

10/21/91 ✓

STATE OF MINNESOTA

BOARD OF ANIMAL HEALTH

IN THE MATTER OF THE PROPOSED	)	
AMENDMENTS TO THE RULES OF THE	)	STATEMENT OF NEED
BOARD OF ANIMAL HEALTH, GOVERNING	)	AND REASONABLENESS
DISEASES OF POULTRY, (MINNESOTA	)	
RULES PARTS 1710.0010 THROUGH 1710.1290)	)	

I. INTRODUCTION.

Minnesota Statutes, Sections 29.051 and 35.03 authorize and require the Minnesota Board of Animal Health (hereinafter referred to as the "Board") to adopt rules necessary to protect the health of Minnesota's domestic animals including poultry. The subject of this rule amendment is the proposed adoption of the rule governing the control of diseases of poultry. The Board has determined that the proposed rule is noncontroversial because it was requested by and is supported by members of the poultry industry and properly protects poultry health. Because of the noncontroversial nature of this rule, the Board is proceeding according to Minnesota Statutes, Sections 14.21 to 14.28, and this Statement of Need and Reasonableness was prepared and completed prior to the date that the proposed rule was published by the State Register.

II. GENERAL OVERVIEW.

The existing rules of the Board, which will be affected by the amendments address four different subject areas:

**CONTROL AND ERADICATION OF PULLORUM-TYPHOID DISEASE IN POULTRY AND OTHER DOMESTICATED FOWL (1710.0010 - 1710.0340);**

**CONTROL OF MYCOPLASMA IN POULTRY (1710.0550 - 1710.0880);**

**CONTROL OF SALMONELLA TYPHI-MURIUM DISEASE IN TURKEYS (1710.0890 - 1710.1200); and**

**DEALING IN POULTRY BY DEALERS (1710.1210 - 1710.1290).**

The rules dealing separately with these four subject areas are being repealed and the subject matter is being combined into one new rule. The reasons for this consolidation, amendment and repeal are:

First, all four of the rules cited above need to be updated. The Dealer rule has not been changed since 1948, the Pullorum-Typhoid rule for sixteen years and the other two areas for eight years. During this time the poultry industry has made many technological advances and parts of the rules are therefore outdated.

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Second, the existing rules are overly repetitive and redundant.

Third, the rules provide several different meanings for identical terms with no valid reasons for differing treatment. For example, "POULTRY" is defined in 3 of the existing rules, each time differently;

1. "Poultry" shall mean turkeys and chickens.  
1710.0010, Subp. 11
2. "Poultry" shall mean turkeys, chickens, and other poultry.  
1710.0550, Subp. 9
3. "Poultry" shall mean and refer to chickens, turkeys, ducks, geese, guinea fowl, pigeons, and any other domestic birds.  
1710.1210, Subp. 5

The new definitions will apply equally to all amended programs.

The request for revising the poultry rules was initiated by the industry. Minnesota breeder flocks have been free of *Mycoplasma synoviae* since 1982 and *Mycoplasma gallisepticum* long before that. The control programs for these diseases have been voluntary and all Minnesota chicken and turkey breeder flocks are participating in them. Since they are doing all the testing and meeting all the requirements of the USDA National Poultry Improvement Plan (NPIP), a state/federal program, they need an updated rule to formalize these requirements and to deter introduction of diseases into Minnesota poultry flocks.

Another reason the poultry rules need to be revised is that over the years there have been changes in the NPIP program. An example is the Sanitation Monitored program. It is currently available to both chicken and turkey breeders, but is required for Egg-type chicken breeders by federal law. Our existing rules do not address the Sanitation Monitored program or any of the program's required testing. The disease testing and control requirements for poultry producers will be easier to understand and meet if they are the same in the state rules and in the federal programs.

### III. NEED FOR AND REASONABLENESS OF THE PROPOSED RULES.

#### 1710.1300 DEFINITIONS.

Most of the definitions are the same but some are changed because of the inconsistencies noted previously or because of changes in the industry. Also, some new definitions are added. These changes are a necessary and reasonable part of the rule to ensure that the rule is clear and consistently applied.

**1710.1310 SALE OF POULTRY AND HATCHING EGGS.**  
(derived from 1710.0020, the last part of 1710.0050,  
1710.0170 and 1710.0580).

Since birds under four months of age cannot be tested for Salmonella Pullorum-Typhoid, according to the National Poultry Improvement Plan, it is necessary to forbid their sale unless they originate from tested and permitted breeding stock. Birds that are over four months of age must be tested prior to sale as breeding stock. When they reach four months of age, the testing available provides a more concrete assurance of their disease-free status. This combination of requirements ensures that diseased birds will not be sold and prevents spread of potentially diseased birds. The industry has been complying with these requirements for over twenty years and they have effectively protected the health of poultry breeding stock.

**1710.1320 EXEMPTIONS.**  
(derived from the first part of 1710.0050).

If a person is hatching poultry for his or her own use and those birds are not sold except to slaughter, it is not necessary to test or regulate them nor is it reasonable to do so since there is no risk of disease transmission to other flocks.

**1710.1330 PERMITS.**  
(derived from 1710.0060, 1710.0580, and 1710.1220).

The sale and trade of poultry are required to be under the supervision of the Board by Minnesota Statutes, Sections 29.051 and 35.03. It is, therefore, necessary and reasonable to require a permit for poultry sale and to establish criteria for that permit in the rule in order to effectively monitor the industry and to provide both effective disease control and the means to enforce poultry health requirements.

**1710.1340 BOARD PARTICIPATION.**  
(derived from 1710.0320).

The federal NPIP Program is set up to be conducted in cooperation with the official state agency (Board of Animal Health). The industry needs to comply with the NPIP Program in order to sell its products interstate. It is, therefore, necessary and reasonable that the Board be authorized to participate in the NPIP Programs.

It is also necessary and reasonable, to ensure that the programs are meaningful, that breeder flocks and hatcheries participating in the state/federal disease control programs agree to abide by the provisions of these programs.

**1710.1350 REQUIRED PARTICIPATION.**

This rule requires participation in certain programs that were voluntary before. This was requested by the industry and is necessary to protect their flocks. It is reasonable because the industry is now doing all of the required testing and all Minnesota Breeding flocks are free of these diseases. If a flock would become infected with one of these diseases, it would be quarantined and could not be used as a breeder flock.

**1710.1360 VOLUNTARY PARTICIPATION.**

By having voluntary disease control programs, it allows us to set testing schedules which the industry may participate in. This is necessary to control and eradicate diseases other than required participation diseases. The flocks would not be quarantined if they become infected. It is reasonable because it helps produce healthier flocks through voluntary participation.

**1710.1370 HATCHERY PARTICIPATION.**

(derived from 1710.0080, 1710.0570 and 1710.0930).

If a person owns more than one hatchery or breeding flock, it is necessary and reasonable for disease control purposes that all products moved between them be of the same disease control classifications. To allow different disease classifications on such flocks would be meaningless, since transfer of birds between flocks creates equal disease risk in those flocks.

**1710.1380 FLOCK PARTICIPATION.**

(derived from 1710.0090, 1710.0720 and 1710.1110)

The provision in 1710.0090 to exclude waterfowl from being tested (by reference to part 1710.0030) was removed. They were originally exempted due to the low risk of disease transmission and the high cost of testing. Since the NPIP now allows the testing of waterfowl via hatchery debris instead of blood testing, the burden of required testing has lowered to the point where testing benefits exceed the minimal cost. Therefore, it is not reasonable nor necessary to have this exclusion.

**1710.1390 LOSS OF CLASSIFICATION.**

(derived from 1710.0330, 1710.0800 and 1710.1200).

If a hatchery or flock sells products to an unclassified buyer, it is necessary and reasonable for disease control that the birds sold cannot keep their classifications because there is no assurance that they will not be infected in their new facility. Further, if a disease is found in a hatchery or flock, that flock cannot by definition be classified as free of that disease.

**1710.1400 SUSPENSION OR REVOCATION OF PERMIT.**  
(derived from 1710.0070, 1710.0950 and 1710.1230).

If a person does not comply with the program provisions that the person has agreed to follow, it is necessary and reasonable to revoke or suspend the permit and to remove the disease control classifications from that operation.

**1710.1410 TEST PROCEDURES.**  
(derived from 1710.0160, 1710.0200, 1710.0650 and 1710.1010).

Since the NPIP requires that the tests, procedures, and antigens used in the control programs be approved by the official state agency, it is necessary and reasonable to have these approval procedures in the rule. Also, in addition to federally prescribed tests, NPIP permits the official state agency to approve use of other unspecified comparable tests, procedures and antigens of equal or greater reliability. Thus, it is necessary and reasonable to give the Board the flexibility of determining adequate methods to aid the industry in developing new procedures while protecting poultry health.

**1710.1420 TESTING SCHEDULE.**

This rule reflects the testing being conducted by the poultry industry, much of it on a voluntary basis, to be in compliance with the NPIP programs. The variety of types of diseases, types of poultry, ages of poultry, and available test procedures require a lengthy chart to address the various permutations of circumstances to be addressed. The requirements in this part reflect those set forth in the NPIP programs and are necessary to reflect the current NPIP program. NPIP has shown that this test schedule is reasonable to eradicate diseases and to better protect poultry health and the consuming public.

**1710.1430 IDENTIFICATION.**

The old rules (1710.0220 and 1710.1030) stated that all birds tested must be identified. Many of the tests are conducted on a sample basis of all birds in the flock and if a sample is positive the entire flock is deemed positive. Thus, the identification of every bird being tested is no longer necessary. The new rule still states that if further testing is required to determine the flock's status, the individual birds tested must be identified. This rule covers what is necessary to diagnose disease and places a more reasonable burden on producers than the old rules.

**1710.1440 REACTORS.**  
(derived from 1710.0240, 1710.0700, 1710.0860 and 1710.1060).

Since the presence of potentially diseased birds (reactors) in a flock causes the loss of classifications for the flock or hatchery, it is necessary and reasonable that more specific tests be performed on the reactors to make sure they are in fact diseased

before the producer faces negative financial consequences from declassification. It is also necessary and reasonable that NPIP procedures be followed for the retesting and they provide for equal treatment of producers throughout the country. The retesting within ten days is one of the NPIP procedures and provides for rapid verification to control disease if disease is present or to mitigate negative consequences to producers if retesting shows that disease is not present.

**1710.1435 DIAGNOSTIC SERVICES and  
1710.1445 INVESTIGATION.**

These rules are required by NPIP. If a state does not have this authority, no flocks in the state can participate in any of the NPIP programs. The requirement for notification to the Board within forty-eight hours of the diagnosis of potential disease allows a prompt response by the Board to control potential disease outbreaks and trace a disease to its source. The identification of birds as reactors and the prompt performance (within ten days) of mandated retests provide the Board with tools for disease control programs. Therefore, it is necessary and reasonable to have these rules.

**1710.1450 QUARANTINE.  
(derived from 1710.0240 and 1710.0870).**

Minnesota, through existing voluntary programs, is already free of the proposed required participation control program diseases. The industry has requested that they become required programs. It is necessary and reasonable to quarantine flocks which test positive for those diseases where participation is mandated and to forbid sale of their products in order to maintain the health of Minnesota poultry and prevent the spread of disease.

**1710.1455 RELEASE OF QUARANTINE.  
(derived from 1710.0240 (last part) and 1710.0250 (first part)).**

The rule and NPIP procedures allow removal of birds that test positive and later retesting for requalification of flocks if followup tests prove negative. This method has been used effectively for the past sixty years to clean up flocks and to prevent disease dissemination. The required twenty-one day wait between tests is scientifically determined to allow detection of disease that might develop into detectable form after the initial test. It is, therefore, necessary and reasonable to keep this provision.

**1710.1460 CLEANING AND DISINFECTING.  
(derived from 1710.0250 (last part), 1710.0260 (last part) and 1710.1080).**

Cleaning and disinfecting of premises where an infection has been found are recognized and necessary disease control procedures.

It is necessary and reasonable to require, by rule, the clean up and disinfection of infected premises to prevent reinfection of birds brought into potentially contaminated facilities and to prevent disease transmission to other flocks or facilities.

**1710.1470 ADDITIONAL TESTING.  
(derived from 1710.0270).**

Since poultry themselves, and disease conditions of poultry are biological and thus variable, some discretion must be used in assessing the adequacy of disease control measures. It is, therefore, necessary and reasonable that the Board be given the authority to employ additional unspecified testing and protective measures when those measures are determined to be necessary to adequately control poultry diseases, prevent disease spread, or meet evolving federal or industry requirements and growing scientific knowledge.

**1710.1480 HATCHERY RESPONSIBILITIES.  
(derived from 1710.0290, 1710.0770 and 1710.1170).**

Hatcheries bear major responsibilities in prevention of poultry diseases. The hatcheries have been abiding by the existing rules for more than twenty years and these rules have proved effective. The control measures set forth prevent disease introduction and disease spread and they also allow tracing of diseases that may be discovered. It is, therefore, necessary and reasonable to keep the requirements in the new rules in a reworded but functionally identical form to meet the minimum standards necessary.

**1710.1490 FLOCKOWNER RESPONSIBILITIES.  
(derived from 1710.0300, 1710.0780 and 1710.1180).**

The flockowner's responsibilities for disease control have been described and followed in the old rules for more than twenty years to good effect. It is, therefore, necessary and reasonable to keep these requirements in the new rules even though they are in a reworded but functionally identical form. Existing rules require isolation of new purchases or returning poultry in order to prevent disease introduction into a clean flock. This part allows release of these birds into the flock after thirty days. This is adequate time to detect disease in birds being added to the flock and to prevent contamination of the flock by these new birds and meets the minimum standards for disease control.

**1710.1500 AUTHORIZED TESTING AGENTS.  
(derived from 1710.0120, 1710.0130, 1710.0140, 1710.0150,  
1710.0960, 1710.0970 and 1710.0980).**

Authorized testing agents are allowed and recommended by the NPIP. Since they are doing official testing and collecting of samples, it is necessary and reasonable to have rules for them to adhere to. The only change in this rule is in Subpart 2 and that

changes the term of authorization from annually to every three years. Since many of the 300 authorized agents have been testing for 20 or 30 years and none have been revoked, it is necessary and reasonable to reduce both their and the Board's paperwork.

**1710.1510 DEALER RESPONSIBILITIES.**

(derived from 1710.1230, 1710.1250, 1710.1270, 1710.1280 and 1710.1290).

The dealer responsibilities, like those of hatcheries and flockowners, are all set forth in the old rules and the dealers have been abiding by them since 1948 to good effect. The requirements provide the means to control the spread of disease and records and reports to trace diseases that are found. It is, therefore, necessary and reasonable to keep them in the new rules in a reworded but functionally identical form. One change is made. The existing rules require records to be kept but do not allow them to be discarded. This part allows the dealers to dispose of the records after two years, thus saving storage space. The two years of records are adequate for the Board to trace potential disease carriers and to find poultry dealer violations.

**1710.1520 ADVERTISING.**

(derived from 1710.0310, 1710.0790 and 1710.1190).

It would be untruthful to advertise poultry having a disease control classification that they do not have. Misrepresentation of one's flock classifications could be detrimental to the rest of the poultry industry by allowing fraudulent sale of possibly diseased birds to clean flocks. It is, therefore, necessary and reasonable to have this rule to prohibit false disease related advertising.

**1710.1530 REVOCATION OF PERMIT.**

(derived from 1710.0950, 1710.0070 and 1710.1230).

The Board has the authority to revoke or to refuse to issue a permit for violation of its rules under Minnesota Statutes 35.93. This rule first allows the permittee ten days to come into compliance with the rules. This time is allowed in conformity with the broad Board goals of seeking voluntary compliance before taking punitive measures. However, if voluntary compliance is not forthcoming within ten days, the Board will act more harshly, administratively or criminally. The thirty days allowed for appeal of Board action against the permittee is consistent with the Administrative Procedure Act. Both time periods strike a balance to ensure the health of the poultry and to protect the interests of the regulated party.

**IV. REPEALER.**

Most of the parts of the previously mentioned rules are incorporated into the new parts. The following three parts are no longer necessary in the rules for the reasons listed.



**1710.0750 SEPARATE FACILITIES.**

Since the industry would not allow a Mycoplasma gallisepticum positive breeder flock to be used nor would there be a market for the eggs, it is not necessary nor is it reasonable to have this section in the rule.

**1710.0940 CERTIFICATES.**

Since certificates have not been used for at least ten years, it is no longer necessary or reasonable to have this section in the rule.

**1710.1160 REMOVAL OF FLOCKS.**

Since section 1710.1380 of the proposed rule states that only birds of the same or comparable classification may be added to a flock, it is no longer necessary or reasonable to have this section in the rule.

**V. SMALL BUSINESS IMPACT OF THE PROPOSED RULE.**

In assessing the economic impact of the proposed changes, the Board is not adding anything that the industry is not doing already. When considering the effect upon small businesses, the rule will have no increased economic costs.

The only new or more stringent compliance standards are those that the industry has asked for and is already meeting.

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DATE

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T. J. HAGERTY, DVM  
EXECUTIVE SECRETARY  
BOARD OF ANIMAL HEALTH