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EMERGENCY ADOPTION

**AGRICULTURE
DIVISION OF ANIMAL HEALTH**

47 N.J.R. 1878(a)

Adopted Emergency Amendments and Concurrent Proposed Amendments: N.J.A.C. 2:3-1.1, 1.9, and 7.4

Livestock and Poultry Importation

Avian Influenza

Emergency New Rules Adopted and Concurrent Proposed Amendments Authorized: June 15, 2015, by the State Board of Agriculture, Douglas H. Fisher, Secretary.

Filed: June 26, 2015, as R.2015 d.117.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c): June 26, 2015.

Authority: N.J.S.A. 4:1-11.1, 4:1-21.5, 4:5-1, and 4:5-94 through 106.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Concurrent Proposal Number: PRN 2015-087.

Emergency Amendments Effective Date: June 26, 2015.

Emergency Amendments Expiration Date: August 25, 2015.

Submit comments by August 19, 2015, to:

Dr. Manoel Tamassia, Director
Division of Animal Health
New Jersey Department of Agriculture
P.O. Box 330
Trenton, New Jersey 08625-0330
or to proposedrulesAnimalHealth@ag.state.nj.us

These rules are adopted on an emergency basis and will become effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-6.5(b)). Concurrently, the provisions of this emergency adoption are proposed for readoption pursuant to the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The rules become effective upon acceptance for filing by the Office of Administrative Law (N.J.A.C. 1:30-6.5(d)), if filed on or prior to the emergency expiration date. The agency emergency adoption and concurrent proposal follows:

Summary

To respond to an imminent peril of serious harm to the New Jersey poultry industry, including the gamebird industry, the Department of Agriculture is proposing new amendments to its importation rules governing Avian Influenza to prevent introduction of High Pathogenic Avian Influenza (HPAI).

Since December 2014, a dangerous new strain of HPAI, also known as "Bird Flu," has been found in domestic poultry, captive falcons, and wild, migratory waterfowl. The United States Secretary of Agriculture has mobilized U.S. Department of Agriculture (USDA) resources to make every effort to contain the disease wherever it may be found, but this HPAI is moving rapidly across the country.

The current outbreak of the disease was initially detected in Washington State and since January has spread eastward into 20 additional states. Cases have been reported in Arkansas, California, Idaho, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Wisconsin, and Wyoming.

HPAI is an extremely infectious and fatal form of the disease affecting all types of birds that, once established, can spread rapidly from flock to flock. HPAI has already been responsible for the loss of 48 million birds in the United States. The threat is credible that the disease could reach New Jersey because New Jersey does not require any Avian Influenza testing for movement of birds except basic testing of birds going to the live bird markets.

Avian Influenza is a viral disease of poultry that can be classified into low pathogenicity (LPAI) and high pathogenicity (HPAI) based on the severity of the illness they cause. HPAI causes severe disease and death loss.

Signs of HPAI may include:

- Sudden increase in bird deaths;
- Sneezing, gasping for air, coughing, and nasal discharge (runny nose);
- Watery and/or green diarrhea;
- Lack of energy and poor appetite;
- Drop in egg production or soft- or thin-shelled misshapen eggs;
- Swelling around the eyes, neck, and head;
- Purple discoloration of the wattles, combs, and leg.

Wild birds, especially migratory waterfowl (ducks and geese), are passive carriers of the flu virus, meaning they can pass the disease along without becoming seriously ill. Avian Influenza viruses can enter the body by inhalation, ingestion, or through other mucous membranes such as the conjunctiva. Feces, saliva, and respiratory secretions from infected birds contain large amounts of the virus. Once introduced into a flock, the virus can spread rapidly (within hours).

Avian Influenza spreads primarily through direct contact between healthy birds and the bodily discharges of infected birds, such as bird droppings and secretions from the nose, mouth, and eyes. In addition, the disease may be spread by mechanical means, such as on vehicles or on the shoes and clothing of people visiting infected premises. The disease is often spread by manure haulers, rendering-truck drivers, feed delivery personnel, poultry farm and egg processing workers, and exhibitors at bird shows. The virus can live for several weeks on bird feathers, manure, and other materials.

Movement of untested poultry poses a great risk of introducing Avian Influenza into the non-infected areas of the country. Ducks and geese can spread the disease as they can be infected and not show symptoms, while other poultry are capable of spreading the virus for a few days before showing clinical signs of the disease. In addition, poultry waste from HPAI states presents a high risk. One gram of contaminated manure can contain enough viruses to infect one million birds. It has been reported that Avian Influenza could be recovered until the 30th through 35th day in droppings kept at 39 degrees Fahrenheit.

N.J.A.C. 2:3-1.1, Definitions, is proposed to be amended to add a definition of "move directly" to clarify that when related to hatching eggs and poultry less than seven days of age, "move directly" means move into New Jersey without any stops or move to a National Poultry Improvement Plan (NPIP) U.S. H5/H7 Avian Influenza Clean National Plan Hatchery or an NPIP U.S. Avian Influenza Clean National Plan Hatchery and then move into New Jersey without any other stops, and to clarify that when related to all other poultry, "move directly" means move into New Jersey without any stops or move to a New Jersey registered poultry distributor and then move into New Jersey without any other stops.

N.J.A.C. 2:3-1.9, Prior import permits, is proposed to be amended to correct the Department's telephone number, which has changed.

N.J.A.C. 2:3-7.4, the Avian Influenza section of Subchapter 7 governing importation of poultry, poultry waste, and hatching eggs, is proposed to be amended at subsection (a) to remove poultry for separate treatment under proposed new subsection (b) addressing importation from a state, territory, or country where HPAI has been detected.

N.J.A.C. 2:3-7.4(b) is proposed to be deleted because hatching eggs are otherwise addressed in proposed new subsection (b).

Proposed new N.J.A.C. 2:3-7.4(b) prohibits importation to a live bird market of any poultry or hatching eggs from a state, territory, or country where HPAI has been detected unless the poultry or hatching eggs are approved and provided a permit by the State Veterinarian and test negative as specified for Avian Influenza with sample collection date [page=1879] within 72 hours of entry into New Jersey. USDA provides an update on states with HPAI every day and NJDA is in touch with State Veterinarians as well and NJDA utilizes these resources to determine when HPAI has been detected in a state.

N.J.A.C. 2:3-7.4(c), which allows the State Veterinarian to enter into agreements with the USDA or other states' Departments of Agriculture to allow poultry and hatching eggs importation, is proposed to be deleted. This subsection is no longer needed because of the additional testing included in proposed subsection (b).

N.J.A.C. 2:3-7.4(d), which references N.J.A.C. 2:3-1.9 concerning obtaining permits, is proposed to be deleted as a separate subsection because this permitting requirement is incorporated into proposed paragraph (b)1.

N.J.A.C. 2:3-7.4(e) is proposed to be amended, and recodified as subsection (c), to prohibit importation of any poultry or hatching eggs from anywhere outside of New Jersey unless they are accompanied by documentation showing that they originated and are moving directly from an Avian Influenza test negative flock.

N.J.A.C. 2:3-7.4(f), (g), and (h) are part of the existing rules to outline the testing requirements for poultry less than seven days old, to ensure healthy poultry is kept separate and apart from all other poultry, and to clarify that a poultry invoice may be used in lieu of a Poultry Inspection Certificate or Certificate of Veterinary Inspection for poultry or hatching eggs being imported into an auction market or live poultry market.

Subsection (f) is proposed for amendment to reference new provisions for poultry less than seven days old in N.J.A.C. 2:3-7.4(b)2ii and (d).

Subsection (g) is proposed for deletion because its requirement to keep poultry separate and apart is addressed through incorporation of "established flock" in the new provisions for poultry and hatching eggs in N.J.A.C. 2:3-7.4(b) and (c).

Subsection (h), which allows use of poultry invoices, is proposed for deletion because it does not have any testing/standards documentation and is proposed for replacement by required permit from HPAI states in N.J.A.C. 2:3-7.4(b) or health documentation and documentary evidence of meeting national standards specified in N.J.A.C. 2:3-7.4(c) for all other poultry or hatching eggs.

As this notice of emergency adoption and concurrent proposal involves an imminent peril subject to the provisions of N.J.S.A. 52:14B-4(c), this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)3.

Social Impact

The social impact of the proposed amendments will affect the entire poultry industry, gamebird industry, wholesale and retail operators, auctions, live bird markets, poultry slaughter facilities, and any backyard poultry enthusiasts. No poultry or hatching eggs originating from states where HPAI has been detected will be allowed entry into the State of New Jersey to live bird markets unless they test negative for Avian Influenza with sample retrieval date within 72 hours of entry into New Jersey. All poultry or hatching eggs from HPAI states entering New Jersey must obtain a permit for entry. Importation of any poultry or hatching eggs from anywhere outside of New Jersey not subject to HPAI testing must be accompanied by documentation showing that they originated and are moving directly from an Avian Influenza test negative flock. The restricted movement of poultry and hatching eggs will affect the poultry industries; however, introduction of HPAI would jeopardize the health and vitality of the State's entire poultry population.

Economic Impact

The proposed amendments to the Avian Influenza import rules will reduce the potential for loss in the poultry industry by providing a mechanism to prevent the introduction of the disease to New Jersey poultry. If HPAI were diagnosed within New Jersey, severe economic losses would be experienced by the entire poultry industry. New Jersey's poultry industry alone is valued at \$ 4 million and generates revenues of \$ 24 million dollars per year. HPAI constitutes a real danger to not only New Jersey's economy, but to the national economy and a potential serious burden on interstate and foreign commerce; financial losses would be in the millions as a result of intrastate, interstate and international trade being halted.

Those required to comply with these rules will incur costs because of or in connection with new testing requirements. The costs for 72-hour testing requirements for poultry, or hatching eggs originating from a state, territory, or country where Highly Pathogenic Avian Influenza (HPAI) has been detected, cannot be precisely estimated; however, the tests would be administered by USDA-approved National Animal Health Laboratory Network labs such as

the labs in New Jersey, Pennsylvania, and New York (Cornell), and the University of Delaware poultry lab. The cost of this test can range from \$ 35.00 to \$ 50.00 per test. One rRT-PCR test can test up to 11 chickens but only up to five domestic ducks with the corresponding higher cost. A range of testing cost for chickens is estimated, for an established flock (which can contain thousands of birds) in which a minimum of 30 birds must be tested negative, to be between \$ 105.00 and \$ 150.00 while a similar range for domestic ducks would be from \$ 210.00 to \$ 300.00 for an established flock. The other testing requirements, for poultry not from HPAI states, are monitoring tests and generally have lower costs and may have USDA subsidies.

During its recent surveillance efforts, the Department communicated with the State's commercial poultry industry and backyard flocks. The potential for the introduction of Avian Influenza was a matter of concern for egg laying facilities, turkey producers, game bird producers, live bird markets and owners of back yard flocks. There was strong support within the industry for additional actions to protect against the introduction of HPAI into the State.

Federal Standards Statement

Executive Order No. 27 (1994) and P.L. 1995, c. 65 require State agencies which adopt, readopt, or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law. The United States Department of Agriculture continues to develop plans, including those that are currently in place, such as surveillance, reporting, biosecurity, movement control, vaccination, and depopulation which can be modified to address any new virus outbreak. These increased standards are necessary to protect the State's poultry inventory which is currently free from this disease. Spreading to and through other states, Avian Influenza is a disease that already infects poultry in many other states. Therefore, this additional testing requirement has been imposed to protect poultry in New Jersey. While exact dollar figures are not available for an outbreak of HPAI, past experience with other outbreaks has shown that the cost of an outbreak involving the poultry sector would far exceed the cost of additional testing requirements. These enhancements to the Federal standards are being adopted on an emergency basis and being proposed concurrently to protect poultry health, the industry, and the surrounding environment in New Jersey.

Jobs Impact

The proposed amendments are not expected to result in the generation or loss of jobs in the State.

Agriculture Industry Impact

The proposed amendments will affect the entire poultry industry conducting business within New Jersey.

The industry will be prohibited from importing poultry and hatching eggs without the accompanying test evidence that Avian Influenza is not present. All individuals importing live birds and hatching eggs into New Jersey from an HPAI state must obtain a permit issued by the Department. The amendments' impact on the agriculture industry is further discussed in the other statements within this proposal

Regulatory Flexibility Analysis

The proposed amendments may impose compliance requirements on small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The requirements and their costs are discussed in the Summary and Economic Impact above. Animal health professional services are needed to comply with these amendments. However, in the absence of testing of imported birds, there is a danger of HPAI entry into New Jersey and it could destroy the individual businesses affected.

The Department has provided no lesser or differing requirements based upon business size. The Department has determined that the proposed amendments represent the minimum standards necessary to [page=1880] protect against

the potential endangerment to the agricultural industry of the State that might result from the introduction into New Jersey of Avian Influenza.

Housing Affordability Impact Analysis

The proposed amendments will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the amendments would evoke a change in the average costs associated with housing because the amendments provide for the protection of the New Jersey poultry industry from Avian Influenza.

Smart Growth Development Impact Analysis

The proposed amendments will have an insignificant impact on smart growth and there is an extreme unlikelihood that the amendments would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey, because the proposed amendments provide for the protection of the New Jersey poultry industry from Avian Influenza.

Full text of the adopted emergency amendments and concurrent proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

2:3-1.1 Definitions

(a) The following words and terms, as used in this chapter, shall have the following meanings. Words of art undefined in the following paragraphs shall have the meaning attributed to them by trade usage or general usage as reflected by definition in a standard dictionary, such as Webster's.

...

"Move directly," when related to hatching eggs and poultry less than seven days of age, means move into New Jersey without any stops, or move to a National Poultry Improvement Plan (NPIP) U.S. H5/H7 Avian Influenza Clean National Plan Hatchery or an NPIP U.S. Avian Influenza Clean National Plan Hatchery and then move into New Jersey without any other stops; and when related to all other poultry, means move into New Jersey without any stops or move to a New Jersey registered poultry distributor and then move into New Jersey without any other stops.

...

(b) (No change.)

2:3-1.9 Prior import permits

Permits required for entry for a specific class of livestock pursuant to N.J.A.C. 2:3-2.7(b), 3.4(d) or 7.4(a), may be obtained by the consignee from the State Veterinarian, Division of Animal Health, New Jersey Department of Agriculture, PO Box 330, Trenton, New Jersey 08625-0330, telephone number 609-[292-3965]671-6400, or e-mail state.veterinarian@ag.state.nj.us.

2:3-7.4 Avian influenza

(a) No [poultry or] poultry waste originating from those areas, counties or states affected by Avian Influenza, as designated by the New Jersey Department of Agriculture, United States Department of Agriculture, or other state Departments of Agriculture, shall be imported into New Jersey for any purposes unless approved and provided a permit

by the State Veterinarian.

[(b) No hatching eggs shall be imported into New Jersey from an area, county or state designated as affected by Avian Influenza.]

(b) No poultry, or hatching eggs originating from a state, territory, or country where Highly Pathogenic Avian Influenza (HPAI) has been detected, shall be imported into New Jersey for live bird markets unless:

1. The poultry or hatching eggs are approved and provided a permit by the State Veterinarian; and

2. The poultry or hatching eggs meet testing requirements as follows:

i. All poultry shall originate and move directly from an established flock in which a minimum of 30 birds, seven days of age and older, were tested negative for Avian Influenza using real-time reverse-transcriptase polymerase chain reaction (rRT-PCR). If the flock contains less than 30 birds, all birds from within the flock must be tested.

(1) rRT-PCR testing is accepted for all gallinaceous poultry and domestic ducks. The date of sample collection must be within 72 hours prior to the date of entry into New Jersey and the shipment must be accompanied by a copy of the finalized laboratory report indicating that the poultry tested negative for Avian Influenza.

(2) Only virus isolation testing is accepted for movement of waterfowl, other than domestic ducks, into the State of New Jersey. Negative Avian Influenza virus isolation results are not expected within 72 hours of sample collection date; therefore, prior approval for movement of waterfowl other than domestic ducks must be obtained from the New Jersey State Veterinarian.

ii. All hatching eggs and poultry less than seven days of age shall originate and move directly from an established flock that meets the testing requirements of (b)2i above.

[(c) The State Veterinarian may enter into agreements with the United States Department of Agriculture or the Departments of Agriculture of other states to allow the importation of those poultry and hatching eggs enumerated in (a) and (b) above, if such poultry and hatching eggs originate from a flock operating under the National Poultry Improvement Plan "United States Avian Influenza Clean" program. Agreements shall include, but not be limited to, the following:

1. A Certificate of Veterinary Inspection;

2. A certificate of origin;

3. A certificate of transportation; and

4. An agreement to follow the rules and orders of the New Jersey Department of Agriculture.

(d) Permits may be obtained as described in N.J.A.C. 2:3-1.9.]

[(e)] **(c) [No person shall import any poultry] Poultry or hatching eggs that are not subject to (b) above shall be imported into the State from any area outside New Jersey [for auction markets and live poultry markets, unless the] only if:**

1. The poultry or hatching eggs are accompanied by a [Poultry Inspection Certificate or] Certificate of Veterinary Inspection which states that the poultry or hatching eggs:

[1.] **i.** Originate and are moving directly from [a] **an established** flock that participates in the National Poultry Improvement Plan (NPIP) ["United States] U.S. Avian Influenza Clean["] program **or NPIP U.S. H5/H7 Avian Influenza Clean or Monitored program** [or other approved United States Department of Agriculture or National Poultry Improvement Plan form in lieu of the Poultry Inspection Certificate or Certificate of Veterinary Inspection];

ii. Originate and are moving directly from a test negative Avian Influenza monitored flock; or

iii. Originate and are moving directly from a test negative Avian Influenza tested flock;

2. The poultry are accompanied by a Poultry Inspection Certificate for movement within the live bird marketing system; or

3. The poultry or hatching eggs are accompanied by a Veterinary Services (VS) Form 9-3 for movement directly from an established flock that participates in the NPIP U.S. Avian Influenza Clean program or NPIP U.S. H5/H7 Avian Influenza Clean or Monitored program.

[2. Originate and are moving directly from a test negative Avian Influenza monitored flock, which means a flock that is being tested routinely for Avian Influenza using a test approved by the United States Department of Agriculture, in which at least 30 birds from each group housed together are tested monthly and any additions shall originate from a similar flock;

3. Originate and are moving directly from a test negative Avian Influenza tested flock, in which a representative sample of 30 birds from each group housed together are tested negative for Avian Influenza within 10 days prior to the date of movement into New Jersey, using a test approved by the United States Department of Agriculture; or

4. Are individually tested negative for Avian Influenza within 10 days prior to the date of movement into New Jersey, using a test approved by the United States Department of Agriculture, and move directly from the location at which they were tested.]

[(f) **(d)** Poultry less than seven days of age **and not subject to (b)2ii above** are exempt from testing requirements [, however,] **if** these birds [page=1881] [must have] originated and moved directly from a breeding flock that meets the requirements of [(e)1 through 4] **(c)1 through 3** above.

[(g) Poultry that qualify for movement shall be kept separate and apart from all other poultry of infected, exposed, or unknown health status.

(h) A poultry invoice may be used for poultry or hatching eggs being imported into an auction market or live poultry market by a poultry distributor/dealer in lieu of a Poultry Inspection Certificate or Certificate of Veterinary Inspection, in accordance with N.J.A.C. 2:9-1.3.]