

**ADMINISTRATIVE RULES SUBCOMMITTEE
OF THE
ARKANSAS LEGISLATIVE COUNCIL**

**Thursday, June 15, 2023
10:00 a.m.
Room A, MAC
Little Rock, Arkansas**

- A. Call to Order**
- B. Reports from the Executive Subcommittee Concerning Emergency Rules**
 - 1. Meeting of the Executive Subcommittee on May 18, 2023**
- C. Reports from ALC Subcommittees Concerning the Review of Rules**
- D. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309**
 - 1. COMMISSIONER OF STATE LANDS
(Kelly Boyd)**
 - a. SUBJECT: Commissioner of State Lands Rules 2023 Edition**

DESCRIPTION: The proposed rules herein are submitted for review and approval in order to implement changes in the practice and procedures relating to the sale of certain tax-delinquent properties and management of public lands required by the enactment of Act 241 of 2023 (eff. July 1, 2023), and Acts 159, 172, and 173 of 2023 (eff. July 31, 2023). The office deals directly with the public in conducting tax sales; therefore, it is necessary to have rules effective as soon as possible in order to inform the public of the changes in advance of July 1, 2023, the tax delinquent property auction commencement date. The proposed rules provide the framework for the process of carrying out the duties of the Office of the Commissioner of State Lands and upon promulgation of permanent rules, repeal and supersede all prior versions of the rules.

PUBLIC COMMENT: A public hearing was held on May 12, 2023. The agency indicated that it received no comments.

Suba Desikan, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses thereto:

1. Throughout the rule, it appears that sections concerning bidding by mail have been eliminated. Could you please provide some background, explain the agency's rationale, and provide the specific statutory provisions upon which the agency is relying in making this change?

RESPONSE: Act 241, Section 1(a)(1) strikes the option of mail-in bids.

2. Title 1, Subtitle D – Definitions:

(a) Could you please explain why the definition of “earnest money” was changed? **RESPONSE:** Effective July 1, 2023, the Commissioner of State Lands will no longer accept cash as a payment method at Tax Delinquent Auctions. Previously, our rules required earnest money at a tax delinquent auction be \$100.00 in a cash payment. The new definition reflects the fact that earnest money is not required at tax delinquent auctions but is still required as part of the payment process for the *online* auction process.

(b) Is there any earnest money requirement for an in-person tax-delinquent property auction? **RESPONSE:** No, there is no longer an earnest money requirement for in-person tax-delinquent auctions.

3. Title 1, Subtitle D – Definitions: Act 241 provided that “Owner” and “interested party” have the same meaning as § 26-37-301. Both definitions in the rule do not appear to track the language of the statute. Could you please explain why?

RESPONSE: [The agency provided a revised markup.]

4. Title 1, Subtitle J – Penalties, §2(a): In this section, you reference Ark. Code Ann. § 5-37-317. However, that code section does not appear to exist.

(a) Is this an incorrect citation? **RESPONSE:** It looks to be a typographical error. It should be Ark. Code Ann. § 26-37-317, which is the section added by Act 173 of 2023.

(b) If so, could you please identify the correct Act/code provision that contains the language? **RESPONSE:** Ark. Code Ann. § 26-37-317. [The agency provided a revised markup.]

5. Title 3, Subtitle C, § 5(c) & (h): These sections provide that in circumstances where the payment of earnest money fails or the buyer fails to pay the balance due after the earnest money has been paid, that buyers may be prohibited from bidding in any and all future auctions. Your comments indicate that these changes are based on Act 241 of 2023.

(a) Could you please provide the specific sections in the Act or other source where this language was taken from?

(b) Could you please provide the specific promulgation authority for this provision?

RESPONSE: Act 241 is cited erroneously and should be stricken from this specific comment in the submitted rules. Title 3, Subtitle C, 5(c) and (h) resemble language already existing in Title 3, Subtitle C, 3(d), which states: “Failure of a successful bidder to tender the Earnest Money or the full purchase price within the specified time may result in revocation of registration and a prohibition on bidding in any or all future land auctions.” Our promulgation authority comes from the current Ark. Code Ann. § 26-37-202 (g) – which will become Ark. Code Ann. § 26-37-202(h) once codified – concerning the procedure to sell, which specifies “The Commissioner of State Lands shall promulgate rules to carry out the provisions of this section.”

The proposed effective date of the rule is July 1, 2023. However, certain provisions related to Acts 159, 172, and 173 of 2023, which are specifically identified in the rule, will become effective on July 31, 2023.

FINANCIAL IMPACT: The Commissioner indicated that the amended rules do not have a financial impact.

LEGAL AUTHORIZATION: Pursuant to Act 626 of 1983, § 7, as amended by Act 814 of 1987, § 6, the Commissioner of State Lands (“Commissioner”) shall have the authority to promulgate such rules as may be necessary to effectively carry out the provisions of Act 626 of 1983, as amended, and upon adoption, such rules shall have the full force and effect of law. *See also* Ark. Code Ann. § 26-37-101 A.C.R.C. notes (Repl. 2012); *Carter v. Green*, 67 Ark. App. 367, 371, 1 S.W.3d 449, 451 (1999) (“The fact that this provision [granting the Commissioner the authority to promulgate rules to further the intent of acts governing tax-forfeiture sales] is not codified does not deprive it of the force of law.”). The proposed amendments implement provisions of the following Acts of the 2023 Regular Session:

Act 159 of 2023, which was sponsored by Representative Mary Bentley, amended the law related to the management of lands located or created within lakes or rivers by the Commissioner of State Lands. Pursuant to the Act, § 1, the Commissioner of State Lands shall promulgate rules to carry out the duties of Ark. Code Ann. § 22-5-405 concerning deeds to lands in lakes or rivers.

Act 172 of 2023, which was sponsored by Representative Marcus Richmond, amended the law concerning management and sale of tax delinquent lands by the Commissioner of State Lands and standardized the use of the term “parcel.”

Act 173 of 2023, which was sponsored by Representative Mary Bentley, amended the law concerning the redemption or sale of tax-delinquent

property; allowed a redemption deed or sale deed to be cancelled if the payment instrument used to redeem or purchase tax-delinquent property fails or is dishonored; and provided a penalty for dishonored payment instruments used to redeem or purchase tax-delinquent property.

Act 241 of 2023, which was sponsored by Representative Marcus Richmond, amended the law concerning the sale and redemption of tax-delinquent property and declared an emergency. Pursuant to Ark. Code Ann. § 26-37-202(g), the Commissioner shall promulgate rules to carry out the provisions of this section concerning the procedure to sell.

2. **DEPARTMENT OF AGRICULTURE, ARKANSAS LIVESTOCK AND POULTRY COMMISSION**
(Patrick Fisk, Wade Hodge)

a. **SUBJECT: Poultry Disease and Flock Condemnation Rule and Repeals**

DESCRIPTION: The Arkansas Department of Agriculture’s Livestock and Poultry Commission (“Commission”) proposes a new rule regarding poultry disease and flock condemnation. The new rule repeals and combines three existing rules and updates the provisions of those rules, regarding the Department’s methods to prevent and control poultry diseases and the response to poultry disease outbreaks.

There are currently existing rules pertaining to poultry disease:

- Regulation Prescribing the Procedures for Condemning a Diseased Poultry Flock;
- Regulations for Poultry Disease Identification, Monitoring and Eradication; and
- Arkansas Regulations to Prevent the Introduction of Avian Influenza.

Having three separate rules can lead to confusion regarding the applicability of each rule. Additionally, two of the rules being repealed were adopted in the late 1980s and the Avian Influenza rule was adopted in 2000. Disease outbreak response and control methods have changed, and the new rule will replace outdated language and inadequate options in order to provide a better response to an outbreak of poultry disease or identification of a diseased flock. Department staff consulted with the Poultry Federation, the USDA, and others from the poultry industry on the language for the new rule.

The proposed Poultry Disease and Flock Condemnation Rule updates, supplements, and combines portions of the three current rules, in addition

to proposing permanent adoption of some language from an emergency rule regarding Avian Influenza that was in place earlier this year. The Commission approved moving forward with adoption of the new rule and the repeal of the three current rules on November 14, 2022.

The proposed rule makes significant changes to the reporting and handling of diseased flocks to reflect modern prevention methods and provide more equity to smaller producers. The current Regulation Prescribing the Procedures for Condemning a Diseased Poultry Flock splits poultry diseases into two categories, “exotic diseases and ornithosis” and “other pathogenic diseases,” making reporting mandatory in the first category and voluntary in the second. Having a category of voluntarily reportable pathogenic diseases impedes response and enforcement. The proposed rule eliminates the two categories and lists only diseases that must be reported, incorporating those from the previously voluntary list and avian influenza.

Under the existing rule, depopulation was the only practicable remedy for a backyard poultry flock infected with a disease in the “other pathogenic diseases” category because those producers lacked the resources to prevent the “grave danger to the poultry industry” which required depopulation. With the combination of the categories, the proposed rule also creates options for disposition, giving backyard poultry growers alternative methods to handle their diseased flock while maintaining safety measures to prevent the spread of the disease. The proposed rule eliminates the provisions for state compensation and indemnity for the destruction of a flock. Under the proposed rule the producers and the Department can assess the specific risks and potential remedies to best address the situation.

Bird dealer licensing fees were provided for in the existing rule, however, the statutory authority for fees was not clearly present. The proposed rule replaces the licensing requirement with a registration requirement, eliminating licensing fees while maintaining information gathering for disease prevention and outbreak response.

The proposed rule includes a section for the response to an outbreak of avian influenza. This section incorporates portions of the existing Arkansas Regulations to Prevent the Introduction of Avian Influenza and the Avian Influenza Emergency Rule that was in effect during the most recent outbreak. The proposed rule gives the Department a framework for rapid response to an outbreak, particularly in regard to the movement of birds.

The new rule:

- Eliminates the need to search through three separate rules for poultry disease issues;

- Updates language and complies with National Poultry Improvement Plan (NPIP) requirements as needed;
- Eliminates the category of voluntarily reportable diseases and mandates the reporting of all listed diseases, incorporating avian influenza;
- Creates the following disposition options for a flock infected with a reportable disease:
 1. Creation of a flock plan that includes quarantine, biosecurity, NPIP certification, testing, and record maintenance;
 2. Quarantine of all birds on the premises for the life of the flock; or
 3. Depopulation of the birds on the premises;
- Eliminates provisions for compensation or indemnity from the state;
- Requires bird dealers to register with the Department, rather than obtain a dealer license;
- Requires event coordinators for swap meets, flea markets, and poultry exhibitions to take steps to prevent the spread of disease; and
- Delineates the Department's response options of to an outbreak of avian influenza.

The new rule will reduce confusion associated with having three separate rules to address poultry disease and provides clear response options for the Department in cases of disease identification and outbreaks of avian influenza and other poultry diseases.

PUBLIC COMMENT: A public hearing was held on January 12, 2023. The public comment period ended on January 28, 2023. The Commission indicated that it received no public comments.

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following questions:

(1) Section II.A.5(b) states: "In cases of PT, AI, or Newcastle Disease, depopulation is the only option as long as indemnity is available through USDA." Does this language signify the elimination of state indemnity within the context of this proposed new rule? **RESPONSE:** This language does not signify the end of state indemnity, because the Department hasn't had any money appropriated for several years. So, state indemnity ended years ago. This just cleans up language that hasn't been operative in years.

(2) Sections III.A.2(c) and IV.G.2 – Did the Commission intend for these sections to refer to "regulations" as opposed to rules, in light of Act 315 of

2019, § 3204? **RESPONSE:** It should say “rule.” Thanks for catching that. I also found one more place where I have replaced “regulation” with “rule.” See pages 4, 6, and 7, which I have highlighted on the new clean copy. The use of the word regulation in Section III.A.5 is appropriate because it refers to federal regulations.

(3) Section III.D. – In the proposed repealed “Regulations for Poultry Disease Identification, Monitoring & Eradication”, the provisions for Hatchery Inspections included “fighting birds”. Did the Commission intend to remove mention of fighting birds from the proposed new rule?

RESPONSE: Yes, the reference to fighting birds was intentionally removed because the Department did not want to give the impression that it was approving of that activity by mentioning it in the rule. Those birds are poultry, so they are covered by the rule without the need for a specific reference.

(4) Section III.D. – In the proposed repealed “Regulations for Poultry Disease Identification, Monitoring & Eradication”, the provisions for Hatchery Inspections included reference to “Salmonella”. Did the Commission intend to remove mention of Salmonella from this section of the proposed new rule? **RESPONSE:** Yes. Salmonella is treated differently than pullorum typhoid, which is still mentioned. Salmonella is still referenced in the reportable disease list, so the remainder of the entire rule covers salmonella.

(5) Section IV.B – this section, concerning confinement of free range and backyard poultry, was explicitly stricken from the recently amended Avian Influenza Emergency Rule. Did the Commission intend to reintroduce this provision into the proposed new rule? **RESPONSE:** Yes, the commission did want to specifically reintroduce that into the proposed new rule.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The Commission indicates that the proposed rule and repeals have no financial impact.

LEGAL AUTHORIZATION: The authority for the control, suppression, and eradication of livestock and poultry diseases and pests, and supervision of livestock and poultry work in this state, including authority to promulgate rules governing the handling, sale, and use of vaccines, antigens, and other biological products used for reportable diseases and emergencies affecting livestock and poultry, is vested in the Arkansas Livestock and Poultry Commission. *See Ark. Code Ann. § 2-33-107(a).* The Commission is further authorized to prescribe, by administrative rule, the method and manner for testing and vaccination of livestock or poultry

located within the state but such authority shall not interfere with farmer vaccination of his or her own product. *See* Ark. Code Ann. § 2-33-107(b)(10). Pursuant to Arkansas Code Annotated § 2-33-107(c), the Commission shall also have the authority to make, modify, and enforce such rules and orders, not inconsistent with law, as it shall from time to time deem necessary to effectively carry out the functions performable by it.

Pursuant to Ark. Code Ann. § 2-33-11(a), the Commission may promulgate rules concerning services performed by the Arkansas Livestock and Poultry Commission Veterinary Diagnostic Laboratory.

It is the duty of the Commission to establish and promulgate rules in regard to isolation or quarantine of infected animals, disinfection of animals and premises, destruction of incurably diseased animals, disposal of carcasses as it may deem necessary to prevent the spread of disease, and for the protection of areas from which animal diseases may be eradicated. *See* Ark. Code Ann. §§ 2-40-103(a)(2) and 103(a)(3). Pursuant to Ark. Code Ann. § 2-40-103(a)(4), it is further the duty of the Commission to draft rules for compensation for owners of exposed or diseased animals and contaminated equipment or other material unsuitable for proper disinfection or destroyed, or for others for any other necessary expenses or for any other purpose, indemnity being subject to available funds.

The Commission is also authorized to adopt rules to prescribe the procedures for condemning a diseased poultry flock. *See* Ark. Code Ann. § 2-40-109(b). Further rulemaking authority can be found at Ark. Code Ann. § 2-40-209(a), which states that the Commission is authorized to adopt appropriate rules regarding the isolation or quarantine of infected, exposed, or suspected infected livestock or poultry.

Pursuant to Ark. Code Ann. § 2-40-1302(a)(1), all large animal carcasses and all parts of large animal carcasses shall be disposed of in a manner prescribed by rules of the Arkansas Livestock and Poultry Commission.

The Commission shall further, by rule, specify acceptable methods for the disposal of fowl carcasses, including, but not limited to composting of carcasses, cremation or incineration, on-farm freezing, and rendering. *See* Ark. Code Ann. § 2-40-403.

E. Agency Updates on the Status of Outstanding Rulemaking Pursuant to Act 595 of 2021

- 1. Department of Agriculture (Wade Hodge)**
- 2. Department of Education (Courtney Salas-Ford)**

- 3. Office of Arkansas Lottery (Brent Standridge)**
- F. Monthly Written Agency Updates Pursuant to Act 595 of 2021 Concerning Rulemaking Resulting from the 2022 Fiscal Session**
- G. Adjournment**