



Final Regulation Agency Background Document

Agency name	Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation	2 VAC 5-200
Regulation title	Rules and Regulations Pertaining to the Disposal of Entire Flocks of Dead Poultry
Action title	Adds "composting" as a method of disposing of poultry destroyed to prevent the spread of a contagious disease; amends the definitions to include composting; and amends the requirement pertaining to disposal plans.
Date this document prepared	April 1, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

This regulation updates the existing regulation (2 VAC 5-200) by amending the acceptable methods of carcass disposal to permit composting or other methods approved by the State Veterinarian; adding language on provisions governing composting; and, amending the requirement to file disposal plans. The substantive changes include adding "composting" as a method of disposing of poultry destroyed to prevent the spread of an infectious or contagious disease; amending the definitions of "incinerator" and "landfill" to mirror definitions contained in Section 3.2-6024 of the Code of Virginia; removing the definition of "infectious and contagious disease"; amending the definition of "person" to remove the terminology "for profit" (as well as removing this terminology from other locations within the regulation) to reflect that the regulation applies not only to for-profit operations, but also to those that are not-for-profit.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On March 19, 2009, the Board of Agriculture and Consumer Services granted approval to the Department of Agriculture and Consumer Services to file 2 VAC 5-200, Rules and Regulations Pertaining to the Disposal of Entire Flocks of Dead Poultry, as a final regulation.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The Board of Agriculture and Consumer Services is authorized to adopt regulations under Section 3.2-6002 of the Code of Virginia. This section encourages the Board to conform its regulations involving the prevention and eradication of contagious or infectious diseases to livestock and poultry with federal regulations establishing regional or national plans of control and eradication. This regulation is in keeping with the state's duty to control and eradicate infectious or contagious disease as part of that state/federal cooperative effort. This regulation, as amended, leaves extensive discretion with the State Veterinarian as to which method will be used to dispose of large numbers of poultry carcasses when an outbreak of an infectious or contagious disease, such as Avian Influenza or Exotic Newcastle Disease occurs. Disposal of whole flocks will be accomplished by the use of quarantine orders issued by the State Veterinarian under Section 3.2-6003 of the Code of Virginia. Although this latter authority exists, the regulation further identifies the acceptable methods that can be used for disposal.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

This regulatory action is essential to provide Virginia's poultry industry and the State Veterinarian with the greatest amount of flexibility when disposal of large flocks of poultry becomes necessary to prevent the spread of infectious or contagious diseases. The regulation will continue to provide the state and the industry with numerous viable, carcass disposal options, while providing an additional option that is economically and environmentally sound.

Part of any depopulation program to control or eradicate an infectious or contagious disease in animals includes destruction and elimination of the carcasses. The current regulation permits poultry infected with infectious or contagious disease to be destroyed by incineration (on or off the farm premises where the birds were raised), rendering, burying in a landfill, or burying on premises in a disposal pit. The regulation adds "composting" as an approved method of disposal. Composting of poultry carcasses is a decomposition process that involves mixing carcasses, a carbon source, and water that, following the decomposition process, will create a homogenous organic material suitable for use as a soil conditioner, fertilizer or material for land application.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The new substantive provisions and the substantive changes to existing sections include the following:

A definition of "composting" is added to define that specific biological process.

The definition of "dead poultry" is amended to update the definition and to incorporate poultry destroyed as a result of natural disasters.

The definition of "department" is removed as being unnecessary.

The definition of "disposal" is amended to include composting or other methods approved by the State Veterinarian to allow for greater flexibility.

The definition of "disposal pit" is amended to update and reference appropriate Department of Environmental Quality regulations.

The definition of "flock" is amended to provide discretion for determining a separate flock by the State Veterinarian instead of the Department.

The definition of "incinerator" is amended to mirror a similar definition contained in the Code of Virginia.

The definition of "infectious and contagious disease" is removed as being unnecessary.

The definition of "landfill" is amended to mirror a similar definition contained in the Code of Virginia.

The definition of "person" is amended to remove the terminology "for profit". Additionally, other "for profit" references are removed throughout the regulation to show that the regulation applies to whole flock disposal, whether for profit or not for profit.

2 VAC 5-200-20 is amended to better emphasize that the regulation only applies to situations where the entire flock must be disposed of.

2 VAC 5-200-30 is amended to incorporate composting as an acceptable method of disposal.

2 VAC 5-200-50 is amended to eliminate the requirement of filing a disposal plan with the State Veterinarian, to require that the person must have a plan in their possession that can be made readily available to the State Veterinarian or his representative, and to identify that persons owning flocks of less than 500 poultry are not required to have a disposal plan, but will work in consultation with the State Veterinarian to determine a proper method of disposal.

"FORMS" is removed as the forms identified in the existing regulation are obsolete.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and
- 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

Poultry diseases of regulatory concern like Avian Influenza and Exotic Newcastle Disease can have serious financial and economical impacts on the affected individuals and communities. Poultry growers and their employees, poultry farm service providers, litter brokers, processing facility employees, and transportation providers can be adversely impacted during a contagious disease outbreak. During the 2002-2003 low pathogenicity avian influenza outbreak in the Shenandoah Valley of Virginia, delayed identification of an effective, safe, and environmentally sound means of disposing of the poultry carcasses caused an interruption in the depopulation of infected flocks.

Adding composting as an acceptable method of whole poultry flock carcass disposal provides poultry growers, and the industry as a whole, an additional economical and environmentally sound method of carcass disposal, in addition to other methods already permitted by the regulation.

The primary advantages to the public include benefits to Virginia families whose income would be severely and adversely affected if there were an outbreak of avian influenza. Allowing composting provides an economical and environmentally sound option to poultry producers to quickly and effectively dispose of large numbers of poultry carcasses, minimizing the negative economic impact that will be experienced by these producers. Also, suppliers and family businesses dependent on the poultry industry would also have diminished income during the control and eradication period following the outbreak of the disease; consequently, if poultry carcasses can be disposed of quickly and effectively, the length of time that these other businesses will be affected can be shortened minimizing the negative financial impact on these businesses.

Primary advantages to the agency and the Commonwealth are that this regulation will facilitate the state's duty to control and eradicate infectious or contagious disease in poultry by allowing as many viable options of carcass disposal as possible.

Composting is an environmentally sound method of carcass disposal which allows for disposing of large biomasses of dead poultry on the same premises where the birds were grown. This on-farm composting can protect other poultry and possibly the public by reducing the possible exposure to the disease of concern (i.e. H5, H7 avian influenza) that could occur if carcasses are moved from the premises. This is one of the methods of carcass disposal preferred by the Virginia Poultry Disease Task Force which is composed of representatives from the commercial poultry industry, the Virginia Department of Agriculture and Consumer Services, the Virginia Department of Environmental Quality, and the United States Department of Agriculture.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
2VAC5-200-30	Provisions governing bona fide rendering contract.	Within the first sentence of subsection D, the term "rendering"	The term "rendering" is not the appropriate term.

		was changed to “rendering”.	
2VAC5-200-50	Plans for disposal of dead poultry.	Within the first sentence of subsection A, commas were inserted after the terms “embracing” and “minimum”.	Insertion of the commas is necessary to make the sentence grammatically correct.
2VAC5-200-60	Transportation of dead poultry; sanitation.	Within subsection D.1., the word “is” has been inserted between “transporting vehicle” and “disinfected”.	Insertion of the word is necessary to make the sentence grammatically correct.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
The Virginia Farm Bureau Federation	The organization supports the proposed regulation.	The agency acknowledges that this organization supports this regulation as proposed and agrees with this comment.
The Virginia Poultry Federation	The organization supports the proposed regulation.	The agency acknowledges that this organization supports this regulation as proposed and agrees with this comment.
The Virginia Department of Environmental Quality	This agency supports the addition of composting to the proposed regulation, but has concerns that the proposal grants authority to the State Veterinarian for establishing disposal standards and making disposal decisions, which is actually the authority of the Director of the Department of Environmental Quality.	The agency does not agree that the regulation grants any additional authority to the State Veterinarian for establishing disposal standards and making disposal decisions that should remain under the authority of the Director of the Department of Environmental Quality. The regulation contains language that requires other disposal methods to comply with all state laws, which would include laws and regulations administered by the Department of Environmental Quality. Existing section 2 VAC 5-200-40 also contains language which authorizes the State Veterinarian to approve a disposal method other than one prescribed by this regulation as long as that method exceeds the standards established by this regulation. Any approval by the State Veterinarian of such methods has been and will continue to be in collaboration with the Department of Environmental Quality. Additionally, many government agencies, including the Virginia Department of Agriculture and Consumer Services and the Department of Environmental Quality, participate in a collaborative effort with poultry industry representatives and organizations on the Virginia Poultry Disease Task Force, which is developing guidance for acceptable disposal methods of poultry.

Enter any other statement here

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
2VAC5-200-10	Same	None	Adds a definition for "Composting" as an acceptable method of dead poultry disposal.
2VAC5-200-10	Same	Defines "Dead poultry".	Amends the definition of "Dead poultry" to add poultry that die or are destroyed as a result of a natural or manmade disaster.
2VAC5-200-10	Same	Defines "Department".	Deletes the definition of "Department" as the term is unnecessary.
2VAC5-200-10	Same	Defines "Disposal".	Amends the definition of "Disposal" by adding composting or other approved methods for the management of dead poultry, to enable rapid disposal of dead poultry to prevent the spread of contagious or infectious diseases.
2VAC5-200-10	Same	Defines "Disposal pit" and references a document, sections of regulations, and an agency that no longer exist.	Amends the definition of "Disposal pit" to reference the appropriate section of the Solid Waste Management Regulations administered by the Department of Environmental quality.
2VAC5-200-10	Same	Defines "Entire flock".	Amends the definition of "Entire flock" by removing certain terminology to make the definition grammatically correct.
2VAC5-200-10	Same	Defines "Flock".	Amends the definition of "Flock" by replacing the term "department" with the terms "State Veterinarian" to reflect appropriate procedure and actual practice.
2VAC5-200-10	Same	Defines "Incinerator".	Amends the definition of "Incinerator" to mirror a similar definition contained in the Code of Virginia.
2VAC5-200-10	Same	Defines "Infectious and contagious disease".	Removes the definition of "Infectious and contagious disease" as the definition is unnecessary.
2VAC5-200-10	Same	Defines "Landfill".	Amends the definition of "Landfill" to appropriately refer to an area permitted by the Department of Environmental Quality allowing the disposal of dead poultry.
2VAC5-200-10	Same	Defines "Person".	Amends the definition of "Person" by removing the terminology "for profit", as these regulations must apply to disposal of whole flocks of dead poultry whether they are

			maintained for profit or not for profit.
2VAC5-200-10	Same	Defines "Poultry".	Amends the definition of "Poultry" by removing the terminology "for profit", as these regulations must apply to disposal of whole flocks of dead poultry whether they are maintained for profit or not for profit.
2VAC5-200-10	Same	Defines "Premises".	Amends the definition of "Premises" by removing the terminology "for profit", as these regulations must apply to disposal of whole flocks of dead poultry whether they are maintained for profit or not for profit.
2VAC5-200-10	Same	Defines "Raising or keeping poultry for profit".	Amends the definition to "Raising or keeping of poultry" and eliminates references to profit as these regulations must apply to disposal of whole flocks of dead poultry whether they are maintained for profit or not for profit.
2VAC5-200-10	Same	Defines "Rendering".	Amends "Rendering" to reference the appropriate part number of Title 9 of the Code of Federal Regulations.
2VAC5-200-20	Same	Identifies the applicability of the regulation.	Amends the applicability by eliminating references to profit as these regulations must apply to disposal of whole flocks of dead poultry whether they are maintained for profit or not for profit. Also adds a statement that in other instances, Title 3.2, Chapter 60 Article 2 of the Code of Virginia applies.
2VAC5-200-30	Same	Identifies the requirements for disposal pits, incinerators, landfilling, or rendering required of persons raising or keeping poultry for profit.	Amends the section as follows: <ul style="list-style-type: none"> • Replaces the term "landfilling" with the term "landfill" as being grammatically correct. • Adds "composting" in the tag line, as an acceptable method of disposal, and identifies the provisions governing composting. • Adds the statement "Any other method approved by the State Veterinarian" as an acceptable method of disposal. • Eliminates all references to "for profit" as these regulations must apply to disposal of whole flocks of dead poultry whether they are maintained for profit or not for profit. • Eliminates the identification of construction materials for incinerators as being unnecessary. • Under the subsection for provisions governing rendering contracts, adds a statement about owning a rendering facility, because some poultry operations do own rendering facilities. • Under the subsection for provisions governing landfills, adds a statement about owning a landfill because some poultry operations do own landfills.
2VAC5-	Same	Identifies requirements to	Amends the section as follows:

200-50		have plans for disposal of dead poultry.	<ul style="list-style-type: none"> • Eliminates all references to “for profit” as these regulations must apply to disposal of whole flocks of dead poultry whether they are maintained for profit or not for profit. • Amends the requirement for persons to file a disposal plan with the State Veterinarian to simply having a plan in their possession which shall be made available to the State Veterinarian upon request. The old process of actually filing a plan is time consuming and of no benefit to the agency or the person filing the plan. • Eliminates the requirement that persons may not implement the plan until approved by the State Veterinarian, as it is not beneficial for the State Veterinarian to be approving plans. • Adds a provision where persons who own flocks of less than 500 poultry are not required to have a plan, but in the event that disposal of dead poultry becomes necessary, the State Veterinarian will work in consultation with the owner to determine a proper method of disposal. • Replaces the term “filing” with the term “developing” in subsection C to be consistent with requirements in the previous subsections.
2VAC5-200-60	Same	Identifies requirements for transportation of dead poultry and sanitation.	<p>In subsection A, inserts the language “to an off-farm disposal site” following the term “premises” to clarify that this requirement does not cover transportation activities on the farm. Eliminates the terminology “by permit” because the State Veterinarian does not issue permits.</p> <p>In subsections B and D, replaces the terms “truck” and “trucks” with the terminology “transporting vehicle” or “transporting vehicles” because vehicles other than trucks can be used for transportation purposes.</p>

Enter any other statement here

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less

stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The regulation includes the addition of composting as a method by which poultry carcasses can be disposed of and does not eliminate other approved methods nor mandate the use of composting. The regulation also amends the requirement pertaining to disposal plans. Disposal plans no longer need to be filed with the State Veterinarian; instead, they need to be made available to the State Veterinarian or his representative upon request. Additionally, persons owning flocks of less than 500 poultry are not required to have disposal plans, but instead, will work in conjunction with the State Veterinarian to determine a method of disposal. Given that the regulation does not impose more stringent standards than what already exists, there are no alternatives necessary and there should be no adverse impact on small business.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulation should have a positive impact on Virginia families overall, as well as hundreds of families with poultry production operations. Many of Virginia's poultry growers are family farmers whose income will be severely curtailed if there is another outbreak of avian influenza. Suppliers and other family businesses dependent on the poultry industry will see their income diminished or curtailed during the eradication of the disease. This regulation is expected to increase protection of the state's supply of poultry which is an inexpensive food and source of dietary protein. Broad based planning for a future outbreak of avian influenza, as well as added flexibility for dealing with whole-flock disposal issues, is essential to minimize impacts on families and to reduce the effects of certain contagious poultry diseases on the poultry industry, poultry growers, and the supporting industries.

The regulation has no effect on strengthening or eroding the authority and rights of parents in the education, nurturing, and supervision of their children. The regulation does encourage economic self-sufficiency, self-pride and the assumption of responsibility for oneself, one's spouse and one's children and/or elderly parents for those families involved in the poultry industry. The regulation does not affect the marital commitment, and it certainly can contribute to maintaining or increasing disposable family income.