

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #3

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2008 JUL 30 AM 9: 36

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

CITE AUTHORITY: 19-9-34A

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1C

TITLE OF RULE BEING AMENDED: Disposal of Dead Poultry

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 28, 2008

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Department of Agriculture
1900 Kanawha Blvd., East
Charleston, WV 25305
304-558-2227

LEGISLATIVE RULE TITLE: Disposal of Dead Poultry

1. Authorizing statute(s) citation 19-9-34A

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 23, 2008

b. What other notice, including advertising, did you give of the hearing?
We filed a Public Comment Period. All poultry companies, The WV Poultry Association and The Farm Bureau were given notice.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 23, 2008

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached X No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 30, 2008

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Herma Johnson, Director

Regulatory and Environmental Affairs Division

1900 Kanawha Blvd., East

Charleston, WV 25305

Office - 304-558-2227

Fax - 304-558-3594

E-Mail - hjohnson@ag.state.wv.us

- g. **IF DIFFERENT FROM ITEM 'F'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A



State of West Virginia

DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner

Janet L. Fisher
Deputy Commissioner

Steve Hannah
Deputy Commissioner

SUMMARY OF PROPOSED RULE
DISPOSAL OF POULTRY MORTALITY
TITLE 61 – SERIES 1C

§61-1C-1. General

1.1. Scope – Changed wording from dead poultry to poultry mortality and removed wording of "domestic fowl" as this is included in the definitions under "Poultry".

§61-1C-2. Definitions

a- Add "Poultry Mortality" as a description of "Dead Poultry".

b- Change the number of birds for "Commercial Purposes" from 200 to 3000 as that is the number used by the United States Department of Agriculture to designate a commercial flock. This figure is also more closely aligned with the commercial poultry industry as it is conducted in West Virginia today.

c- Add the term "Backyard poultry flocks" to describe those poultry flocks of less than 3000 birds.

d- Change fahrenheit to Fahrenheit for grammatical correctness.

e- Eliminate the term "Disposal Pit" and its definition as it is no longer an approved method for the disposal of poultry mortality in the soils of West Virginia. Add the term "Burial" as a means of poultry mortality disposal.

f- Add the term "Sanitary Landfill" as a means of poultry mortality disposal.

g- Add the term "Emergency Situations" to describe those events that would cause mass mortality of poultry.

Summary of Proposed Rule

§61-1C-3. Rules Pertaining to the Disposal of Poultry Mortality

a- Add “Burial in a Sanitary Landfill” and “burial of mass poultry mortality” to the rule.

b- Add a prior approval clause for the transportation of poultry mortality caused by disease outbreak or depopulation.

§61-1C-4. Standards for Incineration

a- Eliminate all references for “Disposal Pits”.

b- Add all needed references for the use of Incineration for the disposal of poultry mortality.

§61-1C-5. Standards for Rendering

a- Add all needed references for the use of Rendering for the disposal of poultry mortality.

§61-1C-6. Standards for Composting

a- Add all needed references for the use of Composting for the disposal of poultry mortality.

b- As a result of the comment period we added “Facilities designed for the purpose of disposal of poultry mortality constructed prior to the effective date of this rule are exempt from the set-back distances”.

§61-1C-7. Standards for Landfill Disposal

a- Add all needed references for the use of Landfill Disposal for the disposal of poultry mortality.

61-1C-8. Standards for Burial

a- Add all needed references for the use of Burial for the disposal of poultry mortality.



State of West Virginia

DEPARTMENT OF AGRICULTURE

Gus R. Douglass, Commissioner

Janet L. Fisher
Deputy Commissioner

Steve Hannah
Deputy Commissioner

STATEMENT OF CIRCUMSTANCES

Disposal of Poultry Mortality
Title 61, Series 1C

The West Virginia Department of Agriculture proposes to update the Disposal of Dead Poultry Rule so that it reflects the current best management practices accepted by industry and government agencies. This rule will repeal and replace W. Va. §61CSR1C "Disposal of Dead Poultry". We also propose to change the title from "Disposal of Dead Poultry" to "Disposal of Poultry Mortality". The last adoption of this Rule was in 1992. In the years that have passed since that time many improved practices for the disposal of dead livestock, as well as numerous Federal, State, and Local rules and regulations have been developed for this task.

By adopting this rule, the West Virginia Department of Agriculture unites with other state governments and the poultry industry to develop just and equitable standards of practice, definitions, and policies to be followed in enforcing these rules. This promotes uniformity in practices, laws, regulations, and enforcement policies. These best management practices are also designed to protect water and other environmental resources.

After the 30 day comment period the following were changed/added to the proposed rule:

- "Changed wording in the "Scope" from dead poultry to poultry mortality and removed wording of "domestic fowl" as this is included in the definitions under "Poultry"
- "Facilities designed for the purpose of disposal of poultry mortality constructed prior to the effective date of this rule are exempt from the set-back distances.

It was not the intent of the Department to require existing composters to relocate; however, new composters must follow the requirements of the proposed rule.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Disposal of Dead Poultry Title 61 - 1C

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Department of Agriculture

Address: 1900 Kanawha Blvd., East
Charleston, WV 25305-0177
Herma Johnson, Director

Phone Number: 558-2227 Email: hjohnson@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.

No fees are associated with this rule.

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	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title: Disposal of Dead Poultry Title 61 - 1C

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

There are no fees associated with this rule.

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.

Date: 4-23-08

Signature of Agency Head or Authorized Representative

Stoneham *SO*

FILED

TITLE 61
LEGISLATIVE RULE
DEPARTMENT OF AGRICULTURE 2008 JUL 30 AM 9: 37

SERIES 1C
DISPOSAL OF POULTRY MORTALITY

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§61-1C-1. General.

1.1. Scope. -- These rules regulate the disposal of poultry mortality by persons, firms or corporations engaged in growing poultry for commercial purposes.

1.2. Authority. -- W. Va. Code §19-9-34A.

1.3. Filing Date. -- ~~April 23, 1992.~~

1.4. Effective Date. -- ~~April 27, 1992.~~

1.5. Repeal of Former Rule -- This legislative rule repeals and replaces W.Va. §61CSR1C "West Virginia Disposal of Dead Poultry" filed April 23, 1992 and effective April 27, 1992.

§61-1C-2. Definitions.

2.1. "Backyard poultry flocks" means the raising or keeping of a flock of poultry, in numbers less than 3000 at one time, for the purpose of sale of such poultry or the eggs produced from such poultry, or the raising or keeping of gamebirds. The disposal of poultry mortality from backyard flocks due to flock depopulation, abnormal death losses, or a catastrophic disease outbreak must conform to this rule.

2.2. "Burial" means interment of mortality below the natural surface of the ground. Burial site selection and criteria must be approved by the appropriate over-site agencies. The burial site location must be situated to prevent the contamination of ground and surface waters.

2.3. "Composting" means a natural process in which beneficial microbes reduce organic waste (poultry mortality) into a biologically safe by-product which is capable of being recycled in the agriculture industry. A composter is a unit constructed of concrete or treated wood located under a roofed structure. A typical unit will contain two treatment areas. A primary treatment area may consist of one or more compartments. The secondary treatment area will be one compartment that will receive partially composted material from the primary treatment areas. Material in the primary treatment area is moved to the secondary area when it has reached a peak temperature of 140 to 160 degrees Fahrenheit after seven to ten days. The composting process is complete when the temperature in the secondary treatment area has reached peak temperature of 140 to 160 degrees Fahrenheit after seven to ten days.

2.4. "Dead poultry" and "poultry mortality" means all poultry, excluding those intentionally slaughtered, which die as a result of disease, injury or of natural causes.

2.5. "Emergency Situations" means situations which involve mass mortality due to flock depopulation, abnormal death losses or a catastrophic disease outbreak.

2.6. "Incinerator" means a firebox constructed of masonry or metal in which poultry mortality is completely burned to ashes by the use of fuel.

2.7. "Person" means any person, firm, partnership, corporation, or institution which engages in the raising or keeping of poultry for commercial purposes. A person is further defined as the grower of the poultry regardless of the ownership of the poultry.

2.8. "Poultry" means all chickens, ducks, turkeys, or other domestic fowl.

2.9. "Raising or keeping of poultry for commercial purposes" means the raising or keeping of a flock of 3000 or more poultry at one time for the purpose of sale of such poultry or the eggs produced from such poultry.

2.10. "Rendering" means the treatment of poultry mortality by steam treatment or by cooking at a commercial rendering plant, for a sufficient time to effectively destroy the product for human food purposes and to preclude dissemination of disease through consumption by animals. Poultry mortality intended for disposal by rendering shall be picked up by or delivered to the rendering company within 24 hours of death or be refrigerated below 40 degrees Fahrenheit pending pickup or delivery. All persons shall hold all poultry mortality in a container that is leak proof, fly proof, and pet and wild animal proof.

2.11. "Sanitary Landfill" means a solid waste disposal site permitted or approved by the West Virginia Department of Environmental Protection. Poultry mortality intended for disposal in a sanitary landfill shall be delivered to the landfill within 24 hours of death or be refrigerated below 40 degrees Fahrenheit pending delivery. All persons shall hold all poultry mortality in a container that is leak proof, fly proof, and pet and wild animal proof.

§61-1C-3. Rules Pertaining to the Disposal of Poultry Mortality.

3.1. It is unlawful for any person to dispose of, or cause to be disposed of, poultry mortality in any manner other than by incinerator, composting, burial in a sanitary landfill, burial on private property, or rendering as defined in section 2 of these rules.

3.2. For the protection of public and animal health during emergency situations, burial of mass poultry mortality may be permitted as defined in section 8 of these rules.

3.3. No person may transport poultry mortality that is the result of a disease outbreak or depopulation to an off-farm disposal site without prior approval, granted on a case-by-case basis by the Commissioner of Agriculture or his representative.

3.4. Facilities designed for the purpose of disposal of poultry mortality constructed prior to the effective date of this rule are exempt from the set-back distances.

§61-1C-4. Standards for Incineration.

4.1. Poultry mortality may be disposed of by using a commercial incinerator.

4.2. The incinerator and the methods used must be approved by the West Virginia Department of Environmental Protection. Incinerators must be registered with the West Virginia Department of Environmental Protection Division of Air Quality.

4.3. Operation of the incinerator must be in accordance with the owner's manual. Proper operation of the incinerator according to manufacturer's recommendations should result in minimal smoke or odor.

4.3.a. Homemade incinerators that do not meet air pollution control standards are not an acceptable means of incineration. The entire carcass must be reduced to ashes.

4.4. Incineration may be accomplished by use of a basic incinerator, which may be mobile, or permanent, an air curtain burner, or a gasification unit.

§61-1C-5. Standards for Rendering.

5.1. Carcasses disposed of by rendering must be delivered to the rendering plant within 24 hours of death unless the carcasses are frozen or refrigerated and must be delivered in covered leak-proof containers.

5.1.a. The Commissioner of Agriculture or his representative may approve alternative requirements during emergency situations.

5.2. Vehicles used for transporting poultry mortality to a commercial rendering facility shall be constructed and maintained, or be prepared prior to receiving carcasses into the vehicle, so that no liquid or fluid from the carcasses is allowed to drip or seep from the vehicle during transport.

5.3. The use of a refrigeration unit or freezer for cold storage of poultry mortality will be necessary unless the carcasses are delivered on a daily basis to the rendering plant. Such refrigeration units or freezers must be animal and vermin proof.

§61-1C-6. Standards for Composting.

6.1. Composting requires a covered structure consisting of a roof with an overhang and a concrete or otherwise impervious floor to prevent rainwater from reaching the composted material. The compostor must be designed and constructed to prevent the contamination of ground and surface water.

6.2. The composter must be located 100 feet from surface water, drainage ditches, and wet lands. It should be located as far from residences and public roads as possible but at least 150 feet from the property line.

6.3. Growers must not attempt to compost large numbers of carcasses without assistance and approval from the West Virginia Department of Agriculture in consultation with the USDA Natural Resources Conservation Services and the West Virginia Department of Environmental Protection.

6.4. Composting can be used for the disposal of mass mortality during an emergency situation. Mass mortality composting may be accomplished in the poultry house or at an outside location. In-house composting involves placing the carcasses and carbon materials in windrows inside the poultry house, and allowing the carcasses to go through the first heating cycle in these windrows. For the second heating cycle the windrows may be turned over and restacked in the poultry house, or the compost may be removed from the poultry house and restacked at an outdoor location. This location must be situated to prevent the contamination of ground and surface water. The site selection for composting in an outdoor location will be made with assistance and approval of the West Virginia Department of Agriculture in consultation with the USDA Natural Resources Conservation Service and the West Virginia Department of Environmental Protection.

§61-1C-7. Standards for Landfill Disposal.

7.1. For the disposal of poultry mortality in an approved sanitary landfill, arrangements shall be made with a city, county, regional, or private landfill official representing the landfill to be utilized.

7.2. Vehicles used for transporting poultry mortality to a sanitary landfill facility shall be constructed and maintained, or be prepared prior to receiving carcasses into the vehicle, so that no liquid or fluid from the carcasses is allowed to drip or seep from the vehicle during transport.

7.3. The use of a refrigeration unit or freezer for cold storage of poultry mortality will be necessary unless the carcasses are delivered on a daily basis to the sanitary landfill. Such refrigeration units and freezers must be animal and vermin proof.

7.3.a. The Commissioner of Agriculture or his representative may approve alternative requirements during emergency situations.

§61-1C-8. Standards for Burial.

8.1. Burial of mass poultry mortality may be permitted during an emergency situation. The site selection for mass poultry mortality burial will be made in consultation with the USDA Natural Resources Conservation Service and the West Virginia Department of Environmental Protection.

8.1.a. The burial site location must be situated to prevent the contamination of ground and surface water.



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

Janet L. Fisher
Deputy Commissioner

Steve Hannah
Deputy Commissioner

COMMENT PERIOD INFORMATION
Disposal of Dead Poultry 61-1C

- **Received one (1) comment from Perdue Incorporated, Salisbury, Maryland.**
 - Questioned §61-1C-6 (6.2) – “the composter must be located 100 feet from surface water, drainage ditches and wetlands. It should be located as far from residences and public roads as possible but at least 150 feet from the property line”.
 - Concern – This statement would indicate existing composters might need to be moved.
- **West Virginia Department of Agriculture’s response – We would take it under consideration prior to submitting to the Legislature.**
 - After reviewing the proposed rule, our intent is not to require existing composters to be relocated; however, new composters must follow the requirements of the rule.
 - Added 3.4 to §61-1C-3 to read “Facilities designed for the purpose of disposal of poultry mortality constructed prior to the effective date of this rule are exempt from the set-back distances.
- **Additional Changes per West Virginia Department of Agriculture Changed the wording in 1.1 Scope**
 - Changed wording from dead poultry to poultry mortality.
 - Removed wording of “domestic fowl” as this is included in the definitions under “Poultry”.

RECEIVED JUL 17 2008



Perdue Incorporated
P.O. Box 1537
Salisbury, MD 21802-1537
www.perdue.com®

July 10, 2008

West Virginia Department of Agriculture
Regulatory and Environmental Affairs
1900 Kanawha Boulevard East
Charleston, West Virginia 25305
Attention: Herma Johnson, Director

Re: Disposal of Dead Poultry Title 61-1C Proposed Rule

Dear Herma Johnson:

In response to the above-referenced proposed rule, Perdue Farms, Inc. respectfully submits the following comment for your consideration.

Specifically, §61-1C-6 (6.2) requires that "the composter must be located 100 feet from surface water, drainage ditches and wetlands. It should be located as far from residences and public roads as possible but at least 150 feet from the property line". As it reads now, it could be inferred that existing composters located within those setbacks might have to be moved. For clarity we would suggest incorporating language that defines the setbacks are for new composters installed after the effective date of the final rule and exempts existing composters.

We appreciate the opportunity to comment and should you have any questions please do not hesitate to contact me at (410) 341-2055.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey Smith", written in a cursive style.

Jeffrey Smith
Corporate Environmental Manager
Perdue Farms, Inc.

Cc: Steve Schwalb (Perdue)
Charlie Carpenter (Perdue)



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State of West Virginia

DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner

Janet L. Fisher
Deputy Commissioner

Steve Hannah
Deputy Commissioner

July 21, 2008

Mr. Jeffrey Smith
Corporate Environmental Manager
Perdue Incorporated
P.O. Box 1537
Salisbury, MD 21802-1537

Dear Mr. Smith:

The Department of Agriculture greatly appreciates your response to the proposed rule on the Disposal of Poultry Mortality. The point that you made concerning the exemption of existing composting facilities to the set-backs required by this rule is well taken. Consideration of your comment will certainly be made during the final drafting of the rule to be submitted to the West Virginia Legislature.

Thank you again for your response, and if you have any further concerns please contact me at (304) 558-2227.

Sincerely,

A handwritten signature in cursive script that reads "Herma Johnson".

Herma Johnson
Director
Regulatory & Environmental Affairs