation permit requirement, the State Veterinarian still believes the proposed amendment is "appropriate," and he will interpret it broadly but will exercise discretion in imposing penalties for violations of the rule (*Minot Daily News*, January 9,2003). The State Veterinarian has indicated that the Board of Animal Health will take action on violations of the permit requirement "If we happen to find out about it" (*Minot Daily News*, January 9, 2003). It is important to recognize, however, that failure to enforce the importation permit requirement uniformly would render it virtually useless as a

disease control measure, and the kind of arbitrary and selective enforcement proposed by the State Veterinarian would render it legally invalid.

The public is told that an importation permit is necessary to provide for more timely tracing of animals than can be done trough the existing health certificate requirement (*Minot Daily News*, January 9, 2003). Of course, this could—and should—be resolved simply by requiring state animal health agencies to expedite the forwarding of health certificates to their counterparts in the importing states, rather than by imposing additional regulatory burdens on the public. However, rather than addressing its current health certificate requirement that doesn't work, the Board of Animal Health is proposing instead to add another importation permit requirement that can't work.

The public also is told that the importation permit requirement is necessary because the U. S. Department of Agriculture does not notify states of the entry of animals from countries where foot and mouth disease is present. However, instead of proposing that the U. S. Department of Agriculture implement a program to notify states of the importation of animals from countries with foot and mouth disease—or limiting the importation permit requirement to the relatively few animals that are imported into North Dakota from those countries, the Board of Animal Health proposes to impose broad—and unenforceable—importation permit requirements on thousands of animals that have never been out of this country.

And, what about the potential for the cattle, sheep, swine and bison from Minnesota, South Dakota and Montana that are exempt from the importation permit requirement? The incubation period in natural foot and mouth disease infections may be 2 to 4 days, so infected animals could easily pass through livestock auction markets or slaughter houses without signs being detected. Is there no need to trace such animals quickly?

Of course, anyone could call the office of the State Veterinarian, say that he/she is a veterinarian, and request an importation permit and then write the number on a health certificate. The person could request a permit for a black Labrador retriever listed on a health certificate, but then import a different black Labrador retriever, and as soon as it crosses the border they could sell or give it to someone else with no record of where it went.

The Board's Notice of Intent asserts that:

> "The purpose of the proposed rules and amendments is to protect the livestock industry from contagious and infectious diseases."

but it provides no information to show how the proposed requirement for importation permits for all animals entering North Dakota would protect the livestock industry from contagious diseases. For example, how does the requirement for an importation permit for a dog protect the livestock industry from contagious and infectious diseases? What diseases are transmitted from dogs to livestock, and which of those are not already present in dogs, livestock and other animals in North Dakota?

Foot and mouth disease? Dogs and cats are resistant to foot and mouth disease, but the disease occasionally occurs in humans. Although both humans and pets potentially could mechanically transport the virus, under the Board's proposed rules, pets imported into the State would require an importation permit while the humans accompanying them and anyone else from countries with foot and mouth disease could enter with no restrictions whatsoever. It should be noted in this context that foot mouth disease has not occurred in this country since 1929, and most

of the outbreaks of foot and mouth disease that occurred in this country in the last century resulted from the importation of infected animal products rather than infected live animals.

Bio-terrorism? What bio-terrorist is going to call the office of the State Veterinarian for an importation permit for a foot and mouth disease-laden beagle? On the other hand, it would be a simple matter to obtain an importation permit that would allow a contaminated animal to enter the State with the full blessing of the Board of Animal Health.

The Board of Animal Health's November 25, 2002, Notice of Intent stated that the purpose of the proposed amendments is to protect the livestock industry from contagious and infectious diseases. However, the public is now being told that the proposed amendments are an attempt to control the spread of diseases such as rabies, distemper and kennel cough (*Minot Daily News*, January 9, 2003).

Rabies is one disease that can be transmitted by dogs and cats to livestock. In 2001, 42 cases of rabies were reported in North Dakota. Twenty-seven of those cases occurred in skunks, two occurred in dogs, three occurred in cats, three occurred in horses and six occurred in cattle, so rabies already is present in North Dakota. In addition, the Board's current Administrative Rules require that dogs over three months of age imported into North Dakota be vaccinated for rabies and they prohibit the importation of dogs less than three months of age from areas under quarantine for rabies. Clearly, adding the requirement for an importation permit for dogs and cats will have no material effect on the occurrence of rabies in North Dakota.

Livestock are not susceptible to canine distemper—in fact, the Board of Animal Health does not even list canine distemper as a reportable disease in North Dakota. Moreover, canine distemper already is widespread in raccoons, skunks and coyotes in North Dakota, and it occurs in unvaccinated dogs in the State, so the requirement for importation permits for dogs would not prevent the introduction of distemper or have any measurable influence on its occurrence. Canine distemper cannot readily be diagnosed in the incubation stage but it is effectively prevented through vaccination. However, the Board is not proposing to amend its Administrative Rules to require vaccination of dogs in the State or those imported into the State for canine distemper.

Livestock also are not susceptible to canine "kennel cough," or infectious tracheobronchitis, and the Board also does not list it as a reportable disease. Infectious tracheobronchitis is common in dogs in North Dakota and it is readily transmitted by aerosol droplets wherever dogs are confined in groups, such as kennels or dog shows. Although infectious tracheobronchitis frequently results in a persistent cough, most dogs recover naturally without complications. The proposed importation permit requirement would have no measurable effect on the occurrence of infectious tracheobrochitis in dogs in North Dakota. Effective vaccines are available but, as with distemper, the Board of Animal Health is not proposing to require the vaccination of dogs in the State or those imported into the State for infectious tracheobronchitis.

It is obvious on its face that the Board's proposed requirement for importation permits for all animals entering North Dakota is unrealistic, unenforceable and of no material value in protecting the livestock industry from the introduction of infectious diseases. Unfortunately, instead of dealing realistically and substantively with the issue, the proposed amendment simply creates a false sense of security that, if anything, makes the livestock industry more vulnerable to the introduction of diseases. Consequently, rather than protecting the livestock industry from contagious diseases, the proposed importation permit requirement simply creates the bureaucratic

illusion—or more accurately, the delusion—of "doing something," even if it is of no value and imposes substantial financial and regulatory burdens on the public.

Revocation of Valid Importation Permits

The Board of Animal Health's proposed amendments of NDCA § 48-02-01-02 dealing with the importation of domestic animals and § 48-12-01-02.1 dealing with the importation of captive wild animals would provide that:

> "Upon a determination that the import permit applicant or permittee is or has been in violation of the requirements of the subject permit or that the applicant has provided inaccurate information with respect to the permit request, the state veterinarian may deny, revoke, or suspend existing permit(s) issued pursuant to these rules."

The proposed amendments do not cite the constitutional basis for revoking valid importation permits that already have been obtained legally, and the statutes cited as the authority for the amendments do not provide such authority. Nevertheless, the Board of Animal Health is attempting through the proposed amendments to bestow upon itself that power.

The proposed amendments do not specify what actions the Board of Animal Health may take upon revoking or suspending existing valid importation permits for animals that already have been legally imported into the State, but the most obvious would be either to compel the owner to return the animals to the state of origin or for the Board to confiscate the animals and either destroy them or return them to the state of origin. Indeed, there is no way under the proposed amendments that the owner could legally continue to possess the animals without having a valid importation permit in effect.

It is instructive to consider how this provision might operate. A rancher who has regularly imported cattle from other states every year for five years could apply for an importation permit for a shipment of 20 heifers and 20 steers. However, when the shipment arrives, it is discovered that, instead of 20 heifers and 20 steers, there are 19 heifers and 21 steers. The permit applicant has "provided inaccurate information with respect to the permit request," and the State Veterinarian would have the authority under the proposed amendments to revoke not only the importation permit for this shipment, but the importation permits for all of the cattle the rancher has imported over the previous five years.

A pet owner who obtained an importation permit for a dog from Minnesota could two years later apply for an importation permit for a female kitten from South Dakota. However, when the owner takes the kitten to the veterinarian two months later to be spayed, it is discovered that the kitten is a male. The permit applicant has "provided inaccurate information with respect to the permit request," and the State Veterinarian would have the authority under the proposed amendments to revoke not only the importation permit for the kitten, but also the one issued two years earlier for the dog.

What about the pet store operator who regularly imports animals for his business? He applies for an importation permit for four poodle puppies and five Siamese kittens, but the supplier sends five cocker spaniel puppies and four Persian kittens by mistake. The pet store operator has "provided inaccurate information with respect to the permit request," and under the proposed amendments, the State Veterinarian could revoke the importation permits for the store's entire inventory.

The question is not whether or under what circumstances the State Veterinarian actually would revoke valid importation permits for animals already legally imported into the State, or whether the Board actually would confiscate those animals. The question is why the Board of Animal Health would presume to bestow such powers on itself in the first place, and why it should be granted such arbitrary and authoritarian powers with the potential for that kind of abuse.

Denial of Permits Without Substantive Evidence

The Board of Animal Health's proposed amendments of NDAC § 48-02-01-02 dealing with the importation of domestic animals and NDAC § 48-12-01-02.1 dealing with the importation of captive wild animals would provide that:

> "The state veterinarian may deny an import permit if the state veterinarian **believes or suspects** than an animal:" (Emphasis added)

has not met the Board's importation requirements, may be infected with or exposed to a contagious disease, may originate from an area under quarantine for a contagious disease, or may be a threat to the health of the human or animal population of the State.

While any of these circumstances might constitute a legitimate basis for denying an importation permit, the provision for the State Veterinarian to deny an importation permit simply because he "believes or suspects" such circumstances might exist and without substantive evidence that they actually do exist constitutes an abuse of authority and denial of due process.

Economic Impacts and Limitations of Use of Private Property

The Board of Animal Health's November 25, 2002, Notice of Intent to Amend Administrative Rules asserts unequivocally that:

> "None of the proposed rules and amendments are expected to have an impact on the regulated community in excess of $50,000.00. The proposed amendments will not limit the use of private real property."

These statements not only are made without any substantiation or consideration of the actual impacts of the proposed rules and amendments, but they are demonstrably false.

Thousands of animals of numerous species enter North Dakota for a variety or reasons every year, including tourists and other travelers with their pets, North Dakota residents returning with their pets, hunters with their dogs, pet owners seeking grooming, training and veterinary services, farmers and ranchers bringing livestock into the State, commercial and avocational captive wildlife owners, shooting preserve operators, and pet store owners. The long distance telephone charges to call the Board of Animal Health to request the importation permits alone could approach $50,000. Add the loss of business in North Dakota resulting from people deciding not to go through process required to get an importation permit to bring their animals into the State and the economic impact becomes staggering.

Of course, it is patently ludicrous for the Board of Animal Health to claim that the denial or revocation of importation permits for animals "will not limit the use of private real property."

These statements clearly demonstrate that the Board has done nothing more than make a perfunctory gesture at "jumping through the hoops" of the process prescribed by law for developing administrative rules, without any serious or substantive consideration of the impacts of those rules.

Arbitrary and Authoritarian Enforcement

Through the proposed amendments to its Administrative Rules, the Board of Animal Health would bestow upon itself broad, sweeping and virtually unlimited control over literally every animal of every species entering North Dakota at any time for any purpose, and regardless of whether it poses any real or imagined disease risk. In short, the proposed amendments seek to establish the State Veterinarian as the czar of animal movements into the State.

The Board of Animal Health proposes its own Administrative Rules, the Board adopts its Administrative Rules, it interprets and administers its Administrative Rules, it enforces its Administrative Rules, it charges citizens for violations of its Administrative Rules, it decides the guilt or innocence of those it charges with violations of its Administrative Rules, and it imposes penalties for violations of its Administrative Rules. The only avenue of due process open to a citizen who is charged with a violation of the Board's Administrative Rules is, after the Board has taken the action, to request a hearing before an administrative law judge, and then to appeal to the State District Court. Of course, the time and expense involved in following this process through the courts are prohibitive for most people, so this creates the potential for the Board to use the threat of action to intimidate and coerce citizens into complying with its interpretations of its Administrative Rules.

The State Veterinarian has stated that the Board of Animal Health interprets the proposed amendments of its Administrative Rules broadly and could fine people up to $5,000 for each violation (*Minot Daily News*, January 9, 2003). Is the public to believe that it is the intention of the Board of Animal Health to confer upon itself such broad and unlimited authority over the entry of animals into the State so that it may then exercise that unlimited power only in a very limited manner? Is the public to believe that the Board will not exercise its unbounded power in an arbitrary and autocratic manner? Based upon my personal experience with the Board of Animal Health's enforcement of its regulations, I can state unequivocally and with substantiating documentation that such an assumption would not simply be naïve, but it would be foolhardy and unfounded. It would also be contrary to the evidence.

On July 5, 1993, the Board of Animal Health issued a Notice of Public Hearing on its proposed Administrative Rules for Nontraditional Livestock. Although I am not actively engaged or financially involved in nontraditional livestock, I do provide some wildlife rehabilitation services on a charity basis, and I have a white-tailed deer that was brought to me as a fawn in the spring of 1988 with one rear leg nearly cut off by a hay mower. So, I decided to read the Board's proposed rules to regulate the importation, confinement, transportation, sale and disposition of nontraditional livestock. What I found astonished me. The Board's proposed rules were replete with conceptual flaws, technical deficiencies, legal defects, contradictions, omissions and plain foolishness that revealed a profound lack of understanding of, and appreciation for, what it was doing. As just one example, the Board's proposed rules required that:

> "Nontraditional livestock acquired from another state/province shall be marked with a North Dakota eartag, unless it has an official ID tag, within 30 days of importation and before commingling with similar animals."

The proposed rules included pheasants and a number of other wild birds as nontraditional livestock, but they did not explain how one is supposed to put an ear tag on a bird.

The Board's proposed rules for nontraditional livestock were so poorly written that on August 30, 1993, I submitted 22 ½ pages of comments pointing out some of their more serious flaws and deficiencies. Among the things I noted was that:

> "Other than the requirement for a 'possession license' for the importation of non-traditional livestock and a 'special license' for 'detrimental' and 'restricted' species, the proposed rules provide virtually no useful information on the license requirements for Category 1-4 captive wild animals that would permit a determination of who would need a license or for what. For example, 'a license' is defined as a document obtained from the Board 'for the raising or propagation of a species in North Dakota,' but there is no mention of any license requirement for the possession of wild animals (other than detrimental or restricted species) for purposes other than raising or propagation."

and I specifically asked:

> "What kind of license does the farmer need who has an injured deer but is not raising or propagating deer? What kind of license does a veterinarian or wildlife rehabilitator need to hold wild animals in captivity for treatment?"

Instead of addressing these public comments is a responsible and professional manner, in September 1993, the Board's staff instead prepared and submitted to the Board a sarcastic internal rebuttal that simply ridiculed and dismissed the issues that had been raised.

After learning about the staff's internal memorandum, I objected to the Board's handling of my comments in letters to the State Veterinarian and to the Attorney General, but I did not receive a response from either. However, on October 20, 1993, the Deputy State Veterinarian stopped by my office and he told me that that it was the intent of the Board of Animal Health that its rules pertaining to nontraditional livestock were to apply only to commercial operations.

In early February 1994, I received a letter from the Deputy State Veterinarian addressed to "Dear Producer" and providing information on the Board's licensing requirements for nontraditional livestock. I responded to the Deputy State Veterinarian, with a copy to the Attorney General, reiterating the Deputy State Veterinarian's statement to me On October 20, 1993, about the licensing requirement applying only to commercial operations, and pointing out that:

> "... because a license is a document obtained from the Board 'for the raising or propagation of a species' (presumably, of non-traditional livestock), the rules contain no requirement for a license for the possession of non-traditional livestock for purposes other than 'raising or propagation.'"

I did not receive a response from either the Deputy State Veterinarian or the Attorney General indicating that my interpretation of the rule was incorrect.

On October 28, 1998, Mr. Jack Sund of the House of Sund Pet Center in Bismarck, his attorney, Mr. Richard Baer, and I met with the current State Veterinarian and Deputy State Veterinarian to discuss the Board's Administrative Rules as they pertain to Mr. Sund's business. During the meeting, I provided the State Veterinarian and the Deputy State Veterinarian with a

copy of my August 30, 1993, comments on the Board's Administrative Rules for Nontraditional Livestock and pointed out that the rules contain no requirement for a license for the possession of nontraditional livestock for purposes other than raising or propagation. The State Veterinarian and the Deputy State Veterinarian both acknowledged that my interpretation was correct, and they said that they already had discussed amending the rules to expand the licensing requirement to include possession.

On May 21, 1999, *The Jamestown Sun* ran a story on our captive white-tailed deer. The reporter had asked me what kind of permit was needed for the deer. I told him just what the former Deputy State Veterinarian had told me on October 20, 1993, and what and the current State Veterinarian and Deputy State Veterinarian had acknowledged on October 28, 1998, which was that a permit is required for the importation of deer from another state and a license is required for raising or propagating deer, but there is no licensing requirement for possession of deer for purposes other than raising or propagation. And that is what the reporter wrote in his story.

Then on May 26, 1999, I received a "**CERTIFIED MAIL RETURN RECEIPT REQUESTED**" letter from the Deputy State Veterinarian stating that:

> "Several individuals reported that you were quoted in the Bismarck Tribune as stating that 'the North Dakota Board of Animal Health does not require people who want to own a deer to have a permit or license.'
>
> As a matter of record, the Board '**does**' [emphasis in original] require white-tailed deer to be licensed...
>
> Currently, owners of nontraditional livestock, which are being held in captivity without a license, are in violation of the North Dakota Century Code and Administrative Rules. After the owner is notified and given adequate time to meet the requirements, **those that do not comply are turned over to the local state's attorney for further action by the Board of Animal Health** [emphasis added]. The next Board meeting is scheduled for June 9th."

Thus, (1) after acknowledging to me seven months earlier before two witnesses that the Board's Administrative Rules do not require a license for the possession of white-tailed deer for purposes other than raising or propagation, (2) based solely upon reports of what others said they had read in a newspaper, and (3) without conducting a proper investigation to establish the facts, the Deputy State Veterinarian simply sent a "**CERTIFIED MAIL RETURN RECEIPT REQUESTED**" letter summarily declaring that I was in violation of the North Dakota Century Code and the Board's Administrative Rules and threatening to turn the matter over to the local State's Attorney for action by the Board of Animal Health if I did not comply.

I responded with a June 1, 1999, letter requesting that the Deputy State Veterinarian identify the specific sections and paragraphs of the Board's Administrative Rules containing the requirement for a license for possession of white-tailed deer for purposes other than raising or propagation.

On June 14, 1999, I received another "**CERTIFIED MAIL RETURN RECEIPT REQUESTED**" letter from the Deputy State Veterinarian enclosing copies of portions of the same Administrative Rules which the former Deputy State Veterinarian had told me on October 20, 1993, apply only to commercial operations and which the current Deputy State Veterinarian

and State Veterinarian had acknowledged on October 28, 1998, do not contain a requirement for a license for the possession of captive wild animals for purposes other than raising or propagation.

Therefore on June 15, 1999, I faxed a letter to the Deputy State Veterinarian pointing out that:

> "... as you know, the only license requirement specified in the Administrative Rules is 'for the importation of animals into North Dakota.'
>
> The highlighted provision in the portion of the Administrative Rules enclosed with your June 14, 1999, letter regarding:
>
> > 'A North Dakota nontraditional livestock license from the board which is valid for a species to be imported or possessed.'
>
> is contained among the requirements for importing nontraditional livestock into North Dakota and, therefore, does not apply to nontraditional livestock that are not being imported. In addition, of course, the Administrative Rules contain no provision for the issuance of a license for purposes other than 'raising or propagation.' Consequently, under the Administrative Rules, there is no North Dakota nontraditional livestock license which is valid for a species to be possessed."

Without addressing these facts or the fact that she and the State Veterinarian had acknowledged eight months earlier that the Administrative Rules contain no requirement for a license for the possession of white-tailed deer for purposes other than raising or propagation, on June 16, 1999, the Deputy State Veterinarian sent a memorandum to the Board of Animal Health informing them that I had been given until the end of the month to obtain a license for our deer.

The memorandum also informed the Board that the State Veterinarian was preparing a news release responding to the story on our deer. In the news release, the State Veterinarian stated categorically that:

> "However, a license is required to maintain the animal within the state. North Dakota Administrative Code Section 48-12-01-03 requires: 'All nontraditional livestock premises must be licensed and comply with the administrative rules of the board and other applicable statutes..."

Of course, the State Veterinarian neglected to mention in his news release that the licensing requirement of the Administrative Rules he cites is for "a document obtained from the board for the raising or propagation of a species in North Dakota," and that he had admitted on October 28, 1998, that the Administrative Rules which he cited in the news release contain no requirement for a license for the possession of deer for purposes other than raising or propagation.

Finally, in her June 16, 1999, memorandum to the Board of Animal Health, the Deputy State Veterinarian stated:

> "I am enclosing all communications with Dr. Pearson and the editorials. As you can see, he has been given until the end of the month of June to obtain a current NTL license for his premise. **Regardless of his response, the local state's attorney is to be notified of the violation and the Game and Fish Department has been notified.** [Emphasis

added] Keeping animals taken in the wild is a direct violation of the Game and Fish Department's regulations under § 20.1-09-02..."

Of course, the Deputy State Veterinarian neglected to tell the Board that on March 10, 1998, the current Director of the North Dakota Game and Fish Department and the current State Veterinarian had signed a Memorandum of Understanding transferring to the Board of Animal Health the authority:

> "To fulfill the licensing, permitting, inspection, regulation and record keeping of native wildlife in accordance with Administrative Rules Chapter 48 and N.D.C.C. 20.1 as staffing and time will allow; and in a manner consistent with prior Departmental program management."

and that she and the State Veterinarian had admitted on October 28, 1998, that Chapter 48 of the Board's Administrative Rules contain no requirement for a license for the possession of deer for purposes other than raising or propagation.

In another "**CERTIFIED MAIL RETURN RECEIPT REQUESTED**" letter on June 16, 1999, the Deputy State Veterinarian stated that:

> "The language in Article 48 may not be easily understood by the public, but the intent of the law is understandable especially in the case of wild native animals that are described within the rules."

But she continued to ignore the fact that she had admitted on October 28, 1998, which is that the Administrative Rules contain no license requirement for the possession of the wild native animals described within the rules for purposes other than raising or propagation, and she summarily asserted that:

> "The Board of Animal Health and the Game and Fish Department equate 'raising' with 'possession.'"

The Deputy State Veterinarian then went on to state that:

> "I want you to know that regardless of changes that may occur in the Administrative Rules in the future, I am obligated to enforce Article 48 as it currently reads... Failure to enforce Article 48 would be neglecting our duties and would negate the licenses of all other Nontraditional Livestock premises."

Of course, enforcing Article 48 as it currently reads simply would mean not requiring a license for the possession of nontraditional livestock for purposes other than raising and propagation, and it would not "negate the licenses of all other Nontraditional Livestock premises" where nontraditional livestock are raised or propagated. The Deputy State Veterinarian apparently does not understand that her only option under the law is to enforce Article 48 as it is written.

The Deputy State Veterinarian then reiterated her threat that:

> "With the above comments in mind, I will wait until the end of June, 1999 and then send a letter to the Stutsman County States Attorney simply informing him of the violation of the state's Administrative Rules concerning 'Lashes' [the name of our deer]. A letter will

also be sent to the Game and Fish Department notifying them of the ongoing violation and the actions to be taken by our office."

In a June 17, 1999, letter to North Dakota Agriculture Commission Roger Johnson, my attorney, Mr. Donald D. Feare, JD, of Fort Worth, Texas, pointed out, regarding the Deputy State Veterinarian's June 16, 1999, letter to me, that:

> "... Dr. Keller blatantly admits that she is using the authority of her agency in retaliation for Dr. Pearson publicly taking a position in opposition to hers. This alone would seem to be an unlawful use of such agency power. She goes on to state, 'The language in Article 48 may not be easily understood by the public, but the intent of the law is understandable.' Again, she makes a rather amazing admission. If a law is admittedly 'not easily understood by the public,' then it is vague and ambiguous and hardly sufficient upon which to prosecute and would not withstand constitutional scrutiny. Further, the concept of prosecuting someone for violation of the 'intent' rather than the published language from which the public derives its understanding of the law is without a doubt a concept unique to Dr. Keller."

In a June 22, 1999, "**CERTIFIED MAIL RETURN RECEIPT REQUESTED**" letter to Mr. Feare, the Deputy State Veterinarian said:

> "As I mentioned to Dr. Pearson in correspondence, the Board of Animal Health **equates 'raising' with 'possessing.'**" (Emphasis in original)

and she went on to add:

> "With that fact in mind and the MOU with the Department of Game and Fish, the Board has evidently not had a need, **up to this point**, to further clarify the law." (Emphasis added)

Of course, the Deputy State Veterinarian neglected to mention that on October 28, 1998, they did not equate raising with possessing.

In his June 24, 1999, response to the Deputy State Veterinarian, Mr. Feare pointed out that:

> "... I see nothing in the regulation you provide, requiring a license or permit to merely posses a pet deer."

Mr. Fear went on to note that:

> "As it is now near the end of the month and you had previously stated that you would wait until the end of the month to forward a letter to the State's Attorney alleging a violation, I take it from the copy of my letter forwarded to Mr. Paul Germolus, Assistant [Attorney General] that you have proceeded with that plan. I can only assume from this point that the matter is in the hands of the State's Attorney. If that conclusion is incorrect, please advise."

By this time, both Mr. Feare and I were prepared to file a counter-suit against the Board of Animal Health petitioning the Court to find the Board's Administrative Rules for Nontraditional Livestock to be arbitrary, ambiguous and an abuse of authority and to declare

them unconstitutional. However, Mr. Feare did not receive a response from the Deputy State Veterinarian and I was never notified by the Stutsman County State's Attorney of any action being taken by the Board of Animal Health against me.

The Board of Animal Health's attempt to use intimidation to coerce compliance with an interpretation of its Administrative Rules which it knew to be erroneous and without legal foundation failed in this case, but it demonstrates, clearly and unequivocally, the arbitrary and authoritarian regulatory philosophy of the Board and the Office of the State Veterinarian.

Conclusions

The amendments proposed by the Board of Animal Health to its Administrative Rules pertaining to the importation of animals into the State of North Dakota raise disturbing questions about the Board's regulatory philosophy and its understanding of the basic principles of administrative law and public policy, and they demonstrate serious problems with the Board's ability to develop realistic, responsible and equitable animal disease prevention and control regulations based on sound scientific principles

The most positive result of the proposed amendments would be if the public attention and indignation they generate prompt the legislative action required to bring about the fundamental and comprehensive reforms in animal disease regulation in North Dakota that are necessary to create a responsible, accountable and professional animal health agency which is able to develop realistic and equitable regulations that effectively protect domestic animals, captive and free-ranging wildlife and humans in North Dakota from the introduction of dangerous infectious animal diseases, without imposing unwarranted burdens on the public.

GOOD MORNING CHAIRMAN NICHOLAS, MEMBERS OF THE AGRICULTURE COMMITTEE. FOR THE RECORD I AM REP. RANDY BOEHNING DISTRICT 27. I REPRESENT BOTH FARGO AND WEST FARGO.

I RISE SUPPORT OF HB 1347, WHAT THIS BILL WILL DO IS ALLOW DOG AND CAT OWNERS THE ABILITY TO CROSS STATE LINES WITHOUT THE FEAR OF NOT HAVING A IMPORTATION PERMIT. IT IS BEING PROPOSED BY THE STATE VETERINARY THAT ALL DOGS AND CATS WHICH CROSS THE STATE LINE REGARDLESS OF WHETHER OR NOT THEY ARE RESIDENTS OF THE STATE OR NOT, HAVE TO HAVE A PERMIT TO GAIN ACCESS BACK INTO THE STATE.

FROM THE OUT CRY OF OUR CONSTITUENCIES THIS BILL WAS CARVED OUT. THIS WOULD BE A HINDRANCE AND AN ADDED EXPENSE TO DOG AND CAT OWNERS.

THERE IS ALSO ANOTHER SEGMENT WHICH I WILL ADDRESS IN A PROPOSED AMENDMENT I WILL BE HANDING OUT. IT WILL INCLUDE HORSES AND OTHER SMALL ANIMALS ENTERING THIS STATE FROM ANOTHER STATE OR PROVINCE OF CANADA.

THIS NEW RULE IN WHICH THE STATE VETERINARY IS PROPOSING IS ALSO OF CONCERN TO RESIDENTS OF OTHER STATES AS WELL. I HAVE RECEIVED MANY EMAILS AS WELL AS OTHERS IN OUR ASSEMBLY THAT OUT OF STATE DOGS AND CATS WHICH COME INTO THE STATE FOR VETERINARY SERVICES WOULD NOT BEABLE TO ENTER THE STATE WITHOUT A IMPORTATION PERMIT. WHAT HAPPENS WHEN SOMEONE BUYS A DOG OR CAT AND DOES BUSINESS WITHIN THE STATE OF NORTH DAKOTA FOR HIS VETERINARY SERVICES. THEY WILL BRING THEIR ANIMALS INTO THE STATE FOR VACCINATIONS, HOW WILL THEY DO THIS. THEY FIRST NEED A CERTIFICATE OF VETERINARY INSPECTION BEFORE THEY GET A PERMIT TO ENTER THE STATE. IT SEEMS TO ME THAT THIS WOULD BE IMPOSSIBLE. THEY WOULD FIRST HAVE TO GO TO A VET IN THEIR OWN STATE SO THEY COULD SEE THE VET OF THEIR CHOICE IN NORTH DAKOTA, AND THIS IS ALSO TRUE FOR

RESIDENCE OF THE STATE OF NORTH DAKOTA WHO GO OUT OF STATE TO BUY DOGS OR CATS.

THIS NEW PROPOSED RULE CHANGE IS ALSO BAD FOR ECONOMIC DEVELOPMENT. THIS WOULD BE THE CASE FOR DOG OR CAT SHOWS. THE ENTRANTS OF THE SHOW FROM OUT OF STATE WOULD FIRST NEED TO OBTAIN A PERMIT TO ENTER. THIS WOULD BE AN ADDED COST TO PARTICIPANTS AND IN THE END WOULD CAUSE MANY PEOPLE NOT TO COME TO NORTH DAKOTA FOR THE MANY SHOWS AND THEREFORE COST LOCAL BUSINESSES LOST REVENUE.

THERE IS NO COST FOR THE PERMIT, BUT THERE WOULD BE A COST TO THE OWNERS TO OBTAIN A CERTIFICATE OF VETERINARY INSPECTION. I WAS QUOTED A PRICE OF 30 DOLLARS PER CERTIFICATE. WHAT WOULD THIS COST A PERSON WITH ONE DOG OR CAT TO TRAVEL OUT OF STATE TO SAY THE LAKES AREA. THERE IS A SIX MONTH PERIOD IN WHICH MOST PEOPLE TRAVEL TO THE LAKES. THIS WOULD COST APPROXIMATELY 180 DOLLARS FOR A SINGLE ANIMAL. WHAT WOULD IS THE IMPACT TO THE BUDGET OF THE STATE VETERINARY, THERE WILL BE THOUSANDS OF PERMITS THAT WILL NEED TO BE ISSUED.

INCONCLUSION THE NEW RULE CHANGE SHOULD NOT HAPPEN AND THINGS SHOULD STAY THE SAME. LETS DO WHATS RIGHT AND APPROVE HB 1347 WITH AMENDMENTS.

THANK YOU MR. CHAIRMAN AND FELLOW LEGISLATORS.

GARY L. PEARSON, D.V.M.
1305 Business Loop East
Jamestown, North Dakota 58401
Telephone (701) 252-6036

STATEMENT REGARDING HOUSE BILL NO. 1347 TO EXEMPT DOGS AND CATS FROM NORTH DAKOTA BOARD OF ANIMAL HEALTH IMPORTATION REQUIREMENTS PRESENTED AT THE HEARING BY THE NORTH DAKOTA LEGISLATIVE ASSEMBLY HOUSE AGRICULTURE COMMITTEE

January 31, 2002

North Dakota Century Code § 36-01-12 authorizes the North Dakota Board of Animal Health to regulate the importation of domestic animals and nontraditional livestock (captive wild animals) into the State in order to control infectious diseases among those animals.

North Dakota Administrative Code § 48-12-01-02 defines domestic animals as dogs, cats, horses, bovines, sheep, goats, bison, llamas, alpacas and swine.

North Dakota Century Code § 36-01-01 specifies that the North Dakota Board of Animal Health shall consist of eight members appointed by the governor, and that they "must include" one individual each actively engaged and financially interested in the commercial beef cattle industry, the purebred beef cattle industry, the dairy cattle industry, the sheep industry, the swine industry, and the bison industry, plus two licensed veterinarians, who traditionally are large animal practitioners serving those same domestic livestock industries. The statute has no provision for representation on the Board by the other domestic animal or nontraditional livestock interests subject to regulation by the Board.

The Board of Animal Health's Administrative Rules have for a number of years required a certificate of veterinary inspection—commonly known as a health certificate—for animals imported into the State. However, the State Veterinarian acknowledges that the health certificate has limited value as a disease control measure, and it is not uniformly enforced (*Minot Daily News*, January 9, 2003).

In response to an outbreak of Foot and Mouth Disease in England, the Board of Animal Health issued an emergency order on March 27, 2001, (1) requiring an importation permit for all animals entering the State, (2) prohibiting the importation of equines and cattle, sheep, swine and other cloven hoofed animals from countries with Foot and Mount Disease until six months after those countries have been declared free of the disease, and (3) establishing quarantine and treatment measures for companion animals coming into the State from countries with Foot and Mouth Disease.

On November 25, 2002, the Board of Animal Health published a Notice of Intent to incorporate into the North Dakota Administrative Code the requirement for

importation permits for all animals entering the State and the quarantine and treatment requirement for companion animals from countries with Food and Mouth Disease. However, the Board's proposed amendments of its Administrative Rules omit the restrictions on the importation of domestic livestock from countries with Foot and Mouth Disease and they provide exemptions from the importation permit requirement for cattle, bison, sheep and swine from producers' premises in adjacent states consigned to licensed livestock auction markets or inspected slaughter houses in North Dakota. Thus, the Board proposes to convert to administrative law the importation requirements for companion animals that are not susceptible to Foot and Mount Disease, while providing exemptions for domestic livestock that are susceptible to the disease.

We are told that the exemptions are necessary to allow the "normal business operations" of domestic livestock interests, but that the Board did not "fully consider" the impacts of the regulation on others (State Veterinarian, Scott Hennen "Hot Talk," January 16, 2003).

We have been told that the importation permit requirement would be "impossible to enforce" (State Veterinarian, *Minot Daily News*, January 9, 2003). Nevertheless, the Board interprets the rule broadly and "would be looking at law enforcement to assist," but, of course, we are assured that it will exercise discretion in imposing penalties (State Veterinarian, The Forum, January 15, 2003).

When the North Dakota Legislative Assembly created the Livestock Sanitary Board in 1907 to deal with domestic livestock diseases, it specified that the Board would be composed of representatives of the State's various domestic livestock interests. The reason for this was to assure that the Board's regulations would be responsive to, and would not unduly burden, the domestic livestock industry.

In 1989, the name of the Livestock Sanitary Board was changed to the Board of Animal Health, and in 1991 the Legislative Assembly transferred jurisdiction over all wild animals held in captivity from the Game and Fish Department to the Board of Animal Health. Now the Board is extending its regulatory control by requiring importation permits for all animals—including pets—entering the State. However, despite the expansion of the Board's jurisdiction, except for the addition of a representative of the bison industry two years ago, there has been no corresponding expansion of representation of the various other animal interests subject to the Board's regulation.

The predictable result is the current public indignation over the Board's requirement for an importation permit for companion animals and its outrage over the prospect of a $5000 fine for bringing a pet back from a weekend at the lake without the required permit.

Pet owners in North Dakota far outnumber all of the domestic livestock interests represented on the Board of Animal Health, and their economic impact undoubtedly rivals that of several of the domestic livestock industries having representatives on the

Board. However, when it comes to the Board of Animal Health, for pet owners, horse owners and nontraditional livestock owners, it is regulation without representation.

Two avenues are available to the Legislative Assembly for addressing the inequities and the public controversy resulting from the domination of the Board of Animal Health by domestic livestock interests. One alternative is to change the composition of the Board to provide balanced representation of all the various animal interests subject to its regulation, and to establish public accountability by the Board. The other is to exempt those without representation on the Board from regulation by the Board. House Bill 1347 employs the second approach by exempting dogs and cats from the Board's health certificate and importation permit requirements. With the opposition expressed by domestic livestock interests to changing the composition of the Board, this is a reasonable, appropriate and ultimately inevitable alternative to address the regulatory excesses and inequities imposed on dog and cat owners by the Board of Animal Health.

Attached to this statement are four documents providing additional information on problems with the Board of Animal Health, and suggestions for addressing them.

Testimony of Larry A. Schuler, DVM
State Veterinarian and
Executive Officer of the State Board of Animal Health
House Bill 1347
House Agriculture Committee
Peace Garden Room
January 31, 2003

Chairman Nicholas and Committee members, my name is Larry Schuler. I am the state veterinarian and executive officer of the State Board of Animal Health. I am here to testify in opposition to HB 1347, which relates to importation permits for dogs and cats.

This bill appears to be in response to the proposed administrative rule that would require importation permits on all animals entering the state. The State Board of Animal Health submitted this rule for public comment in early December has had a public hearing on the proposed rule and will receive written comments until February 14. Based on the comments received to date, there is much public opposition to the proposed rule. In order for the board to be responsive to the wishes of the people of North Dakota, it will make substantial changes to the proposed rule or possibly withdraw the portion of the proposed rule that applies to importation permits.

HB 1347 and the proposed amendment will severely restrict the Board's ability to respond to disease situations as they occur. Currently, there is an Exotic Newcastle Disease outbreak in Southern California which has now spread to Nevada. Approximately 60% of USDA/APHIS/VS's workforce and many state

personnel are working on the eradication effort. HB 1347 and the proposed amendment would tie the hands of the Board and prevent the Board from taking action to prevent this disease from entering North Dakota. Also at this time, there is an equine herpes virus outbreak occurring in Ohio that is causing a neurological disease and death in horses. This bill and the proposed amendment will prohibit the Board from taking action to prevent the disease from entering North Dakota if it becomes necessary. Many things can change with regards to an animal's health status in a short period of time. In 1999, there was an outbreak of equine infectious anemia in the state that affected over 30 horses. These horses all had to be destroyed. It appears that this was the result of horses that were imported without a health certificate. This bill and the proposed amendment will prevent the Board from dealing with common equine diseases. Plague and tularemia are two diseases that are listed as Category "A" Bioterrorist Diseases. Category "A" diseases are the diseases that are of the greatest threat to the public. Plague affects cats and tularemia affects both dogs and cats. Again, this bill will also limit the Board from taking action if there is a bioterrorist attack using one of these organisms? In 2001, Viral Hemorrhagic disease of rabbits was identified in rabbits in Utah. This is a disease that is foreign to the United States and has almost a 100% mortality rate. Rabbits exposed to Viral Hemorrhagic disease were traced to the Montana State Fair and we were notified of the possibility of exposure of rabbits at the North Dakota State Fair. HB 1347 and the proposed amendment would prevent the Board from taking action to prevent the introduction of the disease into North Dakota?

I urge you to allow the Administrative Rulemaking process to work. The final rule will be much different than what was proposed based on the public comment received to date. If the final rule does not meet needs expressed by the input of the public, the Administrative Rules Committee has the authority to not approve the final rule.

HB 1347 will severely limit the ability of the Board to protect the health of the domestic animals and nontraditional livestock of this state. Exempting specific species from importation requirements by statute does not allow the Board to respond to disease situations and puts all of the domestic animals and nontraditional livestock in this state at risk.

Chairman Nicholas and Committee members, I urge a do not pass on HB 1347.

I will be glad to answer any questions that you may have.

GARY L. PEARSON, D.V.M.
1305 Business Loop East
Jamestown, North Dakota 58401
Telephone (701) 252-9470
Facsimile (701) 251-6160
E-mail: gpearson@daktel.com

January 6, 2000

Dr. Susan J. Keller
Deputy State Veterinarian
State Board of Animal Health
North Dakota Department of Agriculture
600 East Boulevard Avenue, Dept. 602
Bismarck, North Dakota 58505-0020

Dear Dr. Keller:

Thank you for your December 21st letter regarding the revision of the Administrative Rules for Nontraditional Livestock. I will be looking forward to seeing the next draft.

I believe that one thing that has become increasingly evident since the current Administrative Rules were implemented in 1994 is that the regulation of captive wildlife is far more complex than the regulation of domestic animals. I would welcome the opportunity to discuss my remaining concerns about the revised rules with you. I recognize that some of my concerns stem from the language of the statutes pertaining to nontraditional livestock, and that it may be necessary to amend the statutes in order to resolve those concerns. However, I also have concerns about the "regulatory philosophy" reflected in the rules, and that was the primary reason I was hoping that the revision of the rules would start with a "clean sheet of paper" so as not to perpetuate that approach in the revised rules.

CONCEPTUAL PROBLEMS WITH THE REVISED ADMINISTRATIVE RULES

Although the committee has made substantial strides in simplifying the revised rules, I believe that three fundamental conceptual problems remain that will continue to foster dissent from nontraditional livestock interests and create problems in the implementation and enforcement of the rules.

Focus on Commercial Production

The first of these conceptual problems is the current rules were designed to deal with nontraditional *livestock*, and that focus continues to be reflected in the revised rules. A common definition of livestock is "animals used or raised on a farm, especially those kept for a profit." That obviously was the context in which the State Legislature amended the statutes to include nontraditional livestock, and, as Dr. Rotenberger confirmed in 1993, that clearly is the thrust of

the current Administrative Rules for Nontraditional Livestock. However, the rules attempt to regulate all captive wildlife under Administrative Rules developed for captive wildlife held for commercial purposes, and they attempt to do it under one universal license (plus an undefined "special license"). As I pointed out at the September 2nd Nontraditional Livestock Advisory Council Meeting, not even the *MODEL FOR STATE REGULATIONS PERTAINING TO CAPTIVE WILD AND EXOTIC ANIAMLS* upon which the Administrative Rules are based thought that was possible, and instead recommended eight different types of permits. This focus on commercial uses still is reflected in the revised rules, and this is compounded by the fact that the Board of Animal Health is ill-constituted and ill-equipped to deal with captive wildlife other than those held as nontraditional livestock for commercial purposes.

Excessive Scope of Regulation

The second conceptual problem with the revised rules is that they still attempt to regulate all captive wildlife. True, Category 1 nontraditional livestock, which includes species generally considered domestic and others that are not inherently dangerous and do not pose a health risk to humans, domestic or wild species and/or a hazard to the environment, do not require a license. However, they still fall under the regulatory purview of Board, and it is left to the discretion of the Board to decide which species are not inherently dangerous, do not pose a health risk or are not a hazard to the environment. Of course, it is possible to postulate situations in which virtually any animal can be dangerous (most hamsters will bite), pose a health risk (budgerigars may carry *Chlamydia*) or be a hazard to the environment (escaped European ferrets may kill indigenous wild animals). The same situation exists for Category 2 species (those which do pose health risks or may be environmentally dangerous) and Category 3 species (those which are inherently dangerous or environmentally hazardous), for which licenses are required.

The problem is that there are many domestic animals that are inherently dangerous (e.g., bulls, stallions, boars), pose a health risk to humans (*Salmonella* and *Campylobacter* in domestic chickens and turkeys, *Cryptosporidium* in calves and pigs, *Toxoplasma gondii* in cats), to domestic animals (*Neosora caninum* transmitted between dogs and cattle) and wildlife (*E. coli* O157:H7 transmitted from cattle to deer, canine parvovirus transmitted from dogs to wild canids), or are hazardous to the environment (domestic horses, cattle, swine, sheep and goats all have long records of devastating natural environments), yet no similar licensing or other regulatory requirements are imposed on domestic animal owners. Thus, we automatically have inequitable regulation based upon whether the animal is domestic or wild, rather than on the threat it represents for health, safety or the environment.

NDCC 36-01-08.1 provides that:

> "The board of animal health may require a license for nontraditional livestock maintained within this state." (Emphasis added)

It is my opinion that the Board should limit this optional licensing requirement to those wildlife species that pose unique or exceptional threats to health, safety and the environment which substantially exceed those posed by unlicensed domestic species. In addition, instead of issuing licenses for every different species of captive wildlife, I would recommend that just three types of licenses be issued,), one for the ownership/possession of species which pose unusual health or environmental threats, one for the ownership/possession of inherently dangerous animals (e.g., large carnivores, cape buffalo, etc.), and one for the ownership/possession of protected wild animals removed from the wild if not covered by one of the previous two licenses. Under this

system, licenses would be issued based on the type of threat posed by the animals, rather than on each species owned or possessed.

Instead of attempting to impose regulations designed to prevent every problem that might arise with captive wildlife, the rules should also focus on provisions that will permit the Board to deal with problems when they do arise, i.e, instead of attempting to anticipate and address in advance every potential problem that might arise with captive wildlife, the rules should simply contain provisions that allow specific problems to be addressed when they arise.

Although the argument has been made that, because of the potential for previously unrecognized diseases to occur in wild animals, it is necessary to impose more strict regulations as a precaution so such diseases will not be transmitted to other captive wild animals and domestic animals. However, it is difficult to make a convincing case that wild animals pose a greater potential than domestic animals for introducing new diseases, because history is replete with previously unrecognized diseases spontaneously arising within domestic animal populations themselves. Hog cholera, which suddenly appeared in domestic swine in Ohio in 1833, is one of the earliest documented examples. Th concentrated domestic poultry industry in Southern California has long been recognized as a brewery for "new" poultry viruses. More recently, in the late 1978 canine parvovirus enteritis suddenly appeared in domestic dogs in the United States, Canada, Europe, South Africa and New Zealand. And, although it does not cause clinical disease in cattle, within the past decade *Escherichia coli* O157:H7 from cattle has been recognized as a serious pathogen for humans, and bovine spongiform encephalopathy has been recognized as a serous pathogen of domestic cattle and a potential human pathogen. Moreover, domestic animals have long been associated with indigenous wildlife in this country, so it is unlikely that many unrecognized diseases to which domestic animals have not already been exposed exist in those populations.

Finally, at the risk of suggesting a totally radical approach, I would even recommend that consideration be given to having the North Dakota Game and Fish Department assume sole responsibility for regulating the removal of wildlife from the wild, and that licensure automatically be required only for animals of protected species taken from the wild and held in captivity. Under this system, the Department would regulate the removal of, say, mule deer from the wild, and a license would then be required to hold those particular mule deer in captivity. However, a license would not be required for captive-bred mule deer. I recognize that the Department might be reluctant to agree to such a system because of concern over the difficulty of identifying which animals were captive-bred and which might have been wild-caught, but I suspect the actual problem would be minimal and to the extent it might occur, it would not have a measurable impact on wild populations. In addition, it is hard to make a convincing case for requiring licenses for many captive-bred wildlife species (e.g. wild turkeys) when there is no corresponding licensing requirement for their domestic counterparts (e.g., domestic turkeys).

Potential for Arbitrary Administration

The third conceptual problem with the revised rules is that virtually every substantive determination involved in their implementation is left to the discretion of the Board of Animal Health, a body which, by its own admission, has little expertise or interest in captive wildlife issues. This creates an environment which not only invites and fosters, but makes virtually inevitable, arbitrary and inequitable administration of the rules, thereby creating animosity and controversy and making them vulnerable to legal challenge on both technical and constitutional grounds.

REGULATORY PHILOSOPHY

I get the strong impression that dissatisfaction with the regulation of captive wildlife has been escalating among captive wildlife owners in the State since the Administrative Rules for Nontraditional Livestock were implemented in 1994. This dissatisfaction apparently is not simply directed at the notion of regulation itself, because prior to 1994 anyone possessing captive protected wildlife already was required to obtain a permit from the North Dakota Game and Fish Department. Therefore, the dissatisfaction appears to stem from the increased regulatory burden placed on captive wildlife owners by the Board of Animal Health's Administrative Rules for Nontraditional Livestock when the State Legislature transferred jurisdiction over captive wildlife from the Department to the Board.

It is not surprising that people who had legally possessed captive wildlife for years or decades prior to 1994 would rebel at the sudden imposition of 18 pages of administrative laws regulating virtually every aspect of their ownership and enjoyment of captive wildlife. However, instead of the dissatisfaction diminishing over time as owners of captive wildlife became more familiar with the rules, the dissatisfaction appears to be escalating. I would suggest that the reason lies in the prevailing philosophy behind the regulation of captive wildlife in North Dakota.

First, it is important to remember that, in a free society, government governs with the consent of the governed. There seems to be little dissatisfaction with the regulation of domestic animals by the Board of Animal Health, so it appears that the Board regulates those with the general consent of domestic animal interests. However, the growing dissatisfaction with the regulation of captive wild animals suggests that the Board does not enjoy the general consent of captive wildlife interests. The question is why?—particularly when the statutes make no distinction between the regulation of domestic animals and captive wild animals. For example, NDCC 36-01-08 simply states that:

> "The board shall protect the health of the domestic animals **and** nontraditional livestock of this state. . ." (Emphasis added)

and NDCC 36-21.1-12 simply provides that:

> ". . . The board may by regulation restrict the importation into the state, restrict the sale or other distribution within the state, of all domestic animals or animals wild by nature which the board may have reason to believe may be a threat to the health and well-being of the human or animal population of the state. . ." (Emphasis added)

I believe there are four primary factors involving differences in the philosophy of regulation of domestic animals and of the regulation of captive wildlife in North Dakota that contribute substantially to the escalating dissatisfaction of captive wildlife owners in the State.

Burden of Proof

As noted in the quotation from New York attorney Jeffrey Snyder which I distributed at the September 2nd Nontraditional Livestock Advisory Council meeting:

> "In a free society, the burden of proof is borne by those who would restrict the liberty of others."

A review of the Board of Animal Health's Administrative Rules pertaining to domestic animals shows that they focus almost exclusively on well-documented animal health issues, the burden is not placed on domestic animal owners to show that their animals do not pose a disease, safety or environmental threat, and the criteria for establishing whether or not domestic animals pose a disease threat are clearly defined. In addition, the rules focus principally on health requirements of domestic animals imported into the State and those offered for public sale, and on the control of reportable diseases.

In the case of captive wildlife, however, the Administrative Rules leave virtually all determinations regarding disease, safety and environmental threats to the discretion of the Board, without clearly established guidelines, and they focus on regulating not only the importation and sale of captive wildlife, but also on the possession of captive wildlife. The result is captive wildlife owners frequently find themselves at the mercy of the Board and having to defend their interests without the existence of clear guidelines for doing so. In addition, I have heard members of the Board express the view on more than one occasion that it is the responsibility of the applicants for nontraditional livestock licenses to provide information showing that their animals do not pose disease, safety or environmental threats.

Permissive vs. Restrictive Regulation

A review of the Board's Administrative Rules pertaining to domestic animals also shows that they follow a permissive approach, where activities generally are permitted unless sound and well-documented reasons exist for restricting them. The Administrative Rules for Nontraditional Livestock, on the other hand, tend to take the approach of restricting activities unless there are sound and well-documented reasons for permitting them.

The imposition of general identification and reporting requirements for captive wild animals while no similar general identification and reporting requirements are imposed on domestic animals are examples of restrictive vs. permissive regulation, i.e., domestic animals may be possessed without complying with any identification and reporting requirements unless there is a good reason for them to be imposed, but captive wildlife must comply with identification and reporting requirements unless a good reason is shown that they should not.

Another example of restrictive rather than permissive regulation in the current Administrative Rules is the absence of any provisions for issuing licenses for wildlife rehabilitation, despite the proliferation of wildlife rehabilitation facilities and the development of wildlife rehabilitation programs at a number of universities across the country over the past two decades, including the North Dakota State University. Although the North Dakota Game and Fish Department has now reassumed jurisdiction over wildlife rehabilitation activities in the State, several members of the committee appointed to revise the Administrative Rules, including the two members from the Board of Animal Health, expressed the opinion that wildlife rehabilitation should not be encouraged because it is unnatural since the natural course is for orphaned and injured wild animals to die. No appreciation was expressed for the fact that it also is not "natural" for wild animals to be pursued by armies of hunters (I am a hunter!) with repeating shotguns and high-powered rifles with telescopic sights, or that there is nothing "natural" about hawks being shot from perches atop utility poles, about raptors, waterfowl, gulls and scores of other species of wild birds sustaining wing fractures as the result of collisions with power lines and radio tower guy wires, or about white-tail does colliding with the bumpers of Fords and Chevrolets and leaving orphan fawns in the ditch. In truth, the vast majority of wild animals that are handled by wildlife rehabilitation facilities are the victims of "unnatural" human activities. Under natural conditions, the principal injuries sustained by wild animals are those inflicted by predators, which, unlike

humans, promptly kill their victims. And because, healthy adult wild animals generally have high survival rates while newborn animals suffer the greatest mortality, wild animal orphans rarely occur under natural conditions. Although it could just as logically be argued that it is "unnatural" to vaccinate cattle or treat calves with diarrhea, the prevailing regulatory philosophy permits and encourages those activities, but it would restrict and discourage treatment of injured and orphaned wild animals.

Control of Diseases vs. Regulation of Animals

As noted above, the Board's administrative rules for domestic animals emphasize control of diseases, but the administrative rules for captive wildlife emphasize regulation of ownership and possession in the name of disease control, public safety and environmental protection. This leads to rules regulating captive wildlife that have little direct relevance to disease control—indeed, if they did, there should be similar rules for domestic animals.

Disenfranchisement of Captive Wildlife Owners

When talking with captive wildlife owners, it soon becomes apparent that no aspect of captive wildlife regulation in North Dakota causes more anger, resentment, distrust and opposition than the feeling that they have no real voice in the regulatory process and that their concerns are not understood or taken seriously and frequently simply are dismissed or ignored. It is important to examine the basis for this feeling.

NDCC 36-01-08 defines the duties of the Board of Animal Health as follows:

> "The board shall protect the health of the domestic animals and nontraditional livestock of this state, shall determine and employ the most efficient and practical means for the prevention, suppression, control, and eradication of dangerous, contagious, and infectious diseases among the domestic and nontraditional livestock of this state, and shall prevent the escape and release of an animal injurious to or competitive with agriculture, horticulture, forestry, wild animals, and other natural resource interests. . ."

It is important to note again that the statute addresses "domestic animals **and** nontraditional livestock" simultaneously, and it makes no distinction between the regulation of the two groups. However, in establishing the composition of the Board of Animal Health, which regulates both domestic animals and nontraditional livestock, NDCC 36-01-01 specifies that the Board shall consist of seven members appointed by the governor for terms of seven years each, and that five of the members shall be "actively engaged and financially interested in" the commercial beef cattle industry (candidates to be recommended by the North Dakota Stockmen's Association), the registered purebred beef cattle industry (candidates to be recommended by purebred beef cattle associations), the dairy cattle industry (candidates to be recommended by dairy breed associations), the swine industry (candidates to be recommended by the North Dakota Swine Breeders' Association), and the sheep industry (candidates to be recommended by the North Dakota Wool Growers' Association). The remaining two members of the Board are graduate veterinarians (candidates nominated by the North Dakota Veterinary Medical Association). Traditionally, the two graduate veterinarians have been private veterinary practitioners engaged in large animal practice, so they also have been actively involved with and financially interested in domestic livestock.

It is instructive to note, therefore, that the statute provides for the Board to consist entirely of representatives of the private domestic livestock industries affected by the Board's regulations,

and that no provisions are made for government agency officials to hold seats on the Board. From this, two conclusions can be drawn. First, it is apparent that the State Legislature feels that private domestic livestock producers can be trusted to regulate their industry responsibly and to address disease control and related issues in an effective manner, and that they are in the best position to do so. Second, the Legislature clearly took specific and decisive steps to assure that the concerns of private domestic livestock owners would not be dismissed by the Board, and that their interests would be protected.

In 1991, the State Legislature transferred jurisdiction over captive wildlife from the North Dakota Game and Fish Department to the Board of Animal Health, but it took no corresponding steps to expand the composition of the Board to include representatives of the various captive wildlife interest groups in the State. Consequently, captive wildlife interests have no formal voice in their regulation but instead are subject to regulation by a Board of Animal Health composed of representatives of domestic livestock groups and which, by its own admission, has little interest or expertise in captive wildlife issues.

Because it lacks expertise in captive wildlife issues, the Board established a Nontraditional Livestock Advisory Council. However, as defined by the Board:

> "The purpose [of the Council] will be to serve as the coordinating body for investigating issues of concern related to nontraditional animal agriculture in North Dakota and recommending government actions to resolve those concerns."

Two significant points are to be noted. First, by definition, the Board limits the Council's authority to coordinating the investigation of issues "related to nontraditional animal **agriculture**," thus again emphasizing the Board's focus on regulating the commercial production of nontraditional livestock, while disregarding the numerous other ways in which people are involved with wildlife held in captivity. Second, the Board restricts the function of the Council to serving as a "coordinating body" which can only "recommend government actions" to deal with "issues related to nontraditional animal agriculture." Thus, the Council is simply an advisory body, with no real authority in matters related to captive wildlife.

The disenfranchisement of captive wildlife interests does not end there, however. Although the Board of Animal Health, by statute, is constituted entirely of representatives of domestic livestock interests subject to its regulations and has no representatives from government agencies, the Board specifies that the Nontraditional Livestock Advisory Council shall consist of one representative each from the North Dakota Furbearers Association, North Dakota pet stores, North Dakota gamebird producers, cervid owners and dangerous animal owners and one from North Dakota zoos, **PLUS** one each from the Board of Animal Health (who shall serve as chairman of the Council), the North Dakota Department of Health, the North Dakota State University Veterinary Diagnostic Laboratory, the U.S.D.A./APHIS Veterinary Services, the North Dakota Game and Fish Department, and the North Dakota Extension Service. Thus, unlike the Board of Animal Health, the Nontraditional Livestock Advisory Council established by the Board to advise it on captive wildlife issues is dominated by government agency officials (6 representatives), with private captive wildlife interests having minority representation (5 representatives) on the Council.

It is instructive to note that the *MODEL FOR STATE REGUALTIONS PERTAINING TO CAPTIVE WILD AND EXOTIC ANIMALS* upon which the Board's Administrative Rules for Nontraditional Livestock are based recommends the appointment of a Technical Consulting

Committee to make "recommendations concerning proposed regulations," but it suggests that the committee consist of:

1) A veterinarian with expertise in the medical care and management of captive wild and exotic animals
2) A zoo director, curator, or zoo veterinarian, preferably from a zoo accredited by a national zoological organization
3) A representative from the hunting preserve industry
4) A representative associated with the propagation of captive wild or exotic animals used for meat and other by-products
5) A private breeder and/or exhibitor of ornamental or exotic birds
6) A dealer in the pet industry, either retail or wholesale
7) A commercial gamebird breeder
8) A representative of a humane society
9) A representative from a transient exhibit such as a circus
10) A falconer
11) A representative of the fur farming industry
12) A person from a statewide association representing sportsmen
13) A person from a statewide association representing non-consumptive users of wildlife (e.g., Wildlife Federation, Audubon Society, Sierra Club, etc.)
14) A private breeder and/or exhibitor of captive wild or exotic animals
15) A dealer/broker of captive wild or exotic animals
16) A scientist involved in research on captive wild or exotic animals
17) A person associated with commercial fish culture.

It is instructive to note that, unlike the advisory Council established by the Board of Animal Health, this Technical Consulting Committee suggested by the model regulations consists entirely of those who are subject to the regulations and it includes no representatives of government agencies or those enforcing the regulations.

First, of course, the composition of the North Dakota Nontraditional Livestock Advisory Council strongly implies that, unlike domestic livestock interests, private captive wildlife interests cannot be trusted to regulate their industry responsibly, and that government officials, none of whom have special expertise in captive wildlife, know better than captive wildlife owners how best to regulate the industry. More importantly, however, the composition of the Council virtually assures that the concerns of captive wildlife owners will continually be subordinate to those of government agency officials, and that captive wildlife interests will have to struggle constantly from a minority position to protect their interests. Not surprisingly, it also virtually assures the continued escalation of anger, frustration, distrust and opposition among captive wildlife interests in the State.

Indeed, it is instructive to note that, under the structure and operation of the Council outlined by the Board:

> "Input at meetings [of the Council] will be received from representatives of participating **agencies** only." (Emphasis added)

Although input at meetings of the Council is permitted from the representatives of all 12groups of the groups listed, this "Freudian slip" is an unfortunate reminder of secondary status of captive wildlife interests on the Nontraditional Livestock Advisory Council and it further emphasizes the disenfranchisement of captive wildlife interests under the Board of Animal Health.

I recognize that it is beyond the scope of the current revision of the Administrative Rules for Nontraditional Livestock to address all of these issue. However, I would hope that these observations and comments might stimulate thought and discussion, and perhaps provide a framework for future changes in the regulation of captive wildlife in North Dakota to make it more equitable and more responsive to captive wildlife interests.

Sincerely,

Gary L. Pearson

Gary L. Pearson, D.V.M.

pc: Mr. Roger Johnson, Commissioner, North Dakota Department of Agriculture
Mr. Roger Rostvet, Deputy Director, North Dakota Game and Fish Department
Mr. Donald D. Feare, JD

HOUSE OF SUND PET CENTER
2700 STATE STREET
Bismarck, N.D. 58503
Jack Sund, Owner

STATEMENT REGARDING HOUSE BILL NO. 1347
BARRING THE BOARD OF ANIMAL HEALTH
FROM REQUIRING IMPORTATION PERMITS OR CERTIFICATES OF HEALTH
FOR PEOPLE'S PETS COMING FROM OTHER STATES OR CANADA
PRESENTED AT THE HEARING BY THE
NORTH DAKOTA LEGISLATIVE ASSEMBLY
HOUSE AGRICULTURE COMMITTEE

ANGER, OUTRAGE, CONSTERNATION, AND FUROR, ARE JUST SOME OF THE DESCRIPTIONS THAT DEPICT THE WAY MANY NORTH DAKOTANS FEEL ABOUT THE BOARD OF ANIMAL HEALTH'S PROPOSAL TO REQUIRE IMPORT PERMITS FOR PEOPLE'S PETS.

APPROXIMATELY A MONTH AGO, OWNERS OF ALL KINDS OF ANIMALS, FROM HORSES TO HAMSTERS, CAME TO THE HERITAGE CENTER TO SPEAK OUT AGAINST THIS RULE. THE MEETING WHICH LASTED FOR OVER 1 ½ HOURS DREW OVER A 100 PEOPLE. NO ONE SPOKE IN FAVOR OF THE BOARD OF ANIMAL'S HEALTH PROPOSAL.

THE BOARD OF ANIMAL HEALTH'S PROPOSED RULE THAT WOULD REQUIRE IMPORT PERMITS FOR ALL ANIMALS ENTERING NORTH DAKOTA IS NOT ONLY UNNECESSARY, IT'S UNENFORCEABLE. NO EFFORT TO ENFORCE THIS RULE HAS BEEN MADE SINCE IT'S IMPOSITION IN MARCH 2001.

HOWEVER, THIS BRINGS UP AN INTERESTING QUESTION, HOW IS THIS RULE GOING TO BE ENFORCED? ARE WE GOING TO SEND OUT THE PET POLICE? WHO IS GOING TO PAY FOR THIS ENFORCEMENT? ARE WE TRYING TO MAKE CRIMINALS OUT OF LAW ABIDING CITIZENS?

IS THIS THE KIND OF IMAGE WE WANT TO PROJECT TO OUR NEIGHBORING STATES? TO THE REST OF THE COUNTRY? DO WE WANT OTHER STATES TO IMPOSE THE SAME SANCTIONS UPON US?

DID ANYONE THINK HOW THIS RULE, IF PASSED, WOULD AFFECT TOURISM IN THIS STATE? " BRING YOUR PET INTO NORTH DAKOTA WITHOUT AN IMPORT PERMIT AND RISK A FINE UPTO $5000.00." IT IS MY UNDERSTANDING THAT THE STATE TOURISM DEPARTMENT IS BEING FLOODED WITH CALLS FROM OUT OF STATERS WITH CONCERNS ABOUT BEING ABLE TO TRAVEL THROUGH NORTH DAKOTA WITH THEIR PETS THIS SUMMER.

YOU WOULD ALSO BE SURPRISED AS TO THE VARIETY OF FAMILY PETS THAT GO ALONG WITH THEIR OWNERS ON VACATION. HAMSTERS, GUINEA PIGS, FERRETS, IGUANAS, PARAKEETS, OFTEN VISIT OUR STORE WHEN THEIR OWNERS STOP TO PICK UP PET SUPPLIES WHILE TRAVELING THROUGH THE STATE. SHOULD OUR PUBLIC POLICY BE TO CRIMINALIZE THE PET OWNER?

THE FARGO FORUM STATED "THE BOARD OF ANIMAL HEALTH IS GIVING STATE GOVERNMENT A BAD NAME" (1-15-03). THE GRAND FORKS HERALD STATED "THE BOAH IS A REGULATORY AUTHORITY THAT HAS FALLEN OUT OF TOUCH" (1-18-03). THE MINOT DAILY NEWS STATED "THE BOAH HAS IRKED PET OWNERS AND VETERINARIANS" (1-9-03).

THERE IS NO QUESTION THERE IS NEED FOR SOME CONTROLS IN THIS AREA, BUT INSTEAD OF DEVELOPING RESPONSIBLE REGULATIONS THAT ADDRESSES ANIMAL HEALTH, THEY PLACE A REGULATORY BURDEN ON PET OWNERS THAT IS DISPROPORTIONATE AND UNREASONABLE.

WHO IS HELD ACCOUNTABLE WHEN THESE ARBITRARY RULES ARE CREATED SUBJECTING PEOPLE TO CRIMINAL AND CIVIL PENALTIES WHEN THERE IS NO SCIENTIFIC JUSTIFICATION FOR THESE RULES IN THE FIRST PLACE?

THIS COMMITTEE NOW HAS THE OPPORTUNITY TO TAKE A POSITIVE FIRST STEP TO ADDRESS SOME OF THE EXISTING PROBLEMS PLAGUING THE BOAH. THIS COMMITTEE MUST CONSIDER THE REAL THREAT, THE HARM THESE RULES WOULD REALLY BRING TO NORTH DAKOTA. I THEREFORE URGE THE HOUSE AGRICULTURE COMMITTEE TO VOTE A "DO PASS" ON HB 1347.

TESTIMONY REFERENCING HB 1347
By Mike Donahue, Lobbyist #215
January 31. 2003

House Agriculture Committee

The United Sportsmen of North Dakota and the N.D. Wildlife Federation ask for a DO PASS of HB 1347.

The State Board of Animal Health rule at Section 48-02-01-02 is not a good rule. If need be, you should listen to the tape of the hearing held on January 14, 2003. Testimony then was overwhelmingly against the rule.

Chairman Nicholas & House Representatives

In 1999 when the BOAH brought changes to chapter 36 that criminalized companion animal owners for leaving and returning to the state with their animals, we objected to the new law. Citing that if this was ever enforced or made public, the new law would do millions of dollars of economic damage to the states companion animal business and tourism. It would restrict the use of personal property and cause million of dollars to be spent on health certificates to residents of ND with little or no Benefit to the state's domestic livestock populations or companion animals.

At that hearing (1999) we were told that there would be a clause that specific animals could be exempted. Chairman Nicholas told me to make sure those guys (BOAH) took care of us. The clause was added, but as of this date after four years no exemption has been given to companion animals. The only exemptions that have been given are to cattle, pigs & sheep. To add insult to injury, now the BOAH wants import permits on all livestock through administrative rule. Now that these laws & rules have been made public because of the requirement to advertise public hearings on the administrative rule, the damage has started. People are calling, "can I still bring my dog to get groomed", "what do I need?" Tourist want to know what are the rules or are making plans to by-pass ND according to AAA in Fargo. Minnesotan's are calling to see if the law is in effect now and if they can bring their dogs in state to receive professional services. Just the threat of this law is causing economic damage to the states companion animal & tourist businesses. Most people think it is a new proposed law, they ask me what is the legislature thinking of, and why this new law is needed." I can not repeat most responses when I tell them it has been law for 4 years. The criticism is directed at state government, not the BOAH who is to blame.

What is the economic impact of companion animals business in ND?
Using the US Census of 2000, ND has .0022% of the US population. Assuming national averages of pet ownership and dollars spent, the values are as follows:

	ND households Owning	AVE # OWNED	ANNUAL $ SPENT	TOTAL SPENT
Dogs	88,000	1.7	864.00	$76,032,000.00
Cats	77,000	2.1	644.00	$49,588,000.00
Birds	15,180	2.7	688.00	$10,443,840.00
Sm animals	12,100	3.4	128.00	$1.588,000.00
Reptiles	8,000	2.2	171.00	$1.504,800.00
Trop. Fish	26.900	13.0	300.00	$8,070,000.00
TOTAL	140,000			$147,000,000.00

*Many homes are multi-pet, but 140,000 ND households own pets
**figure is for annual upkeep only, does not include cost of animals or sales of goods and services to Border States residents.

Total revenues of companion animals sales $ services apx. $200,000,000.00

Survey figures used are from the American Pet Product Manufacture Association National Owners Survey. All rights reserved. This survey is done every 2 years and shows a continued growth in all categories over the last 12 years.

The BOAH has stated that the livestock industries have an annual volume of 735 million (Senate Ag committee on 01/22/03). They have 6 representatives on the BOAH. The companion animal industries do apx 200 million per year; we have no representatives on the BOAH. If we talk households, or residents that own tradition livestock compared to companion animals, companion animal owners have a 2-1 margin of animal ownership (assuming that there are 50,000 households that own cattle, pigs, sheep, bison), but the companion animals still have no seats on the BOAH. I am not looking at this time to fight for a seat on the BOAH, but to show the impact and unfairness that the current BOAH is having on 200,000 state residents that have no representation on the board of animal health.

The BOAH has given exemptions to cattle, sheep, swine, but not given any exemptions to the following groups that pose little or no risk to traditional livestock;

1. The companion animal owners of ND who leave and return to the state.
2. Tourists who travel in ND with pets,
3. Border State residents who bring their pets to ND for goods & services.
4. horse owners who frequently leave & return to attend shows

The results of these actions will cause millions of dollars of damage to business & tourism and increase the cost of pet ownership to get certificates of Vet inspection.

1. 1000 X $30 X 365 days /year = 11.000.000.00 (border crossings)
2. How many tourist will not come ???$$$???$$$???$$$???
3. 25-33 % reduction sales & services if all border residents did not come to grooming parlors, vet clinics, dog-training classes, plus supplies they would not buy. 20 to 30 million lost?
4. Would the Valley City Winter Shows building continue to run weekly horse shows in the summer with attendance down 25-33% because out of state horses would not attend, they will go to other states.
5. What would it cost 1 business to get permits for pets for sale, 25,000 pet year? Could they pass on the cost to consumers or would they shop else where and business totally close?

I have always heard the excuse that other states have these laws. My only answers are, bad legislation is bad legislation in any state. Is ND a copycat state?

Normally I'm the one sticking my foot in mouth. But I have to make a comment regarding the BOAH comments regarding its current structure. The Boah wants to retain its current size for efficiency reasons and length of meeting times. That would be fine if they only regulated themselves. The problem is when they regulate out side of their field

of expertise; we get messes like the one we have today. How can we get meaningful rules & legislation when they are written from ignorance and fear, rather than from science, fact and co-operation? There are no qualified experts, experienced professionals, or balance on the BOAH that brings forth the best rules that includes companion animals. Would it not be better to spend 3 hours instead of 2 hours at a meeting and get it right the first time, instead of the mess we have today. Residents expect that state government is bringing the best knowledgeable & expert talent in the state, checking its options, finding the correct solution to a problem. The current BOAH seems to think it's easier to write some rules and see where it hits the wall and see if it sticks. The current BOAH feels that no changes are needed. Fine, Than about 200,000 companion animal owners and I want nothing to do with the BOAH.

Since there will be no meaningful changes to the BOAH, state government must take away the power it has granted the BOAH, right the wrong that has been done. It must pass HB1347 now. This bill will decriminalize 200.000 residents, customers, & tourist each year with no current harm to livestock industries. If in the future we need to change something regarding companion animals, Rules and laws will be written from science, fact, & input from knowledgeable parties, not ignorance and fear. The only way we can achieve successful legislation is from an informed representative governing body that creates solutions, not criminals. I hope that HB1347 with amendments will receive unanimous do pass from this committee, in not I respectfully ask for a role call vote.

Duane Bohnsack
Stonegate Pet Store
ND Pet Retail Association

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1347

Page 1 line 1, replace "a" with "four" and replace "section" "sections"

Page 1. After line 13. Insert:

SECTION 2. A new section to chapter 36-01 of the North Dakota Century Code is created and enacted as follows:

Importation permits - Vaccination requirements - Horses.

1. If a horse is removed from this state for a period of less than thirty days, the board of animal health may not require an importation permit for the horse as a condition of its return to this state, provided the horse has a health certificate issued by a veterinarian within the past twelve months and that the horse tested negative for equine infectious anemia during the past twelve months.

2. If a horse is brought into this state form another state and remains for a period of less than thirty days, the board of animal health may not require an importation permit for the horse as a condition of its entry into this state, provided the horse has a health certificate issued by a veterinarian within the past twelve months and that the horse tested negative for equine infectious anemia during the past twelve months.

SECTION 3. Importation permits - Other animals:

1. The board of animal health may not require importation permits or certificates of health for dogs, cats, and other small animals entering this state from another state or province of Canada.

SECTION 4. Vaccination obtained in this state.

1. It is not a violation of this chapter for an individual residing in a bordering state to bring an animal into this state for the purpose of obtaining any vaccination or other health care service form a licensed veterinarian required by this chapter.

I am Dr Rod Gigstad.

I am a veterinarian at Petcetera Animal Clinic in Grand Forks.

On one side I see the livestock industry taking steps to protect their livelihood and on the other I see people from the companion animal side resisting what they consider overzealous regulations that they feel infringe on their freedoms. What you have been asked to do is find a middle ground that will protect the livestock industry without unjustifiably affecting the companion animal industry.

It is my understanding that the ND State Board of Animal Health has enacted rules that make it illegal for a dog or a cat and other companion animals to come into North Dakota without having a certificate of veterinary inspection and a permit from the State Veterinarian's office. Other people have testified or will testify on how much damage such a law will cause to the pet industry, to the tourism industry and to how hard it will be for the average pet owner to comply and on how hard the rule will be to enforce. I believe that it would be hard to find a person in the state of North Dakota that would not support very strong measures to keep exotic diseases out of North Dakota but I also believe the rule put into effect by the State Board of Animal Health to prevent the spread of FMD as it pertains to dogs and cats should be changed because carnivores as a group are resistant to the FMD virus. Inspecting

thousands upon thousands of animals for a disease they can't contract is not a good use of resources.

FMD hasn't been found in the United States for 70 years so it would seem that the USDA has done a pretty good job in keeping us safe. Would it not seem prudent that we should follow the recommendations of the experts that deal with exotic diseases every day and follow the guidelines from the USDA?

The following are questions that should be asked about the health certificate and permit requirements.

1. If it is a good rule, why are you not enforcing the rule?
2. Does the USDA recommend such a rule? If so why haven't they asked for a similar rule nationwide?
3. Has there ever been a documented case of any of the many diseases listed on the **ND Reportable Animal Disease List** being transmitted to livestock or companion animal by an imported companion animal in the state of North Dakota?
4. What is the rationale of inspecting a cat or a dog or other companion animal coming across state lines but not inspecting a herd of cattle that goes to a sale barn directly from a ranch?

The ND Dept of Agriculture Web Site states that:

Certificates of veterinary inspection are required on all animals imported, except livestock consigned directly from producers premises to a licensed auction market or to a state or federally inspected slaughtering establishments.

After 9\11 our nation was under a high threat level for many months but now as time passes the threat level has been decreased by the Department of Homeland Security. We as citizens of North Dakota need to ask the ND Board of Animal Health why we are still at such a high level of security that we are checking cats and dogs for a disease that they are resistant to and that has not occurred within the United States for over 70 years. FMD is only one of the diseases that we worry about but if the risk is low then decrease the requirements, if the risk is high then increase the requirements.

I believe if there was an outbreak of FMD somewhere in the United States tomorrow, the Governor would have the National Guard at the borders checking and disinfecting not just cats and dogs but people and vehicles to make sure they don't carry the virus into our state, but until such an outbreak actually occurs do **you** think it is necessary to inspect a dog that is coming back from the same lake cabin in Minnesota it has been going to for the last 10 summers.

What we need are laws that specifically spell out what happens if something occurs such as Minnesota's law that says for PSITTACINE AND OTHER HOUSEHOLD PET BIRDS that a Certificate of veterinary inspection is required if exotic Velogenic Viscerotropic Newcastle Disease is known to exist in the United States. Minnesota has laws that are specific enough that it tells you in seconds which counties in Colorado or Nebraska have restrictions because of Chronic Wasting Disease. It would take a little more time to write laws like the Minnesota law but a good law well written and enforced should protect our state better than a bad law that is not enforced.

As a veterinarian I see no benefit in these blanket health certificates and permits but certainly there are times such as the outbreak of rabies in Texas a few years ago and the Newcastle Disease outbreak in California recently that change things. So please protect the North Dakota livestock industry and the companion animal industry but do so with

Laws that are timely,

Laws that make sense,

Laws that can be enforced and

Laws that are fair and equal to everyone.

Thank you

HB 1347

Dr. Schuller

TITLE 48

STATE BOARD OF ANIMAL HEALTH

ARTICLE 48-02

~~LIVESTOCK REGULATIONS~~ DOMESTIC ANIMAL IMPORTATION REQUIREMENTS

CHAPTER 48-02-01

~~IMPORTATION - ALL LIVESTOCK~~ GENERAL IMPORTATION REQUIREMENTS

48-02-01-01. Importation – All livestock – Certificate of veterinary inspection required- Exemptions.

Except as otherwise provided in this section or chapter, ~~All~~ all imported domestic animals ~~and nontraditional livestock~~ must be accompanied by an official certificate of veterinary inspection~~,~~. ~~Except~~ But domestic animals originating directly from a producer's premises, not diverted en route, and consigned to an auction market, or stockyards approved by the board~~, of animal health,~~ and livestock consigned to a state or federally inspected slaughtering establishment are exempt from the requirement. Prior to importation, the board may grant exceptions to the certificate of veterinary inspection requirement, if in the opinion of the board, the animals are free of contagious and infectious diseases. In addition to the disease testing, treatment, vaccination, or identification requirements of this chapter, the state veterinarian may require additional disease testing, treatment, vaccination, or identification if the state veterinarian has reason to believe that other health risks are present.

48-02-01-02. General – Importation Permits.

1. No animal or poultry that is infected, or recently exposed to any infectious or transmissible disease, shall be imported. ~~A certificate of veterinary inspection is required.~~

2. The state veterinarian may deny an import permit if the state veterinarian has information that an animal:

a. has not met the disease testing, vaccination and identification requirements set forth in N.D.C.C. Title 36 or N.D. Admin. Code Title 48, or as otherwise required by the State Veterinarian;

b. has not met or satisfied any pre-entry quarantine conditions imposed by law;

c. is or may be infected with any contagious or infectious disease;

d. has been exposed, or may have been exposed to any contagious or infectious disease;

e. is or may originate from an area or premises under quarantine or other form of official or regulatory action relating to contagious or infectious disease; or

f. may be a threat to the health and well being of the human or animal population of the state, or both.

History: Amended effective September 1, 1988.
General Authority: NDCC 36-01-08, 36-21.1-12
Law Implemented: NDCC 36-01-08, 36-01-12, 36-21.1-12

48-02-01-03. Cattle.

1. **Tuberculosis.** A negative tuberculosis test, within thirty days prior to entry into North Dakota, is required for all cattle originating from any modified accredited state, or any other area, where in the estimation of the board, tuberculosis may exist.

   Nursing calves accompanying negative tested dams are exempted from the test requirement.

   Cattle of Mexican origin must have a negative tuberculosis test, administered by a licensed, accredited United States veterinarian, the test being administered at the proper interval following the Mexican test, which is required for entry into the United States. This last test must be administered within thirty days prior to entry into North Dakota.

2. **Brucellosis.** All cattle must have a negative brucellosis test within thirty days prior to entry into North Dakota or must comply with uniform methods and rules in control of brucellosis as published by USDA/APHIS. Tests for brucellosis must be conducted by a state or federal laboratory or by a veterinarian approved in the state of origin. "Brucellosis test" means an approved blood test conducted at a state or federal laboratory. No female cattle over twelve months (three hundred sixty-five days) of age may be imported unless officially calfhood vaccinated against brucellosis and properly identified. Exempted from this requirement are cattle which, in the estimation of the board, meet the following conditions:

   a. Drought conditions render pasture and feed supplies inadequate for North Dakota producers to maintain their breeding herds;

   b. It is necessary that North Dakota cattle producers secure out-of-state grazing or feeding facilities for their breeding herds; and

   c. The cattle are owned by legitimate North Dakota cattle producers with the intent to return the cattle to the North Dakota producers' premises upon completion of the grazing or feeding period.

3. **Permits.** Permits shall be required on all female cattle over twelve months (three hundred sixty-five days) of age. Permits shall be required on all cattle originating from any state where

scabies may be introduced in shipments originating from such state at the discretion of the board or where emergency disease occurrence warrants special considerations.

4. **Dipping.** Dipping in a solution approved by the board shall be required on all cattle originating from states where scabies permits are required. Two dippings, ten to fourteen days apart, may be required on cattle originating from states determined by the board to have a large number of infested herds. In lieu of dipping, treatment with an approved avermectin administered by a licensed accredited veterinarian in accordance with the United States department of agriculture, guidelines for veterinary services, found in 9 CFR part 73, is acceptable.

5. **Calves.** Calf permits are required on all imported calves under four months of age. Imported calves are not to be resold in less than sixty days. Purchasers must pick up imported calves at the sellers' premises. Calves accompanying dams are excluded from the requirements of this section.

History: Amended effective April 1, 1980; June 1, 1983; September 1, 1984; September 1, 1988; May 16, 1990; November 1. 1992; October 1, 1998.
General Authority: NDCC 36-01-08, 36-01-12
Law Implemented: NDCC 36-01-08, 36-01-12, 36-14-04.1

48-02-01-04. Bison.

1. **Tuberculosis.** A negative tuberculosis test is required on all bison except nursing calves accompanying negative-tested dams. Bison originating from tuberculosis free states or areas that do not require North Dakota origin bison to be tested prior to entry are exempt from the tuberculosis test requirement.

2. **Brucellosis.** ~~Tests for brucellosis must be conducted by a state or federal laboratory or by a veterinarian approved in the state of origin. "Brucellosis test" means an approved blood te conduoted and confirmed in an approved state or federal laboratory. A negative preentry test within thirty days will be required on test eligible bison females originating in free or class A states; those test eligible bison females originating from a class B state will require a negative preentry test within thirty days and be placed under quarantine and complete a negative ninety to one hundred eighty day postentry test.~~ Test eligible bison must have a negative brucellosis test within thirty days prior to entry into North Dakota. Bison originating from brucellosis free states or areas that do not require North Dakota bison to be tested prior to entry are exempt from the brucellosis test requirement. Test eligible bison are all bison over 18 months of age except steers, spayed heifers, and official calfhood vaccinates for brucellosis under 24 months of age.

3. **Permits.** Permits shall be required on all bison.

4. **Dipping.** Dipping in a solution approved by the board shall be required on all bison originating from states where scabies permits are required. Two dippings, ten to fourteen days apart, may be required on bison originating from states determined by the board to have a large number of infested herds. In lieu of dipping, treatment with an approved avermectin administered by a licensed accredited veterinarian in accordance with the United States department of agriculture, guidelines for veterinary services, found in 9 CFR part 73, is acceptable.

History: Amended effective September 1, 1988; January 1, 1994; October 1, 1998.
General Authority: NDCC 36-01-08, 36-01-12
Law Implemented: NDCC 36-01-08, 36-01-12, 36-14-04.1

48-02-01-05. Sheep.

1. For all sheep imported into North Dakota, all of the following are required:

   a. A certificate of veterinary inspection, except as otherwise provided by North Dakota Century Code sections 36-14-04.1 and 36-14-10 and North Dakota Administrative Code 48-02-01-01.

   b. An import permit from the board.

   c. Sheep must be free of any visible signs of infectious foot rot and must originate from flocks that have been inspected and are free from any visible signs of infectious foot rot. The certificate of veterinary inspection must specifically state that all of the sheep are free of any visible signs of infectious foot rot. Special permission may be given by the state veterinarian to import registered breeding sheep without meeting the requirements of this subsection. Registered breeding sheep imported by special permission must be held under quarantine and isolated from other sheep for a minimum of thirty days, upon entry into North Dakota.

   d. Unless the sheep have a QR or RR genotype at codon 171 as verified by two blood tests conducted at least two weeks apart and drawn under the supervision of an accredited veterinarian or state or federal veterinarian, ~~The~~ the certificate of veterinary inspection must contain a written statement, signed by the owner of the sheep, stating that:

   "To the best of my knowledge, the sheep listed on this certificate originate from a flock that has not been diagnosed as a scrapie-infected, source, trace, or exposed flock in the past five years." (This statement shall be signed by the owner.)

2. All breeding rams imported into North Dakota must comply with all of the following requirements:

   a. Breeding rams six months of age or over must have had a negative test for brucella ovis, or the flock of origin must have a negative brucella ovis status. To qualify a flock as a negative brucella ovis status flock, two negative tests for brucella ovis must have been administered, forty-five to sixty days apart, during the same year, to all rams one year of age or older, and thereafter a yearly negative test must have been administered to all rams in the flock one year of age or older. The certificate of veterinary inspection must include specific negative test information concerning brucella ovis.

   b. Rams must be individually identified with registration ear tag or tattoo, or other identification approved by the state veterinarian.

3. All rams sold for breeding purposes in North Dakota must comply with all of the following requirements:

   a. Breeding rams six months of age or over must have had a negative test for brucella ovis. or the flock of origin must have a negative brucella ovis status. To qualify a flock as a negative brucella ovis status flock, two negative tests for brucella ovis must have been administered, forty-five to sixty days apart, during the same year, to all rams one year of

age or older, and thereafter a yearly negative test must have been administered to all rams in the flock one year of age or older.

b. Rams testing positive to an official brucella ovis test must be isolated, branded with a B brand on the left jaw, and sold for slaughter only, or they must be neutered before leaving the premises.

c. Rams must be individually identified by registration ear tag or tattoo, or other identification approved by the state veterinarian.

4. All tests for brucella ovis administered pursuant to this section must be tests officially recognized or otherwise approved by the state veterinarian.

History: Amended effective July 1, 1988; September 1, 1988.
General Authority: NDCC 36-01-08, 36-01-12
Law Implemented: NDCC 36-01-08, 36-01-12, 36-14-04.1

48-02-01-06. Swine - Breeding and feeder purposes. A permit is required for all swine imported into North Dakota. All breeding swine over six months of age must have had a negative brucellosis test within thirty days prior to entry into North Dakota unless from validated herd or state.

History: Amended effective June 1, 1983; March 15, 1988.
General Authority: NDCC 36-01-01, 36-01-12
Law Implemented: NDCC 36-01-08, 36-01-12, 36-14-04.1

48-02-01-08. Dogs and cats.

No person may import any dog ~~Dogs and cat must have a~~ or cat over three months of age without certification of a current rabies vaccination ~~, no known exposure to rabies within one hundred days prior to importation. If over three months of age, dogs and cats must be vaccinated for rabies. The state game and fish department requires hunting dogs to have been vaccinated at least thirty days prior to import date.~~ When an area is quarantined for rabies, a certifying statement is required from an accredited veterinarian that the dog or cat has not been exposed to rabies ~~, and has a current rabies vaccination is required.~~ No person may import any dog or cat ~~No dogs or cats~~ less than three months of age ~~will be accepted~~ from an area under quarantine for rabies. A certificate of veterinary inspection is not required unless the animal originates from an area quarantined for rabies, a foreign country other than Canada, if the animal remains in the state for thirty days or more, or if the state veterinarian determines that it is necessary based on disease information for a time period not to exceed the term of the threat. If the state veterinarian determines that it is necessary to require certificates of veterinary inspection, the state veterinarian shall publicize the requirement for the certificate of veterinary inspection.

History: Amended effective September 1, 1988; October 1, 1998.
General Authority: NDCC 36-01-08, 36-01-12
Law Implemented: NDCC 36-01-08, 36-01-12, 36-14-04.1

48-02-01-09. Horses.

All equine species require negative tests for equine infectious anemia within twelve months prior to date of importation, unless originating from states exempted from test requirements by the state veterinarian.

North Dakota horses testing positive to equine infectious anemia must be positively and individually identified by permanent brand.

A certificate of veterinary inspection is not required for horses entering the state for less than seven days , an official copy of a negative equine infectious anemia test within the last twelve months accompanies the horse unless the state veterinarian determines that it is necessary based on disease information for a time period not to exceed the term of the threat. If the state veterinarian determines that it is necessary to require certificates of veterinary inspection, the state veterinarian shall publicize the requirement for the certificate of veterinary inspection

History: Amended effective June 1, 1983; September 1, 1988.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08

DRAFT

CHAPTER 48-02-02
LIVESTOCK EXHIBITION AND IMPORT FOR EXHIBITION

48-02-02-01. Livestock exhibition and import for exhibition.

1. ~~For all~~ All livestock imported for exhibition purposes~~,~~ must be accompanied by a certificate of veterinary inspection ~~is required~~ and the owner of such livestock, or their agent, must comply with the import permit requirements under section 48-02-01-02.

2. Equine species require a negative test for equine infectious anemia within twelve months prior to date of importation, unless originating from a state exempted from the test requirement by the North Dakota state veterinarian.

3. For all cattle imported for exhibition purposes, a negative brucellosis test is required within thirty days prior to date of entry unless the cattle are official brucellosis vaccinates originating from certified free herds or areas. Female cattle, not vaccinated for brucellosis, over one year of age, may be imported for exhibition purposes only. A permit is required for all female cattle over one year of age and for all cattle originating from any state where scabies may be introduced, as determined by the board.

4. Sheep imported for exhibition purposes must meet the same requirements as sheep imports for other purposes.

5. All swine imported into North Dakota being used for exhibition purposes must meet the same requirements as swine imports for other purposes.

6. All animals leaving the state for exhibition or competition with a valid certificate of veterinary inspection may return to the state with the same certificate of veterinary inspection if the animal has not been out of the state for more than thirty days.

History: Amended effective September 1, 1988.
General Authority: NDCC 36-01-08, 36-01-12
Law Implemented: NDCC 36-01-08, 36-01-12, 36-14-04.1, 36-21.1-12

ARTICLE 48-12
NONTRADITIONAL LIVESTOCK

CHAPTER 48-12-01
NONTRADITIONAL LIVESTOCK

48-12-01-02. Definitions. For purposes of this chapter:

1. "Board" means the North Dakota board of animal health.

2. "Domestic animal" means dog, cat, horse, bovine animal, sheep, goat, bison, llama, alpaca, or swine.

1. "Herd" means all animals commingled with other animals of the same species owned by the same person, which are confined to specific premises.

4. "Hybrid" means an animal produced by crossing species or subspecies.

5. "Import permit" or "importation permit" means a pre-movement authorization for entry into the State of North Dakota obtained from the office of the state veterinarian.

~~5.~~6. "License" means a document obtained from the board for the raising or propagation of a species in North Dakota.

~~6.~~7. "Nontraditional livestock" means any wildlife held in a cage, fence, enclosure, or other manmade means of confinement that limits its movement within definite boundaries, or an animal that is physically altered to limit movement and facilitate capture.

Category 1: Those animals that are similar to but have not been included as domestic species, including turkeys, geese, ducks (morphologically distinguishable from wild turkeys, geese, ducks), pigeons, and mules or donkeys. (These animals are subject to the rules of domestic animals.)

Category 2: Those species that have been domesticated, including ostrich, emu, chinchilla, guinea fowl, ferret, ranch foxes, ranch mink, peafowl, all pheasants not in category 3, quail, chukar, and Russian lynx. Category 2 species imported must meet the health requirements as set forth in this chapter.

Category 3: Those species that are indistinguishable from wild, indigenous species or present a health risk to wild and domestic species, or both, including elk, deer (except those listed under subdivisions a and b of subsection 3 of section 48-12-01-03), reindeer, bighorn sheep, fallow deer, ring-necked pheasant, Bohemian pheasant, sichuan pheasant, Canadian lynx, bobcat, and raptor.

Category 4: Those species that are considered inherently or environmentally dangerous, including bears, wolves, wolf hybrids, primates, lions, tigers, and cats (not listed previously).

Category 5: Those species that are not categorized in categories 1 through 4 require a special license, the requirements of which will be established by the board.

~~7. "Permit" means a document obtained from the board for the importation of animals into North Dakota.~~

8. "Person" means any individual, partnership, firm, joint stock company, corporation, association, trust, estate, or other legal entity.

9. "Possess" means to own, control, restrain, transport, or keep in captivity.

10. "Zoo" means an organization with a class C exhibitor's permit, which follows United States department of agriculture (USDA) regulations and are inspected by USDA/APHIS.

History: Effective March 1, 1994; amended effective October 1, 1998.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12

48-12-01-02.1. Importation Permit Required – Denial - Exemptions

1. Except as provided in this section, no person may import any nontraditional livestock without first obtaining an import permit from the office of the state veterinarian. The import permit number must be written on the certificate of veterinary inspection, unless the nontraditional livestock are being imported without a certificate of veterinary inspection for immediate slaughter pursuant to North Dakota Century Code section 36-14-10. Import permits expire 30 days after issuance and are not transferable. Upon a determination that the import permit applicant or permittee is or has been in violation of the requirements of the subject permit or that the applicant has provided inaccurate information with respect to the permit request, the state veterinarian may deny permit(s) issued pursuant to these rules. Import permits may be obtained from the office of the state veterinarian by calling the telephone numbers listed in section 48-01-01-01.

2. The state veterinarian may deny an import permit if the state veterinarian has information that an animal:

   a. has not met the disease testing, vaccination and identification requirements set forth in N.D.C.C. Title 36 or N.D. Admin. Code Title 48, or as otherwise required by the State Veterinarian;

   b. has not met or satisfied any pre-entry quarantine conditions imposed by law;

   c. is or may be infected with any contagious or infectious disease;

   d. has been exposed, or may have been exposed to any contagious or infectious disease;

   e. is or may originate from an area or premises under quarantine or other form of official or regulatory action relating to contagious or infectious disease; or

   f. may be a threat to the health and well being of the human or animal population of the state, or both.

3. Unless the state veterinarian determines it is necessary based on disease incidence information, the following are exempt from the importation permit and certificate of veterinary inspection requirement:

   a. arachnids
   b. amphibians
   c. invertebrates
   d. reptiles
   e. tropical freshwater and saltwater fish
   f. Pet Birds of the Psittacidae and Fringillidae families
   g. ferrets
   h. gerbils
   i. guinea pigs
   j. hamsters
   k. mice
   l. rats
   m. rabbits

The state veterinarian shall publicize the requirement for the certificate of veterinary inspection if the certificate of veterinary inspection should become necessary.

History:
General Authority: NDCC 36-01-08, 36-21.1-12
Law Implemented: NDCC 36-01-08, 36-01-12, 36-21.1-12

ARTICLE 48-14
FARMED ELK

CHAPTER 48-14-02
IMPORTATION REQUIREMENTS

48-14-02-01. Importation requirements. Farmed elk may be imported into North Dakota only after the owner of the farmed elk:

1. Obtains an importation permit from the state veterinarian's office in accordance with section 48-02-01-02;

2. Submits to the state veterinarian's office proof of a physical examination by an accredited veterinarian accompanied by an approved certificate of veterinary inspection. The certificate of veterinary inspection must include the minimum, specific disease test results, vaccinations, and health statements required by this chapter;

3. Submits to the state veterinarian's office the genetic purity test results in compliance with section 48-14-02-02. The genetic purity test results must be included with the certificate of veterinary inspection;

4. Submits to the state veterinarian's office a chronic wasting disease risk assessment form in compliance with section 48-14-02-07, unless the state veterinarian waives such requirement under subsection 2 of section 48-14-02-07; and

5. Completes and submits satisfactory proof of additional disease testing or vaccinations as may be required from the state veterinarian's office if ~~it~~ the state veterinarian has reason to believe other diseases, parasites, or other health risks are present.

History: Effective April 1, 2001;
General Authority: NDCC 36-25-02
Law Implemented: NDCC 36-14-04.1, 36-25-02

Consideration of Comments Received on Proposed Amendments to N.D. A.C. §48-02, 48-12, and 48-14

On November 25, 2002 the State Board of Animal Health submitted proposed changes to the North Dakota Administrative Code § 48-02, § 48-12 and § 48-14. We solicited comments for more that 60 days ending February 14, 2003. A public hearing was held on January 14, 2003 to receive public comment. Written or oral data, views, and comments are responded to in this document. The general comments, which were received from many commenters, will be responded to first followed by responses to more specific comments.

The proposed changes to the North Dakota Administrative Code, Title 48 dealt with importation requirements of domestic animals and nontraditional livestock. It would have required an importation permit on domestic animals and nontraditional livestock entering the state and would have changed the importation requirements for bison and sheep.

The Board did not receive any comments on the sheep importation requirement change that would allow the importation of sheep based on the genotype at codon 171. Therefore, the board will not modify that section of the proposed rule.

Many comments were received about livestock species not requiring an importation permit if the animals are going directly from a producer's premises, not diverted enroute, to a licensed auction or state or federally inspected slaughter facility. The board believes that the risks of importing disease into the state are mitigated by the presence of veterinary inspectors at licensed auction markets and the traceability of animal through the markets. However, because of the outcry of the public on an issue it does not understand, the board is withdrawing that portion of the proposed rule.

Many comments were received that were of a personal nature or based on misinformation. They will not be responded to.

Many comments were received questioning the need for a certificate of veterinary inspection and an importation permits on dogs and cats traveling with their owners or to veterinarians or pet groomers in border cities. Loss of business, inconvenience, enforceability, cost vs. gain, affect on shows and tourism, affect on truckers and humane societies were listed as reasons not to follow through with the rule as written. The Board recognizes these impacts and, while it was not the intention of the Board to impact these groups and persons, the rule as written would have. Therefore, the Board is modifying the rule to make exceptions for some domestic animals and nontraditional livestock (i.e. dogs, cats, horses, arachnids, amphibians, invertebrates, reptiles, tropical freshwater and saltwater fish, pet birds, ferrets, gerbils, guinea pigs, hamsters, mice, rats, and rabbits). In some instances the exceptions to the certificate of veterinary inspection and importation permit requirement is limited based on the amount of time that the animal will be in the state. In all cases the state veterinarian reserves the right to require certificates of

veterinary inspection and importation permits if it is necessary based on disease incidence information for the amount of time that the disease threat exists. The state veterinarian will make a concerted effort to notify the public of the need for a certificate of veterinary inspection and/or importation permit when such a situation arises.

There was one comment questioning the need for a certificate of veterinary inspection and importation permits on game birds. The Board believes that it is necessary to require a certificate of veterinary inspection and importation permit on game birds because of national disease control programs (i.e. The National Poultry Improvement Plan).

There was a request for a regulatory analysis of the proposed rule. Since the Board is making changes to the proposed rules based on comments received from the individuals who requested the regulatory analysis and the concerns expressed are being responded to the Board will not do a regulatory analysis of the proposed rule. Also, under section 28-32-08, the requirement for an agency to issue a regulatory analysis is triggered in 1 of 2 ways. First, an agency must issue a regulatory analysis if, within 20 days after the last published notice date of a proposed rule hearing, a written request for the analysis is filed by the Governor or a member of the legislative assembly. The regulatory analysis request was received on January 14, 2003, at the public hearing. Thus, it was not received "within 20 days after the last published notice date of the proposed rule hearing," since at least 30 days must elapse between the later of the date of publication of the notice or the date the legislative council mails copies of an agency's notice. In addition, with one exception, the written request for regulatory analysis was not filed by the Governor or a member of the legislative assembly. The Honorable Eliot Glassheim, District 18, did sign the request, but did not do so until January 13, 2003. In addition, the written request was not filed until January 14, 2003. Thus, the Board is not required by law to issue a regulatory analysis pursuant to section 28-32-08(1) (a).

Secondly, an agency would be required to issue a regulatory analysis if the proposed rule is expected to have an impact on the regulated community in excess of $50,000. The agency, in this case the Board, makes this determination, not members of the public. Thus, the Board has no obligation to conduct a regulatory analysis because members of the public feel that the rule would have an impact in excess of $50,000. But this is not the end of the story. Under section 28-32-18(1), it is entirely possible that the administrative rules committee may find the rule or a portion of the rule void if the committee makes the specific finding that with the rule there is, in this case, "a failure to comply with express legislative intent or to substantially meet the procedural requirements of chapter 28-32, or that the rule is arbitrary or capricious.

Even if the Board determined that a regulatory analysis should have been issued, it would be too late now. Section 28-32-08(1) (b) requires that the "analysis under this subsection must be available on or before the first date of public notice as provided for in section 28-32-10." Thus, to prepare a regulatory analysis now would not be in substantial compliance with the procedures required under chapter 28-32. The agency announced in its Notice of Intent to Adopt Administrative Rules that the amendments are not expected to have an impact on the regulated community in excess of $50,000.

There was also a comment about limiting the use of personal property. A request was made that the Board prepare a "written assessment that may limit the use of real property and its taking" pursuant to N.D.C.C. § 23-32-09. The commenter then goes on to argue that the "proposed rule would limit the use of personal property." (Emphasis added). The commenter sites examples such a "leaving the state for one day to go hunting with their dog, attending a horse show, show grandma their new pet that lives in a nursing home or returning from the lake with their pets".

N.D.C.C. § 23-32-09 provides that an agency must prepare a written assessment of the constitutional takings implications of a proposed rule, if the proposed rule may limit the use of real property (emphasis added). In an agency's analysis of the takings implications of a proposed rule, "taking" means the taking of private real property as defined in section 47-01-03, by government action which requires compensation to the owner of that property by the 5th or 14th amendment of the United States or section 16 of Article 1 of the North Dakota Constitution.

Under State law, property is classified as either "real or immovable" or "personal or moveable" (see N.D.C.C. § 47-01-02). Under section 47-01-03 defining real property, real or immovable property consists of land, that which is affixed to land, that which is incidental or appurtenant to land, and that which is immovable by law. Conversely, N.D.C.C. § 47-01-07 defines "personal property" as meaning and including "every kind of property that is not real [property]".

The commenter stated that the proposed rule would limit the use of personal property, not real property. Agencies are not required to conduct a takings assessment under section 28-32-09 regarding limitations on the use of private, personal property.

One commenter stated that the proposed rule was an attempt to expand the Board's regulatory authority to encompass every animal of every species. N.D.C.C § 36-01-08 states that he Board "shall protect the health of the domestic animals and nontraditional livestock of this state". This proposed rule only deals with domestic animals and nontraditional livestock and, therefore, is not an expansion of the Board's authority.

A commenter also was concerned about the state veterinarian having the authority to deny permits without substantive evidence and the authority of the state veterinarian to revoke permits issued for animals already legally imported into the state. While there is some concern about this creating some inability of the state veterinarian to take necessary steps to restrict importations into the state, the Board recognizes the commenter's concern for abuse of power and has changed the proposed rule accordingly so that the state veterinarian may deny an importation permit if the state veterinarian has information about the status of the animals for which the importation permit is being requested and the ability of the state veterinarian to revoke a permit that has already been issued is withdrawn.

Under the revised proposed rules some permits will still be required. One commenter was concerned about the inability to obtain an importation permit after business hours and on weekends. The staff of the State Board of Animal Health has two cellular phones that are carried with them 24 hours a day and can, and frequently do, issue importation permits at all hours of the day or night.