WEST VIRGINIA SECRETARY OF STATE
KRIS WARNER
ADMINISTRATIVE LAW DIVISION

eFILED
10/23/2026 3:40:11 PM
Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Agriculture

RULE TYPE: Legislative TITLE-SERIES: 61-28

RULE NAME: Poultry Litter And Manure Movement Into Primary Breeder Rearing Areas

CITE AUTHORITY: §19-9-2, 19-9-10

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Amie J Minor -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 61
LEGISLATIVE RULE
DEPARTMENT OF AGRICULTURE

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. -- ~~April 13, 2021~~

1.4 Effective Date. -- ~~May 3, 2021~~

1.5.Sunset Date. -- This rule shall terminate and have no further force or effect August 1, ~~2031~~ 2032.

§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~~ rule, unless the context otherwise requires or a different meaning is specifically prescribed, have the following meanings:

3.1.~~a~~1. “Area” means any land within a one-mile radius of a poultry house engaged in the rearing of commercial primary breeder stock.

3.1.~~b~~2. “Certificate” means a document issued by the Commissioner of Agriculture indicating a regulated material is free of specified pathogens.

3.1.~~c~~3. "Commissioner" means the Commissioner of Agriculture of the State of West Virginia or his/her designee.

3.1.~~d~~4. "Commercial primary poultry breeder" is an operation engaged in the maintenance and improvement of breeding genetics.

3.1.~~e~~5. "Compost" means the natural process in which beneficial microbes reduce organic waste into a biologically safe by-product which is capable of being recycled.

3.1.~~f~~6. "Move" means to ship, offer for shipment, receive for transportation, carry, or otherwise transport, move, or to be moved.

3.1.~~g~~7. "Multiplier" (commonly referred to as the fourth generation) is the offspring of Grandparent stock used to produce birds for market.

3.1.~~h~~8. "Pathogen" is a microorganism, virus, bacterium, or fungus capable of causing disease in its host.

3.1.~~i~~9. "Permit" is a document issued by the Commissioner of Agriculture to provide for movement of regulated articles to restricted destinations.

3.1.~~j~~10. "Person" means an individual, partnership, corporation, association, co-op, firm, company, or any organized group of persons, whether incorporated or not.

3.1.~~k~~11. "Poultry" includes any birds raised commercially or domestically for meat, eggs, feathers, or pets.

3.1.~~l~~12. "Poultry Litter" refers to any material used as poultry bedding which may include sawdust, wood shavings, rice hulls, peanut hulls, straw, newspaper, and sand.

3.1.~~m~~13. "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. The term does not include a person raising poultry for the sale of meat or eggs.

3.1.~~n~~14. "Sell" means to offer for sale, exchange, barter, or trade.

3.1.~~o~~15. "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:

4.1.~~a~~1. Establish guidelines for the movement of poultry litter into restricted areas, including the following:~~;~~

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

4.1.~~a.1(a).~~1.b. 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.

4.1.~~a.2~~1.c. A person shall not transport, move, or sell swine manure~~,~~ into any area engaged in the production of commercial primary poultry breeder stock due to the additional disease risk.

4.1.~~a.3~~1.d. 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, moved, or sold has been properly composted for a period of 30 days~~,~~ and is in compliance with the testing required by this rule.

4.1.~~b~~2. Require testing and prescribe methods of testing, ~~as prescribed by the Commissioner of Agriculture~~ in accordance with W. Va. Code §19-9-2, for the presence of pathogens capable of causing harm to poultry or people.

4.1.~~b.1~~2.a. A person shall not transport, move, or sell or sell poultry litter into any county engaged in the production of commercial primary poultry breeder stock unless the poultry litter being transported has been certified by the Commissioner to have:

4.1.~~b.1(a)~~2.a.1. originated from a flock that has ~~been~~ tested negative for Avian Influenza pre-movement;

4.1.~~b.1.(b)~~2.a.2. originated from a flock that is Mycoplasma free; and

4.1.~~b.1.(c)~~2.a.3. been tested at an approved laboratory facility using approved methodology for the absence of salmonella~~;~~.

4.1.~~1.2.~~1.3. A person shall not transport, move, or sell poultry litter into the county in which the primary poultry 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~~.

5.1. Criminal penalties. -- Any person who shall violate any of the provisions of this ~~article~~ rule, or who shall obstruct or hinder the commissioner, or any officer or employee, in the performance of his or her duties under this ~~article~~ rule, shall be guilty of a misdemeanor, and, upon conviction thereof, shall, for the first offense, be fined not more than $100, and upon conviction for each subsequent offense fined not more than $500, and in addition to such fine may be confined in the county jail for not more than ninety days.

5.2. The commissioner may, in his or her discretion, suspend for up to one year the right to transport poultry litter of any person who violates the provisions of this rule twice or more within any one-year period. ~~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.~~

~~5.3. 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.~~

~~5.4. 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~~ issued pursuant to this rule shall be served upon all affected persons by registered mail. Within ten days of 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 the Administrative Procedures Act concerning contested cases, W. Va. Code § 29A-5-1 *et seq.*, and of this rule. ~~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.~~