



2 of 192 DOCUMENTS

NEW JERSEY REGISTER

Copyright © 2010 by the New Jersey Office of Administrative Law

VOLUME 42, ISSUE 20

ISSUE DATE: OCTOBER 18, 2010

RULE PROPOSALS

**AGRICULTURE
DIVISION OF ANIMAL HEALTH**

42 N.J.R. 2347(a)

Proposed Readoption: N.J.A.C. 2:5

[Click here to view Interested Persons Statement](#)

Disease Control Program

Quarantines and Embargoes on Animals

Authorized By: State Board of Agriculture and Douglas H. Fisher, Secretary, Department of Agriculture.

Authority: *N.J.S.A. 4:1-11.1, 4:1-17, 4:1-18, 4:1-21.5 and 4:5-1 et seq.*

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

Proposal Number: PRN 2010-240.

Submit comments by December 17, 2010 to:

Dr. Nancy E. Halpern
NJDA/Division of Animal Health
P.O. Box 330
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to *N.J.S.A. 52:14B-5.1*, the rules in this chapter are scheduled to expire October 20, 2010. In accordance

with N.J.S.A. 52:14B-5.1c, the submission of this notice of proposal to the Office of Administrative Law extends that expiration date 180 days to April 18, 2011. The State Board of Agriculture and Department of Agriculture have reviewed the rules proposed for readoption and finds these rules to be necessary, reasonable and adequate, efficient, understandable and responsive to the purpose for which they were originally promulgated. Readoption of these rules is necessary, as they describe various embargoes and import requirements for livestock entering New Jersey in order to meet the legislatively required mandate to provide adequate disease control for New Jersey's livestock.

N.J.A.C. 2:5-1.1 allows the Director, Division of Animal Health to take the actions necessary to protect the health of livestock and poultry in New Jersey by asking the Board of Agriculture (Board) for permission to issue **quarantines** for specific animal diseases and issue violations and assess penalties for a period of 12 months without prior Board approval, provided, however that the Director advises the Board of the actions taken at the next regularly scheduled Board meeting.

N.J.A.C. 2:5-2.1 addresses the imposition of an embargo as a result of disease outbreaks in other states. Generally, an embargo is a legal prohibition on commerce. Embargoes in this rule deal with the movement of animals coming from other states. Since New Jersey has no authority to issue a **quarantine** outside of its borders, this rule allows the Department to stop the import of animals either suspected of or confirmed as having a contagious or infectious disease or to set up specific entry requirements based upon the originating location of the animals.

N.J.A.C. 2:5-2.2 provides the requirements for the prevention of Vesicular stomatitis and allows the Division ways to control the disease if found in New Jersey. Vesicular stomatitis (VS) is a viral disease, not found in New Jersey, that can affect horses, cattle and pigs, and occasionally, sheep, goats, deer and exotic animals, causing blisters to form in the animal's mouth, on teats or along the hooves, resulting in excessive salivation, lameness or oozing sores. The clinical signs of VS can cause concern because they mimic those of a highly contagious foreign animal infection foot-and-mouth disease (FMD). Laboratory tests must be run to differentiate between the two diseases. Unlike FMD, VS also can affect horses and other members of the equine family. This contagious viral disease is a major economic and health concern to New Jersey's livestock industry.

N.J.A.C. 2:5-3 contains requirements for the eradication and control of equine infectious anemia (EIA) in equids. This viral disease is a major economic concern in the horse industry and is transmitted by biting insects. This subchapter provides that the Department of Agriculture will accept the Enzyme Linked Immunosorbant Assay as an official test for this disease.

N.J.A.C. 2:5-4, Livestock and poultry, contains general requirements to assist in the control and eradication of poultry diseases and diseases of livestock that may be devastating to New Jersey's livestock and poultry industry. Some diseases, such as Avian Influenza, Exotic Newcastle Disease, Foot and Mouth Disease and Nipah virus are extremely infectious and fatal. Because these types of diseases can infect poultry or livestock, an outbreak would cause a major economic threat to the livestock or poultry industry of New Jersey and the nation. The rules in *N.J.A.C. 2:5-4.1* explain when a **quarantine** will be placed upon a premise and how the **quarantine** can be lifted. The rules in *N.J.A.C. 2:5-4.2* explain the biosecurity requirements that must be met. This section addresses cleaning, disinfection and disposal of any infected premises, protective clothing or equipment.

N.J.A.C. 2:5-5 addresses penalties to be imposed for violations of this chapter. The penalty for a first offense shall be not less than \$ 100.00, while the penalty for a second offense shall be \$ 200.00 or imprisonment for not more than one year, or both. Any person aggrieved by the findings of the Division of Animal Health, will be afforded the opportunity for a hearing thereon in the manner provided for contested cases pursuant to the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq. and the Uniform Administrative Procedure Rules, *N.J.A.C. 1:1*.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to *N.J.A.C. 1:30-3.3(a)5*.

Social Impact

The prevention and control of disease by the regulation of programs necessary to prevent the importation of diseased and/or disease carrying [page=2348] animals that may infect New Jersey's livestock and poultry population is a key element to the viability of animal agriculture. These rules proposed for readoption set requirements for the socially beneficial programs that prevent the introduction of diseases harmful to the health of the animal husbandry industry. The maintenance of these rules to protect New Jersey's livestock and poultry from infectious and contagious diseases not only protects their owners and producers, but also provides a safe and healthy product for consumers.

The rules proposed for readoption have streamlined the process for issuing **quarantines** and embargoes. The amendments for biosecurity and **quarantine** are being put into place to effectuate a quicker halt to a disease outbreak.

Therefore, for the reasons set forth in the Summary above, the rules proposed for readoption will have a positive social impact.

Economic Impact

The burden of the rules proposed for readoption falls upon the farmer, consumer and the intermediaries between the two. Compliance with rules proposed for readoption imposes minimal additional costs to farmers and dealers as a result of processing paperwork, treating any diseases found and following the additional biosecurity requirements. However, even these costs are outweighed by the safety of the products produced and a higher economic return from the product as a result of compliance with these rules. Since the costs of treatment and eradication of diseases far exceed the costs of surveillance in prevention, it is in the best interests of New Jersey's agriculture industry to have strong rules in place for **quarantines** and embargoes. In general, a larger and healthier supply of animals gets to market, commands a better price and the consumer benefits by receiving a safe and nutritious food product. In addition, in the interest of assuring compliance to the greatest extent possible, the rule also provides for penalties for a first violation of this chapter and in a larger amount for second or subsequent violations.

Therefore, for the reasons set forth in the Summary and Social Impact above, the rules proposed for readoption will have a positive economic impact.

Federal Standard 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. A Federal standard analysis is not required because the subject matter of the rules proposed for readoption is governed by the New Jersey Department of Agriculture in accordance with, but not exceeding applicable Federal requirements or standards. In 9 CFR 145, Animals and Animal Products, The National Poultry Improvement Plan establishes standards and guidelines for the poultry industry with respect to certain diseases including Pullorum disease and Avian Influenza, among others. Under the auspices of The National Poultry Improvement Plan the United States Secretary of Agriculture issued a "Declaration of Extraordinary Emergency Because of Exotic Newcastle Disease," (68 FR 1432 Docket No. 03-001-1, 68 FR 3507 Docket No. 03-001-2, 68 FR 3561 Docket No. 03-003-3), effective (CA--January 6, 2003, NV--January 17, 2003, AZ--February 12, 2003) enabling APHIS of the USDA to conduct a program for the eradication of END wherever it may be found in the each of the respective states. In addition, APHIS has outlined uniform standards for a State-Federal-Industry Cooperative Program for the Prevention and Control of H5 and H7 Low Pathogenicity Avian Influenza in the Live Bird Marketing System, which became effective October 20, 2004. The rules proposed for readoption are substantially the same as, but do not exceed, those imposed by Federal law and uniform standards.

Jobs Impact

The rules proposed for readoption will not result in the generation or loss of any jobs in the State.

Agriculture Industry Impact

For the reasons set forth in the Summary, Social Impact and Economic Impact above, the rules proposed for readoption will have a positive impact on the agriculture industry, particularly the livestock and poultry industry, since it minimizes the introduction and/or spread of disease to New Jersey livestock and poultry.

Regulatory Flexibility Analysis

While most farmers are small businesses as that term is defined by the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq., the rules proposed for readoption do not impose any new or increased reporting, recordkeeping and/or other compliance requirements beyond those already mandated by the authorizing statutes. In order to comply with these rules, professional services, in the form of veterinary care and treatment will have to be retained. The costs of these services will vary depending upon animal species, herd size and type of disease. Horse dealers will continue to provide negative Coggin's tests for horses they take to auctions. There will be no capital expenditures.

Without the promulgation of these rules, New Jersey livestock farmers would not be permitted to participate in interstate and international commerce. Since these rules are established to control the spread of disease and protect the public health, welfare and safety, no differing standards based on business size are permitted. The New Jersey Department of Agriculture has carefully attempted to balance the need for disease control with the impact on the citizen.

Smart Growth Impact

The rules proposed for readoption will have no impact on smart growth or upon the State Development and Redevelopment Plan.

Housing Affordability Impact

The rules proposed for readoption will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules provide for various embargoes and import requirements for livestock entering New Jersey.

Smart Growth Development Impact

The rules proposed for readoption will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in house production in Planning Areas 1 or 2 within designated centers under the State Development and Redevelopment Plan in New Jersey because the rules provide for various embargoes and import requirements for livestock entering New Jersey.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at *N.J.A.C. 2:5*.