

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

IN THE MATTER OF A WAIVER OF ANIMAL HEALTH RULES ss. ATCP 10.40 (1) and (8) (a) 3. and s. ATCP 10.42 (1) (a), Wisconsin Administrative Code)))))	AH Docket No. 19-O-002 Amendment 1 ORDER GRANTING A WAIVER FROM THE REQUIREMENT THAT EITHER THE BIRDS BE INDIVIDUALLY TESTED NEGATIVE FOR PULLORUM-TYPHOID OR THE BIRDS AND EGGS ORIGINATE FROM AN ENROLLED, QUALIFIED, OR "U.S. PULLORUM-TYPHOID CLEAN" FLOCK, WITH CONDITIONS.
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INTRODUCTION

Under s. ATCP 10.93, Wis. Admin. Code, the State of Wisconsin Department of Agriculture, Trade and Consumer Protection (department) may waive provisions of ch. ATCP 10, Wis. Admin. Code (Animal Diseases and Movement) if the department finds that the waiver is reasonable and necessary, is consistent with the objectives of ch. ATCP 10, Wis. Admin. Code, and will not conflict with state law. The state veterinarian must issue the waiver in writing.

Pursuant to s. ATCP 10.93, Wis. Admin. Code, the department hereby makes the following findings and conclusions and issues the following order waiving the requirements under ss. ATCP 10.40 (1) and (8) (a) 3. and s. ATCP 10.42 (1) (a), Wis. Admin. Code, requiring that either the birds be individually tested negative for Pullorum-Typhoid or that the birds and eggs originate from an enrolled, qualified, or "U.S." pullorum-typhoid clean" flock, with conditions.

FINDINGS OF FACT

(1) The department is responsible for administering Wisconsin's animal health program under ch. 95, Wis. Stats. The program is designed to protect the health of animals in this state, and to prevent, control and eradicate communicable diseases among animals. The department has broad authority to adopt rules interpreting statutes under its jurisdiction. (See s. 93.07 (1), Wis. Stats.).

(2) Under s. ATCP 10.93, Wis. Admin. Code, the department may waive any provision of ch. ATCP 10, Wis. Admin. Code, if the department finds that the waiver is reasonable and necessary, is consistent with the objectives of ch. ATCP 10, Wis. Admin. Code, and will not conflict with state law. The state veterinarian must issue the waiver in writing.

(3) Under s. ATCP 10.40 (1), Wis. Admin. Code, except as specified under sub. (8), no person may use poultry or farm-raised game birds or their eggs for breeding or hatching, or for exhibition at a fair or livestock exhibition, unless one of the following applies:

- (a) The birds or eggs originate from a flock that is enrolled in the national poultry improvement plan under s. ATCP 10.41 and meets all of the following requirements:

1. The flock is currently classified "U.S. pullorum-typhoid clean" under the national poultry improvement plan.

2. In the case of turkeys, the flock is currently classified "Mycoplasma gallisepticum clean" under the national poultry improvement plan.

(b) The birds or eggs originate from a flock that qualifies as an affiliate flock under the national poultry improvement plan.

(c) The birds or eggs originate from a flock that is enrolled as a Wisconsin tested flock under sub. (2) or a Wisconsin associate flock under sub. (3).

(d) In the case of birds, the birds meet all of the following requirements:

1. They have individually tested negative for pullorum, fowl typhoid and, in the case of turkeys, Mycoplasma gallisepticum, within the preceding 90 days, and there has been no change of ownership of any birds since the completion of testing. Testing for purposes of a fair or livestock exhibition shall be completed before the birds arrive at the fair or livestock exhibition.

2. They originate from a flock in which no bird has tested positive for pullorum, fowl typhoid, or Mycoplasma gallisepticum.

(e) The birds or eggs are pigeons or pigeon eggs.

(g) The birds are not used for breeding or hatching, and are moved from the flock premises only for youth exhibition at a county fair pursuant to sub. (8).

(4) Section ATCP 10.40 (2) (a), Wis. Admin. Code, specifies that annual enrollment as a Wisconsin tested flock expires on June 30 of each year.

(5) Section ATCP 10.40 (2) (c), Wis. Admin. Code, requires proof that the flock has tested negative for Pullorum-Typhoid and, in the case of turkeys, Mycoplasma gallisepticum in the application for enrollment as a Wisconsin tested flock.

(6) Section ATCP 10.40 (3) (a), Wis. Admin. Code, specifies that annual enrollment as a Wisconsin associate flock expires on June 30 of each year.

(7) Section ATCP 10.40 (3) (b) 4., Wis. Admin. Code, requires documentation showing that all of the birds or bird eggs in the flock were acquired directly from a flock enrolled under sub. (2) or (3) or s. ATCP 10.41 in the application for enrollment as a Wisconsin associate flock.

(8) Section ATCP 10.40 (8) (a) 3., Wis. Admin. Code, requires for the purposes of an exemption of sub. (1) for youth exhibition of poultry or poultry eggs at a county fair a certification that the youth acquired the poultry or eggs directly from a flock enrolled under sub. (2) or (3) or s. ATCP 10.41.

(9) Section ATCP 10.41 (1), Wis. Admin. Code, specifies that annual enrollment in the national poultry improvement plan expires on June 30 of each year.

(10) Section ATCP 10.41 (3), Wis. Admin. Code, requires proof that the flock has been tested for Pullorum-Typhoid and, in the case of turkeys, *Mycoplasma gallisepticum* in the application for enrollment in the national poultry improvement plan.

(11) Under s. ATCP 10.42 (1) (a), Wis. Admin. Code, except as specified under sub. (2), no live poultry, poultry eggs for hatching, farm-raised game birds or farm-raised game bird eggs for hatching may be imported to this state unless the live birds or eggs are accompanied by a federal bureau form VS 9-3 or a valid certificate of veterinary inspection that certifies at least one of the following:

1. They originate from flocks that are enrolled in the national poultry improvement plan, or a plan that the department determines to be equivalent.
2. They originate from flocks that are classified as "U.S. pullorum-typhoid clean" and, in the case of turkeys and turkey eggs, "*Mycoplasma gallisepticum* clean" under the national poultry improvement plan or a plan that the department determines to be equivalent.
3. All individual test-eligible birds have tested negative for pullorum, fowl typhoid, and, in the case of turkeys, *Mycoplasma gallisepticum* within 90 days prior to import. Tested birds shall bear official individual identification, and there shall be no change of ownership between the test sampling date and the import date.

(12) Section ATCP 10.42 (2), Wis. Admin. Code, specifies that sub. (1) does not apply to poultry or farm-raised game birds that are imported directly to a slaughtering establishment for immediate slaughter.

(13) There is currently no available supply of the antigen needed to conduct Pullorum-Typhoid testing. A manufacturer has submitted an antigen to the USDA for evaluation and licensure, but there is currently no estimated date of availability.

(14) It will not be possible for poultry owners to fulfill Pullorum-Typhoid testing requirements until a supply of the Pullorum-Typhoid antigen is available.

(15) Pullorum-Typhoid has not been reported in Wisconsin in the past 20 years and has not been reported in the U.S. in the past 10 years.

(16) Pullorum-Typhoid does not cause disease in humans.

(17) A waiver to the requirements under ss. ATCP 10.40 (1) and (8) (a) 3. and s. ATCP 10.42 (1) (a), Wis. Admin. Code, regarding Pullorum-Typhoid testing would be reasonable and necessary, consistent with the objectives of ch. ATCP 10, Wis. Admin. Code, for animal disease control, and would not conflict with state statutes. The department will continue to require *Mycoplasma gallisepticum* testing in the case of turkeys.

(18) The Division of Animal Health could properly grant a waiver of ss. ATCP 10.40 (1) and (8) (a) 3., Wis. Admin. Code, with the following conditions:

- a) In the case of turkeys, one of the following must apply:
 1. The birds have been individually tested for *Mycoplasma gallisepticum* within the preceding 90 days and there has been no change of ownership of any birds since the completion of testing. Testing for purposes of a fair or livestock exhibition shall be completed before the birds arrive at the fair or livestock exhibition.
 2. The birds or eggs originate from a flock that tested negative for *Mycoplasma gallisepticum* during the calendar year. Testing for purposes of a fair or livestock exhibition shall be completed before the birds arrive at the fair or livestock exhibition.

(19) The Division of Animal Health could properly grant a waiver of s. ATCP 10.42 (1) (a), Wis. Admin. Code, with the following conditions:

- a) Turkeys and turkey eggs must be accompanied by a federal bureau form VS 9-3 or a valid certificate of veterinary inspection that certifies at least one of the following:
 1. They originate from flocks that are enrolled in the national poultry improvement plan, or a plan that the department determines to be equivalent.
 2. They originate from flocks that are classified as “*Mycoplasma gallisepticum* clean” under the national poultry improvement plan or a plan that the department determines to be equivalent.
 3. All individual test-eligible birds have tested negative for *Mycoplasma gallisepticum* within 90 days prior to import. Test birds shall bear official individual identification, and there shall be no change of ownership between the test sampling date and the import date.
- b) Other than turkeys and turkey eggs, all other live poultry, poultry eggs for hatching, farm-raised game birds and farm-raised game bird eggs for hatching must be accompanied by a federal bureau form VS 9-3 or a valid certificate of veterinary inspection that is not required to certify any of the items under s. ATCP 10.42 (1) (a) 1. through 3., Wis. Admin. Code.

CONCLUSIONS OF LAW

- (1) This waiver does not affect any other provisions of ch. ATCP 10, Wis. Admin. Code.
- (2) This waiver does not conflict with any requirements under ch. 95, Wis. Stats.
- (3) Pursuant to s. ATCP 10.93, Wis. Admin. Code, the department may grant a written waiver from a requirement under ch. ATCP 10, Wis. Admin. Code, if the department finds that the waiver is reasonable

and necessary, is consistent with objectives of ch. ATCP 10, Wis. Admin. Code, and will not conflict with state law.

(4) The department has made the findings required under s. ATCP 10.93, Wis. Admin. Code.

(5) Pursuant to s. ATCP 10.93, Wis. Admin. Code, and Findings of Fact (1) through (19), the department should waive the requirements under ss. ATCP 10.40 (1) and (8) (a) 3. and s. ATCP 10.42 (1) (a), Wis. Admin. Code, if conditions specified under the Order are met.

ORDER

NOW, THEREFORE, it is ordered pursuant to s. ATCP 10.93, Wis. Admin. Code, that:

(1) The department grants a waiver to persons who use poultry or farm-raised game birds or their eggs for breeding or hatching or for the exhibition at a fair or livestock exhibition from the requirements of ss. ATCP 10.40 (1) and (8) (a) 3., Wis. Admin. Code, requiring that either the birds be individually tested negative for Pullorum-Typhoid or the birds or eggs originate from a flock that is enrolled in the national poultry improvement plan, qualifies as an affiliate flock under the national poultry improvement plan, is enrolled as a Wisconsin tested flock, or is enrolled as a Wisconsin associate flock, with the following conditions:

- a) In the case of turkeys, one of the following requirements must be met:
 - 1. The birds have been individually tested for *Mycoplasma gallisepticum* within the preceding 90 days and there has been no change of ownership of any birds since the completion of testing. Testing for purposes of a fair or livestock exhibition shall be completed before the birds arrive at the fair or livestock exhibition.
 - 2. The birds or eggs originate from a flock that tested negative for *Mycoplasma gallisepticum* during the calendar year. Testing for purposes of a fair or livestock exhibition shall be completed before the birds arrive at the fair or livestock exhibition.

(2) The department grants a waiver to persons who import live poultry, poultry eggs for hatching, farm-raised game birds or farm-raised game bird eggs for hatching from the requirements of s. ATCP 10.42 (1) (a), Wis. Admin. Code, requiring that a certificate of veterinary inspection certifies that live birds and eggs originate from flocks that are enrolled in the national poultry improvement plan, that live birds and eggs originate from flocks that are classified as "U.S. pullorum-typhoid clean" or that all individual test-eligible birds have tested negative for pullorum and fowl typhoid, with the following conditions:

- a) Turkeys and turkey eggs must be accompanied by a federal bureau form VS 9-3 or a valid certificate of veterinary inspection that certifies at least one of the following:
 - 1. They originate from flocks that are enrolled in the national poultry improvement plan, or a plan that the department determines to be equivalent.

2. They originate from flocks that are classified as "Mycoplasma gallisepticum clean" under the national poultry improvement plan or a plan that the department determines to be equivalent.
 3. All individual test-eligible birds have tested negative for Mycoplasma gallisepticum within 90 days prior to import. Test birds shall bear official individual identification, and there shall be no change of ownership between the test sampling date and the import date.
- b) Other than turkeys and turkey eggs, all other live poultry, poultry eggs for hatching, farm-raised game birds and farm-raised game bird eggs for hatching must be accompanied by a federal bureau form VS 9-3 or a valid certificate of veterinary inspection that is not required to certify any of the items under s. ATCP 10.42 (1) (a) 1. through 3., Wis. Admin. Code.

(3) This waiver will remain in effect until formally rescinded by order of the Secretary or State Veterinarian.

Dated this 27th day of August, 2019.

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