



Asa Hutchinson  
Governor

# ARKANSAS DEPARTMENT OF AGRICULTURE

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Wes Ward  
Secretary of Agriculture

## Summary of Proposed Rule Regarding Airborne Eradication of Feral Hogs

### **PURPOSE**

The Arkansas Livestock & Poultry Commission (Commission) is proposing a rule to allow the airborne eradication of feral hogs in Arkansas.

### **BACKGROUND**

In 2017 the Arkansas General Assembly passed Act 1010 which created the Feral Hog Eradication Task Force. One of the recommendations of the Task Force was to propose legislation addressing feral hogs. As a result, in 2019 the General Assembly passed Act 991. Among other things, Act 991 authorized the airborne hunting of feral hogs by individuals holding a permit issued by the Livestock & Poultry Commission pursuant to federal law. Act 991 became effective July 24, 2019.

### **KEY POINTS**

The proposed rule:

- Establishes issuance of a permit as outlined in this summary
- Establishes what information will be necessary for applicants to submit
- Establishes prohibited acts that could lead to suspension or revocation of a permit
- Informs applicants that the Department of Agriculture is required by federal law to share with both the FBI and the Department of the Interior certain personal information assembled in connection with the issuance of a permit

### **DISCUSSION**

Current federal law (16 USC § 742j-1) makes it illegal to hunt from aircraft unless done pursuant to a permit issued by the United States or any State to protect "... land, water, wildlife, domesticated animals, human life, or crops ...". The issuance of a permit necessitates informing applicants and permit holders of the requirements for both obtaining and maintaining such a permit. The rule clearly informs applicants of acts that are not authorized by the issuance of a permit and outlines information which must be provided to the Commission in order to obtain a permit.

The federal law and regulations (50 CFR 19) require states issuing permits to submit certain information on the applicant in an annual report to the Department of the Interior, and to immediately notify the FBI regarding the issuance of such a permit. The rule provides clear notice to applicants that the information collected by the Commission will be shared with federal authorities. Both the information required to be submitted by applicants as well as the prohibitions contained in the rule come directly from the federal law and federal regulations.

The rule does not impose a fee, because Act 991 of 2019 did not give the Commission authority to assess a fee for these permits.

**FERAL HOG AIRBORNE ERADICATION RULE**

**I. APPLICATION**

A. The Arkansas Livestock and Poultry Commission (Commission) may issue a permit to any person to allow for the shooting of feral hogs from an aircraft if the Commission finds that management of feral hogs by the use of aircraft is necessary to protect or to aid in the administration or protection of land, water, wildlife, livestock, domestic animals, timber, human life, or crops and will not have a harmful effect on indigenous species.

B. All applications and supporting documentation shall be filed with the Arkansas Department of Agriculture (Department).

C. All applications must include:

1. One or more affidavits, containing facts as well as opinion, as to why the permit should be issued for the management of feral hogs by the use of aircraft, including the purpose for which the permit will be used, specifically identifying whether the permit is necessary to protect land, water, wildlife, livestock, domestic animals, timber, crops, or human life;
2. An address and adequate description of the land covered by the permit, including approximate acreage;
3. Unless the applicant is the landowner, an applicant must also submit to the Department a landowner's authorization to manage feral hogs. The landowner's authorization may be submitted by a group of landowners or by an association on behalf of such landowners;
4. the approximate number of hogs to be managed; and
5. an accurate and adequate description of the aircraft used, including aircraft number and the location where the aircraft was used. As defined in 7 U.S.C. § 742j-1(c) "aircraft" means any contrivance used for flight in the air.

D. The Department may:

1. Require permit holders to report to the Department on the eradication process.
2. Limit the number of feral hogs taken per permit
3. Limit airborne eradication to certain days or hours or both
4. Limit the duration of a permit

**II. PROHIBITED ACTS**

A. The permit provided for in this rule is for the purposes stated in the rule and for no other reason. Any act not consistent with this rule or state or federal law shall be grounds for revocation or suspension of the permit, including without limitation:

1. Hunting, killing, or capturing, or attempting to hunt, kill, or capture from an aircraft any animal that is not specifically authorized by a permit issued by the Commission;

2. Using an aircraft to manage feral hogs without first obtaining and having in the person's immediate possession a permit and a landowner's authorization for the management of feral hogs by the use of aircraft.
3. Using an aircraft to harass wildlife, exotic animals, or any other animal or bird including engaging in the activity of counting, photographing, relocating, capturing, or hunting wildlife or exotic animals under the authority of a permit.
4. Hunting any animal or bird from an aircraft for sport.
5. Knowingly participating in using an aircraft whether in the aircraft or on the ground for any purpose referred to in this section.

B. The acts prohibited in this section include without limitation, any person who:

1. Pilots or assists in the operation of the aircraft from which another person shoots or shoots at wildlife while airborne, or
2. While on the ground takes or attempts to take any wildlife by any means, aid, or use of an aircraft.

### **III. NOTIFICATION**

All applicants shall sign a statement verifying that they understand that the Department will provide immediate notification to the FBI of issuance of the application, and that the permits holders' information will also be provided to federal authorities in an annual report as required by federal law. Information provided to federal authorities may include, without limitation:

1. Personal contact information of the permit holder and landowner;
2. the aircraft number of the aircraft used and the location where the aircraft was used;
3. any and all other information collected or assembled by the Department.

### **IV. PENALTIES AND AUTHORITY**

A. Failure to comply with any of the provisions of this rule may result in administrative penalties as provided by law.

B. Authority. ACA §§ 2-32-501; 2-33-107(a); 2-38-502.

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B. All applications and supporting documentation shall be filed with the Arkansas Department of Agriculture (Department).

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2. Using an aircraft to manage feral hogs without first obtaining and having in the person's immediate possession a permit and a landowner's authorization for the management of feral hogs by the use of aircraft.
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3. any and all other information collected or assembled by the Department.

### **IV. PENALTIES AND AUTHORITY**

A. Failure to comply with any of the provisions of this rule may result in administrative penalties as provided by law.

B. Authority. ACA §§ 2-32-501; 2-33-107(a); 2-38-502.

**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE**  
**ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT/AGENCY Arkansas Department of Agriculture/Livestock & Poultry Commission  
DIVISION Livestock & Poultry  
DIVISION DIRECTOR Patrick Fisk  
CONTACT PERSON Wade Hodge  
ADDRESS #1 Natural Resources Drive, Little Rock AR 72205  
PHONE NO. 501-219-6361 FAX NO. \_\_\_\_\_  
E-MAIL wade.hodge@agriculture.arkansas.gov  
NAME OF PRESENTER AT COMMITTEE MEETING Patrick Fisk  
PRESENTER E-MAIL Patrick.fisk@agriculture.arkansas.gov

**INSTRUCTIONS**

- A. Please make copies of this form for future use.
- B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica C. Sutton  
Administrative Rules Review Section  
Arkansas Legislative Council  
Bureau of Legislative Research  
One Capitol Mall, 5<sup>th</sup> Floor  
Little Rock, AR 72201

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- 1. What is the short title of this rule? Airborne Eradication of Feral Hogs
- 2. What is the subject of the proposed rule? To provide for a permit process for the eradication of feral hogs by aircraft
- 3. Is this rule required to comply with a federal statute, rule, or regulation? Yes \_\_\_\_\_ No x \_\_\_\_\_  
If yes, please provide the federal rule, regulation, and/or statute citation.
- 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?  
Yes \_\_\_\_\_ No x \_\_\_\_\_  
If yes, what is the effective date of the emergency rule? \_\_\_\_\_  
When does the emergency rule expire? \_\_\_\_\_  
  
Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes \_\_\_\_\_ No \_\_\_\_\_

- Federal law allows for the shooting of certain animals from aircraft only by a permit issued by the federal or a state government. See attached summary for further explanation.

Does this repeal an existing rule? Yes \_\_\_\_\_ No x If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes      No x If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled “mark-up.”**

- Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. A.C.A. 2-33-107(c) & 2-38-502 as amended by Act 991 of 2019, effective July 24, 2019.
- What is the purpose of this proposed rule? Why is it necessary? Necessary to establish the criteria for the permitting process outlined by Acct 991 of 2019. See attached summary
- Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). www.agriculture.arkansas.gov
- Will a public hearing be held on this proposed rule? Yes \_\_\_\_\_ No \_\_\_\_\_  
If yes, please complete the following: Hearing will be held if requested
- Date: \_\_\_\_\_
- Time: \_\_\_\_\_
- Place: \_\_\_\_\_
- When does the public comment period expire for permanent promulgation? (Must provide a date.)  
\_\_\_\_\_
- What is the proposed effective date of this proposed rule? (Must provide a date.)  
\_January 1, 2020\_\_\_\_\_
- Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. Attached
- Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e). Attached

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known. Unknown

### **FINANCIAL IMPACT STATEMENT**

#### **PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Arkansas Department of Agriculture/Livestock & Poultry Commission  
**DIVISION** Livestock & Poultry  
**PERSON COMPLETING THIS STATEMENT** Wade Hodge  
**TELEPHONE NO.** 501-219-6361 **FAX NO.** \_\_\_\_\_  
**EMAIL:** wade.hodge@agriculture.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

**SHORT TITLE OF THIS RULE** Airborne Eradication of Feral Hogs \_\_\_\_\_

1. Does this proposed, amended, or repealed rule have a financial impact?  
Yes \_\_\_\_\_ No x \_\_\_\_\_
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?  
Yes xx \_\_\_\_\_ No \_\_\_\_\_
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes x \_\_\_\_\_ No \_\_\_\_\_

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;
  - (b) The reason for adoption of the more costly rule;
  - (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and
  - (d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.
4. If the purpose of this rule is to implement a federal rule or regulation, please state the following: N/A
- (a) What is the cost to implement the federal rule or regulation?

#### **Current Fiscal Year**

General Revenue \_\_\_\_\_

#### **Next Fiscal Year**

General Revenue \_\_\_\_\_



Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
  
Total \_\_\_\_\_

Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
  
Total \_\_\_\_\_

(b) What is the additional cost of the state rule?

**Current Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
  
Total \_\_\_\_\_ N/A \_\_\_\_\_

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
  
Total \_\_\_\_\_ N/A \_\_\_\_\_

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected. N/A

**Current Fiscal Year**

\$ \_\_\_\_\_ N/A \_\_\_\_\_

**Next Fiscal Year**

\$ \_\_\_\_\_ N/A \_\_\_\_\_

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6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

**Current Fiscal Year**

\$ \_\_\_\_\_ N/A \_\_\_\_\_

**Next Fiscal Year**

\$ \_\_\_\_\_ N/A \_\_\_\_\_

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7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes \_\_\_\_\_ No   x  

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously

with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
  - (a) justifies the agency's need for the proposed rule; and
  - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
  - (a) the rule is achieving the statutory objectives;
  - (b) the benefits of the rule continue to justify its costs; and
  - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.