



Proposed Regulation Agency Background Document

Agency name	Department of 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	May 27, 2008

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

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The proposed regulation will revise 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 proposed by this action 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 3.1-742.1 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 proposed regulation) to reflect that the regulation applies not only to for-profit operations, but also to those that are not-for-profit.

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 number(s), if applicable, and (2) promulgating entity, i.e., the 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 3.1-726 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 it now exists and as it will be 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 3.1-727 of the Code of Virginia. Although this latter authority exists, the proposed regulation further identifies the acceptable methods that can be used for disposal.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, 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 proposed 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 proposed regulation will add "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 briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The substantive provisions of the proposed regulation 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 proposed 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 proposed 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so 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 proposed regulation would 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.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements included in this regulation that exceed applicable federal requirements. The proposed regulation will actually provide greater flexibility to the poultry industry in the event whole flocks of poultry will need to be disposed of.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

Localities in Virginia having the greatest densities of poultry growers would be impacted to a much greater extent than other localities. These localities would include counties located in the Shenandoah Valley, South Central Virginia, Southeast Virginia, and the Eastern Shore.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to:

Colleen Calderwood, DVM
 P.O. Box 1163
 Richmond, Virginia 23218
 Phone: 804-786-2483
 Fax: 804-371-2380
 E-mail: colleen.calderwood@vdacs.virginia.gov

Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last date of the public comment period.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>There are no projected costs to the state to implement and enforce the proposed regulation. This regulation provides an additional option to currently approved whole-flock disposal methods, but does not mandate any changes. Any costs to the state would be those already incurred for travel to premises for monitoring and sampling and would depend on the number of simultaneous incidents in which composting is being used as a disposal method. The USDA traditionally provides emergency funding for a contagious disease response that would cover these costs.</p>
<p>Projected cost of the regulation on localities</p>	<p>There are no projected costs to localities.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>Entities likely to be affected by this regulation are poultry companies, individual poultry growers, and persons who own flocks of less than 500 poultry.</p>

	<p>The proposed regulation provides an additional option for whole-flock mortality disposal, therefore providing greater flexibility to the poultry industry. The effects realized by the poultry industry will be of a positive nature.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>The number of small businesses potentially affected by this proposed regulation would depend on the number of whole flock mortality events. The use of composting for disposal of whole poultry flock mortality should expedite responses to disease events and help control the consequences of a disease spreading in a locality. Rapid response relative to disposal of whole flocks of poultry should minimize any negative effect that would be experienced by small businesses.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>There are no projected costs to affected individuals, businesses or other entities that would be created by this proposed regulation. Because this proposal provides an additional option for whole-flock disposal, it is very likely that affected entities will realize a reduction in costs should whole-flock disposal become a necessity. The Department of Conservation and Recreation has existing regulations for the land application of compost, 4 VAC 5-15-140 <i>Nutrient Management Plan Content</i>, and 4 VAC 5-15-150 <i>Required Nutrient Management Plan Procedures</i>.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The department meets quarterly with officials of the United States Department of Agriculture, Veterinary Services; the Virginia Department of Environmental Quality; the Virginia Cooperative Extension Service; and members of the Virginia Poultry Federation. This group constitutes the agency’s “Virginia Poultry Disease Task Force.” Disposal because of whole-flock mortality is a major topic of discussion at these meetings. The Virginia Cooperative Extension Service has conducted composting trials to ascertain the best procedures to use in assuring that composting is effective, protects human and animal health, and is environmentally sound. On farm composting was used successfully to dispose of more than 50,000 poultry carcasses in response to a low pathogenicity avian influenza infection in July, 2007 in Shenandoah County, Virginia.

Other methods of carcass disposal will still be permitted by the proposed regulation. Of those methods, incineration may have negative environmental impacts. Landfill burial may be a lower cost option than composting depending on the distance of the poultry premises to the landfill and the landfill fees involved. Many landfills will not accept large volumes of poultry carcasses. Poultry carcasses exposed to high pathogenicity avian influenza, which has human health implications, may have to be disposed of at landfills designed for infectious waste and would be more expensive than composting. Newer

technologies like alkaline hydrolysis are cost prohibitive and have not been used enough in large scale responses to be appropriately evaluated.

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 proposed 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 proposed 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 proposed 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.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Virginia Farm Bureau Federation	Supports composting as a disposal method. Composting is accepted, effective, economical, and environmentally sound. Whole flocks can be composted as effectively as normal mortality and the use of composting can control disease spread and help manage carcass disposal.	The agency agrees with these comments.

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.

The proposed amendments 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. The regulation changes anticipated are expected to increase protection of the state’s supply of poultry which is an inexpensive food. Broad based planning for a future outbreak of avian influenza 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.

Detail of changes

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

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
2 VAC 5-200-10	n/a	Does not include a definition of composting.	Proposed amendment to define composting as another acceptable alternative for disposal of poultry carcasses.
2 VAC 5-200-10	n/a	Defines “dead poultry” as those that die or are destroyed as a result contagious or infectious disease.	Amends the definition of dead poultry to add language about poultry destroyed as a result of natural or manmade disaster.
2 VAC 5-200-10	n/a	Defines “department” as Virginia Department of Agriculture and Consumer Services.	Eliminates the definition of department because it is unnecessary.
2 VAC 5-200-10	n/a	Defines “disposal” as the complete destruction of dead poultry.	Amends the definition of disposal to make the definition more accurate and to include composting or other methods approved by the State Veterinarian.
2 VAC 5-200-10	n/a	Defines “disposal pit”.	Amends the definition of disposal pit to update appropriate state agency references and regulations.
2 VAC 5-200-10	n/a	Defines “entire flock”.	Amends the definition of entire flock to update and clarify language.

2 VAC 5-200-10	n/a	Defines "flock".	Amends definition of flock to provide discretion for to the State Veterinarian rather than the Department for identifying a separate flock.
2 VAC 5-200-10	n/a	Defines "incinerator".	Amends definition of incinerator to be consistent with similar definition contained in Section 3.1-742.1 of the Code of Virginia.
2 VAC 5-200-10	n/a	Defines "infectious and contagious disease".	Removes definition of infectious and contagious disease as it is not necessary.
2 VAC 5-200-10	n/a	Defines "landfill".	Amends definition of landfill to be consistent with similar definition contained in Section 3.1-742.1 of the Code of Virginia.
2 VAC 5-200-10	n/a	Defines "person".	Amends definition of person to remove the statement "for profit", because the regulation should apply to all mass disposal situations, not just those of for-profit operations.
2 VAC 5-200-10	n/a	Defines "poultry"	Amends definition of poultry to remove the statement "for profit", because the regulation should apply to all mass disposal situations, not just those of for-profit operations.
2 VAC 5-200-10	n/a	Defines "premises".	Amends definition of premises to remove the statement "for profit", because the regulation should apply to all mass disposal situations, not just those of for-profit operations.
2 VAC 5-200-10	n/a	Defines "raising or keeping of poultry for profit"	Amends definition to remove language pertaining to "for profit", because the regulation should apply to all mass disposal situations.
2 VAC 5-200-10	n/a	Defines "rendering".	Amends the definition of rendering to reference the appropriate part of the Code of Federal Regulations.
2 VAC 5-200-20	n/a	Identifies the current applicability of the regulation.	Amends the applicability language to show that proposed regulation will apply to any situation where an entire flock dies or must be depopulated, and adds language to address other instances involving for-profit operations.
2 VAC 5-200-30	n/a	Identifies acceptable methods of whole flock disposal, and includes composting as an approved method.	Amends the language to include composting or other method approved by the State Veterinarian as acceptable options for the disposal of whole poultry flock mortality; removes language pertaining to "for profit"; adds language to cover poultry producers who own a rendering facility; adds language to cover poultry producers who own a landfill; and adds language identifying provisions governing composting.
2 VAC 5-200-50	n/a	Requires filing a disposal plan with the State Veterinarian.	Amends the language to remove "for profit" statements and removes the requirement to file a disposal plan with the State Veterinarian. Replaces a requirement for the person to have a disposal plan in their possession and to make the plan available to the State Veterinarian. Additionally, removes the requirement that the plan cannot be

			implemented unless approved by the State Veterinarian and adds language that those owning flocks of less than 500 poultry are not required to have a plan in their possession, but should work in consultation with the State Veterinarian to determine a method of disposal if the flock dies or needs to be depopulated.
2 VAC 5-200-60	n/a	Identifies requirements for maintaining sanitation when transporting dead poultry.	Amends the language to add the statement in paragraph A "to an off farm disposal site" for consistency with paragraphs B, C, and D; and removes the requirement for a permit. Additionally, it changes the term "truck" to "transporting vehicle" for added flexibility for the poultry industry.