

Title 15. Natural Resources and Economic Development

Chapter I. Arkansas Natural Resources Commission, Department of Agriculture

Subchapter A. Generally

Part 4. Arkansas Nutrient Management Planner Certification Program

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "Enabling and pertinent legislation. Arkansas Code Annotated § 8-4-101 et seq., "Arkansas Water and Air Pollution Control Act." Ark. Code Ann. §15-20-201 et seq., "Arkansas Natural Resources Commission Act." Ark. Code Ann. §15-20-1001 et seq., "Arkansas Soil Nutrient Management Planner and Applicator Certification Act." Ark. Code Ann. § 25-15-201 et seq., "Arkansas Administrative Procedure Act." Ark. Code Ann. § 17-1-106 [repealed], Licensure, certification, or permitting of active duty service members, returning military veterans, and spouses."

Subpart 1. General Provisions

15 CAR § 4-101. Purpose.

(a) This part governs the Arkansas Natural Resources Commission's Nutrient Management Planner Certification Program for individuals who prepare nutrient management plans.

(b) Planners prepare nutrient management plans to indicate how nutrients should be applied to fields and other land for crop production while protecting groundwater and surface water from excessive nutrient enrichment.

(c) Plans contain operating procedures based on:

- (1) Expected crop type;
- (2) Existing nutrient levels in the soil;
- (3) Organic residuals;
- (4) Optimum timing and placement of nutrients;
- (5) Environmental resource protection; and

(6) Agronomic practices such as:

- (A) Liming;
- (B) Tillage; and
- (C) Crop rotation.

(d)(1) The commission shall:

- (A) Certify the competence of individuals to prepare these plans; and
- (B) Determine information to be contained in nutrient management plans.

(2) The training provided by the commission or its delegate shall at a minimum meet the United States Natural Resources Conservation Service conservation practice standards for Arkansas.

(3) To maintain certification, certified nutrient planners must develop plans in accord with certified nutrient planner training.

(e) The commission shall issue certificates of competence to certified nutrient planners.

Authority. Arkansas Code § 15-20-1004.

15 CAR § 4-102. Definitions.

As used in this part:

(1) "Administrative consent order" means a legal agreement signed by:

- (A) The Director of the Arkansas Natural Resources Commission; and
- (B) A certified nutrient planner;

(2)(A)(i) "Arkansas Phosphorus Index" means the risk-based assessment tool referenced in nutrient management plans developed to govern the terms and conditions under which nutrients may be land-applied.

(ii) See P. A. Moore, A. N. Sharpley, W. Delp, B. Haggard, T. Daniel, K. VanDevender, A. Baber, and M. Daniels, The Revised Phosphorus Index (2009).

(B) Any nutrient management plan drafted or revised pursuant to the Arkansas Phosphorus Index effective at the time of its drafting or revision will not be

deemed out of compliance for failure to use the current index until five (5) years have passed since the plan was drafted or revised.

(C) However, any updates to that nutrient management plan within that five-year period must be conducted in compliance with the index effective at the time of update;

(3) "Certified nutrient planner" means a person who has been certified by the Arkansas Natural Resources Commission as competent to develop nutrient management plans;

(4) "Commission" means the Arkansas Natural Resources Commission as described in Arkansas Code § 15-20-201 et seq.;

(5) "Conservation district" means a district created under the Conservation Districts Law, Arkansas Code § 14-125-101 et seq.;

(6) "Delegate" means a person or entity appointed by the Director of the Arkansas Natural Resources Commission to function in a specific capacity in furtherance of this program and may be another agency, commission, organization, or company, whether public or private;

(7) "Director" means the Director of the Arkansas Natural Resources Commission;

(8) "Litter" means byproducts associated with the confinement of livestock, including:

- (A) Excrement;
- (B) Feed wastes;
- (C) Bedding materials;
- (D) Composted carcasses; and
- (E) Any combinations thereof;

(9) "Livestock" means animals kept or raised for use or pleasure, especially farm animals kept for use and profit, including:

- (A) Horses;
- (B) Cattle;
- (C) Swine; and

(D) Poultry;

(10)(A) "Nutrient" means a substance or recognized plant nutrient, element, or compound which is used or sold for its:

- (i) Plant nutritive content; or
- (ii) Claimed nutritive value.

(B) The term includes substances found in, but is not limited to:

- (i) Litter;
- (ii) Compost as fertilizer;
- (iii) Commercially manufactured chemical or organic fertilizers;
- (iv) Sewage sludge; or
- (v) Combinations thereof;

(11) "Nutrient management plan" means a documented record of how nutrients will be managed on a nutrient management unit prepared in accordance with United States Natural Resources Conservation Service conservation practice standards for Arkansas to guide and assist landowners and operators in the use of fertilizers, litter, sewage sludges, compost, and other nutrient sources for soil fertility and protection of the waters within the state;

(12) "Poultry" means:

- (A) Chickens;
- (B) Turkeys;
- (C) Ducks;
- (D) Geese; and
- (E) Any other domesticated birds;

(13) "Returning military veteran" means a former member of the United States Armed Forces who was discharged from active duty under circumstances other than dishonorable; and

(14)(A) "Warning letter" means a written description signed by the Director of the Arkansas Natural Resources Commission of:

- (i) A violation of this part; and
- (ii) The necessary corrective action.

(B) A warning letter:

- (i) Cannot be used to assess civil penalties;
- (ii) Is not appealable to the Arkansas Natural Resources Commission;

and

- (iii) Is not final agency action.

Authority. Arkansas Code § 15-20-1004.

15 CAR § 4-103. Duties of other state agencies.

The provisions of this part shall not limit the powers of other state agencies.

Authority. Arkansas Code § 15-20-1004.

Subpart 2. Requirements for Certification

15 CAR § 4-201. Eligibility for certification.

(a) An applicant may obtain certification by satisfying all of the following requirements:

(1) Satisfactorily completing and submitting to the Arkansas Natural Resources Commission an application form;

(2) Attending the certified nutrient planner training course provided by the commission or its delegate;

(3) Obtaining a passing score on the certified nutrient planner examination administered by the commission or its delegate;

(4) Submitting a one hundred-dollar certification fee; and

(5) Submitting a twenty-five-dollar testing fee.

(b)(1) Anyone initially certified or in the process of certification by the United States Natural Resources Conservation Service as a nutrient management planner prior to the effective date of this part who provides acceptable proof of certification to the commission:

(A) Will be recognized as certified under this part without further testing or training; and

(B) May have certification fees waived by the Director of the Arkansas Natural Resources Commission.

(2) Persons initially certified by the United States Natural Resources Conservation Service must still attain required continuing education credit to be recertified under this part.

Authority. Arkansas Code § 15-20-1004.

15 CAR § 4-202. Review of application.

(a) The application and supporting documentation to obtain certification will be reviewed by the Arkansas Natural Resources Commission.

(b) The commission will:

(1) Inform the applicant in writing if it determines that the application is incomplete; and

(2) Specify why the application is incomplete.

(c) When a completed application, supplemental application, or requested information is returned, the commission will continue action on the application.

Authority. Arkansas Code § 15-20-1004.

15 CAR § 4-203. Training course.

The Arkansas Natural Resources Commission or its delegate will periodically provide a certified nutrient planner training session on concepts supporting and related to nutrient management plan development prior to scheduled examinations.

Authority. Arkansas Code § 15-20-1004.

15 CAR § 4-204. Examination.

(a)(1) The Arkansas Natural Resources Commission or its delegate shall administer certified nutrient planner certification examinations at least once per year for a twenty-five-dollar examination fee that must be paid prior to sitting for the test.

(2) The commission may limit the number of applicants taking the examination based upon available examination space.

(b) The commission shall establish a passing score for the examination based on the commission's determination of the level of examination performance required to show minimal, acceptable competence.

(c)(1) If an applicant does not achieve a passing score on the examination, he or she may retake the examination at the next scheduled time.

(2) An applicant may retake the examination one (1) time with no additional charge by resubmitting the application for certification.

(d) All applications must be received ten (10) days prior to the examination date set by the commission.

(e)(1) An applicant who is unable to take an examination at the scheduled time shall notify the commission at least five (5) days prior to the date and time of the examination.

(2) The applicant will be rescheduled for the next examination.

(3) Failure to timely notify the commission may require the applicant to submit new testing fees.

Authority. Arkansas Code § 15-20-1004.

15 CAR § 4-205. Notification of results.

(a) Each applicant shall:

(1) Be notified of results in writing within sixty (60) days of the completion of the examination; and

(2) Receive notice of whether certification has been approved.

(b) An applicant denied certification for a reason other than test failure may request review of the decision pursuant to Rules of Organization and General Operation of the Arkansas Natural Resources Commission, 15 CAR pt. 1.

Authority. Arkansas Code § 15-20-1004.

Subpart 3. Maintaining Certification

15 CAR § 4-301. Term of certification.

(a) Certification shall be valid for a period of five (5) years and will automatically expire on January 1 of the fifth year following certification if the certificate holder fails to properly renew certification.

(b) Following the expiration of a certificate, reinstatement may be accomplished only by reapplication and compliance with all requirements, including the examination, unless waived by the Arkansas Natural Resources Commission for good cause.

(c) Certification held by an active duty military service member or the spouse of an active duty military service member deployed outside the State of Arkansas shall not expire until one hundred eighty (180) days following the active duty military service member's or the spouse's return from active deployment.

Authority. Arkansas Code § 15-20-1004.

15 CAR § 4-302. Renewal of certification.

(a) A certified nutrient planner must renew certification prior to the certificate's expiration date by complying with all of the following requirements:

- (1) Submission of the renewal application form;
- (2) Payment of a one hundred-dollar renewal fee to the Arkansas Natural Resources Commission; and
- (3) Completion of at least four (4) hours of continuing education preapproved by the commission within the last five (5) years.

(b) If the certified nutrient planner has knowingly violated commission rules or refused to pay fines assessed by the commission, the commission may choose not to renew certification.

Authority. Arkansas Code § 15-20-1004.

15 CAR § 4-303. Requirement to keep current address on file.

(a) A certified nutrient planner is required to provide the Arkansas Natural Resources Commission with current address and other requested contact information within fifteen (15) working days of change so that the commission can advise him or her of updates to law and rules as well as provide notice of complaints and hearings.

(b)(1) Service of notice sent by mail will be addressed to the most recent address on file with the commission.

(2) Registered or certified mail sent with proper postage and to the last known address that is returned unclaimed shall be considered adequate notification of notice served.

(c) Failure to update commission staff with current address:

(1) May be considered refusal to accept mail, which is a violation of this part;
and

(2) Could result in disciplinary action.

Authority. Arkansas Code § 15-20-1004.

15 CAR § 4-304. Continuing education.

(a)(1) A certified nutrient planner must have proof of four (4) approved continuing education credits completed during the five (5) previous years to renew his or her certification.

(2) Each continuing education credit refers to an hour of instruction:

(A) Approved for credit by the Arkansas Natural Resources Commission;
and

(B) Designed to provide further knowledge of nutrient management planning.

(b) A certified nutrient planner may either take:

- (1) Continuing education courses provided by the commission; or
- (2) Preapproved classes provided by third parties.

Authority. Arkansas Code § 15-20-1004.

15 CAR § 4-305. Approval of third-party courses.

(a)(1) Programs submitted for preapproval shall be considered by the Arkansas Natural Resources Commission only if the sponsor or attendee submits a written description.

(2) The description must include the:

- (A) Names and qualifications of the presenters;
- (B) Time and location;
- (C) Proposed number of credits; and
- (D) Program's objectives.

(3) Programs may be held within or outside the state and must be related to:

- (A) Nutrient management planning; or
- (B) Compliance with the commission's rules and other governmental and

industry requirements.

(4) The commission at its discretion may approve a course for credit after the course has taken place.

(b)(1) Program sponsors must:

(A) Provide written proof of attendance to attendees following each event;

and

(B) Provide the commission with a list or lists of attendees by January 1 of

each year.

(2) Certified nutrient planners are also responsible for:

(A) Obtaining proof of attendance; and

(B) Sending that proof to the commission when certification is renewed.

Authority. Arkansas Code § 15-20-1004.

Subpart 4. Record Keeping

15 CAR § 4-401. Maintaining plans.

(a)(1) The Arkansas Natural Resources Commission may periodically inspect:

(A) Nutrient management plans prepared by certified nutrient planners;

and

(B) Other records for compliance with this part.

(2) A complete copy of each nutrient management plan prepared shall be made available for inspection by commission personnel upon request.

(b) The certified nutrient planner must also maintain a summary listing of:

(1) All nutrient management plans prepared for each landowner or operator;

and

(2) The dates the plans were prepared or revised.

(c) The records required by this section shall not be public records.

Authority. Arkansas Code § 15-20-1004.

15 CAR § 4-402. Quarterly activity reports.

A certified nutrient planner shall file a quarterly activity report with the Arkansas Natural Resources Commission containing the following information:

(1) Name and certificate number of the certified nutrient planner; and

(2) Number of nutrient management plans completed.

Authority. Arkansas Code § 15-20-1004.

Subpart 5. Rules Applicable to Active Duty Service Members, Returning Military Veterans, and Spouses

15 CAR § 4-501. Consideration of military training and experience in lieu of experience or education.

When considering an application for licensure, the Arkansas Natural Resources Commission shall:

(1) Consider whether or not the applicant's military training and experience is substantially similar to experience or education required for certification; and

(2) Accept the applicant's military training and experience in lieu of experience or education required for certification if the commission determines the military training and experience is a satisfactory substitute for the experience or education required for certification.

Authority. Arkansas Code § 15-20-1004.

15 CAR § 4-502. Consideration of equivalent out-of-state certification.

The Arkansas Natural Resources Commission will issue certification to an individual applying for Arkansas certification who:

(1) Holds a substantially equivalent certification issued by another state and who is in good standing with that state; and

(2) Is one (1) of the following:

(A) An active duty military service member stationed in the State of Arkansas;

(B) A returning military veteran applying within one (1) year of his or her discharge from active duty; or

(C) The spouse of a person described by subdivision (2)(A) or (2)(B) of this section.

Authority. Arkansas Code § 15-20-1004.

15 CAR § 4-503. Expedited certification.

The Arkansas Natural Resources Commission shall expedite the certification process for the following individuals:

- (1) An active duty military member stationed in Arkansas;
- (2) A returning military veteran applying within one (1) year of his or her discharge from active duty; or
- (3) The spouse of a person described by subdivisions (1) or (2) of this section.

Authority. Arkansas Code § 15-20-1004.

15 CAR § 4-504. Certification expiration.

A certification issued by the Arkansas Natural Resources Commission held by an active duty military service member or the spouse of an active duty military service member deployed outside Arkansas shall not expire until one hundred eighty (180) days following the active duty military service member's or the spouse's return from active deployment.

Authority. Arkansas Code § 15-20-1004.

15 CAR § 4-505. Continuing education exemption.

(a) The Arkansas Natural Resources Commission shall allow a full or partial exemption from certification continuing education requirements for the following individuals:

- (1) An active duty military service member deployed outside of the State of Arkansas;
- (2) A returning military veteran applying within one (1) year of his or her discharge from active duty; or
- (3) The spouse of a person under subdivisions (a)(1) or (a)(2) of this section.

(b) The commission may require the completion of continuing education before issuing a subsequent certification for renewal purposes.

Authority. Arkansas Code § 15-20-1004.

Subpart 6. Fees

15 CAR § 4-601. Fees.

(a) Fees are nonrefundable and shall not be prorated.

(b) The Arkansas Natural Resources Commission will assess the following fees:

- (1) Certification, one hundred dollars (\$100);
- (2) Examination fee, twenty-five dollars (\$25.00); and
- (3) Recertification, one hundred dollars (\$100).

(c) All fees collected by the commission through any penalty assessed under this part shall be:

- (1) Deposited into the State Treasury; and
- (2) Used to operate the programs administered by the commission through 15 CAR pts. 3, 4, 5, and 6.

Authority. Arkansas Code § 15-20-1004.

Subpart 7. Penalty for Noncompliance

15 CAR § 4-701. Noncompliance.

It shall be a violation of Arkansas Code § 15-20-1001 et seq., and this part for a certified nutrient planner to:

- (1) Provide misleading, false, or fraudulent information in applying for certification;
- (2) Provide the Arkansas Natural Resources Commission with any misleading, false, or fraudulent plan;

(3) Offer or prepare a nutrient management plan, and if applicable, a poultry litter management plan, that does not comply with the requirements for such plans found in Rules Governing the Arkansas Soil Nutrient and Poultry Litter Application and Management Program, 15 CAR pt. 6;

(4) Fail to promptly provide any record or plan or to allow the commission access to inspect any records required to be kept by this part; or

(5) Violate any other requirement imposed by rule in this part.

Authority. Arkansas Code § 15-20-1004.

15 CAR § 4-702. Review of suspected noncompliance.

(a)(1) Upon complaint or suspicion of suspected violation of 15 CAR § 4-601, Arkansas Natural Resources Commission or conservation district staff may investigate and recommend disciplinary action to the Director of the Arkansas Natural Resources Commission.

(2)(A) Anyone providing information to the commission about a possible violation must provide a written complaint stating the complainant's:

(i) Legal name; and

(ii) Current mailing and physical addresses.

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

(3) Complaints are subject to the Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq.

(b)(1) After reviewing evidence provided to him or her regarding a possible violation, the director will determine whether there is evidence that a violation has occurred.

(2) If the director finds that a violation occurred, the director may issue a warning letter or administrative consent order to the alleged violator stating the:

(A) Violation; and

(B) Resulting corrective or disciplinary action.

(3) If an incomplete complaint is received or the director finds that there is not sufficient evidence of a violation, the director will inform the complainant and alleged violator in writing.

Authority. Arkansas Code § 15-20-1004.

15 CAR § 4-703. Administrative penalties.

(a)(1) Upon the first violation of this part by a certified nutrient planner within any one-year period, the planner shall be issued a warning letter.

(2) For the second violation within any one-year period, the Director of the Arkansas Natural Resources Commission may assess not more than fifty dollars (\$50.00) in cumulative civil penalties.

(3)(A) Upon the third violation within any one-year period, the director may impose a penalty not to exceed one thousand dollars (\$1,000) for each violation of Arkansas Code § 15-20-1001 et seq., and this part.

(B) Following the third violation, the Arkansas Natural Resources Commission may also choose to suspend, revoke, annul, or withdraw the certified nutrient planner's certification.

(b) A warning letter or administrative consent order may be served by:

(1) Certified mail, restricted delivery, return receipt requested to the address on file with the commission or district; or

(2) Any means sufficient for service of process in a civil court action.

(c)(1) The alleged violator may choose to sign an administrative consent order and thereby agree to the penalties contained within the order.

(2) The certified nutrient planner will also be deemed to have consented to the order if:

(A) He or she fails to respond; and

(B) The commission has received a certified mail receipt or other proof showing that the alleged violator was served with the administrative consent order.

(d)(1) If the alleged violator disputes that a violation occurred or believes the assessed penalty is too harsh, the certified nutrient planner must respond to the administrative consent order within thirty (30) days by requesting a hearing before the commission.

(2) The hearing will be conducted in accordance with Rules of Organization and General Operation of the Arkansas Natural Resources Commission, 15 CAR pt. 1.

(3) The commission has the burden of proving the alleged facts and violations of law stated in the administrative consent order.

(4) The commission and the director may issue subpoenas to any witness requiring his or her attendance and testimony before the commission as provided in Arkansas Code § 15-22-208.

(e) The commission will not take final administrative action against persons accused of violating this part or Arkansas Code § 15-20-1001 et seq., until the accused person has executed an administrative consent order or been given opportunity for a hearing to review the decision under 15 CAR pt. 1.

Authority. Arkansas Code §§ 15-20-1004, 15-20-1008.

15 CAR § 4-704. Emergency action.

If the Arkansas Natural Resources Commission finds that the public health, safety, or welfare imperatively requires emergency action and incorporates that finding in its order, the agency can summarily suspend, limit, or restrict certification prior to holding an adjudicative hearing, so long as an adjudicative hearing is held within ten (10) days pursuant to 15 CAR pt. 1.

Authority. Arkansas Code § 15-20-1004.

15 CAR § 4-705. Reinstatement after suspension.

No suspended certified nutrient planner will be reinstated until the individual satisfies any condition imposed by the Arkansas Natural Resources Commission or the Director of the Arkansas Natural Resources Commission as a condition of reinstatement.

Authority. Arkansas Code § 15-20-1004.

15 CAR § 4-706. Recertification after revocation.

(a) No certified nutrient planner whose certification has been revoked will be recertified until the individual satisfies any condition imposed by the Arkansas Natural Resources Commission or the Director of the Arkansas Natural Resources Commission as a condition of recertification.

(b) No individual will be recertified unless the commission approves recertification by a majority vote.

Authority. Arkansas Code § 15-20-1004.

Subpart 8. Appeals Procedure

15 CAR § 4-801. Judicial review.

(a) 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 an Arkansas Natural Resources Commission order following a hearing has the right to appeal the case to district court in his or her county of residence, the county where he or she does business, or in Pulaski County within thirty (30) days of the decision.

(b) The executed administrative consent order or commission decision shall constitute final agency action for the purpose of judicial review.

(c) Judicial review of final agency action shall be as provided by the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

Authority. Arkansas Code § 15-20-1004.