

DEPARTMENT OF AGRICULTURE

OFFICE OF THE STATE VETERINARIAN

Statutory Authority: 3 Delaware Code, Chapters 63 and 71, Sections 6301 and 7101 (3 **Del.C.** Chs. 63 & 71; §§6301 & 7101)

3 **DE Admin. Code** 901

PROPOSED

PUBLIC NOTICE

901 Poultry Disease Prevention Regulations

Summary

The Department of Agriculture proposes to amend its Regulations adopted in accordance with Title 3, Chapter 1 of the Delaware Code to revise the Poultry Disease Prevention Regulations at 3 **DE Admin. Code** 901. The purpose of the amended regulations is to update terminology, definitions, requirements for entry to Delaware and reference to federal rules, and to add a new Section 6.3 to prohibit the slaughter, other than for humane euthanasia or disease control, of any poultry on the premises of any dealer or broker of poultry or on the premises of any poultry sales establishment. Other regulations issued by the Department of Agriculture are not affected by this proposal. The Department of Agriculture is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

Comments

A copy of the proposed regulations is being published in the December 1, 2018 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Department of Agriculture, 2320 South DuPont Highway, Dover, Delaware 19901 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Department of Agriculture at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before December 31, 2018. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Regulation

On or after December 31, 2018, following review of the public comment, the Department of Agriculture will determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public comments received.

901 Poultry Disease Prevention Regulations

1.0 Authority.

This regulation is written under the authority of 3 **Del.C.** Ch. 63 and Ch. 71, and §§6301 and 7101.

2.0 Purpose.

- 2.1 The commercial poultry industry in the State of Delaware is of vital economic importance to the state's agricultural community. The threat of serious poultry diseases, such as avian influenza or exotic ~~New Castle~~ Newcastle Disease, necessitates the promulgation of new regulations aimed at safeguarding poultry flocks in Delaware from the introduction of these or other diseases.
- 2.2 The following proposed regulations will apply to the specific categories of poultry as noted.

3.0 Definitions.

The following words and terms when used in these regulations mean have the meanings indicated:

"Commercial Poultry" means poultry wholly owned by a corporate enterprise that controls the entire growing cycle of the birds, from the breeder flock to the processing plant as defined in 9CFR Part 146.

"Completely Clean" means free of all organic material.

"DDA" means the Delaware Department of Agriculture.

"Integrated Poultry Company" means a corporate enterprise ~~those~~ that contracts the entire growing cycle of its own birds from the breeder flock to the processing plant.

"Non-commercial Poultry" means all other species and classes of poultry other than those defined as commercial poultry. ~~Examples include but are not limited to: hobby or pet poultry, exhibition poultry, poultry for the owner's own consumption, poultry for trade or resale, etc.~~

"NPPI" means the National Poultry Improvement Plan of the United States Department of Agriculture, 9CFR Parts 145-147.

"Person" means individual, corporation, partnership, business, cooperative, or any other legal entity.

~~"Persons"~~ means individuals, incorporations, businesses and cooperatives.

"Physical Plant" means the permanent structure of a building or place including walls, floors, ceilings, crates, coops, or other enclosures that may become contaminated with infectious material.

"Poultry" means domesticated fowl, including chickens, turkeys, ostriches, emus, rheas, cassowaries, waterfowl, game birds, doves and pigeons.

"Poultry Dealer" means a person or corporation ~~that consistently purchases three or more lots of poultry during a week and resells such poultry within one month of purchase~~ engaged in the business of buying, selling or transporting poultry or operating a livestock auction or livestock sales facility, exempting state-federal approved livestock markets.

"Poultry Producer" means any person who owns or operates a poultry producing ~~premise for shares in the profits and risks of loss from such premise,~~ premises and who grows, raises, ~~feeds~~ feeds, exhibits, owns or produces ~~said agricultural commodity~~ poultry in Delaware. Poultry producer includes both commercial and non-commercial poultry.

"Poultry Producing Premises" means any location in Delaware where live poultry is kept.

4.0 Registration.

- 4.1 In order to be able to quickly notify all poultry producers in the state of a potential or existing disease threat, ~~the (DDA) will require~~ DDA requires the registration of all premises in Delaware where live poultry is kept. This will allow information regarding disease ~~scenarios~~ incidents to be sent in a timely manner to all poultry producers.
- 4.2 The registration form, available from DDA, shall include at a minimum the following information:
 - 4.2.1 Name;_i
 - 4.2.2 Address;_i
 - 4.2.3 Telephone number and email address of owner/producer;_i
 - 4.2.4 Type and number of the poultry being raised;_i
 - 4.2.5 The geo-reference coordinates (latitude/longitude state plane coordinates NAD 83) of the chicken house(s); (if not available, DDA will provide);_i and
 - 4.2.6 The general purpose for which they are kept (hobby, show, own consumption, commercial, eventual sale, etc.).
- 4.3 ~~This registration is also in anticipation of the forthcoming national animal premises identification system.~~ Forms will be provided by the Department of Agriculture DDA and when completed, must be returned to that agency. Other timely information may also be sent to registrants.

5.0 Sale Or Transfer Of Poultry Leaving The State.

- 5.1 Owners of commercial or ~~privately owned~~ non-commercial poultry leaving the State of Delaware and whose cargo changes ownership outside the State of Delaware must abide by the following provisions:
 - 5.1.1 Complete and accurate records must be maintained including the name, address and telephone number of the purchaser, the number, species and weight of the poultry ~~to be sold~~ sold, and the date of the sale. These records, invoices or receipts must be retained for at least one year.
 - 5.1.2 All vehicles, crates, coops and footwear must be in a completely clean condition before being used to load poultry from a Delaware farm. Department DDA personnel will have the authority to inspect all vehicles and equipment prior to use entry to a Delaware farm. Unsatisfactory inspections will result in an immediate refusal to allow loading of the poultry.
 - 5.1.3 After the poultry ~~has~~ have been unloaded at an out of state location, and prior to its return into the State of Delaware, it will be necessary to completely clean and disinfect the entire vehicle, including the inside floorboard and pedals by using ~~(commercial)~~ commercial truck washing personnel and equipment.
 - 5.1.4 In addition, all coops, crates, and footwear must be individually washed and completely cleaned and disinfected by commercial equipment before being loaded onto a vehicle and returning to the State of

Delaware. A receipt from a company, approved by the DDA to perform this service, must be obtained by the transporter and kept in the vehicle for inspection by Department personnel. DDA personnel will have the authority to inspect all vehicles and equipment as deemed necessary. These receipts must be kept for a period of at least one year.

~~5.1.45.1.5~~ Poultry transported out of the state for the purpose of sale or change of ownership and brought back into Delaware is prohibited and will result in the quarantine and possible destruction of the entire flock and penalties as described in Section 12.0 of this regulation. ~~The foregoing quarantine will be in effect until sufficient diagnostic testing has been completed to ensure that no serious diseases have been introduced. The conclusion by the DDA that the returned poultry has introduced a serious poultry disease may result the destruction of the entire flock.~~

~~5.1.55.1.6~~ It shall be the responsibility of the owner (individual or corporation) of the birds to obtain all pertinent information from the state of destination regarding any health diagnostic testing or inspection requirements that must be fulfilled prior to the birds leaving the Delaware farm. Furthermore, it will be the owner's responsibility to make the necessary arrangements with the approved diagnostic laboratory, accredited veterinarian or other persons needed to provide the official documentation necessary to satisfy these requirements.

6.0 ~~Selling Or Trading~~ Selling, Trading, or Slaughtering Poultry In Within Delaware.

6.1 Livestock or Poultry auctions and swap meets. Livestock/poultry auctions or poultry swap meets taking place within the State of Delaware will be authorized to sell live poultry if they abide by certain requirements imposed by the DDA. To be authorized, the auction or other entity organized for the sale, barter or trade of live poultry must abide by the following:

6.1.1 Allow DDA full access to all premises, grounds and buildings where poultry is being kept or offered for sale.

6.1.2 Keep complete and accurate records of names, addresses, type and number of poultry from all consignors. The same information must be recorded for all buyers whether paying cash or making other arrangements for payment. These records must be maintained for at least one year.

6.1.3 Notify the Department of any purchasers at the auction/sale that would be considered a poultry dealer. The person who meets the conditions of being a poultry dealer will be required to purchase a livestock/poultry dealer's license and to comply with the provisions thereof.

6.1.4 Allow Department personnel full access to inspect all lots of poultry offered for sale, trade or barter. If, in the opinion of ~~Department~~ DDA personnel, a lot of poultry exhibits signs of sickness or extremely poor husbandry as to be deemed a possible disease threat, the entire lot will be condemned, confiscated, humanely destroyed and diagnostic tests performed to determine the possible presence of ~~a serious~~ infectious diseases.

~~6.36.1.5~~ The physical plant, floors, cages and other equipment used to house or transport poultry must be completely cleaned and disinfected after each sale or swap meet. This procedure must be completed at least two working days prior to the next sale so that ~~Department~~ DDA personnel may inspect the facilities, if desired. If the cleaning and disinfecting procedure is deemed unsatisfactory, management will be notified and given the opportunity to remediate the situation. Failure to do so will result in the cancellation of the next scheduled poultry ~~auction/sale~~ auction, sale, or swap meet.

6.2 Poultry Dealers. The vehicles, crates and coops of all poultry dealers coming to auctions/sales within the State of Delaware ~~from out of state~~ must have been completely cleaned and disinfected before ~~coming into this state~~ entering auction/sales premises. ~~Department~~ DDA personnel may inspect all equipment and any findings of incomplete cleanliness of the vehicle, coops or crates will be cause to prevent that dealer from consigning or remaining at the auction and purchasing any poultry or livestock. Repeat offenders may have their dealer license revoked by DDA.

6.3 Limitation on slaughter of live poultry. No dealer, broker, poultry market operator, or employee or contractor thereof or any person acquiring live poultry from any of them shall slaughter, other than for humane euthanasia or disease control, any poultry that are on the premises of the dealer or broker or on the premises of a sales establishment.

7.0 Non-Commercial Poultry Leaving The State Of Delaware And Returning Under The Same Ownership.

7.1 ~~These flocks are strictly non-commercial poultry of a hobby nature.~~ Owners of this class of non-commercial poultry must comply with the following regulations:

7.1.1 All Delaware show bird exhibitors will be responsible for being completely familiar with the poultry health requirements of the state and the particular show which they are attending.

- 7.1.2 ~~All crates and coops used to transport the birds must be of such construction and material to be completely cleaned and disinfected before returning to this state. A small, plastic pump up sprayer could be used for this purpose~~ made of material that can be completely cleaned and disinfected before returning to Delaware. All four vehicle ~~tires~~ tires, foot mats, and floor board pedals must also be cleaned prior to returning to Delaware.
- 7.1.3 ~~Any newly obtained poultry originating from a state that has had a case of Avian Influenza or other serious infectious poultry disease within the past six months, must be tested by an official state laboratory using an officially recognized test no more ten days prior to that bird entering Delaware. Upon returning to Delaware birds shall be kept separate from all other birds in the flock for a period of 30 days. Birds returning from out of state shall not be sold, traded, or exchanged for 30 days.~~
- 7.1.4 ~~Each poultry producer bringing birds back into Delaware for re-entry into his flock must abide by a set of biosecurity procedures aimed at minimizing the possibility of spreading a poultry disease contracted at a show to the remainder of his flock or to other flocks in the nearby area.~~

8.0 Commercial Poultry.

- 8.1 The following requirements will be imposed on all commercial poultry ~~companies/growers~~ companies and growers:
 - 8.1.1 Complete a poultry producer registration form (as described above) for each farm owned or operated by an individual or corporation who produces poultry for an integrated company.
 - 8.1.2 Submit a plan, signed, approved and verified by the integrated company, for the in-place ~~in-farm~~ on-farm disposal method of normal day to day mortality for each separate commercial poultry producing farm.
 - 8.1.3 The transport of any poultry which is owned by an integrated poultry company to a public sale or auction is strictly prohibited.
 - 8.1.4 In an attempt to minimize the establishment of new back yard poultry flocks, the commercial poultry companies will instruct catching crews to catch and load all live birds and/or killed culls from every house. If any live or dead birds are left in a house, they must be caught and humanely destroyed and/or properly disposed of within 48 hours of ~~when~~ the flock ~~left~~ being taken into processing.

9.0 Requirements for live poultry and other avian species entering Delaware

- 9.1 Avian Influenza
 - 9.1.1 Live poultry except doves and pigeons must show proof of a negative avian influenza PCR test within 21 days prior to entry to the State of Delaware for any purpose, unless the flock of origin participates in and meets the requirements of the NPIP "U.S. Avian influenza clean", "U.S. H5/H7 Avian influenza clean", or "U.S. Avian influenza monitored" programs.
 - 9.1.2 Birds of prey, psittacines and other avian species not included in the NPIP must show proof of a negative avian influenza PCR test within 21 days prior to entry to the State of Delaware for any purpose, including fairs, shows, and swap meets.
- 9.2 Pullorum-Typhoid:
 - 9.2.1 Live poultry and hatching eggs except doves and pigeons must meet one of the following conditions to enter Delaware:
 - 9.2.1.1 Must be from a flock that participates in and meets the requirements of the "NPIP U.S. Pullorum-Typhoid Clean" program, or
 - 9.2.1.2 Individual birds over four months of age entering Delaware must be tested negative for pullorum-typhoid using an NPIP-approved test within 90 days prior to entry and be accompanied by a negative pullorum test report, or
 - 9.2.1.3 Must originate from a flock enrolled in an Pullorum-Typhoid clean program approved by DDA, or
 - 9.2.1.4 Must originate from a flock in which birds are 4 months of age or older and a minimum of 300 birds are tested negative or the entire flock is tested negative, if the flock is smaller than 300 birds.
 - 9.2.2 Psittacines, passerines, and raptors, along with other non-poultry species are exempt from subsection 9.2.
- 9.3 Health certification: any avian species or hatching eggs entering Delaware must be accompanied by certification of health as follows:
 - 9.3.1 Flock of origin is not an NPIP flock: must enter Delaware with a health certificate
 - 9.3.2 Flock of origin is an active NPIP participant: must enter Delaware with a NPIP 9-3 form.
 - 9.3.3 Poultry that are healthy and are being moved to a participating NPIP slaughter plant for immediate slaughter are exempt from health certification requirements described in subsection 9.3.

- 9.4 Additional testing requirements for movement of poultry or other avian species into Delaware may be imposed at any time at the discretion of the State Veterinarian.
- 9.5 Movement permit required: live poultry and other avian species originating from an area that is under quarantine for an infectious disease may not move within Delaware or enter the State of Delaware without an official movement permit approved in advance by the Delaware State Veterinarian.

9.010.0 Violations And Hearing Procedures.

- 9.410.1 Failure to comply with these regulation may result in the assessment of a civil penalty.
- 9.210.2 No civil penalty shall be imposed until an administrative hearing is held before the Secretary of Agriculture or his or her designee. Administrative hearings for the provisions of this chapter shall be conducted within 30 days of the violation of this chapter. The Department shall issue a decision in writing to the person(s) charged with a violation of this chapter within 30 days of the conclusion of the administrative hearing.
- 9.310.3 The person(s) charged with a violation of this chapter will be notified in writing of the date and time of the aforementioned administrative hearing. The aforementioned person(s) shall have the right to appear in person, to be represented by counsel and to provide witnesses in his or her own behalf.
- 9.410.4 The Secretary, for the purposes of investigation of a possible violation of this chapter and for its hearings, may issue subpoenas, compel the attendance of witnesses, administer oaths, take testimony and compel the production of documents. In case any person summoned to testify or to produce any relevant or material evidence refuses to do so without reasonable cause, the Department of Agriculture may compel compliance with the subpoena by filing a motion to compel in Superior Court which shall have jurisdiction over this matter.
- 9.510.5 The Department shall preserve a full record of the proceedings and a transcript may be purchased by any interested person.

10.011.0 Appeal.

Any party, including an individual or corporation, that feels aggrieved by decision of the Secretary or his or her designee after an administrative hearing may take appeal to the Superior Court within thirty days of the date the decision is mailed to that party by the DDA. After a full hearing, the Court shall make such decree as seems just and proper. Written notice of such appeal, together with the grounds therefore, shall be served upon the Secretary of the DDA.

11.012.0 Civil Penalties.

- 11.412.1 It shall be unlawful for any person to interfere with the DDA in its effort to enforce these regulations and will subject the violator to a civil penalty of no less than ~~\$400~~ \$500 nor more than \$1,000 per proven violation.
- 11.212.2 It shall be unlawful for any person to violate a quarantine order issued by the DDA and will subject the violator to a civil penalty of no less than \$1,000 nor more than \$5,000 per proven violation.
- 11.312.3 The payment of penalties assessed under these regulations may be made on a payment schedule approved by the Secretary of the DDA.
- 11.412.4 A person who violates an emergency order of the Secretary of DDA or his or her designee exposes themselves to a civil penalty of no less than \$1,000 nor more than \$5,000 per proven violation.

7 DE Reg. 1691 (06/01/04)

22 DE Reg. 434 (12/01/18) (Prop.)