

**CHAPTER 9  
AVIAN INFLUENZA**

**Authority**

N.J.S.A. 4:5-1 and 4:5-10.

**Source and Effective Date**

R.2001 d.284, effective July 20, 2001.  
See: 33 N.J.R. 1887(a), 33 N.J.R. 2806(b).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 9, Avian Influenza, expires on January 16, 2007. See: 38 N.J.R. 3203(a).

**Chapter Historical Note**

Chapter 9, Avian Influenza, was adopted as R.1986 d.250, effective July 7, 1986. See: 18 N.J.R. 870(a), 18 N.J.R. 1370(a). Pursuant to Executive Order No. 66(1978), Chapter 9, Avian Influenza, expired on July 7, 1991.

Chapter 9, Avian Influenza, was readopted as new rules by R.1991 d.430, effective August 19, 1991. See: 23 N.J.R. 1485(a), 23 N.J.R. 2498(a).

Pursuant to Executive Order No. 66(1978), Chapter 9, Avian Influenza, was readopted as R.1996 d.400, effective July 26, 1996. See: 28 N.J.R. 2815(b), 28 N.J.R. 3915(a).

Chapter 9, Avian Influenza, was readopted as R.2001 d.284, effective July 20, 2001. See: Source and Effective Date. See, also, section annotations.

Subchapter 2, General Provisions, Subchapter 3, Live Bird Markets, Subchapter 4, Poultry Distributors, Subchapter 5, Production/Supplier Flocks and Subchapter 6, Penalties, were adopted as new rules by R.2006 d.201, effective June 5, 2006. See: 38 N.J.R. 865(a), 38 N.J.R. 2413(a).

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**SUBCHAPTER 1. INDEMNIFICATION AND DISPOSAL COSTS**

**2:9-1.1 Indemnities**

(a) The handling and disposition of any and all poultry, poultry products or equipment, which is in the opinion of the Department of Agriculture likely to spread or harbor Avian Influenza shall be dealt with in accordance to the directives of the Division of Animal Health of the New Jersey Department of Agriculture.

(b) Indemnity to be paid for any bird destroyed pursuant to an order of the Department shall be the market value of the type and classification of the average bird of such type and kind. No indemnity for any one bird shall exceed \$20.00 per bird.

(c) No indemnity shall be paid for any actions not taken pursuant to a directive of the Department, or in contradiction of a directive of the Department.

(d) Subsections (a) through (c) above shall not apply to premises quarantined pursuant to this chapter for infection with Avian Influenza more than twice within the registration year.

Amended by R.2006 d.201, effective June 5, 2006.  
See: 38 N.J.R. 865(a), 38 N.J.R. 2413(a).  
Added (d).

**2:9-1.2 Disposal costs**

(a) The disposal costs of any birds destroyed pursuant to a directive of or by the Department shall be paid as follows:

1. Should the owner undertake to dispose of the birds pursuant to the directives of the Department, the owner shall submit the disposal bill to the Department. If the Department finds the bill reasonable, the Department shall reimburse the bill, or such costs as the Department deems reasonable.

2. No disposal undertaken without Department supervision, or in contradiction to the directives of the Department, shall be paid.

(b) Subsection (a) above shall not apply to premises quarantined pursuant to this chapter for infection with Avian Influenza more than twice within the registration year.

Amended by R.2006 d.201, effective June 5, 2006.  
See: 38 N.J.R. 865(a), 38 N.J.R. 2413(a).  
Added (b).

**2:9-1.3 (Reserved)**

Repealed by R.2006 d.201, effective June 5, 2006.

See: 38 N.J.R. 865(a), 38 N.J.R. 2413(a).

Section was "Movement into live poultry markets".

**2:9-1.4 (Reserved)**

Repealed by R.2006 d.201, effective June 5, 2006.

See: 38 N.J.R. 865(a), 38 N.J.R. 2413(a).

Section was "Definitions".

**SUBCHAPTER 2. GENERAL PROVISIONS****2:9-2.1 Definitions**

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Accredited veterinarian" means a veterinarian approved by the Administrator of USDA, Animal and Plant Health Inspection Service (APHIS), in accordance with the provisions of 9 CFR Part 161, to perform functions required by state-Federal-industry cooperative programs.

"Animal health official" means a full-time employee of any state animal health department or of APHIS who has authority from the State Veterinarian or the area veterinarian in charge to carry out program activities.

"APHIS-VS" means Animal and Plant Health Inspection Service — Veterinary Services.

"Area veterinarian in charge" means the APHIS veterinarian who is assigned by the Administrator of the Animal and Plant Health Inspection Service to supervise and perform official duties of APHIS in a specified state or states. Information as to the name and address of the Regional Director for the state or states concerned can be obtained by writing to the Animal and Plant Health Inspection Service, Animal Care, 4700 River Road, Unit 84, Riverdale, MD 20737-1234.

"Certificate of Veterinary Inspection" means an official document which includes:

1. The information outlined in N.J.A.C. 2:3-1.4;
2. A statement made by the examining veterinarian that includes the date, a statement of negative avian influenza status and lab accession number(s) of qualifying tests; and
3. A statement verifying that the identified poultry are from a monitored flock or tested flock.

"Certified poultry technician" means an individual who has been specially trained in poultry health monitoring and specimen collection by the state in which they are certified, who is included on an official list of technicians certified by the state in which they reside to perform inspections and specimen collections, and whose state certification program

has been approved by the NJDA. A state's certification program, at a minimum, must contain standards for:

1. Certification that include training in sample collection, sample handling and submission, biosecurity protocol and poultry health monitoring;

2. Recertification that includes an annual training update, review of the technician's testing history and paperwork, and review of reports of non-compliance with poultry certificate requirements and biosecurity protocol; and

3. Termination of certification that include disciplinary action protocols.

"Distribution system" means businesses engaged in the transportation and/or sale of poultry to the live bird markets, including, but not limited to, poultry distributors, wholesalers, poultry dealers, haulers/truckers, and qualified poultry auctions.

"Established flock" means poultry of the same species held together on one premises for at least 21 consecutive days; or at the discretion of the State Veterinarian, any group of poultry on one premises that has been segregated from another group for at least 21 consecutive days.

"Hauler/trucker" means a business entity or individual that transports poultry from producer/supplier premises to another producer/supplier, a poultry distributor, a live bird market, or qualified poultry auction.

"Live bird market" or "live bird marketing" means any facility that gathers live poultry to be slaughtered and sold onsite. End-stage poultry markets that are not "slaughter-only" markets, will require development and approval of special biosecurity safeguards pursuant to N.J.A.C. 2:9-2.2(b)7 and inspections to ensure that they meet the requirements of this chapter and are successful in the prevention and control of low pathogenicity avian influenza.

"Live bird marketing system" means live bird markets and their production/supplier flocks and distribution systems.

"Monitored flock" means an established flock that meets the following criteria:

1. A sample size of at least 30 birds is tested monthly for signs of avian influenza. If the flock contains less than 30 birds, all birds within the flock must be tested monthly;
2. The birds tested have tested negative for avian influenza for three consecutive months;
3. The flock is registered with the New Jersey Department of Agriculture pursuant to N.J.A.C. 2:9-2.2;
4. No birds of lesser status have been added to the flock. When birds of lesser status are added to the flock, the flock loses its monitored status. After waiting 21

## SUBCHAPTER 3. LIVE BIRD MARKETS

**2:9-3.1 Movement of poultry into live bird markets**

(a) Only poultry distributors who have met the requirements of N.J.A.C. 2:9-2.2 and 4.1 may move live poultry into a New Jersey live bird market. All poultry moving into a live bird market must be accompanied by a poultry invoice.

(b) Live bird markets are responsible for obtaining poultry invoices for all birds at the time of their receipt. If poultry invoices are not available, the birds must not enter the live bird market.

(c) All poultry invoices must be maintained at the live bird market for a minimum of 12 months from the date of entry into the market and must be presented upon demand by any authorized agent of the NJDA.

(d) All poultry entering a live bird market shall be slaughtered within 10 days of entering the market.

**2:9-3.2 Live bird market sanitation and biosecurity**

(a) Live bird markets shall develop and adhere to a biosecurity protocol that is approved by the NJDA pursuant to N.J.A.C. 2:9-2.2(b)7. All biosecurity protocols shall include, at minimum, quarterly closure of the market with complete sanitation, cleaning, disinfection and at least 24 hours of downtime after disinfectant is applied. The market must be inspected, tested and approved by an authorized agent of the NJDA before it will be allowed to reopen. The market will be approved for reopening when the market has been sanitized, cleaned, disinfected and retested in accordance with biosecurity protocols approved pursuant to N.J.A.C. 2:9-2.2(b)7.

(b) All locations on the premises that are used to house poultry, livestock and all associated conveyances, equipment and supplies, must be of a material that can be routinely cleaned and disinfected in accordance with the NJDA approved biosecurity protocol on a year-round basis.

(c) Poultry shall be housed separate and apart from swine in accordance with the NJDA-approved biosecurity protocol to minimize disease transmission between these species.

(d) Only animals for sale and slaughter shall be kept in areas where poultry are housed.

(e) No person shall permit live poultry to leave the live bird market.

(f) Live poultry shall not be moved from one live bird market to another, or to any other location.

(g) Each live bird market shall maintain an effective and safe pest control program that minimizes or eliminates the presence of rodents, flies, roaches, and other insects and vermin. The premises shall be kept in such condition as to prevent the breeding, harborage, or feeding of these pests.

**2:9-3.3 Live bird market surveillance**

(a) Live bird markets shall be required to undergo at minimum monthly inspections for compliance with this chapter and quarterly testing.

(b) Premises suspected or confirmed positive of infection with avian influenza shall be quarantined by the NJDA, pursuant to N.J.A.C. 2:5-4. Premises under quarantine must comply with the following:

1. All premises shall dispose of its poultry population. Premises under quarantine may be given up to five days to sell down poultry. No new poultry or animal deliveries may be accepted once the premises has been placed under quarantine. At the close of business on the fifth day, any poultry remaining, including pigeons and doves, shall be depopulated by market personnel;

2. All other livestock must be removed from the market, and placed into temporary holding pens on the premises in accordance with N.J.A.C. 2:8, Humane Treatment of Domestic Livestock, while the entire market is cleaned, disinfected and allowed to dry, or moved directly into a USDA recognized slaughter establishment by permit issued by the NJDA;

3. Once emptied of birds and livestock, the premises must be cleaned of all organic material, then disinfectant shall be applied. All areas where poultry and livestock were housed shall be cleaned and disinfected. An authorized agent of the NJDA will determine if the cleaning and disinfection is satisfactory; and

4. The premises must remain empty of poultry and livestock for a minimum of 24 hours after disinfectant is applied. The premises must be retested and approval must be obtained from an authorized agent of the NJDA before it will be released from quarantine.

(c) Once official confirmation of avian influenza exists, such premises shall remain under quarantine until an authorized agent of the NJDA is satisfied that the risk of disease exposure no longer exists.

(d) Live bird markets that test positive on quarterly testing will be required to undergo monthly testing, unless the State Veterinarian determines that more frequent testing is necessary. If more frequent testing is necessary, the testing shall occur at intervals recommended by State Veterinarian. If results are positive for avian influenza virus, the live bird market will again be placed under quarantine and shall follow the requirements of (b) above. After three consecutive months of negative testing, the market may be allowed to return to a schedule of quarterly testing and monthly inspection.

## SUBCHAPTER 4. POULTRY DISTRIBUTORS

**2:9-4.1 Testing requirements for poultry distributors**

(a) A poultry distributor must obtain a completed poultry inspection certificate or a certificate of veterinary inspection for all poultry intended for movement into a New Jersey live bird market and qualified poultry auction.

(b) The poultry inspection certificate or certificate of veterinary inspection required in (a) above shall remain in the possession of the poultry distributor and a poultry invoice shall accompany all poultry delivered to live bird markets. If poultry are sold or transferred from one poultry distributor to another, a copy of the poultry inspection certificate or certificate of veterinary inspection and a poultry invoice must accompany each transaction.

(c) The State of New Jersey adopts as the official laboratory tests of the avian influenza program Part IV of USDA's Prevention and Control of H5 and H7 Low Pathogenicity Avian Influenza in the Live Bird Marketing System Uniform Standards for a State-Federal-Industry Cooperative Program, effective October 20, 2004, incorporated herein by reference, as amended and supplemented. A copy of this document is on file in the State Veterinarian's Office, Division of Animal Health, New Jersey Department of Agriculture, Health and Agriculture Building, John Fitch Plaza, Trenton, NJ 08625.

(d) Poultry less than seven days of age are exempt from testing requirements if:

1. The poultry originated and moved directly from a monitored or tested breeding flock; and
2. The poultry are accompanied by a poultry inspection certificate or certificate of veterinary inspection.

(e) Poultry distributors may not remove live poultry or other live animals from live bird markets.

**2:9-4.2 Poultry distributor sanitation and biosecurity**

(a) All poultry distributors shall develop and adhere to an NJDA approved biosecurity protocol. All biosecurity protocols submitted pursuant to N.J.A.C. 2:9-2.2(b)7, at a minimum, must include the following:

1. Cleaning, sanitation and disinfection to prevent transmission of Avian Influenza virus from one premises to another;
2. All non-disposable footwear shall be disinfected before entering and after leaving any premises containing poultry;
3. All disposable footwear shall be discarded after each visit to any premises containing poultry;

4. All poultry distributor personnel shall wash their hands prior to and between each entry of a premises containing live poultry;

5. Cabs (interior and exterior), tires and bodies of all conveyances shall be cleaned and disinfected to prevent transmission of the Avian Influenza virus from one premises to another; and

6. Coops, crates, flats, cages or other conveyances and other equipment shall be cleaned and disinfected prior to reuse when moving live poultry, using NJDA-approved washing equipment and protocols.

(b) All poultry distributors shall maintain records of all poultry invoices, poultry inspection certificates and certificates of veterinary inspection for a period of 12 months at the business premises. These records must be presented upon demand to an authorized agent of the New Jersey Department of Agriculture.

(c) All poultry distributors shall maintain a logbook in each vehicle used to transport live poultry certifying that they have complied with the biosecurity protocols in (a) above.

1. All completed logbooks must be maintained at the business premises for a period of 12 months and must be presented upon demand to an authorized agent of the New Jersey Department of Agriculture.

2. Each logbook shall contain the following information for each entry:

i. The date, time and location that each act of cleaning and disinfection required by (a)5 and 6 above was performed;

ii. The following statement: "I certify under penalty of law that the information provided in this entry is true, accurate and complete. I am aware that there are significant civil penalties for submitting false, inaccurate or incomplete information and significant criminal penalties, including fines and/or imprisonment for submitting false, inaccurate or incomplete information or information which I do not believe to be true."; and

iii. The signature of the agent who performed the act of cleaning and disinfection on behalf of the poultry distributor.

3. The NJDA will accept logbooks from other states that meet the requirements of (c)1 and 2 above.

4. Each logbook must be reviewed quarterly by the poultry distributor to ensure compliance with the NJDA approved biosecurity plan. Proof of this quarterly review must be shown by a certification containing the following information for each quarter:

i. The following statement: "I certify under penalty of law that I have reviewed the entries in the logbook for this quarter and that the actions of the above named agent(s) are in compliance with my NJDA approved

biosecurity plan. I am aware that there are significant civil penalties for submitting false, inaccurate or incomplete information and significant criminal penalties, including fines and/or imprisonment for submitting false, inaccurate or incomplete information or information which I do not believe to be true.”;

ii. The signature of the poultry distributor if the poultry distributor is an individual, or the signature of a person authorized to act on behalf of the poultry distributor if the poultry distributor is a business entity; and

iii. The date in which the logbook was signed and the time period the review covers.

(d) Incidents involving false swearing or false reporting in the documents required by this subchapter may be referred by the Department for prosecution including, but not limited to, those authorized pursuant to N.J.S.A. 2C:28-3.

### 2:9-4.3 Poultry distributor surveillance

(a) Poultry distributors including all premises, conveyances, crates and birds will be inspected for compliance with this chapter and tested at least quarterly for evidence of avian influenza virus. Any registered poultry distributor located outside the State shall be subject to quarterly inspection and testing by authorized agents of USDA-APHIS-VS or agents of the state in which the registrant premises is located on behalf of the NJDA.

(b) Poultry distributor facilities that test positive for avian influenza virus shall be quarantined according to N.J.A.C. 2:5-4 and shall remain under quarantine until an authorized agent of the NJDA is satisfied that the risk of disease exposure no longer exists. Premises under quarantine must comply with the following:

1. All premises shall be quarantined according to N.J.A.C. 2:5-4 and will be required to depopulate all poultry, including pigeons and doves, and undergo cleaning and disinfection. The premises shall be retested and approved by an authorized agent of the NJDA before it will be released from quarantine. A negative environmental test result is required before restocking;

2. All other livestock must be removed from any area where the poultry were housed or stored while the entire poultry area is cleaned, disinfected and allowed to dry. Livestock must be placed into temporary holding pens on the premises in accordance with N.J.A.C. 2:8, Humane Treatment of Domestic Livestock, or moved directly into a USDA recognized slaughter establishment pursuant to conditions established by NJDA;

3. Once emptied of birds and livestock, all areas where poultry were housed or stored must be cleaned of all organic material, then disinfectant shall be applied. An authorized agent of the NJDA will determine if the cleaning and disinfection is satisfactory; and

4. The premises must remain empty of poultry and livestock for a minimum of 24 hours after disinfectant is applied. Any disinfectant and/or cleaning solution applied to the premises must be allowed to thoroughly dry before restocking with poultry or livestock. The poultry distributor premises must be inspected, tested and approved by an authorized agent of the NJDA before it will be allowed to restock.

5. At the discretion of the State Veterinarian, under special circumstances poultry distributors may be exempted from depopulation if they are determined to be low risk for disease transmission. In such cases, the State Veterinarian will approve and implement a special quarantine release protocol. Under this protocol, the poultry distributor premises will be quarantined until tested negative and the quarantine is lifted by the State of New Jersey.

(c) A poultry distributor that fails biosecurity inspections and/or tests positive during the quarterly testing shall undergo monthly inspections and testing until there have been three consecutive months of negative testing, at which time quarterly testing will resume.

(d) Poultry distributors located in other states that test positive for Avian Influenza may be embargoed by the NJDA according to N.J.A.C. 2:5-2.1(a) and (b).

## SUBCHAPTER 5. PRODUCTION/SUPPLIER FLOCKS

### 2:9-5.1 Production/supplier flocks

Birds from production/supplier flocks may not be sold directly to live bird markets unless the flock owner or manager is also registered as a poultry distributor pursuant to N.J.A.C. 2:9-2.2, with the necessary NJDA-approved biosecurity protocols and equipment to ensure effective cleaning and disinfection of conveyances and equipment.

### 2:9-5.2 Production/supplier flock sanitation and biosecurity

(a) Production and supplier flock facilities, conveyances, and other equipment shall be clean and sanitary at all times.

(b) A biosecurity protocol shall be developed by the producer/supplier, approved by NJDA pursuant to N.J.A.C. 2:9-2.2(b)7 and shall be in place for all production/supplier premises.

(c) Flock test records, as well as records of bird transfers, receipts and biosecurity records, must be maintained at the flock premises for 12 months and shall be presented upon demand to an authorized agent of the New Jersey Department of Agriculture.

**2:9-5.3 Production/supplier flock surveillance**

(a) Premises may be subjected to random inspections by authorized agents of the New Jersey Department of Agriculture to ensure that the premises, conveyances, and coops are clean and sanitary. Random samples may be collected for virus identification from birds and/or environment at the time of inspection.

(b) Premises that have results confirmed as positive for avian influenza virus shall be quarantined according to N.J.A.C. 2:5-4 and will be required to depopulate all poultry, including pigeons and doves, and undergo cleaning and disinfection. All premises under quarantine shall remain under quarantine until an authorized agent of the NJDA is satisfied that the risk of disease exposure no longer exists. The premises shall be retested and approved by an authorized agent of the NJDA before it will be released from quarantine. A negative environmental test result is required before restocking.

(c) All other livestock must be removed from any area where the poultry were housed or stored while the entire poultry area is cleaned, disinfected and allowed to dry. Livestock must be placed into temporary holding pens on the premises in accordance with N.J.A.C. 2:8, Humane Treatment of Domestic Livestock, or moved directly into a USDA-recognized slaughter establishment by permit issued by the NJDA.

(d) Once emptied of birds and livestock, all areas where poultry were housed or stored must be cleaned of all organic material, then disinfectant shall be applied. An authorized agent of the NJDA will determine if the cleaning and disinfection is satisfactory.

(e) The premises must remain empty of poultry and livestock for a minimum of 24 hours after disinfectant is applied. Any disinfectant and/or cleaning solution applied to the premises must be allowed to thoroughly dry before restocking with poultry or livestock. The premises must be inspected, tested and approved by an authorized agent of the NJDA before it will be allowed to restock.

(f) At the discretion of the State Veterinarian, under special circumstances small positive flocks may be exempted from depopulation if they are determined to be low risk for disease transmission. In such cases, the State Veterinarian will approve and implement a special quarantine release protocol. Under this protocol, the flock will be quarantined and allowed to remain in its environment until it tests negative and the quarantine is lifted by the State of New Jersey.

**SUBCHAPTER 6. PENALTIES****2:9-6.1 Penalties for violations of this chapter**

(a) Any person who violates the provisions of this chapter, shall be subject to the following penalties:

1. First offense: not less than \$100.00 per unit or violation nor more than \$200.00 per unit or violation; and

2. Each subsequent offense: \$200.00 per unit or violation or imprisonment for not more than one year, or both.

i. After the second violation of any part of this chapter by the same registered live bird market, poultry distributor, poultry producer/supplier flock during the same calendar year, the Department of Agriculture may revoke its registration for the remainder of the registration year.

(b) Every day a violation occurs at the same location, or by the same individual or persons representing that individual, shall be considered a separate violation.

(c) The Department may require poultry to be tested for avian influenza if in its judgment such testing would be necessary to prevent introduction of the disease.

(d) Additional penalties or actions may be taken at the discretion of the State Veterinarian until epidemiology, testing or retesting discloses no potential threat of avian influenza infection to contact animals.

(e) An authorized agent of the NJDA shall make the initial determination as to whether a violation of this chapter has occurred and what penalty should be assessed pursuant to (a) above.

(f) The State Veterinarian shall make the initial determination as to whether to deny a registration in N.J.A.C. 2:9-2.2, or revoke a registration as provided in (a)2i above.

(g) Any applicant who is aggrieved by the determination of the State Veterinarian pursuant to this section shall, upon written request transmitted to the NJDA within 20 days of the penalty assessment, registration denial, or notice of intent to revoke a registration, 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 Administrative Procedure Rules, N.J.A.C. 1:1.

(h) Poultry not meeting the requirements of this chapter shall be refused entry into the State, or if already in the State, are subject to quarantine by the NJDA as follows:

1. Actions taken by the NJDA as part of a quarantine, in accordance with this subsection, may include, but shall not be limited to:

i. A directive prohibiting movement of poultry into or out of a quarantined area;

ii. A directive requiring diagnostic tests and procedures to confirm that the poultry are not affected by Avian Influenza and shall remain under quarantine until such confirmation is received; and/or