

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

Arkansas Natural Resources Commission
Rules Governing the Arkansas Nutrient Management
Planner Certification Program
Title 20
(amended ~~June 1, 2018~~ 2020)

<u>Subtitle</u>	<u>Page</u>
I. General provisions	
2001.1 Purpose.....	1
2001.2 Enabling and pertinent legislation	1
2001.3 Definitions.....	2
2001.4 Duties of other state agencies	3
II. Requirements for certification	
2002.1 Eligibility for certification	3
2002.2 Review of application	3
2002.3 Training course	4
2002.4 Examination	4
2002.5 Notification of results	4
<u>2002.6 Required qualifications for reciprocity</u>	<u>4</u>
<u>2002.7 Required documentation for reciprocity</u>	<u>5</u>
<u>2002.8 Temporary and provisional certification.....</u>	<u>5</u>
<u>2002.9 Applicant with experience from jurisdiction that does not require</u> <u>certification</u>	<u>6</u>
<u>2002.10 Reciprocity and state-specific education</u>	<u>6</u>
III. Maintaining certification	
2003.1 Term of certification	6
2003.2 Renewal of certification.....	7
2003.3 Requirement to keep current address on file.....	7
2003.4 Continuing education.....	7
2003.5 Approval of third-party courses	8

IV. Record keeping	
2004.1 Maintaining plans.....	8
2004.2 Quarterly activity reports	8
V. Rules applicable to active duty service members, returning military veterans, and spouses	
2005.1 Consideration of military training and experience in lieu of experience or education.....	9
2005.2 Consideration of equivalent out of state certification	9
2005.3 Expedited certification	9
2005.4 Certification expiration	9
2005.5 Continuing education exemption	9
<u>v. Automatic licensure under Act 820 of 2019</u>	
2005.1 Automatic licensure under Act 820 of 2019.....	10
VI. Fees	
2006.1 Fees	10
VII. Penalty for noncompliance	
2007.1 Noncompliance	10
2007.2 Review of suspected noncompliance	11
2007.3 Administrative penalties	11
2007.4 Emergency action.....	12
2007.5 Reinstatement after suspension.....	12
2007.6 Re-certification after revocation	12
VIII. Appeals procedure	
2008.1 Judicial review	12

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

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 groundwater 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~~ Natural Resources Division 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~~ Division 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~~ Division 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~~ Automatic licensure for active duty service members, returning military veterans, and spouses, Act 820 of 2019.

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

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

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~~ Division 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~~ 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.

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

H. "Division" or "Natural Resources Division" references the Department of Agriculture employees responsible for carrying out the functions of the Arkansas Natural Resources Commission.

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

~~I~~ J. "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~~ K. "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~~ L. "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~~ 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 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 the following requirements:

1. Satisfactorily completing and submitting to the ~~Commission~~ Natural Resources Division an application form;
2. Attending the certified nutrient planner training course provided by the ~~commission~~ Division or its delegate;
3. Obtaining a passing score on the certified nutrient planner examination administered by the ~~Commission~~ Division or its delegate;
4. Submitting a certification fee; and
5. Submitting a 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.

The application and supporting documentation to obtain certification will be reviewed by the ~~Commission~~ Natural Resources Division. The ~~Commission~~ 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~~ Division will continue action on the application.

Section 2002.3 Training course.

The ~~Commission~~ Natural Resources Division 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~~ Natural Resources Division or its delegate shall administer certified nutrient planner certification examinations at least once per year for an 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 a passing score 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 applicant to submit new testing fees.

Section 2002.5 Notification of results.

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 of the Arkansas Natural Resources Commission.

Section 2002.6 Required qualifications for reciprocity.

An applicant applying for reciprocal certification as a nutrient management planner 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 2002.7 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 2002.6(A).

B. To demonstrate that the applicant meets requirements listed at Section 2002.6(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 2002.8 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 2002.7 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 2002.6, 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 2002.9 Applicant with experience from jurisdiction that does not require certification.

A. An applicant practicing as a commercial nutrient management planner 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 planner.

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

Section 2002.10 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 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(1). A certified nutrient planner must renew certification prior to the certificate's expiration date by complying with the following requirements:

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

~~—B (2).~~ If the certified nutrient planner has knowingly violated Commission rules or refused to pay fines assessed by the Commission or Director, the Commission or Director may choose not to renew certification.

B. A person who previously held a nutrient management planner certification under these rules may choose to obtain re-certification without taking the Natural Resources 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.

Section 2003.3 Requirement to keep current address on file.

A. A certified nutrient planner 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 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-Natural Resources Division~~ 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~~Natural Resources Division 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~~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 planning or compliance with ~~the Commission's Rules~~ 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 nutrient planners are also responsible for obtaining proof of attendance and sending that proof into the ~~Commission~~Division when certification is renewed.

Subtitle IV. Record keeping.

Section 2004.1 Maintaining plans.

A. The ~~Commission~~Natural Resources Division 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~~ the Division 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~~Natural Resources Division, 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 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. Fees

Section 2006.1 Fees.

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

B. The ~~Commission~~ Natural Resources Division will assess the following fees:

1. Certification: \$100.00 (one hundred dollars);
2. Examination fee : \$25.00 (twenty-five dollars); and
3. Re-certification: \$100.00 (one hundred dollars).

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 used to operate the programs administered by the ~~Commission~~ Division 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~~ Natural Resources Division 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~~ Natural Resources Division 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~~ the 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 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 (\$50.00) 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 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~~ 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 planner 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 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 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 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 VIII. 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.*

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 20 rules governing Nutrient Management Planner 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." See attached**

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_x ____ No _____
If yes, please complete the following: Hearing will be held if requested
Date: December 16, 2021
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.



Asa Hutchinson
Governor

ARKANSAS DEPARTMENT OF AGRICULTURE

1 Natural Resources Drive, Little Rock, AR 72205
agriculture.arkansas.gov
(501) 225-1598



Wes Ward
Secretary of Agriculture

October 21, 2020

Summary of Proposed Amendments to Arkansas Natural Resources Commission Title 20 Rules Governing the Arkansas Nutrient Management Planner 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 Planner Certification Program. These rules are referred to as Title 20. 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 Planner Certification Program ensures that certified individuals will prepare nutrient management plans in a manner that optimizes crop production while protecting groundwater and surface water from excessive nutrient enrichment. 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 2019 Acts regarding reciprocity and temporary licensure, as well as licensure of active duty service members, returning military veterans, and spouses
- Shorten the time in which an applicant will be notified of test results
- Clarify language dealing with the internal administration of the Nutrient Management Planner 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 individuals 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 proposed amendments shorten the time in which a planner applicant will be notified of test results from sixty (60) to fourteen (14) days. 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.