

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
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Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____



Asa Hutchinson
Governor

ARKANSAS DEPARTMENT OF AGRICULTURE

1 Natural Resources Drive, Little Rock, AR 72205
agriculture.arkansas.gov
(501) 225-1598



Wes Ward
Secretary of Agriculture

August 10, 2021

TO: Editor Arkansas Democrat-Gazette

FROM: Wade Hodge, Chief Counsel
Arkansas Department of Agriculture

SUBJECT: Legal Notice

Please publish the enclosed legal notice in the August 13 – 15, 2021 issues of the Arkansas Democrat-Gazette. Please bill us in the usual manner.

WH:ll

Enclosure

CC: Wade Hodge, Chief Counsel, Arkansas Agriculture Department
Caleb Stanton, Governor's Office
Arkansas State Library
U of A Library, Fayetteville

Legal Notice

Arkansas Livestock and Poultry Commission

The Arkansas Livestock and Poultry Commission is proposing amendments to the Feral Hog Airborne Eradication Rule. The proposed amendments will allow the collection of a permit fee to help defray the costs of administration of the program and shift the burden of producing information and obtaining a permit from the individual landowners to the commercial owners and operators of aircraft used in eradication.

The Arkansas Livestock and Poultry Commission is proposing amendments to the Arkansas Swine Rule. The proposed amendments will eliminate exceptions to certain diagnostic testing for swine imported into Arkansas which allowed imported swine to be treated more leniently than in-state swine and increased the potential for importing disease into Arkansas; provide greater guidance on commercial production management plans and commercial commuter agreements; authorize the Commission to administer civil penalties for violation of applicable law and rules; and eliminate provisions in the rule pertaining to terminal facilities which are no longer provided for in the law.

Comments may be mailed to Arkansas Livestock and Poultry Division, ATTN: Patrick Fisk, PO Box 8505, Little Rock, AR 72203, or emailed to patrick.fisk@agriculture.arkansas.gov

Comments will be accepted beginning August 13, 2021, until the close of business September 11, 2021.

The proposed rule changes may be viewed on the web page at www.agriculture.arkansas.gov



Wade Hodge, Chief Counsel
Arkansas Department of Agriculture



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Governor

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Wes Ward
Secretary of Agriculture

August 10, 2021

Proposed Amendment to Feral Hog Airborne Eradication Rule

PURPOSE

The Arkansas Department of Agriculture (Department) is seeking review of proposed amendments to the Arkansas Livestock and Poultry Commission's (Commission) Feral Hog Airborne Eradication Rule.

BACKGROUND

In this year's General Assembly, the Arkansas Legislature passed Act 692, amending the law regarding feral hogs, A.C.A. § 2-38-501 et seq. Act 692 authorizes the Commission to establish and collect reasonable fees to administer and enforce the existing feral hog airborne eradication program.

Prior to Act 692, the Commission was authorized to establish an airborne eradication program for feral hogs in accordance with federal statute 16 U.S.C. § 742j-1. That law authorizes states to allow the shooting of feral hogs from aircraft if there is a bona fide need for protection of land, water, wildlife, livestock, domesticated animals, human life, or crops. However, Arkansas law did not allow the Commission to charge a fee in association with the program. On July 15, 2021, the Commission voted to adopt amendments to the rule.

KEY POINTS

- The Department will be able to collect a permit fee to help defray the costs of administration of the program.
- The amendment shifts the burden of producing information and obtaining a permit from the individual landowners to the commercial owners and operators of aircraft used in eradication.

DISCUSSION

The current airborne eradication rule allows landowners to obtain a permit for airborne eradication activities. The burden is on the landowner to obtain the permit and submit information to the Department, including an affidavit explaining the need for the activity, a description of the land on which the activity will take place, the approximate number of hogs to be managed, and a description of the aircraft to be used. The amendments shift the burden of producing information on airborne eradication activities from the landowner to the aircraft owner or operator. That change reduces the obstacles of Arkansas farmers and landowners who need the airborne eradication program.

The proposed amendment requires the aircraft owner or operator to obtain a yearly permit from the Department by submitting the aircraft information and payment of a \$250 fee. Then, the aircraft owner or operator must seek authorization from the Department before each activity by submitting further information about the specific activity, including the justification for the activity. Once the aircraft owner and operator obtain authorization, they can then proceed with the activity. Post activity removal data must be submitted to the Department within 14 days following the activity.

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, human life, or crops (including but not limited to, timber), and will not have a harmful effect on indigenous species.

B. All applications and supporting documentation shall be filed with, and payment of the permit fee shall be paid to, 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, crops (including but not limited to, timber), 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; and~~

2. Unless the applicant is the landowner, the applicant must submit to the Department payment of two hundred fifty dollars (\$250.00) for an annual airborne eradication permit.

D. No less than three (3) business days prior to any airborne eradication activity, the owner or operator of the aircraft to be used must submit the following information to the Department:

1. One or more affidavits signed by the landowner, 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, crops (including but not limited to, timber), 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, the owner or operator of the aircraft must also submit a landowner's authorization to manage feral hogs. The landowner's authorization may be signed by a group of landowners or by an association on behalf of such landowners;

4. the approximate number of hogs to be managed;

5. Flight Plans including ArcGis based shape files; and

6. Maps with adequate delineation of subject properties, boundaries, and potential hazards.

E. No airborne eradication activity shall occur without prior written approval from the Department.

F. Post activity removal data forms shall be submitted no later than fourteen (14) business days after each airborne eradication activity.

G. 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; and
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 Department;
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; 2-38-505.

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, human life, or crops (including but not limited to, timber), and will not have a harmful effect on indigenous species.

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C. All applications must include:

1. An accurate and adequate description of the aircraft used, including aircraft; and
2. Unless the applicant is the landowner, the applicant must submit to the Department payment of two hundred fifty dollars (\$250.00) for an annual airborne eradication permit.

D. No less than three (3) business days prior to any airborne eradication activity, the owner or operator of the aircraft to be used must submit the following information to the Department:

1. One or more affidavits signed by the landowner, 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, crops (including but not limited to, timber), 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, the owner or operator of the aircraft must also submit a landowner's authorization to manage feral hogs. The landowner's authorization may be signed by a group of landowners or by an association on behalf of such landowners;
4. the approximate number of hogs to be managed;
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4. Hunting any animal or bird from an aircraft for sport.
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B. The acts prohibited in this section include without limitation, any person who:

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B. Authority. ACA §§ 2-32-501; 2-33-107(a); 2-38-502; 2-38-505.

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. Whittaker
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

- 1. What is the short title of this rule? Feral Hog Airborne Eradication Rule
- 2. What is the subject of the proposed rule? To allow shooting feral hogs from an aircraft, to provide for a permit fees, and to provide for information to be provided by the applicant.
- 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 _____

5. Is this a new rule? Yes No x ____ If yes, please provide a brief summary explaining the rule.

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 x ____ No _____ 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.**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. A.C.A. 2-38-505
7. What is the purpose of this proposed rule? Why is it necessary? See attached summary
8. 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
9. 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: Sept. 17, 2021 _____
Time: 10:00am _____
Place: 1 Natural Resources Drive _____
10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
TBD _____
11. What is the proposed effective date of this proposed rule? (Must provide a date.)
November 1, 2021
12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice.
13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e).
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.

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 Disbursement of State Funds for Fairs and Livestock Shows

1. Does this proposed, amended, or repealed rule have a financial impact?

Yes _____ No

The only financial impact will be the permit fee. The impact is expected to be minimal.

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 _____

Federal Funds _____

Next Fiscal Year

General Revenue _____

Federal Funds _____

Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

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 _____

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 _____

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.