

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



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 _____

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

DEPARTMENT Arkansas Department of Agriculture
BOARD/COMMISSION _____
BOARD/COMMISSION DIRECTOR _____
CONTACT PERSON Cynthia Edwards
ADDRESS 1 Natural Resources Drive, Little Rock, AR 72205
PHONE NO. (501) 831-2163 EMAIL cynthia.edwards@agriculture.arkansas.gov
NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING _____
Wes Ward, Patrick Fisk,
PRESENTER EMAIL(S) wes.ward@agriculture.arkansas.gov; patrick.fisk@agriculture.arkansas.gov

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, miller-ricer@blr.arkansas.gov, for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, garritym@blr.arkansas.gov, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

1. What is the official title of this rule?
Poultry Feeding Operations Registration Program Rule
2. What is the subject of the proposed rule? Establishing the registration process for poultry feeding operations
3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☒

If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☐

4. Is this rule being filed for permanent promulgation? Yes ☒ No ☐

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☒

If yes, what was the effective date of the emergency rule? _____

On what date does the emergency rule expire? _____

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes ☐ No ☒

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes ☒ No ☐

If yes, please provide the state statute and/or rule citation.

[A.C.A. 15-20-904](#)

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes ☐ No ☒

If yes, please list the rules being repealed.

If no, please explain.

[The Department does not have two rules to repeal.](#)

8. Is this a new rule? Yes ☒ No ☐

Does this repeal an existing rule? Yes ☒ No ☐

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes ☐ No ☒

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

[A.C.A. 15-20-904](#)

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?
Yes ☒ No ☐

If yes, please provide the year of the act(s) and act number(s).

[Act 600 of 2023](#)

11. What is the reason for this proposed rule? Why is it necessary?

[Act 600 of 2023 transferred the responsibilities for registering poultry feeding operations from the Arkansas Natural Resources Commission to the Department of Agriculture. The proposed rule establishes the poultry feeding operations registration program in compliance with Act 600.](#)

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

agriculture.arkansas.gov

13. Will a public hearing be held on this proposed rule? Yes ☒ No ☐

If yes, please complete the following:

Date: 3/15/2024

Time: 9:00 am

Place: Arkansas Department of Agriculture, 1 Natural Resources Dr., Little Rock

Please be sure to advise Bureau Staff if this information changes for any reason.

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. 3/18/2024

15. What is the proposed effective date for this rule? After ALC approval

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

19. Is the rule expected to be controversial? Yes ☐ No ☒

If yes, please explain.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT Arkansas Department of Agriculture

BOARD/COMMISSION _____

PERSON COMPLETING THIS STATEMENT Cynthia Edwards

TELEPHONE NO. (501) 831-2163 **EMAIL** cynthia.edwards@agriculture.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE Poultry Feeding Operations Registration Program Rule

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes ☐ No ☒
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 ☒ 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 ☒ No ☐
If no, please explain:
 - (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 reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and
 - (d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.
4. If the purpose of this rule is to implement a *federal* rule or regulation, please state the following:
 - (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
 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 _____

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

Current Fiscal Year

\$ 10.00

Next Fiscal Year

\$ 10.00

Poultry Feeding Operations, defined as any lot or facility where 2,500 or more poultry are housed or confined and fed or maintained on any one day in the preceding 12-month period, is subject to the rule. The \$10.00 fee was established when the registration began in 2005 and remains unchanged.

6. What is the total estimated cost by fiscal year to a state, county, or 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

\$ 30,000.00

Next Fiscal Year

\$ 30,000.00

This amount represents staff salaries and fringe for two employees who oversee portions of this program in addition to other duties.

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 ☒

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.



Sarah Huckabee Sanders
Governor

ARKANSAS DEPARTMENT OF AGRICULTURE

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



Wes Ward
Secretary of Agriculture

February 20, 2024

MEMORANDUM REGARDING THE ARKANSAS LIVESTOCK AND POULTRY COMMISSION RULE OF THE POULTRY FEEDING OPERATIONS REGISTRATION PROGRAM

Purpose

This memorandum discusses the Arkansas Livestock and Poultry Commission's proposed rule in accordance with Act 600 of 2023.

Background

Act 600 of 2023 transferred responsibilities for the registration of poultry feeding operations under Ark. Code Ann. § 15-20-904 from the Arkansas Natural Resources Commission to the Arkansas Department of Agriculture.

Discussion

Under Act 600 of 2023, the Arkansas Department of Agriculture assumed responsibility for the registration of poultry feeding operations from the Arkansas Natural Resources Commission. This proposed rule reflects the change of responsibility of the registration program to the Arkansas Department of Agriculture in compliance with Act 600 of 2023.

Conclusion: The amendment will allow the rule to reflect the changes made to the Poultry Feeding Operations Registration Program under Act 600 by the 2023 General Assembly.

Legal Notice

Arkansas Livestock and Poultry Commission

The Arkansas Livestock and Poultry Commission is proposing amendments to rules under Act 600 of 2023, Poultry Feeding Operations Registration Program.

The purpose of the proposed rule amendment is to establish the poultry feeding operations registration under the Arkansas Livestock and Poultry Commission after Act 600 of 2023 transferred responsibility to the Arkansas Livestock and Poultry Commission from the Arkansas Natural Resources Commission.

Comments can be mailed to: Arkansas Department of Agriculture – Attn: Patrick Fisk, 1 Natural Resources Drive, Little Rock, AR 72205, or emailed to patrick.fisk@agriculture.arkansas.gov.

Written comments will be accepted beginning February 18, 2024 until March 18, 2024. Oral comments may be made in person at the Arkansas Department of Agriculture, 1 Natural Resources Drive, Little Rock, AR 72205 on March 15, 2024 at 9 am.

The proposed rules changes can be viewed on the website at www.arkansas.agriculture.gov



Patrick Fisk
Director, Arkansas Livestock and Poultry Division
Arkansas Department of Agriculture

Linda Luebke

From: Legal Ads <legalads@arkansasonline.com>
Sent: Thursday, February 15, 2024 8:23 AM
To: Linda Luebke
Subject: Re: Legal Notice - Rules Governing the Poultry Feeding Operations Registration Program

Thanks, Linda. As per your request, this will run in the non-statewide edition on Sun 2/18 (will run in print in 63 counties, excluding NW Arkansas), and Mon 2/19 and Tues 2/20 (running in print in Pulaski County only).

Gregg Sterne, Legal Advertising
Arkansas Democrat-Gazette
legalads@arkansasonline.com

From: "Linda Luebke" <linda.luebke@agriculture.arkansas.gov>
To: "legalads@arkansasonline.com" <legalads@arkansasonline.com>
Cc: "Corey Seats" <corey.seats@agriculture.arkansas.gov>, "Patrick Fisk" <Patrick.Fisk@agriculture.arkansas.gov>, "Wes Ward" <wes.ward@agriculture.arkansas.gov>, "Cynthia Edwards" <cynthia.edwards@agriculture.arkansas.gov>, "Autumn Causey" <Autumn.causey@agriculture.arkansas.gov>
Sent: Wednesday, February 14, 2024 9:20:29 AM
Subject: Legal Notice - Rules Governing the Poultry Feeding Operations Registration Program

Please run the attached legal notice February 18 – 20, 2024.

Sunday, February 18, 2024, statewide. Monday (2/19/24) and Tuesday (2/20/24) in all counties that still receive daily (Mon. – Sat.) delivery of the printed edition.

Thank you!

Linda Luebke

Administrative Analyst

Arkansas Department of Agriculture
1 Natural Resources Drive, Little Rock, AR 72205
(501) 225-1598
linda.luebke@agriculture.arkansas.gov
agriculture.arkansas.gov



Title XIX
Arkansas Natural Resources Commission
Rules Governing the Poultry Feeding Operations
Registration Program

Subtitle	Page
I. General provisions	
1901.1 Purpose.....	1
1901.2 Enabling and pertinent legislation.....	1
1901.3 Definitions.....	1
II. Registration program	
1902.1 Applicability.....	2
1902.2 Registration period.....	2
1902.3 Registration information.....	2
1902.4 Submission of materials.....	3
1902.5 Requirement to keep current address on file.....	3
1902.7 Fees.....	3
III. Penalty for noncompliance	
1903.1 Noncompliance.....	3
1903.2 Review of suspected noncompliance	4
1903.3 Administrative penalties.....	4

~~Title XIX~~
~~Arkansas Natural Resources Commission~~
Rules Governing the Poultry Feeding Operations
Registration Program

Subtitle I. General provisions

~~Section 1901.1~~ A. Purpose.

~~A.1.~~ These rules govern the ~~Commission's~~ Arkansas Department of Agriculture's Poultry Feeding Operations Registration Program.

~~B.2.~~ Poultry feeding operations are registered to locate litter sources and estimate the amount of litter produced.

~~C. The Arkansas Natural Resources Commission shall operate an annual registration program for the purpose of assembling and maintaining information on the number, composition, and practices of poultry feeding operations in the state.~~

~~Section 1901.2B.~~ Enabling and pertinent legislation.

~~A. Arkansas Code Annotated §15-20-201 et seq., "Arkansas Natural Resources Commission Act."~~

~~B.1.~~ Ark. Code Ann. § 15-20-901 et seq., "Arkansas Poultry Feeding Operations Registration Act."

~~C.2.~~ Ark. Code Ann. § 25-15-201 et seq., "Administrative Procedure Act."

~~Section 1901.3C.~~ Definitions.

The following definitions shall apply to all parts of this ~~Title~~Rule:

~~A. 1.~~ "Administrative consent order" means a legal agreement signed by the ~~Director~~ Secretary or his or her designee and the owner or operator of a poultry feeding operation.

~~B. 2.~~ "Commission" means the ~~Arkansas Natural Resources Commission, as defined in Ark. Code Ann. §§15-20-201 et seq.~~ "Department" means the Arkansas Department of Agriculture.

~~C. "Conservation district" or "district" means a district created under the Conservation Districts Law, Ark. Code Ann. §§14-125-101 et seq.~~

~~D. "Delegate" means a person or entity appointed by the Director to function in a specific capacity in furtherance of this program and may be another agency, commission, organization, or company, whether public or private.~~

~~E. 3.~~ "Director" means the ~~Executive Director of the Arkansas Natural Resources Commission.~~ "Secretary" means the Secretary of the Arkansas Department of Agriculture or his or her designee.

~~F. 4.~~ "Land Application" means the application of litter, in whole or in part, to land.

~~G. 5.~~ "Litter" means byproducts associated with the confinement of poultry, including excrement, feed wastes, bedding materials, composted carcasses, and any combinations thereof.

~~H. 6.~~ "Litter Management System" means any method to dispose or use litter.

~~I. 7.~~ "Nutrient" means a substance or recognized plant nutrient, element or compound, which is used or sold for its plant nutritive content or its claimed nutritive value. The term includes substances found in, but is not limited to, livestock manure and poultry litter, compost as fertilizer, commercially manufactured chemical fertilizers, sewage sludge or combinations thereof.

~~J. 8.~~ "Permit" or "permit coverage" refers to an authorization to operate that is required by the United States Environmental Protection Agency's Concentrated Animal Feeding Operations (CAFO) program for poultry feeding operations meeting the size thresholds listed on the ~~Commission's~~ Department's registration form.

~~K. 9.~~ "Person" means any individual, partnership, company, association, fiduciary, corporation, or any organized group of persons whether incorporated or not.

~~L.10.~~ "Poultry" means chickens, turkeys, ducks, geese, and any other domesticated birds.

~~M.11.~~ "Poultry feeding operation" means any lot or facility where two thousand five hundred (2,500) or more poultry are housed or confined and fed or maintained on any one day in the preceding twelve-month period. For the purposes of determining the number of animals at an operation, multiple poultry houses under common ownership are considered to be a single poultry feeding operation if they adjoin each other or if they share a common area or system for the disposal of wastes.

~~N.12.~~ "Poultry processor" means an entity that processes poultry or eggs for commercial sale.

~~O.13.~~ "Warning letter" means a written description signed by the ~~Director~~ Secretary or his or her designee of a violation of this Title Rule and the necessary corrective action. A warning letter cannot be used to assess civil penalties, is not appealable ~~to the Commission~~, and is not final agency action.

~~Subtitle II. Registration program~~

~~Section 1902.1A. Applicability.~~

Persons in the state of Arkansas who own or operate poultry feeding operations where 2,500 or more poultry are housed or confined on any given day in the preceding 12-month period will be required to register annually with the Commission Department.

~~Section 1902.2B. Registration period.~~

~~A.1.~~ All poultry feeding operations shall register from January 1 to March 31 each year, and facilities constructed after March 31 of any year shall register during the next available period of registration.

~~B.2.~~ ~~Effective March 31, 2005, all~~ All poultry feeding operations shall register in the manner denoted below or be deemed out of compliance and subject to penalties set forth in these regulations.

~~C.3.~~ Facilities must annually renew registration by submitting a renewal form made available by the Department ~~and the annual fee.~~

~~Section 1902.3C. Registration information.~~

~~A.1.~~ Poultry Feeding Operations shall submit to the Commission Department ~~or conservation districts~~, on forms to be supplied-made available by the Commission Department, the following information concerning the previous calendar year:

~~1.(a)~~ The number and type of birds housed or maintained by the operation;

~~2.(b)~~ The location of the operation ~~by latitude and longitude and county, township, range, and section;~~

~~3.The business address of the owner of the facility;~~

~~4.The address of the facility if different from the owner's business address;~~

~~5.(c)~~ The type of waste handling system;

~~6.(d)~~ The type of litter management system used;

~~7.(e)~~ The type of litter storage system used and the amount of litter stored;

~~8.(f)~~ The method used for carcass disposal;

~~9.(g)~~ The acreage owned, controlled, or used by the poultry feeding operation and used for land application of litter;

~~10.(h)~~ The land application practices used by the poultry feeding operation and the amount of litter applied;

~~11.(i)~~ Tons of litter produced, removed, transferred or otherwise used by the poultry feeding operation, ~~and~~ the type of transfer or usage, and the destination of the litter;

~~12.(j)~~ The poultry processor or processors with which the poultry feeding operation has contracted to provide poultry or poultry litter; and

~~13.(k)~~ Any other relevant information deemed necessary by the Commission Department.

- ~~B. The conservation district office wherein the majority of the facility is located is available to assist the operator in filling out the registration form.~~
- ~~C. Conservation districts will collect any fees accompanying the registration form and will deliver the fees to the appropriate agency or department, if applicable.~~

Section 1902.D. Submission of materials.

- ~~A.1. Registration information materials shall be submitted online. sent to either the following address:~~
- ~~1. Poultry Feeding Operation Registration Program, Arkansas Natural Resources Commission; Conservation and Education Division; 101 E. Capitol, Suite 350, Little Rock, AR 72201, or~~
 - ~~2. The conservation district office wherein the majority of the facility is located.~~
- ~~B. If the operator is applying for a permit or permit coverage under the Environmental Protection Agency's Concentrated Animal Feeding Operations program and does not directly submit the fee to the district, the operator must mail a copy of the form and fee to the address listed on the form.~~

Section 1902.5E. Requirement to keep current address on file.

- ~~A.1. All persons registering operations are required to provide the Commission Department or the district wherein the majority of the facility is located with current address and other requested contact information within fifteen working days of change.~~
- ~~B.2. Mail will be addressed to the most recent address on file with the Commission Department or district. Registered or certified mail sent with proper postage to the last known address that is returned unclaimed shall be considered adequate notification of notice served.~~
- ~~C.3. Failure to update the Commission Department or district with current address may be considered refusal to accept mail which is a violation of these rules and could result in disciplinary action.~~

Section 1902.6F. Not a public record.

- ~~A.1. Registration information collected about an individual poultry feeding operation shall not be a public record.~~
- ~~B.2. Summary information that prevents identification of individual poultry feeding operations shall be a public record.~~

Section 1902.7G. Fees.

- ~~A.1. Poultry Feeding Operation owners shall pay an annual \$10 fee for every poultry feeding operation under the owner's control.~~
- ~~B.2. Fees are non-refundable and shall not be prorated.~~
- ~~C.3. All registration fees collected by the conservation district shall be used by the district to administer the Poultry Feeding Operation Registration Program. Fees shall be submitted to the Department at the time of registration.~~
- ~~D. All fees collected by the Commission through any penalty assessed under this Title shall be deposited in the state treasury and shall be used to operate the programs administered by the Commission through Titles 19, 20, 21, and 22 of the Commission's rules.~~

Subtitle III. Penalty for noncompliance

Section 1903.1A. Noncompliance.

- ~~1. The registered owner must comply with all conditions of registration. It shall be a violation of Ark. Code Ann. §15-20-901 et seq. and these rules for any person to:~~
- ~~1.(a). Provide misleading, false, or fraudulent registration information; or~~

2.(b). Fail to register annually or promptly provide any record or allow the Commission Department access to inspect any records required to be kept by these rules.

Section 1903.2B. Review of suspected noncompliance.

A.1. Upon complaint or ~~suspicion of suspected violation of 1903.1~~ suspicion of noncompliance, ~~Commission or conservation district~~ the Department staff may investigate an owner or operator of a poultry feeding operation and may recommend disciplinary action to the ~~Director~~ Secretary or his or her designee.

1. ~~Entry shall not occur without prior notification of the owner, operator, or agent in charge of the property. Notice shall be given to the owner, operator, or agent at least seventy-two (72) hours before entry.~~

2. ~~Documentation of bio-security measures taken and bio-security certification received by the Commission agent, including a bio-security log book, shall be made available to the owner or operator upon request.~~

B.2. Anyone providing information to the Commission Department about a possible violation must provide a written complaint stating the complainant's legal name and current mailing and physical addresses.

1.(a). The complaint must be verified by the notarized signature of the complainant.

2.(b). Complaints are subject to the Freedom of Information Act, Ark. Code Ann. § 25-19-101 et seq.

C.3. After reviewing evidence ~~provided to him or her~~ regarding a possible violation, the ~~Director~~ Secretary or his or her designee will determine whether ~~there is evidence that~~ a violation has occurred. If the ~~Director~~ Secretary or his or her designee finds that a violation occurred, the ~~Director~~ Secretary or his or her designee may issue a warning letter or administrative consent order to the alleged violator, stating the violation and the resulting corrective or disciplinary action. If an incomplete complaint is received or the ~~Director~~ Secretary or his or her designee finds that there is not sufficient evidence of a violation, the ~~Director~~ Secretary or his or her designee will inform the complainant and alleged violator in writing.

Section 1903.3C. Administrative penalties.

A.1. Upon the first violation of these rules by an owner or operator within any one-year period, the owner or operator shall be issued a warning letter. For the second violation within any one-year period, the ~~Director~~ Secretary or his or her designee may assess ~~not more than up to~~ fifty dollars (\$50) in cumulative civil penalties. Upon the third violation within any one-year period, the ~~Director~~ Secretary or his or her designee may impose a penalty not to exceed five hundred dollars (\$500) for each violation of Ark. Code Ann. § 15-20-901 et seq. and this Title Rule.

B.2. A warning letter or administrative consent order may be served by certified mail, restricted delivery, return receipt requested to the address on file with the ~~Commission or district~~ Department or by any means sufficient for service of process in a civil court action.

C.3. The owner or operator may choose to sign an administrative consent order and thereby agree to the penalties contained within the order. The owner or operator will also be deemed to have consented to the order if he or she fails to respond to the Commission Department in writing within thirty days of receipt of the administrative consent order and the Commission Department has proof that the owner or operator was served with the administrative consent order.

D.4. If the owner or operator disputes that a violation occurred or believes the assessed penalty is too harsh, the owner or operator must respond to the administrative consent order within thirty days by requesting a hearing before the Commission Department. The hearing will be conducted in accordance with Commission rules, Title I the Administrative Procedures Act, Ark. Code Ann. § 25-15-201 et seq. The

~~Commission has the burden of proving the alleged facts and violations of law stated in the administrative consent order. The Commission and the Director may issue subpoenas to any witness requiring his or her attendance and testimony before the Commission as provided in Ark. Code Ann. § 15-22-208.~~

~~E-5. The Commission Department will not take final administrative action against persons accused of violating this Title or Ark. Code Ann. § 15-20-901 et seq. until the accused person has executed an administrative consent order or been given opportunity for a hearing. to review the decision under Commission Rules, Title I, Rules of Organization and General Operation of the Arkansas Natural Resources Commission.~~

~~Subtitle IV. Judicial review~~

~~Section 1904.1 Judicial review:~~

~~By law, a person who considers himself or herself injured in his or her person, business, or property by an executed administrative consent order or a Commission order following a hearing has the right to appeal the case to district court in his county of residence, the county where he does business, or in Pulaski County within thirty days of the decision. The executed administrative consent order or Commission decision shall constitute final agency action for the purpose of judicial review. Judicial review of final agency action shall be as provided by the Arkansas Administrative Procedure Act, Ark. Code Ann. § 25-15-201 et. seq.~~

**Rules Governing the Poultry Feeding Operations
Registration Program**

I. General provisions**A. Purpose.**

1. These rules govern the Arkansas Department of Agriculture's Poultry Feeding Operations Registration Program.
2. Poultry feeding operations are registered to locate litter sources and estimate the amount of litter produced.

B. Enabling and pertinent legislation.

1. Ark. Code Ann. § 15-20-901 et seq., "Arkansas Poultry Feeding Operations Registration Act."
2. Ark. Code Ann. § 25-15-201 et seq., "Administrative Procedure Act."

C. Definitions.

The following definitions shall apply to all parts of this Rule:

1. "Administrative consent order" means a legal agreement signed by the Secretary or his or her designee and the owner or operator of a poultry feeding operation.
2. "Department" means the Arkansas Department of Agriculture.
3. "Secretary" means the Secretary of the Arkansas Department of Agriculture or his or her designee.
4. "Land Application" means the application of litter, in whole or in part, to land.
5. "Litter" means byproducts associated with the confinement of poultry, including excrement, feed wastes, bedding materials, composted carcasses, and any combinations thereof.
6. "Litter Management System" means any method to dispose or use litter.
7. "Nutrient" means a substance or recognized plant nutrient, element or compound, which is used or sold for its plant nutritive content or its claimed nutritive value. The term includes substances found in, but is not limited to, livestock manure and poultry litter, compost as fertilizer, commercially manufactured chemical fertilizers, sewage sludge or combinations thereof.
8. "Permit" or "permit coverage" refers to an authorization to operate that is required by the United States Environmental Protection Agency's Concentrated Animal Feeding Operations (CAFO) program for poultry feeding operations meeting the size thresholds listed on the Department's registration form.
9. "Person" means any individual, partnership, company, association, fiduciary, corporation, or any organized group of persons whether incorporated or not.
10. "Poultry" means chickens, turkeys, ducks, geese, and any other domesticated birds.
11. "Poultry feeding operation" means any lot or facility where two thousand five hundred (2,500) or more poultry are housed or confined and fed or maintained on any one day in the preceding twelve-month period. For the purposes of determining the number of animals at an operation, multiple poultry houses under common ownership are considered to be a single poultry feeding operation if they adjoin each other or if they share a common area or system for the disposal of wastes.
12. "Poultry processor" means an entity that processes poultry or eggs for commercial sale.
13. "Warning letter" means a written description signed by the Secretary or his or her designee of a violation of this Rule and the necessary corrective action. A warning letter cannot be used to assess civil penalties, is not appealable, and is not final agency action.

II. Registration program**A. Applicability.**

Persons in the state of Arkansas who own or operate poultry feeding operations where 2,500 or more poultry are housed or confined on any given day in the preceding 12-month period will be required to register annually with the Department.

B. Registration period.

1. All poultry feeding operations shall register from January 1 to March 31 each year, and facilities constructed after March 31 of any year shall register during the next available period of registration.
2. All poultry feeding operations shall register in the manner denoted below or be deemed out of compliance and subject to penalties set forth in these regulations.
3. Facilities must annually renew registration by submitting a renewal form made available by the Department.

C. Registration information.

1. Poultry Feeding Operations shall submit to the Department, on forms made available by the Department, the following information concerning the previous calendar year:
 - (a) The number and type of birds housed or maintained by the operation;
 - (b) The location of the operation;
 - (c) The type of waste handling system;
 - (d) The type of litter management system used;
 - (e) The type of litter storage system used and the amount of litter stored;
 - (f) The method used for carcass disposal;
 - (g) The acreage owned, controlled, or used by the poultry feeding operation and used for land application of litter;
 - (h) The land application practices used by the poultry feeding operation and the amount of litter applied;
 - (i) Tons of litter produced, removed, transferred or otherwise used by the poultry feeding operation, the type of transfer or usage, and the destination of the litter;
 - (j) The poultry processor or processors with which the poultry feeding operation has contracted to provide poultry or poultry litter; and
 - (k) Any other relevant information deemed necessary by the Department.

D. Submission of materials.

1. Registration information shall be submitted online.

E. Requirement to keep current address on file.

1. All persons registering operations are required to provide the Department with current address and other requested contact information within fifteen working days of change.
2. Mail will be addressed to the most recent address on file with the Department. Registered or certified mail sent with proper postage to the last known address that is returned unclaimed shall be considered adequate notification of notice served.
3. Failure to update the Department with current address may be considered refusal to accept mail which is a violation of these rules and could result in disciplinary action.

F. Not a public record.

1. Registration information collected about an individual poultry feeding operation shall not be a public record.
2. Summary information that prevents identification of individual poultry feeding operations shall be a public record.

G. Fees.

1. Poultry Feeding Operation owners shall pay an annual \$10 fee for every poultry feeding operation under the owner's control.
2. Fees are non-refundable and shall not be prorated.
3. Fees shall be submitted to the Department at the time of registration.

III. Penalty for noncompliance**A. Noncompliance.**

1. The registered owner must comply with all conditions of registration. It shall be a violation of Ark. Code Ann. §15-20-901 et seq. and these rules for any person to:
 - (a). Provide misleading, false, or fraudulent registration information; or
 - (b). Fail to register annually or promptly provide any record or allow the Department access to inspect any records required to be kept by these rules.

B. Review of suspected noncompliance.

1. Upon complaint or suspicion of noncompliance, the Department may investigate an owner or operator of a poultry feeding operation and may recommend disciplinary action to the Secretary or his or her designee.
2. Anyone providing information to the Department about a possible violation must provide a written complaint stating the complainant's legal name and current mailing and physical addresses.
 - (a). The complaint must be verified by the notarized signature of the complainant.
 - (b). Complaints are subject to the Freedom of Information Act, Ark. Code Ann. § 25-19-101 et seq.
3. After reviewing evidence regarding a possible violation, the Secretary or his or her designee will determine whether a violation has occurred. If the Secretary or his or her designee finds that a violation occurred, the Secretary or his or her designee may issue a warning letter or administrative consent order to the alleged violator, stating the violation and the resulting corrective or disciplinary action. If an incomplete complaint is received or the Secretary or his or her designee finds that there is not sufficient evidence of a violation, the Secretary or his or her designee will inform the complainant and alleged violator in writing.

C. Administrative penalties.

1. Upon the first violation of these rules by an owner or operator within any one-year period, the owner or operator shall be issued a warning letter. For the second violation within any one-year period, the Secretary or his or her designee may assess up to fifty dollars (\$50) in cumulative civil penalties. Upon the third violation within any one-year period, the Secretary or his or her designee may impose a penalty not to exceed five hundred dollars (\$500) for each violation of Ark. Code Ann. § 15-20-901 et seq. and this Rule.
2. A warning letter or administrative consent order may be served by certified mail, restricted delivery, return receipt requested to the address on file with the Department or by any means sufficient for service of process in a civil court action.
3. The owner or operator may choose to sign an administrative consent order and thereby agree to the penalties contained within the order. The owner or operator will also be deemed to have consented to the order if he or she fails to respond to the Department in writing within thirty days of receipt of the administrative consent order and the Department has proof that the owner or operator was served with the administrative consent order.

4. If the owner or operator disputes that a violation occurred or believes the assessed penalty is too harsh, the owner or operator must respond to the administrative consent order within thirty days by requesting a hearing before the Department. The hearing will be conducted in accordance with the Administrative Procedures Act, Ark. Code Ann. § 25-15-201 et seq.
5. The Department will not take final administrative action against persons accused of violating this Title or Ark. Code Ann. § 15-20-901 et seq. until the accused person has executed an administrative consent order or been given opportunity for a hearing.