

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**
Form #8

Do Not Mark In This Box
Filing Date

2012 SEP 13 PM 2: 56

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

DATE EMERGENCY RULE WAS ORIGINALLY FILED: July 11, 2012

FIRST EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

SECOND EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

DATE OF FIRST EMERGENCY AMENDMENT: September 13, 2012

SERIES NUMBER OF RULE: 28

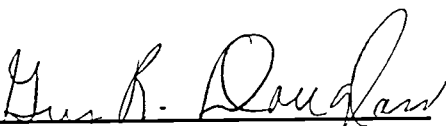
TITLE OF RULE: Poultry Litter and Manure Movement Into Primary Breeder Rearing Areas

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY AMENDMENT ARE AS FOLLOWS:

Facts and Circumstances are attached.

Use additional sheets if necessary


Authorized Signature



EMERGENCY RULE QUESTIONNAIRE

DATE: September 13, 2012

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Department of Agriculture
1900 Kanawha Boulevard, East
Charleston, WV 25305

EMERGENCY RULE TITLE: Poultry Litter Manure Movement Into Primary Poultry Breeder R

1. Date of filing September 13, 2012

2. Statutory authority for promulgating emergency rule:
WV Code 19-9-2; 19-9-10

3. Date of filing of proposed legislative rule: July 11, 2012

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? This emergency amendment to the emergency rule does adopt new language.

5. Has the same or similar emergency rule previously been filed and expired?
No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.

This rule is eminent to protect the primary breeder industry and protect their integrity for strict export and import requirements, by instilling protocols to ensure disease prevention. This primary breeder industry employs almost 200 personnel in a rural farming community, which would shut down this operation if the risk of infection or disease was not strictly controlled by regulating litter movement into the primary poultry breeder rearing areas. Local farmers can more readily have access to the fertilizer and nutrient enhancements provided by the tested litter at a much lower cost

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

~~This rule is eminent to protect the primary breeder industry and protect their integrity~~ for strict export and import requirements, by instilling protocols to ensure disease prevention. ~~This primary breeder industry employees almost 200 personnel in a rural~~ farming community, which would shut down this operation if the risk of infection or ~~disease was not strictly controlled by regulating litter movement into the primary~~ poultry breeder rearing areas. Local farmers can more readily have access to the fertilizer and nutrient enhancements provided by the tested litter at a much lower cost.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Poultry Litter and Manure Movement Into Primary Breeder Rearing Areas

Rule Title: _____

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Department of Agriculture

Address: 1900 Kanawha Boulevard, East
Charleston, WV 25305

Phone Number: 304-558-3200 Email: douglass@ag.state.wv.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This legislative rule establishes standards for the transport of poultry litter and swine manure into areas where commercial primary poultry breeder operations are located. Implementation and ongoing management of this rule will increase agency expense in its first and subsequent years.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	10,000.00	10,000.00	10,000.00
Personal Services			
Current Expenses	10,000.00	10,000.00	10,000.00
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	6,000.00	6,000.00

Poultry Litter and Manure Movement Into Primary Breeder Rearing Areas

Rule Title: _____

Rule Title: _____

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

The estimated cost to the state in the first year of implementation is \$10,000, which is comprised of \$6,000 for testing supplies and \$4,000 for staff travel for monitoring and enforcement of this rule.

The agency will cover the cost of testing in the first year; in subsequent years, farmers will be charged for the actual cost of each test which will offset the testing supplies expense. As a result, after the first year, the net cost to the agency will be \$4,000 to cover required staff travel.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

[Empty box for memorandum content]

Date: 9/13/12

Signature of Agency Head or Authorized Representative

Ben K. Douglas



State of West Virginia
DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner

Janet L. Fisher
Deputy Commissioner

Bob Tabb
Deputy Commissioner

Steve Miller
Assistant Commissioner

The purpose of this rule is to establish guidelines for the transport of poultry litter and swine manure into areas where commercial primary poultry breeder operations are located. The function of these primary breeders is to maintain pure blood lines, expand pure bred lines and develop cross-bred lines. Primary breeder farms adhere to strict biosecurity programs to prevent introduction of pathogens from other poultry or animals. Movement of personnel, equipment and birds are strictly controlled to reduce the risk of infection and disease. Other protocols to ensure disease prevention on primary breeder farms include strict separation of generations and geographically separated farms.

After input from two public hearings, the Department wishes to change our Emergency rule to read as the agency approved filing that was filed on August 31, 2012. These changes address concerns raised by producers and users of poultry litter.

A handwritten signature in cursive script, reading "Gus R. Douglass".

TITLE 61
LEGISLATIVE RULE
DEPARTMENT OF AGRICULTURE

FILED

2012 SEP 13 PM 2: 57

SERIES 28
POULTRY LITTER AND MANURE MOVEMENT
INTO PRIMARY POULTRY BREEDER
REARING AREAS

OFFICE WEST VIRGINIA
SECRETARY OF STATE

61-28-1. General.

- 1.1. Scope. -- This legislative rule establishes standards for the transport of poultry litter and swine manure into areas where commercial primary poultry breeder operations are located.
- 1.2. Authority. -- W. Va. Code '19-9-2; 19-9-10.
- 1.3. Filing Date. --
- 1.4 -- Effective Date. --

61-28-2. Purpose.

The purpose of this article is to establish guidelines for the transport of poultry litter and swine manure into areas where commercial primary poultry breeder operations are located. The function of primary breeders is to maintain pure blood lines, expand pure blood lines and develop cross-bred lines. Primary breeders maintain and reproduce the first three generations of birds referred to as Pedigree, Great-grandparent and Grandparent stock. These birds are used to produce the fourth generation known as Parent or Multiplier stock, which produce the fifth generation birds grown by commercial growers for marketing. Primary breeder farms adhere to strict biosecurity programs to prevent introduction of pathogens from other poultry or animals. Diseases such as salmonella, mycoplasmas and avian influenza are major concerns. Breeding turkeys may also be easily infected with influenza viruses from swine which will result in immediate and dramatic cessation of egg production. Movement of personnel, equipment and birds are strictly controlled to reduce the risk of infection or disease. Other protocols to ensure disease prevention on primary breeder farms include strict separation of generations and geographically separated farms.

61-28-3. Definitions.

The following words as used in this article, unless the context otherwise requires or a different meaning is specifically prescribed, shall have the following meanings:

- (a) "Area" means any land within a ~~three-mile~~ one-mile radius of a poultry house engaged in the rearing of commercial primary breeder stock.

- (b) "Certificate" means a document issued by the commissioner of agriculture or the WVDA State Veterinarian, if designated by the commissioner, indicating a regulated material is free of specified pathogens.
 - (c) "Commissioner" means the commissioner of agriculture of the State of West Virginia or his/her designee.
 - (d) "Commercial primary poultry breeder" is an operation engaged in the maintenance and improvement of breeding genetics.
 - (e) "Compost" means the natural process in which beneficial microbes reduce organic waste into a biologically safe by-product which is capable of being recycled.
 - (f) "Move" means to ship, offer for shipment, receive for transportation, carry, or otherwise transport, move or to be moved.
 - (g) "Multiplier" (commonly referred to as the fourth generation) is the offspring of Grandparent stock used to produce birds for market.
 - (h) "Pathogen" is a microorganism, virus, bacterium, or fungus capable of causing disease in its host.
 - (i) "Permit" is a document issued by the commissioner of agriculture or the WVDA State Veterinarian, if designated by the commissioner, to provide for movement of regulated articles to restricted destinations.
 - (j) "Person" means an individual, partnership, corporation, association, co-op, firm, company, or any organized group of persons whether incorporated or not.
 - (k) "Poultry" includes any birds raised commercially or domestically for meat, eggs, feathers or pets.
 - (l) "Poultry Litter" refers to any material used as poultry bedding which may include sawdust, wood shavings, rice hulls, peanut hulls, straw, newspaper, and sand.
 - (m) "Primary poultry breeder" is any person (as designated in definitions) engaged in the production of Pedigree, Great-grandparent, Grandparent and Parent stock of poultry (commonly referred to as the first four generations).
 - (n) "Sell" means offer for sale, exchange, barter or trade.
 - (o) "Swine manure" refers to excreta from the production of pigs which may include bedding material such as sawdust, wood shavings or straw.
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61-28-4. Powers and duties of the Commissioner.

The Commissioner has the authority to:

- (A) Adopt, promulgate and enforce rules to carry out the purpose of this article. Said rules shall establish guidelines for the movement of poultry litter into restricted areas.

~~(1) No person shall transport, move or sell poultry litter, which is a regulated material as defined in this legislative rule, into any area engaged in the production of commercial primary poultry breeder stock unless the poultry litter being transported has been properly composted for a period of 60 days.~~

(1) No person shall transport, move, or sell poultry litter into any area engaged in the production of commercial primary poultry breeder stock (“Area” means any land within a one-mile radius of a poultry house engaged in the rearing of commercial primary breeder stock.

(a) Any farm located within the area engaged in the production of commercial primary poultry breeder stock may be given reasonable consideration to acquire poultry litter being produced by the primary poultry breeder facility within the area.

~~(2) No person shall move or sell swine manure, into any area engaged in the production of commercial primary poultry breeder stock due to additional disease risks.~~

(2) No person shall move or sell swine manure, into any area engaged in the production of commercial primary poultry breeder stock due to additional disease risk. (“Area” means any land within a one-mile radius of a poultry house engaged in the rearing of commercial primary breeder stock)

(3) No person shall transport, move, or sell poultry litter, which is a regulated material as defined in this legislative rule, into the county in which the primary poultry breeder facility is located unless the poultry litter being transported has been properly composted for a period of 30 days, and is in compliance with the required testing.

- (B) Require testing and prescribe methods of testing for the presence of pathogens capable of causing harm to poultry or people.

- (1) No person shall move or sell poultry litter into any area engaged in the production of commercial primary poultry breeder stock unless the poultry litter being transported has been certified by the State Veterinarian to have:
 - (a) originated from a flock that has been tested negative for Avian Influenza pre-movement.
 - (b) originated from a flock that is Mycoplasma free.
 - (c) been tested at an approved laboratory facility using approved methodology for the absence of salmonella.
- (2) No person shall move or sell poultry litter into ~~any area engaged in the production of commercial primary poultry breeder stock~~ the county in which the primary breeder facility is located without having in his/her possession the certificate from the State Veterinarian stating poultry litter being transported has been tested within 30 days of movement.

61-28-5. Criminal penalties; civil penalties; negotiated agreement.

(A) **Criminal penalties.** -- Any person violating any provision of this article or rules adopted hereunder is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than two thousand dollars nor more than five thousand dollars for the first offense; second and subsequent offenses shall be fined not less than five thousand nor more than ten thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned. Magistrates have concurrent jurisdiction with circuit courts to enforce the provisions of this article.

(B) **Civil penalties.** --

- (1) Any person violating a provision of this article or rules adopted hereunder may be assessed a civil penalty by the commissioner of agriculture. In determining the amount of any civil penalty, the commissioner shall give due consideration to the history of previous violations of any person, the seriousness of the violation, including any irreparable harm to the environment, any hazards to the health and safety of the public and any economic damages to the public or business entity.
- (2) The commissioner may assess a civil penalty of up to one thousand dollars for any violation.

(3) The civil penalty is payable to the State of West Virginia and is collectible in any manner now or hereafter provided for collection of debt. If any person liable to pay the civil penalty neglects or refuses to pay the same, the amount of the civil penalty, together with interest at ten percent, is a lien in favor of the State of West Virginia upon the property, both real and personal, of such a person after the same has been entered and docketed to record in the county where such property is situated. The clerk of the county, upon receipt of the certified copy of such, shall enter same to record without requiring the payment of costs as a condition precedent to recording.

(C) Notwithstanding any other provision of law to the contrary, the commissioner may promulgate and adopt rules which permit consent agreements or negotiated settlements for the civil penalties assessed as a result of violation of the provisions of this article.

(D) Nothing in this article may be construed as requiring the commissioner or his representative to report for prosecution as a result of minor violations of the article when he believes that the public interest will be best served by a suitable notice of warning in writing.

(E) Upon application by the commissioner, the circuit court of the county in which the violation is occurring, has occurred or is about to occur, as the case may be, may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this article or any rule promulgated under this article, notwithstanding the existence of other remedies at law. Any such injunction shall be issued without bond.

(F) No state court may allow for the recovery of damages for any administrative action taken, if the court finds that there was a probable cause for the action.

(G) It is the duty of the prosecuting attorney of the county in which the violation occurred to represent the department of agriculture, to institute proceedings and to prosecute the person charged with such violation.

61-28-6. Right to appeal.

Any order of the Commissioner of agriculture or his/her designee shall be served upon all persons affected thereby by registered mail. Within ten days of the receipt of such order any party adversely affected thereby may, in writing, request a hearing before the Commissioner. Such hearing and any judicial review thereof shall be conducted in accordance with the applicable provisions of article five (§29A-5-1 et. seq.) and six (§29A-6-1 et seq.), chapter twenty-nine-A of this Code as if the same were set forth herein in extensor.