

**TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND
FORESTRY
CHAPTER 48. WILDLIFE SERVICES**

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 3. Aerial Management of Depredating Animals

35:48-3-9 [AMENDED]

35:48-3-10 [AMENDED]

35:48-3-12 [AMENDED]

35:48-3-13 [AMENDED]

35:48-3-14 [AMENDED]

35:48-3-19 [AMENDED]

AUTHORITY:

Oklahoma Constitution, Article 6, Section 31; State Board of Agriculture; 2 O.S. § 2-4; and 29 O.S. § 4-107.2

ADOPTION:

October 24, 2017

EFFECTIVE:

Immediately upon Governor's approval

EXPIRATION:

Effective through September 14, 2018, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 3. Aerial Management of Depredating Animals

35:48-3-12 [AMENDED]

35:48-3-14 [AMENDED]

Gubernatorial approval:

March 3, 2017

Register publication:

34 Ok Reg 545

Docket number:

17-318

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The proposed emergency rule amendments revise the Department's rules to avoid conflict with HB 2324 (approved by the Governor on May 15, 2017 and immediately in full force and effect) and the Governors Executive Order No. 2017-16.

As a result of the foregoing, the State Board of Agriculture determined that an emergency exists requiring amendments to the notice requirements, recordkeeping requirements, and practical limitations imposed by the Department's current rules on the subject.

GIST/ANALYSIS:

The proposed emergency rule amendments (1) remove language that requires the permit holder to identify other persons participating in flights on the 24-hour notice to the Department, (2) clarify the information that may be provided to the Department for the purpose of describing the area on which management will occur, (3) revise the permitted firearms and ammunition, and (4) allow the Board of Agriculture to grant exceptions to the requirements of the subchapter on a case by case basis.

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PURSUANT THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F):

SUBCHAPTER 3. AERIAL MANAGEMENT OF DEPREDATING ANIMALS

35:48-3-9. Application requirements

- (a) Applications for an aerial management permit shall be submitted to the Department using the form prescribed by the Department.
- (b) A person seeking an aerial management permit shall submit an application containing the following information:
 - (1) The name of the person seeking an aerial management permit;
 - (2) The address, telephone number, and other relevant contact information for the person seeking an aerial management permit;
 - (3) If the person seeking the aerial permit is a corporation or other legal entity, the telephone number and relevant contact information for the corporation or entity's representative and the address of the entity's registered service agent;
 - (4) A statement declaring whether the person seeking an aerial management permit is operating or intends to operate a commercial or pay-for-service experience
 - ~~(4)~~ (5) The address, telephone number, and other relevant contact information, and appropriate documentation of any commercial pilot's license required by the Federal Aviation Administration for the pilot of the aircraft used for management by the use of aircraft if the person seeking an aerial management permit is operating or intends to operate a commercial or pay-for-service experience;
 - ~~(5)~~ The address, telephone number, and other relevant contact information for the person or persons authorized to use a firearm on the aircraft;
 - (6) A description of the area from which animals will be taken and ~~The~~ the address, telephone number, and other relevant contact information for the landowner or lessee for the area from which animals will be taken;
 - ~~(7)~~ A description of the animals and number of animals to be taken;
 - ~~(8)~~ A description of the area from which the animals will be taken;
 - ~~(9)~~ (7) Proof of ownership or proof of the landowner's or lessee's permission to conduct aerial management on the area from which the animals will be taken;
 - (8) A description of the animals to be taken;

~~(10)~~ (9) A description of the aircraft that will be used for management by the use of aircraft;

~~(11)~~ If applicable, a description of the firearm and ammunition that will be used for management by the use of aircraft; and

~~(12)~~ Proof of liability insurance with a minimum coverage of \$300,000.

(c) A permit holder shall be required to advise the Department of any changes in information submitted with the application ~~no~~ not less than twenty-four (24) hours prior to engaging in management by the use of aircraft.

(d) If the applicant submits an incomplete application or the Department requests additional information, the Department shall notify the applicant that the application is incomplete and identify the information on the application that is incomplete or needs additional information. The applicant may submit additional information within twenty (20) working days to supplement and complete the application. If the applicant does not respond to the request for additional information in a timely manner, the application shall be denied.

(e) The applicant may withdraw its application from consideration at any time.

(f) An applicant whose application is denied due to insufficient information provided by the applicant or the withdrawal of the application may submit a new application. Any fees and charges paid by the applicant in connection with the denied or withdrawn application shall not be applied to the processing of a new application.

(g) Aerial management permits may be renewed by filing an application for renewal with the Department at least thirty (30) days prior to the expiration date.

(h) Applications and renewals for aerial management permits shall be accompanied by the payment of any required fee.

35:48-3-10. Permit issuance

(a) The Department may issue an aerial management permit if it finds that it will aid in the management of depredated animals.

(b) The Department may deny an aerial management permit if it finds that it will have a deleterious effect on indigenous species.

(c) The Department may authorize the permit holder to advertise and collect payment from other individuals when the activity will aid in the management of depredated animals.

(d) The Department may issue an aerial management permit to any person to engage in the management by use of aircraft without limitation by statewide season regulations or bag limits.

(e) The Department may place reasonable restrictions on the permit holder, ~~including limitations on the type of aircraft, firearm, and ammunition used for aerial hunting or the management by use of aircraft, the number of animals to be taken, and such other limitations necessary for safety and for the effect on indigenous species.~~

(f) The aerial management permit shall include, but is not limited to, the following information:

(1) The name and address of the pilot authorized to operate the aircraft under the permit;

~~(2)~~ (2) The name and address of the person authorized to use firearms on the aircraft or otherwise engage in the management by use of aircraft;

~~(3)~~ (2) A description of the animals ~~and number of animals authorized~~ to be taken;

~~(4)~~ (3) A description of the area from which the animals are authorized to be taken;

~~(5)~~ (4) The issue and expiration date of the aerial management permit; and

~~(6)~~ (5) Any limitations placed on the permit holder by the Department.

- (g) An aerial management permit to manage depredating animals issued pursuant to this section shall be valid for a period of one (1) year from the date of issuance.
- (h) An aerial management permit shall not be bartered or transferred to any other person.

35:48-3-12. Twenty-four hour notice

- (a) A permit holder shall notify the Department of the date, time, and area on which the management by use of aircraft will occur not less than twenty-four (24) hours prior to the activity. Area can be reported in a format to include legal description, global positioning system (GPS) coordinates, or GPS boundary files (shape files).
- (b) Twenty-four (24) hour notification shall be made by ~~telephone, fax, or~~ electronic means.
- (c) Twenty-four (24) hour notification shall include a confirmation by the permit holder that all the information contained in the aerial management permit application is current and correct or shall provide new information and documentation if necessary.
- (d) Twenty-four hour notification shall include the name and address of the pilot authorized to operate the aircraft under the permit ~~and the name and address of the person authorized to use firearms on the aircraft or otherwise engage in the management by use of aircraft.~~
- (e) A single twenty-four (24) hour notification may describe up to seven (7) days upon which aerial management may occur.

35:48-3-13. Quarterly reports

A permit holder shall file a quarterly report with the Department within thirty (30) days of each calendar quarter or on the termination of the permit, whichever occurs first, that includes the following information:

- (1) The name, address, and permit number of the permit holder;
- (2) The name and address of the pilot ~~and any other person~~ participating in the flights;
- (3) The number and description of the depredating animals managed under the permit;
- (4) The types of depredating animals authorized to be managed under the permit;
- (5) Dates and times of authorized flights; and
- (6) Any other information required by the Department.

35:48-3-14. Prohibited activities

- (a) A permit holder or pilot shall not:
 - (1) Hunt, shoot, shoot at, kill, or attempt to kill any wildlife, domesticated animal, or livestock from an aircraft other than the animals authorized by the aerial management permit;
 - (2) Intentionally disturb, haze, or buzz any wildlife, domesticated animal, or livestock from an aircraft other than the animals authorized by the aerial management permit;
 - (3) Take or attempt to take any depredating animal for any purpose other than is necessary for the protection of land, water, wildlife, livestock, domesticated animals, human life, or crops;
 - (4) Manage depredating animals from an unsuitable aircraft;
 - (5) Manage depredating animals from an unmanned aerial vehicle;
 - (6) Manage depredating animals with a firearm ~~other than a shotgun~~ using pellet ammunition or soft point or hollow ammunition;
 - (7) Manage depredating animals using incendiary ammunition or any similar hunting method that poses a substantial wildfire risk;

~~(7)~~ (8) Manage depredating animals during hazardous weather, low visibility or nighttime hours;

~~(8)~~ (9) Manage depredating animals during designated deer hunting seasons from the dates of October 1 through January 15 without first obtaining a special permit from the local game warden or other authorized employee of the Department of Wildlife Conservation; or

~~(9)~~ (10) Herd animals from one property to another without the permission of all landowners or lessees affected.

(b) A permit holder may engage in trial flights allowing pilots and passengers to practice the aerial management activity, however, trial flights shall be subject to all the restrictions and notification requirements as an actual aerial management flight.

35:48-3-19. Pilot and aircraft requirements

Pilots and aircraft shall comply with all appropriate federal laws and regulations when engaging in the management of depredating animals by use of aircraft.

~~(a) — Pilots shall possess a commercial license from the FAA.~~

~~(b) — Pilots shall possess a Class II medical certificate.~~

~~(c) — Pilots shall have documented experience of no less than 250 low-level flying hours in an agricultural environment or some equivalent.~~

~~(d) — Only passengers on an aircraft shall be permitted to use firearms.~~

~~(e) — Suitable aircraft eligible for aerial management activities shall be registered with the Federal Aviation Administration, and shall be:~~

~~(1) — powered rotor aircraft, or~~

~~(2) — a fixed, high-wing aircraft with tandem seating with a rated stall speed of 50 mph or less.~~