

Title 15. Natural Resources and Economic Development

Chapter I. Arkansas Natural Resources Commission, Department of Agriculture

Subchapter A. Generally

Part 5. Arkansas Nutrient Management Applicator 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 § 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, Licensure, certification, or permitting of active duty service members, returning military veterans, and spouses."

Subpart 1. General Provisions

15 CAR § 5-101. Purpose.

(a) This part governs the Arkansas Natural Resources Commission's Nutrient Management Applicator Certification Program for individuals who apply nutrients to land.

(b)(1) The commission shall certify the competence of individuals to:

(A) Apply nutrients; and

(B) Provide training relating to nutrient application.

(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, a certified nutrient applicator must develop plans in accord with certified nutrient applicator training.

(c) The commission may issue distinct classifications of certification.

(d) Persons making nutrient application to nutrient surplus areas on or after January 1, 2006, must become certified.

(e) Persons making nutrient application outside nutrient surplus areas are not required to become certified.

Authority. Arkansas Code § 15-20-1005.

15 CAR § 5-102. Definitions.

As used in this part:

(1) "Administrative consent order" means a legal agreement signed by the Director of the Arkansas Natural Resources Commission and a certified nutrient applicator;

(2) "Certified nutrient applicator" means a person who has been certified by the Arkansas Natural Resources Commission as competent to apply nutrients to land and includes certified commercial applicators and certified private applicators;

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

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

(5) "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;

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

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

- (A) Excrement;
- (B) Feed wastes;
- (C) Bedding materials;

- (D) Composted carcasses; and
- (E) Any other combinations thereof;

(8) "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;

(9)(A) "Nutrient" means a substance or recognized plant nutrient, element, or compound that 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;

(10) "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;

(11) "Nutrient surplus area" means a defined geographic area declared by Arkansas Code § 15-20-1104 that has been determined to be an area in which the soil concentration of one (1) or more nutrients is so high or the physical characteristics of the soil or area is such that continued application of the nutrient to the soil could negatively impact soil fertility and 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 § 15-20-1005.

15 CAR § 5-103. Duties of other state agencies.

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

Authority. Arkansas Code § 15-20-1005.

15 CAR § 5-104. Distinction between private and commercial applicators.

(a) Certified private applicator.

(1) A person seeking certification to apply nutrients to land owned in whole or part by him or her or to land that is under his or her control through a property interest other than ownership shall apply to be certified as a certified private applicator.

(2) Land controlled by a person through a means other than property ownership would include but is not limited to:

(A) Farmers farming someone else's land through a land rental agreement; or

(B) Persons who work exclusively for one (1) landowner and apply nutrients incidental to other services provided to the landowner.

(b) **Certified commercial applicator.** A person seeking certification to apply nutrients and who derives a substantial portion of income from the application of nutrients to land not under his or her ownership or control shall apply to be certified as a certified commercial applicator.

(c) A certified private applicator may apply poultry litter produced on a farm under his or her ownership or control to land not under his or her ownership or control without being considered a certified commercial applicator so long as he or she does not derive a substantial portion of his or her income from such application.

(d) A certified private applicator who owns or operates a poultry farm and who owns cleanout equipment may assist others in the cleanout of poultry houses and the application of poultry litter from those houses without being a certified commercial applicator so long as he or she does not derive a substantial portion of his or her income from such cleanout work.

Authority. Arkansas Code § 15-20-1005.

15 CAR § 5-105. Persons who may apply nutrients without obtaining applicator certification.

(a) When applicator certification is required and circumstances authorize a certified private applicator to apply nutrients, a person may apply nutrients while acting under the supervision and control of a certified applicator as a volunteer or an employee without obtaining certification.

(b) When a certified commercial applicator is contracted to apply nutrients, a person working under his or her direction and control may apply nutrients without

certification so long as the certified commercial applicator accepts responsibility for compliance with this part by employees under his or her direction and control.

Authority. Arkansas Code § 15-20-1005.

Subpart 2. Private Applicator Certification

15 CAR § 5-201. Requirements for private applicator certification.

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

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

(2) Attending the certified private applicator training course on proper nutrient application provided by the commission or its delegate; and

(3) Submitting a thirty-dollar certification fee.

(b) No examination is required for certified private applicator applicants.

Authority. Arkansas Code §§ 15-20-1005, 15-20-209.

15 CAR § 5-202. Review of application.

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

(b)(1) The commission will:

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

(B) Specify why the application is incomplete.

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

(c) If the applicant meets all requirements and attends the certified private applicator training course, certification will be issued.

(d) An applicant denied certification may request review of the decision pursuant to Organization and General Operation of the Arkansas Natural Resources Commission, 15 CAR pt. 1.

Authority. Arkansas Code § 15-20-1005.

15 CAR § 5-203. Private applicator certification training.

The Arkansas Natural Resources Commission or its delegate shall periodically provide certified private applicator training sessions.

Authority. Arkansas Code § 15-20-1005.

Subpart 3. Commercial Applicator Certification

15 CAR § 5-301. Requirements for commercial applicator certification.

An applicant may obtain commercial applicator certification by satisfying all of the following requirements:

- (1) Satisfactorily completing and submitting an application form to the Arkansas Natural Resources Commission;
- (2) Attending the certified commercial applicator training course on proper nutrient application provided by the commission or its delegate;
- (3) Obtaining a passing score on the certified commercial applicator examination administered by the commission or its delegate;
- (4) Submitting a sixty-dollar certification fee; and
- (5) Submitting a twenty-five-dollar testing fee.

Authority. Arkansas Code §§ 15-20-1005, 15-20-209.

15 CAR § 5-302. Review of application.

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

(b)(1) The commission will:

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

(B) Specify why the application is incomplete.

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

Authority. Arkansas Code § 15-20-1005.

15 CAR § 5-303. Certified commercial applicator training.

The Arkansas Natural Resources Commission or its delegate shall periodically provide certified commercial applicator training prior to scheduled examinations.

Authority. Arkansas Code § 15-20-1005.

15 CAR § 5-304. Examination.

(a)(1) The Arkansas Natural Resources Commission or its delegate will periodically provide written examinations to certified commercial applicator applicants 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 passing scores 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 individual to submit new testing fees.

Authority. Arkansas Code §§ 15-20-1005, 15-20-209.

15 CAR § 5-305. Notification of commercial applicator certification.

(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 Organization and General Operation of the Arkansas Natural Resources Commission, 15 CAR pt. 1.

Authority. Arkansas Code § 15-20-1005.

Subpart 4. Maintaining Certification

15 CAR § 5-401. 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 certified nutrient applicator 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

requirements for certified commercial applicators, unless waived by the Arkansas Natural Resources Commission for good cause.

Authority. Arkansas Code § 15-20-1005.

15 CAR § 5-402. Renewal of certification.

(a) A certified private applicator 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; and
- (2) Payment of a thirty-dollar renewal fee to the Arkansas Natural Resources Commission.

(b) A certified commercial applicator 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 sixty-dollar renewal fee; and
- (3) Completion of at least four (4) hours of continuing education preapproved by the commission within the last five (5) years.

(c) If the certified nutrient applicator has knowingly violated commission rules or refused to pay fines assessed by the commission, the commission may choose to deny recertification.

Authority. Arkansas Code §§ 15-20-1005, 15-20-209.

15 CAR § 5-403. Requirement to keep current address on file.

(a) A certified nutrient applicator 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 § 15-20-1005.

15 CAR § 5-404. Continuing education for commercial applicators.

(a)(1) A certified commercial applicator must have proof of four (4) approved continuing education credits completed during the previous five (5) 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 application.

(b) An applicator may take either:

(1) Continuing education courses provided by the commission; or

(2) Preapproved classes provided by third parties.

Authority. Arkansas Code § 15-20-1005.

15 CAR § 5-405. Approval of third-party courses.

(a)(1) Continuing education 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 application; 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 commercial applicators are also responsible for:

- (A) Obtaining proof of attendance; and
- (B) Sending that proof to the commission whenever certification is

renewed.

Authority. Arkansas Code § 15-20-1005.

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

15 CAR § 5-501. 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 § 15-20-1005.

15 CAR § 5-502. Consideration of 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 § 15-20-1005.

15 CAR § 5-503. 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 subdivision (1) or (2) of this section.

Authority. Arkansas Code § 15-20-1005.

15 CAR § 5-504. 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 § 15-20-1005.

15 CAR § 5-505. 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 subdivision (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 § 15-20-1005.

Subpart 6. Record Keeping

15 CAR § 5-601. Maintaining records.

(a) The Arkansas Natural Resources Commission may periodically inspect nutrient application records for compliance with this part.

(b) A certified nutrient applicator shall maintain the following application records for a period of not less than five (5) years from the date the application was made, including:

- (1) Type and amount of nutrients applied by field;
- (2) The source or sources of nutrients applied by field;
- (3) The location of the field or fields where nutrients were applied;
- (4) The date of application by field;
- (5) The application rate used by field;
- (6) The name and address of the person or business for whom the nutrients were applied; and
- (7) The cover vegetation by field.

(c) A certified commercial applicator shall provide the landowner with a copy of the application record.

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

Authority. Arkansas Code § 15-20-1005.

Subpart 7. Fees

15 CAR § 5-701. Fees.

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

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

- (1) Certification fee for certified private applicator, thirty dollars (\$30.00);
- (2) Certification fee for certified commercial applicator, sixty dollars (\$60.00);
- (3) Examination fee, twenty-five dollars (\$25.00);
- (4) Recertification fee for certified private applicator, thirty dollars (\$30.00);

and

(5) Recertification fee for certified commercial applicator, sixty dollars (\$60.00).

(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 §§ 15-20-1005, 15-20-1008, 15-20-209.

Subpart 8. Penalty for Noncompliance

15 CAR § 5-801. Noncompliance.

It shall be a violation of the Arkansas Soil Nutrient Management Planner and Applicator Certification Act, Arkansas Code § 15-20-1001 et seq., and this part for any certified nutrient applicator 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 application record;
- (3) Fail to promptly provide any application record or to allow the commission access to inspect any records required to be kept by this part; or
- (4) Violate any other requirement imposed by rule in this part.

Authority. Arkansas Code § 15-20-1005.

15 CAR § 5-802. Review of suspected noncompliance.

(a)(1) Upon complaint or suspicion of suspected violation of 15 CAR § 5-701, Arkansas Natural Resources Commission or conservation district staff may:

- (A) Investigate; and

(B) 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 § 15-20-1005.

15 CAR § 5-803. Administrative penalties.

(a)(1) Upon the first violation of this part by a certified nutrient applicator within any one-year period, the applicator 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) 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 the Arkansas Soil and Nutrient Management Planner and Applicator Certification Act, Arkansas Code § 15-20-1001 et seq., and this part.

(4) Following the third violation, the Arkansas Natural Resources Commission may also choose to suspend, revoke, annul, or withdraw the certified nutrient applicator'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:

(A) Sign an administrative consent order; and

(B) Thereby agree to the penalties contained within the order.

(2) The certified nutrient applicator 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 applicator 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 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 the Arkansas Soil and Nutrient Management Planner and Applicator Certification Act, Arkansas Code § 15-20-1001 et seq., until the accused person has:

- (1) Executed an administrative consent order; or
- (2) Been given opportunity for a hearing to review the decision under 15 CAR pt. 1.

Authority. Arkansas Code §§ 15-20-1005, 15-20-1008.

15 CAR § 5-804. 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 § 15-20-1005.

15 CAR § 5-805. Reinstatement after suspension.

No certified nutrient applicator whose certification has been suspended 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 § 15-20-1005.

15 CAR § 5-806. Recertification after revocation.

(a) No certified nutrient applicator 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 § 15-20-1005.

Subpart 9. Appeals Procedure

15 CAR § 5-901. 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 the 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 § 15-20-1005.