

ARKANSAS REGISTER

Transmittal Sheet

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For Office

Use Only:

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Name of Agency Arkansas Natural Resources Commission

Department Legal Division

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Contact Person

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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

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Date

Arkansas Natural Resources Commission
Rules Governing the Arkansas Nutrient Management
Applicator Certification Program
Title 21
(amended June 1, 2018)

<u>Subtitle</u>	<u>Page</u>
I. General provisions	
2101.1 Purpose.....	1
2101.2 Enabling and pertinent legislation	1
2101.3 Definitions.....	1
2101.4 Duties of other state agencies	2
2101.5 Distinction between private and commercial applicators	2
2101.6 Persons who may apply nutrients without obtaining applicator certification	3
II. Private applicator certification	
2102.1 Requirements for private applicator certification	3
2102.2 Review of application	4
2102.3 Private applicator certification training	4
III. Commercial applicator certification	
2103.1 Requirements for commercial applicator certification	4
2103.2 Review of application	4
2103.3 Certified commercial applicator training	4
2103.4 Examination	5
2103.5 Notification of commercial applicator certification.....	5
IV. Maintaining certification	
2104.1 Term of certification	5
2104.2 Renewal of certification.....	5
2104.3 Requirement to keep current address on file.....	6
2104.4 Continuing education for commercial applicators	6
2104.5 Approval of third party courses	6
V. Rules applicable to active duty service members, returning military veterans, and spouses	
2105.1 Consideration of military training and experience in lieu of experience or education.....	7
2105.2 Consideration of equivalent out-of-state certification	7
2105.3 Expedited certification	7
2105.4 Certification expiration	7
2105.5 Continuing education exemption	8

VI. Record keeping	
2106.1 Maintaining records	8
VII. Fees	
2107.1 Fees	8
VIII. Penalty for noncompliance	
2108.1 Noncompliance	9
2108.2 Review of suspected noncompliance	9
2108.3 Administrative penalties	9
2108.4 Emergency action.....	10
2108.5 Reinstatement after suspension.....	10
2108.6 Re-certification after revocation	10
XI. Appeals procedure	
2109.1 Judicial review	11

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

Subtitle I. General provisions

Section 2101.1 Purpose.

A. These rules govern the Arkansas Natural Resources Commission's Nutrient Management Applicator Certification Program for individuals who apply nutrients to land.

B. The Commission shall certify the competence of individuals to apply nutrients and provide training relating to nutrient application. 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, 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.

Section 2101.2 Enabling and pertinent legislation.

A. Arkansas Code Annotated § 15-20-201 et seq., "Arkansas Natural Resources Commission Act."

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

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

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

Section 2101.3 Definitions.

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

B. "Certified nutrient applicator" means a person who has been certified by the Commission as competent to apply nutrients to land and includes certified commercial applicators and certified private applicators.

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

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

E. “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.

F. “Director” means the Executive Director of the Arkansas Natural Resources Commission.

G. “Litter” means byproducts associated with the confinement of livestock, including excrement, feed wastes, bedding materials, composted carcasses, and any other combinations thereof.

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

I. “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.

J. “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.

K. “Nutrient Surplus Area” means a defined geographic area, declared by Ark. Code Ann. § 15-20-1104 which has been determined to be an area in which the soil concentration of one 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.

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 2101.4 Duties of other state agencies.
The provisions of this chapter shall not limit the powers of other state agencies.

Section 2101.5 Distinction between private and commercial applicators.

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

1. Land controlled by a person through a means other than property ownership would include but is not limited to farmers farming someone else's land through a land rental agreement or persons who work exclusively for one landowner and apply nutrients incident 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 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 ownership or control to land not under his ownership or control without being considered a certified commercial applicator so long as he does not derive a substantial portion of his 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 does not derive a substantial portion of his income from such cleanout work.

Section 2101.6 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 direction and control may apply nutrients without certification so long as the certified commercial applicator accepts responsibility for compliance with these rules by employees under his direction and control.

Subtitle II. Private applicator certification

Section 2102.1 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 Commission;
2. Attending the certified private applicator training course on proper nutrient application provided by the Commission or its delegate; and
3. Submitting a \$30.00 certification fee.

B. No examination is required for certified private applicator applicants.

Section 2102.2 Review of application.

A. The application and supporting documentation to obtain certification will be reviewed by the Commission staff.

B. 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 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 Commission Rules, Title I, Rules of Organization and General Operation.

Section 2102.3 Private applicator certification training.

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

Subtitle III. Commercial applicator certification

Section 2103.1 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 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 \$60.00 certification fee; and
5. Submitting a \$25.00 testing fee.

Section 2103.2 Review of application.

A. The application and supporting documentation to obtain certification will be reviewed by the Commission staff.

B. 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 staff will continue action on the application.

Section 2103.3 Certified commercial applicator training.

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

Section 2103.4 Examination.

A. The Commission or its delegate will periodically provide written examinations to certified commercial applicator applicants 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 passing scores 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 individual to submit new testing fees.

Section 2103.5 Notification of commercial applicator certification.

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.

Subtitle IV. Maintaining certification

Section 2104.1 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 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 Commission for good cause.

Section 2104.2 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 \$30.00 renewal fee to the 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 \$60.00 renewal fee; and
3. Completion of at least four hours of continuing education pre-approved by the Commission within the last five 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 re-certification.

Section 2104.3 Requirement to keep current address on file.

A. A certified nutrient applicator 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 2104.4 Continuing education for commercial applicators.

A. A certified commercial applicator must have proof of four approved continuing education credits completed during the previous five 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 application.

B. An applicator may either take continuing education courses provided by the Commission or pre-approved classes provided by third parties.

Section 2104.5 Approval of third party courses.

A. Continuing education 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 application 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 commercial applicators are also responsible for obtaining proof of attendance and sending that proof into the Commission whenever certification is renewed.

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

Section 2105.1 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 2105.2 Consideration of 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 2105.3 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 2105.4 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 2105.5 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. Record keeping

Section 2106.1 Maintaining records.

A. The Commission may periodically inspect nutrient application records for compliance with this Title.

B. A certified nutrient applicator shall maintain the following application records for a period of not less than five 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.

Subtitle VII. Fees

Section 2107.1 Fees.

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

B. The Commission will assess the following fees:

1. Certification fee for certified private applicator = \$30.00;
2. Certification fee for certified commercial applicator = \$60.00;
3. Examination fee = \$25.00;
4. Re-certification fee for certified private applicator = \$30.00; and
5. Re-certification fee for certified commercial applicator = \$60.00.

C. All fees collected by the Commission through any penalty assessed under this Title shall be deposited in the state treasury and shall be to operate the programs administered by the Commission through Titles 19, 20, 21, and 22 of the Commission's rules.

Subtitle VIII. Penalty for noncompliance

Section 2108.1 Noncompliance.

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

1. Provide misleading, false, or fraudulent information in applying for certification;
2. Provide the 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 these rules; or
4. Violate any other requirement imposed by rule in this Title.

Section 2108.2 Review of suspected noncompliance.

A. Upon complaint or suspicion of suspected violation of 2107.1, 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 2108.3 Administrative penalties.

A. Upon the first violation of these rules by a certified nutrient applicator within any one-year period, the applicator 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 applicator'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 applicator 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 applicator 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 2108.4 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 2108.5 Reinstatement after suspension.

No certified nutrient applicator whose certification has been suspended will be reinstated until the individual satisfies any condition imposed by the Commission or the Director as a condition of reinstatement.

Section 2108.6 Re-certification after revocation.

No certified nutrient applicator whose certification has been revoked will be re-certified 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 IX. Appeals procedure

Section 2109.1 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 the 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, § 25-15-201 et. seq.