

ARKANSAS REGISTER

Proposed Rule Cover Sheet



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**Arkansas Natural Resources Commission
Rules Governing the Arkansas Nutrient Management
Applicator Certification Program
Title 21
(amended June 1, 2018 2020)**

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**Arkansas Natural Resources Commission
Rules Governing the Arkansas Nutrient Management
Applicator Certification Program
(amended June 1, 2018, 2020)**

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~~ Natural Resources Division 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~~ Division 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~~ shall apply nutrients in accord with certified nutrient applicator training.

C. The ~~Commission~~ Division 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 ~~D~~. 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. Automatic licensure for active duty service members, returning military veterans, and spouses, Act 820 of 2019.~~

E. Ark. Code Ann. § 17-1-107, Reinstatement of licenses, Act 1011 of 2019.

F. Ark. Code Ann. § 17-1-108, Expedited temporary and provisional licensure, Acts 426 and 1011 of 2019.

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~~ Natural Resources Division 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~~ 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.

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

G. “Division” or “Natural Resources Division” references the Department of Agriculture employees responsible for carrying out the functions of the Arkansas Natural Resources Commission.

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

~~H~~ 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.

~~I~~ 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.

~~J~~ 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.

~~K~~ L. “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~~ M. “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(1). 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.

‡ (2). 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 private 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 the following requirements:

1. Satisfactorily completing and submitting an application form to the ~~Commission~~ Natural Resources Division;

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

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

C(1). Because a person obtaining private applicator certification does not obtain certification to engage in the profession of nutrient application, “private applicator certification” does not qualify as “occupational licensure” for reinstatement pursuant to Ark. Code Ann. § 17-1-107, reciprocity or temporary licensure pursuant to Ark. Code Ann. § 17-1-108, or occupational criminal background checks pursuant to Ark. Code Ann. § 17-3-101 et seq.

(2). The Division offers private applicator certification as a convenience to persons who primarily seek certification to apply nutrients to their own land, enabling such individuals to apply nutrients without hiring a commercial applicator or satisfying the more rigorous requirements necessary for commercial applicator certification.

Section 2102.2 Review of application.

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

B. The ~~Commission~~ Natural Resources Division 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~~ Natural Resources Division 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~~ Natural Resources Division 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 the following requirements:

1. Satisfactorily completing and submitting an application form to the ~~Commission~~ Natural Resources Division;
2. Attending the certified commercial applicator training course on proper Nutrient application provided by the ~~Commission~~ Natural Resources Division or its delegate;
3. Obtaining a passing score on the certified commercial applicator examination administered by the ~~Commission~~ Natural Resources Division 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 Natural Resources Division;

B. The ~~Commission~~ Natural Resources Division 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~~ Division will continue action on the application.

Section 2103.3 Certified commercial applicator training.

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

Section 2103.4 Examination.

A. The ~~Commission~~ Natural Resources Division 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~~ Division may limit the number of applicants taking the examination based upon available examination space.

B. The ~~Commission~~ Division shall establish passing scores for the examination based on the ~~Commission's~~ Division'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~~ Division.

E. An applicant who is unable to take an examination at the scheduled time shall notify the ~~Commission~~ Division 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~~ Division 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~~ fourteen 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.

Section 2103.6 Required qualifications for reciprocity.

An applicant applying for reciprocal certification as a commercial applicator shall meet the following requirements:

1. The applicant holds a substantially similar certification from another state, territory, or district of the United States;

a. The certification will be deemed substantially similar to Arkansas's certification if the other jurisdiction's certification qualifications require knowledge of the following:

i. The Arkansas Phosphorous Index, the risk-based assessment tool referenced in nutrient management plans developed to govern the terms and conditions under which nutrients may be land-applied in Arkansas; and

ii. The Arkansas Natural Resources Commission's Rules Governing the Arkansas Soil Nutrient and Poultry Litter Application and Management Program;

b. The applicant holds certification in good standing;

c. The applicant shall not have had a certification revoked for an act of bad faith or a violation of law, rule, or ethics; and

d. The applicant does not hold a suspended or probationary license in another state, territory, or district of the United States;

2. The applicant shall be sufficiently competent in nutrient management application.

Section 2103.7 Required documentation for reciprocity.

An applicant shall submit a fully-executed application, required application and testing fees, and the documentation described below.

A. As evidence that the applicant's certification from another jurisdiction is substantially similar to Arkansas's, the applicant shall submit the following information:

1. Evidence of current and active certification from another jurisdiction; and

2. Evidence that the other jurisdiction's certification requirements match those listed in Section 2103.6(1)(a).

B. To demonstrate that the applicant meets requirements listed at Section 2103.6(1)(b) – (d), the applicant shall provide the Division with:

1. The names of all states in which the applicant is currently certified or has previously been certified; and

2. Letters of good standing or other information from the licensing entity of each jurisdiction in which the applicant is currently certified or has previously been certified showing that the applicant has not had his certificate revoked for an act of bad faith or a violation of law, rule, or ethics and does not hold a certificate on a suspended or probationary status; or

3. As evidence that the applicant is sufficiently competent in the field of nutrient management application, an applicant shall pass the Division's nutrient management application certification test.

Section 2103.8 Temporary and provisional certification.

A. The Natural Resources Division shall issue a temporary and provisional commercial applicator certification immediately upon receipt of the application, the required fee, and the documentation described at Section 2103.7 above.

B. The temporary and provisional license shall be effective for at least ninety (90) days or unless the Division determines that the applicant does not meet the requirements listed at Section 2103.6, in which case the temporary and provisional license shall be immediately revoked.

C. An applicant may provide the rest of the documentation required above in order to receive a license, or the applicant may only provide the information necessary for the issuance of a temporary and provisional certification.

Section 2103.9 Applicant with experience from jurisdiction that does not require certification.

A. An applicant practicing as a commercial nutrient management applicator in a state, territory, or district of the United States that does not require occupational certification shall meet the following requirements:

1. The applicant shall be sufficiently competent in nutrient management application; and

2. Demonstrate knowledge of the following:

i. The Arkansas Phosphorous Index, the risk-based assessment tool referenced in nutrient management plans developed to govern the terms and conditions under which nutrients may be land-applied in Arkansas; and

ii. The Arkansas Natural Resources Commission's Rules Governing the Arkansas Soil Nutrient and Poultry Litter Application and Management Program; Provide documentation describing his or her experience as a nutrient management applicator.

B. An applicant shall submit a fully-executed application, application and testing fees, and pass the Division's certified nutrient applicator examination.

Section 2103.10 Reciprocity and state-specific education.

A. The Natural Resources Division shall require an applicant to take the Division's certified nutrient applicator examination which is based upon the Arkansas Phosphorous Index and the Arkansas Natural Resources Commission's Rules Governing the Arkansas Soil Nutrient and Poultry Litter Application and Management Program if the applicant is licensed in a jurisdiction that does not offer reciprocity to Arkansas residents that is similar to reciprocity to out-of-state applicants in Ark. Code Ann. §17-1-108.

B. Reciprocity in another state will be considered similar to reciprocity under Ark. Code Ann. §17-1-108 if the reciprocity provisions in the other state:

1. Provide the least restrictive path to licensure for Arkansas applicants;

2. Does not require Arkansas applicants to participate in the apprenticeship, education, or training required as a prerequisite to licensure of a new professional in that state, except that the state may require Arkansas applicants to participate in

continuing education or training that is required for all professionals in that state to maintain licensure; and

3. Does not require Arkansas applicants to take a state-specified education unless required under the same conditions described in Ark. Code Ann. §17-1-108.

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~~ Natural Resources Division.

~~B(1).~~ A certified commercial applicator must renew certification prior to the certificate's expiration date by complying with ~~all of~~ the following requirements:

- ~~1~~ a. Submission of the renewal application form;
- ~~2~~ b. Payment of a \$60.00 renewal fee; and
- ~~3~~ c. Completion of at least four hours of continuing education pre-approved by the ~~Commission~~ Division within the last five years.

(2). A person who previously held a commercial nutrient management applicator certification under these rules may obtain re-certification without taking the Division's training course upon submission of a completed application, passage of the Division's test, and payment of a certification fee so long as the person is not otherwise disqualified.

C. If the certified nutrient applicator has knowingly violated Commission rules or refused to pay fines assessed by the Commission or Director, the Commission or Director 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~~ Natural Resources Division with current address and other requested contact information within fifteen working days of change so that the ~~Commission~~ Division 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~~ Division. 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~~ the Division 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~~ Natural Resources Division and designed to provide further knowledge of nutrient management application.

B. An applicator may either take continuing education courses provided by the ~~Commission~~ Natural Resources Division 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~~ Natural Resources Division 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~~ these rules and other governmental and industry requirements. The ~~Commission~~ Division 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~~ Division 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~~ Division whenever certification is renewed.

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

~~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 V. Automatic licensure under Act 820 of 2019

Section 2105.1 Automatic licensure under Act 820.

A. As used in this subsection, "returning military veteran" means a former member of the United States Armed Forces who was discharged from active duty under circumstances other than dishonorable.

B. The Natural Resources Division shall grant automatic licensure to an individual who holds a substantially equivalent license in another U.S. jurisdiction and is:

1. An active duty military service member stationed in the State of Arkansas;
2. A returning military veteran applying for licensure within one (1) year of his or her discharge from active duty; or
3. The spouse of a person under B (1) or (2) above.

C. The Division shall grant such automatic licensure upon receipt of all the below:

1. Payment of the initial licensure fee;
2. Evidence that the individual holds a substantially equivalent license in another state; and
3. Evidence that the applicant is a qualified applicant under Section B.

Subtitle VI. Record-keeping

Section 2106.1 Maintaining records.

A. The ~~Commission~~ Natural Resources Division 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~~ Natural Resources Division 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~~ Division 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~~ Division 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~~ Natural Resources Division with any misleading, false or fraudulent application record;
3. Fail to promptly provide any application record or to allow the ~~Commission~~ Division 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 Section 2107.1, ~~Commission~~ Natural Resources Division or conservation district staff may investigate and recommend disciplinary action to the Director.

1. Anyone providing information to the ~~Commission~~ Division 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 (\$50.00) 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 (\$1,000.00) 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~~ Natural Resources Division 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~~ Division 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~~ Division has the burden of proving the alleged facts and violations of law stated in the administrative consent order. The Commission ~~and the Director or the~~ Commission's designee 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.

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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.*



Asa Hutchinson
Governor

ARKANSAS DEPARTMENT OF AGRICULTURE

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Wes Ward
Secretary of Agriculture

October 21, 2020

Summary of Proposed Amendments to Arkansas Natural Resources Commission Title 21 Rules Governing the Arkansas Nutrient Management Applicator Certification Program

PURPOSE

The Arkansas Department of Agriculture (Department) is seeking review and approval of proposed amendments to rules promulgated by the Arkansas Natural Resources Commission (ANRC) governing the Arkansas Nutrient Management Applicator Certification Program. These rules are referred to as Title 21. The proposed amendments are necessary to comply with legislation passed by the Arkansas General Assembly during the 2019 regular session.

BACKGROUND

The Arkansas Nutrient Management Applicator Certification Program ensures that certified individuals apply nutrients according to plans that protect water from excessive nutrient enrichment. The rules contain provisions for both private and commercial applicators. Generally, an applicant is required to take a mandatory course, pass a competency test, and pay required fees. The ANRC met May 20, 2020 and approved the proposed changes to comply with certain 2019 Acts.

KEY POINTS

The proposed amendments:

- Comply with Act 820 of 2019 which requires occupational licensing entities to promulgate rules regarding portability of licenses for military members and spouses
- Comply with Act 1011 of 2019 which requires occupational licensing entities to promulgate rules providing for reciprocity and temporary licensure
- Clarify language dealing with the internal administration of the Nutrient Management Applicator Certification Program

DISCUSSION

The new additions to the Board's rules were based on model rules drafted by the Attorney General's office. The reciprocity and temporary licensure provisions allow commercial applicators holding similar authorizations in other states to practice in this state while their credentials are being vetted to see if they are substantially similar to Arkansas' requirements. The military licensure provisions grant automatic licensure to active duty military service members, returning military veterans, and their spouses, if they hold a substantially equivalent occupational license in good standing in another state, territory, or district of the United States. These additions will help to reduce any barriers individuals might face in obtaining a license in this state or when returning to the workforce.

The remainder of the revisions to the rules respond to changes brought about by the Act 910 of 2019, the Transformation and Efficiencies Act, by clarifying the role of the Department and that of the ANRC.

QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Arkansas Department of Agriculture/Natural Resources Commission

DIVISION Natural resources

DIVISION DIRECTOR Bruce Holland

CONTACT PERSON Wade Hodge

ADDRESS #1 Natural Resources Drive, Little Rock AR 72205

PHONE NO. 501-219-6361 **FAX NO.** _____

E-MAIL wade.hodge@agriculture.arkansas.gov

NAME OF PRESENTER AT COMMITTEE MEETING Ryan Benefield and Wade Hodge

PRESENTER E-MAIL ryan.benefield@arkansas.gov wade.hodge@agriculture.arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.**
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.**
- C. If you have a method of indexing your rules, please give the proposed citation after “Short Title of this Rule” below.**
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:**

Jessica C. Sutton
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

- 1. What is the short title of this rule? Title 21 rules governing Nutrient Management Applicator Certification Program
- 2. What is the subject of the proposed rule? To comply with 2019 Acts regarding reciprocity and temporary licensure, as well as active duty service members, returning military veterans, and spouses
- 3. Is this rule required to comply with a federal statute, rule, or regulation? Yes___ No X ___
If yes, please provide the federal rule, regulation, and/or statute citation.
- 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes___ No x ___
If yes, what is the effective date of the emergency rule? _____
When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes_____ No_____

5. Is this a new rule? Yes__ ____ No_X ____ If yes, please provide a brief summary explaining the rule.

Does this repeal an existing rule? Yes_____ No_X ____ If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes_X ____No_____ If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. A.C.A. § 15-20-206(a); § 17-1-108; § 17-1-106
7. What is the purpose of this proposed rule? Why is it necessary? See attached summary
8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). www.aad.arkansas.gov
9. Will a public hearing be held on this proposed rule? Yes_____ No _____
If yes, please complete the following: Hearing will be held if requested
Date: December 16, 2020
Time: 10:00am
Place: 1 Natural Resources Drive, Little Rock
10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
11/21/2020
11. What is the proposed effective date of this proposed rule? (Must provide a date.)
2/1/2021
12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice.

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e).
14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Agriculture/Natural Resources Commission
DIVISION Natural Resources
PERSON COMPLETING THIS STATEMENT Wade Hodge
TELEPHONE NO. 501-219-6361 **FAX NO.** _____
EMAIL: wade.hodge@agriculture.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Title 20 rules governing Nutrient Management Planner Certification Program

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes _____ No x__
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes xx_____ No _____
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes x_____ No _____

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;
 - (b) The reason for adoption of the more costly rule;
 - (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and
 - (d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.
4. If the purpose of this rule is to implement a federal rule or regulation, please state the following: N/A
 - (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____ N/A _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____ N/A _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected. N/A

Current Fiscal Year

\$ _____ N/A _____

Next Fiscal Year

\$ _____ N/A _____

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ _____ N/A _____

Next Fiscal Year

\$ _____ N/A _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes _____ No x _____

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously

with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.