

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

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2013 MAY 15 PM 2:08

Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 28

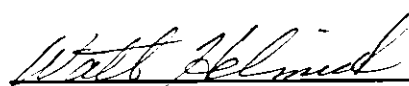
TITLE OF RULE BEING PROPOSED: Poultry Litter & Manure Movement Into
Primary Poultry Breeder Rearing Areas

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB2689

SECTION 64-9-9 (b), PASSED ON April 13, 2013

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: May 15, 2013


Authorized Signature

TITLE 61
LEGISLATIVE RULE
DEPARTMENT OF AGRICULTURE

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

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. -- May 15, 2013
- 1.4 Effective Date. -- June 13, 2013

61-28-2. Purpose.

2.1 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 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.

- 3.1 The following terms, as used in this article, unless the context otherwise requires or a different meaning is specifically prescribed, have the following meanings:
 - (a) "Area" means any land within a 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 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 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 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.

61-28-4. Powers and duties of the Commissioner.

4.1 The Commissioner may:

(A) Establish guidelines for the movement of poultry litter into restricted areas;

(1) A person shall not transport, move, or sell poultry litter into any area engaged in the production of commercial primary poultry breeder stock.

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

(2) A person shall not move or sell swine manure, into any area engaged in the production of commercial primary poultry breeder stock due to the additional disease risk.

(3) A person shall not transport, move, or sell poultry litter, which is a regulated material as defined in this 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 testing required by this rule.

(B) Require testing and prescribe methods of testing as prescribed by the Commissioner of Agriculture in accordance with §19-9-2, for the presence of pathogens capable of causing harm to poultry or people.

(1) A person shall not 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 Commissioner 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; and

(c) been tested at an approved laboratory facility using approved methodology for the absence of salmonella;

(2) A person shall not move or sell poultry litter into the county in which the primary breeder facility is located without having in his or her possession the certificate from the Commissioner stating that the

poultry litter being transported has been tested within 30 days of its movement.

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

(A) **Criminal penalties.** -- Any person who shall violate any of the provisions of this article, or who shall obstruct or hinder the commissioner, or any officer or employee, in the performance of his duties under this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall, for the first offense, be fined not more than one hundred dollars, and upon conviction for each subsequent offense fined not more than five hundred dollars, and in addition to such fine may be confined in the county jail for not more than ninety days.

(B) Upon application by the Commissioner, the circuit court of the county in which the violation is occurring, has occurred or is about to occur, 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. An injunction shall be issued without bond.

(C) A state court may not allow for the recovery of damages for any administrative action taken, if the court finds that there was a probable cause for the action.

(D) 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 a violation.

61-28-6. Right to appeal.

Any order of the Commissioner of Agriculture shall be served upon all affected persons by registered mail. Within ten days of the receipt of any order any party adversely affected by the order may, in writing, request a hearing before the Commissioner. The hearing and any judicial review thereof shall be conducted in accordance with the applicable provisions of West Virginia Code §29A-5-1 et. seq. and West Virginia Code §29A-6-1 et seq. under the Department's rule, Poultry Litter and Manure Movement Into Primary Poultry Breeder Rearing Areas 61CSR28.