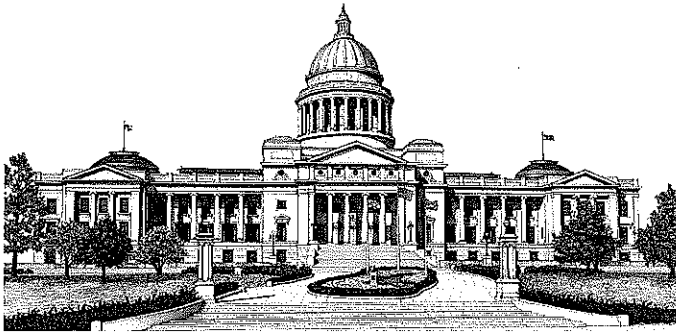


ARKANSAS REGISTER

Transmittal Sheet

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Use Only:

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Department Legal Division

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Crystal Phelps crystal.phelps@arkansas.gov

May 18, 2018

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

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Title

May 18, 2018

Date

Arkansas Natural Resources Commission
Rules Governing the Arkansas Nutrient Management
Planner Certification Program
Title 20
(amended June 1, 2018)

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Arkansas Natural Resources Commission
Rules Governing the Arkansas Nutrient Management
Planner Certification Program
(amended June 1, 2018)

Subtitle I. General provisions

Section 2001.1 Purpose.

A. These rules govern the 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 ground water and surface water from excessive nutrient enrichment.

C. Plans contain operating procedures based on expected crop type, existing nutrient levels in the soil, organic residuals, optimum timing and placement of nutrients, environmental resource protection, and agronomic practices such as liming, tillage, and crop rotation.

D. The Commission shall certify the competence of individuals to prepare these plans and determine information to be contained in nutrient management plans. The training provided by the Commission or its delegate shall at a minimum meet the United States Department of Agriculture Natural Resource Conservation Service conservation practice standards for Arkansas. 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.

Section 2001.2 Enabling and pertinent legislation.

A. Arkansas Code Annotated § 8-4-101 et seq., "Arkansas Water and Air Pollution Control Act."

B. Ark. Code Ann. §15-20-201 et seq., "Arkansas Natural Resources Commission Act."

C. Ark. Code Ann. §15-20-1001 et seq., "Arkansas Soil Nutrient Management Planner and Applicator Certification Act."

D. Ark. Code Ann. § 25-15-201 et seq., "Arkansas Administrative Procedure Act."

E. Ark. Code Ann. § 17-1-106, Licensure, certification, or permitting of active duty service members, returning military veterans, and spouses.

Section 2001.3 Definitions.

A. "Administrative consent order" means a legal agreement signed by the Director and a certified nutrient planner.

B. "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 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).

1. 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 years have passed since the plan was drafted or revised

2. However, any updates to that nutrient management plan within that five-year period must be conducted in a compliance with the index effective at the time of update

C. "Certified nutrient planner" means a person who has been certified by the Commission as competent to develop nutrient management plans.

D. "Commission" means the Arkansas Natural Resources Commission as described in Ark. Code Ann. §15-20-201, et seq.

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

F. "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.

G. "Director" means the Executive Director of the Arkansas Natural Resources Commission

H. "Litter" means byproducts associated with the confinement of livestock, including excrement, feed wastes, bedding materials, composted carcasses, and any combinations thereof.

I. "Livestock" means animals kept or raised for use or pleasure, especially farm animals kept for use and profit, including horses, cattle, swine, and poultry.

J. "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, Litter, compost as fertilizer, commercially manufactured chemical or organic fertilizers, sewage sludge, or combinations thereof.

K. "Nutrient management plan" means a documented record of how nutrients will be managed on a nutrient management unit prepared in accordance with United States Department of Agriculture 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.

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

M. "Returning Military Veteran" means a former member of the United States Armed Forces who was discharged from active duty under circumstances other than dishonorable.

N. "Warning letter" means a written description signed by the Director of a violation of this Title 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.

Section 2001.4 Duties of other state agencies.

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

Subtitle II. Requirements for certification

Section 2002.1 Eligibility for certification.

A. An applicant may obtain certification by satisfying all of the following requirements:

1. Satisfactorily completing and submitting to the 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 \$100.00 certification fee; and
5. Submitting a \$25.00 testing fee.

B. Anyone initially certified or in the process of certification by the Natural Resources Conservation Service (NRCS) as a nutrient management planner prior to the effective date of these rules who provides acceptable proof of certification to the Commission will be recognized as certified under this Title without further testing or training and may have certification fees waived by the Director. Persons initially certified by the NRCS must still attain required continuing education credit to be re-certified under this Title.

Section 2002.2 Review of application.

A. The application and supporting documentation to obtain certification will be reviewed by the Commission. The Commission will inform the applicant in writing if it determines that the application is incomplete and will specify why the application is incomplete. When a completed application, supplemental application, or requested information is returned, the Commission will continue action on the application.

Section 2002.3 Training course.

The 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.

Section 2002.4 Examination.

A. The Commission or its delegate shall administer certified nutrient planner certification examinations at least once per year for a \$25.00 examination fee that must be paid prior to sitting for the test. 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. If an applicant does not achieve a passing score on the examination, he or she may retake the examination at the next scheduled time. An applicant may retake the examination one time with no additional charge by resubmitting the application for certification.

D. All applications must be received ten days prior to the examination date set by the Commission.

E. An applicant who is unable to take an examination at the scheduled time shall notify the Commission at least five days prior to the date and time of the examination. The applicant will be rescheduled for the next examination. Failure to timely notify the Commission may require the applicant to submit new testing fees.

Section 2002.5 Notification of results.

A. Each applicant shall be notified of results in writing within sixty days of the completion of the examination and shall also 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 Commission Rules, Title I, Rules of Organization and General Operation of the Arkansas Natural Resources Commission.

Subtitle III. Maintaining certification

Section 2003.1 Term of certification.

A. Certification shall be valid for a period of five 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 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.

Section 2003.2 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 \$100 renewal fee to the Commission; and
3. Completion of at least four (hours of continuing education pre-approved by the Commission within the last five 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.

Section 2003.3 Requirement to keep current address on file.

A. A certified nutrient planner is required to provide the Commission with current address and other requested contact information within fifteen 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. Service of notice sent by mail will be addressed to the most recent address on file with the Commission. 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 may be considered refusal to accept mail which is a violation of this Title and could result in disciplinary action.

Section 2003.4 Continuing education.

A. A certified nutrient planner must have proof of four approved continuing education credits completed during the five previous years to renew his or her certification. Each continuing education credit refers to an hour of instruction, approved for credit by the Commission and designed to provide further knowledge of nutrient management planning.

B. A certified nutrient planner may either take continuing education courses provided by the Commission or pre-approved classes provided by third parties.

Section 2003.5 Approval of third party courses.

A. Programs submitted for pre-approval shall be considered by the Commission only if the sponsor or attendee submits a written description. The description must include the names and qualifications of the presenters, the time and location, the proposed number of credits, and the program's objectives. Programs may be held within or outside the state, and must be related to Nutrient management planning or compliance with the Commission's Rules and other governmental and industry requirements. The Commission at its discretion may approve a course for credit after the course has taken place.

B. Program sponsors must provide written proof of attendance to attendees following each event and must provide the Commission with a list or lists of attendees by January 1 of each year. Certified nutrient planners are also responsible for obtaining proof of attendance and sending that proof into the Commission when certification is renewed.

Subtitle IV. Record keeping.

Section 2004.1 Maintaining plans.

A. The Commission may periodically inspect nutrient management plans prepared by certified nutrient planners and other records for compliance with this Title. 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 all nutrient management plans prepared for each landowner or operator and the dates the plans were prepared or revised.

C. The records required by this section shall not be public records.

Section 2004.2 Quarterly activity reports.

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

1. name and certificate number of the certified nutrient planner; and
2. number of nutrient management plans completed.

Subtitle V. Rules applicable to active duty service members, returning military veterans, and spouses

Section 2005.1 Consideration of military training and experience in lieu of experience or education.

When considering an application for licensure, the Commission shall:

- A. Consider whether or not the applicant's military training and experience is substantially similar to experience or education required for certification; and
- B. 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.

Section 2005.2 Consideration of equivalent out-of-state certification.

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

1. Holds a substantially equivalent certification issued by another state who is in good standing with that state; and
2. Is one 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 (2)(A) or (B).

Section 2005.3 Expedited certification.

The Commission shall expedite the certification process for the following individuals:

1. A 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 (1) or (2) of this section.

Section 2005.4 Certification expiration. A certification issued by the 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.

Section 2005.5 Continuing education exemption.

A. The 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 (1) or (2) of this section.

B. The Commission may require the completion of continuing education before issuing a subsequent certification for renewal purposes.

Subtitle VI. Fees

Section 2006.1 Fees.

A. Fees are non-refundable and shall not be prorated.

B. The Commission will assess the following fees:

1. Certification = \$100.00;
2. Examination fee = \$25.00; and
3. Re-certification = \$100.00.

C. 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 VII. Penalty for noncompliance

Section 2007.1 Noncompliance.

It shall be a violation of Ark. Code Ann. § 15-20-1001 et seq. and these rules for a certified nutrient planner to:

1. Provide misleading, false, or fraudulent information in applying for certification;
2. Provide the 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 Title XXII, Rules Governing the Arkansas Soil Nutrient and Poultry Litter Application and Management Program;
4. Fail to promptly provide any record or plan or to allow the Commission access to inspect any records required to be kept by these rules; or
5. Violate any other requirement imposed by rule in this Title.

Section 2007.2 Review of suspected noncompliance.

A. Upon complaint or suspicion of suspected violation of 2006.1, Commission or conservation district staff may investigate and recommend disciplinary action to the Director.

1. Anyone providing information to the Commission about a possible violation must provide a written complaint stating the complainant's legal name and current mailing and physical addresses. The complaint must be verified by the notarized signature of the complainant.

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

B. 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. 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 violation and the resulting corrective or disciplinary action. 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.

Section 2007.3 Administrative penalties.

A. Upon the first violation of these rules by a certified nutrient planner within any one-year period, the Planner shall be issued a warning letter. For the second violation within any one-year period, the Director may assess not more than fifty dollars (\$50) in cumulative civil penalties. 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 Ark. Code Ann. §15-20-1001 et seq. and this Title. Following the third violation, the 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 certified mail, restricted delivery, return receipt requested to the address on file with the Commission or district or by any means sufficient for service of process in a civil court action.

C. The alleged violator may choose to sign an administrative consent order and thereby agree to the penalties contained within the order. The certified nutrient planner will also be deemed to have consented to the order if he or she fails to respond and the Commission has received a certified mail receipt or other proof showing that the alleged violator was served with the administrative consent order.

D. 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 days by requesting a hearing before the Commission. The hearing will be conducted in accordance with Commission Rules, Title I. 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. The Commission will not take final administrative action against persons accused of violating this Title or Ark. Code Ann. § 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 Title I.

Section 2007.4 Emergency action.

If the 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 days pursuant to Title I.

Section 2007.5 Reinstatement after suspension.

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

Section 2007.6 Re-certification after revocation.

No certified nutrient planner whose certification has been revoked will be recertified until the individual satisfies any condition imposed by the Commission or the Director as a condition of re-certification. No individual will be re-certified unless the Commission approves re-certification by a majority vote.

Subtitle VII. Appeals procedure

Section 2008.1 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.