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Applicator Certification & Education Statutes & Regulations

Arkansas

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Applicator Certification & Education

STATE OF ARKANSAS

1) Ark. Code Ann. §§ 15-20-1001—1003, 1005, 1006, 1008; 138 00 CARR 2101.1, .3—.6, 2102.1—.3, 2103.1—.5, 2104.1—.5, 2105.1, 2106.1

The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the Arkansas Bureau of Legislative Services.

1) Ark. Code Ann. §§ 15-20-1001—1003, 1005, 1006, 1008; 138 00 CARR 2101.1, .3—.6, 2102.1—.3, 2103.1—.5, 2104.1—.5, 2105.1, 2106.1

15-20-1001. Title.

This subchapter shall be known and may be cited as the "Arkansas Soil Nutrient Management Planner and Applicator Certification Act".

15-20-1002. Legislative intent.

The General Assembly finds that:

- (1) Proper application of nutrients is necessary for maximum soil fertility and proper plant growth;
- (2) Failure to properly apply nutrients to soil may result in a waste of a valuable resource and may negatively impact waters within the state;
- (3) Persons developing soil nutrient plans or applying nutrients to soil should have certain knowledge, skills, and abilities to ensure the proper use of soil nutrients; and
- (4) A certification system must be developed to determine that persons certified have the knowledge, skill, and abilities to properly develop nutrient management plans or properly apply soil nutrients.

15-20-1003. Definitions.

As used in this subchapter:

- (1) "Commission" means the Arkansas Natural Resources Commission;

- (2) "Crop" means any vegetative cover;
- (3) "Executive director" means the Executive Director of the Arkansas Natural Resources Commission;
- (4) "Litter" means byproducts associated with the confinement of livestock, including excrement, feed wastes, bedding materials, composted carcasses, and any combinations thereof;
- (5) "Livestock" means animals kept or raised for use or pleasure, especially farm animals kept for use and profit, including horses, cattle, swine, and poultry;
- (6)
 - (A) "Nutrient" means a substance or recognized plant nutrient, element, or compound that is used or sold for its plant-nutritive content or its claimed nutritive value.
 - (B) "Nutrient" includes litter, compost as fertilizer, commercially manufactured chemical or organic fertilizers, sewage sludge, or combinations thereof;
- (7) "Nutrient application" means the process by which humans apply nutrients to soil or associated crops;
- (8) "Nutrient applicator" means any person who applies nutrients to soil or associated crops;
- (9) "Nutrient management plan" means any plan prepared to assist landowners and operators in the proper management and utilization of nutrient sources for maximum soil fertility and protection of the waters within the state;
- (10)
 - (A) "Nutrient surplus area" means the:
 - (i) Illinois River watershed, included within Benton, Crawford, and Washington counties;
 - (ii) Spavinaw Creek watershed, included within Benton County;
 - (iii) Honey Creek watershed, included within Benton County;
 - (iv) Little Sugar Creek watershed, included within Benton County;

(v) Upper Arkansas River watershed, which includes Lee Creek within Crawford and Washington counties and Massard Creek within Sebastian County;

(vi) Poteau River watershed, included within Polk, Scott, and Sebastian counties;

(vii) Mountain Fork of the Little River watershed, included within Polk County; and

(viii) Upper White River watershed above its confluence with the Crooked Creek.

(B) No additional areas may be added unless the areas are added as nutrient surplus areas pursuant to the Arkansas Soil Nutrient Application and Poultry Litter Utilization Act, § 15-20-1101 et seq.;

(11) "Person" means any natural person; and

(12) "Waters within the state" means all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, including surface and underground, natural or artificial, and public or private, that are contained within, flow through, or border upon this state or any portion of the state.

15-20-1005. Nutrient applicator program.

(a) The Arkansas Natural Resources Commission shall develop and implement a nutrient applicator training and certification program to certify the competence and knowledge of a person making nutrient application, including the proper utilization of litter.

(b)

(1) The applicator certification program is voluntary for nutrient applicators that apply nutrients outside nutrient surplus areas.

(2) The commission may not require a nutrient applicator to become certified unless the applicator intends to apply nutrients within nutrient surplus areas or otherwise utilize litter produced within nutrient surplus areas.

(c) The commission shall promulgate regulations that:

(1) Specify the qualifications and standards for a person to be deemed competent in nutrient application and provide for the issuance of documentation of certification to the person;

- (2) Specify the conditions under which a certification issued may be suspended or revoked;
- (3) Establish fees to be paid by persons enrolling in the training and certification programs; and
- (4) Provide for the performance of other duties and the exercise of other powers by the Executive Director of the Arkansas Natural Resources Commission as may be necessary to provide for the training and certification of a person making nutrient application.

15-20-1006. Procedure.

- (a) The process for the development of regulations and the imposition of administrative penalties shall be conducted pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.
- (b) Any records collected by the Arkansas Natural Resources Commission in furtherance of this subchapter that contain information about a specific nutrient management plan or specific nutrient application shall not be made public record.

15-20-1008. Administrative penalties.

- (a) The Arkansas Natural Resources Commission may impose administrative penalties not to exceed one thousand dollars (\$1,000) per violation against any person violating this subchapter or regulations adopted pursuant to this subchapter.
- (b) The commission or the Executive Director of the Arkansas Natural Resources Commission may issue subpoenas under § 15-22-208.
- (c) If a person against whom an administrative penalty has been imposed by the commission as authorized in this section fails to pay the penalty to the commission, the commission may file an action to collect the administrative penalty in the circuit court of the county in which the person resides.

Section 2101.1 Purpose.

- A. These rules govern the Arkansas Natural Resources Commission's Nutrient Management Applicator Certification Program for individuals who apply nutrients to land.
- B. The Commission shall certify the competence of individuals to apply nutrients and provide training relating to nutrient application. The training provided by the Commission or its delegate shall at a minimum meet the United States Department of Agriculture Natural Resource Conservation Service conservation practice standards for

Arkansas. To maintain certification, a certified nutrient applicator must develop plans in accord with certified nutrient applicator training.

C. The Commission may issue distinct classifications of certification.

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

E. Persons making nutrient application outside nutrient surplus areas are not required to become certified.

Section 2101.3 Definitions.

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

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

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

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

E. "Delegate" means a person or entity appointed by the Director to function in a specific capacity in furtherance of this program and may be another agency, commission, organization, or company, whether public or private.

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

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

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

I. "Nutrient" means a substance or recognized plant nutrient, element, or compound which is used or sold for its plant nutritive content or its claimed nutritive value. The term includes substances found in, but is not limited to, litter, compost as fertilizer, commercially manufactured chemical or organic fertilizers, sewage sludge, or combinations thereof.

J. "Nutrient Management Plan" means a documented record of how nutrients will be managed on a nutrient management unit prepared in accordance with United States Department of Agriculture Natural Resources Conservation Service conservation practice standards for Arkansas to guide and assist landowners and operators in the use of fertilizers, litter, sewage sludges, compost and other nutrient sources for soil fertility and protection of the waters within the state.

K. "Nutrient Surplus Area" means a defined geographic area, declared by Ark. Code Ann. § 15-20-1104 which has been determined to be an area in which the soil concentration of one or more nutrients is so high or the physical characteristics of the soil or area is such that continued application of the nutrient to the soil could negatively impact soil fertility and the waters within the state.

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

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

N. "Warning Letter" means a written description signed by the Director of a violation of this title and the necessary corrective action. A warning letter cannot be used to assess civil penalties, is not appealable to the Commission, and is not final agency action.

Section 2101.4 Duties of Other State Agencies.

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

Section 2101.5 Distinction Between Private and Commercial Applicators.

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

1. Land controlled by a person through a means other than property ownership would include but is not limited to farmers farming someone else's land through a land rental agreement or persons who work exclusively for one landowner and apply nutrients incident to other services provided to the landowner.

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

C. A certified private applicator may apply poultry litter produced on a farm under his ownership or control to land not under his ownership or control without being considered

a certified commercial applicator so long as he does not derive a substantial portion of his income from such application.

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

Section 2101.6 Persons Who May Apply Nutrients Without Obtaining Applicator Certification.

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

B. When a certified commercial applicator is contracted to apply nutrients, a person working under his direction and control may apply nutrients without certification so long as the certified commercial applicator accepts responsibility for compliance with these rules by employees under his direction and control.

Section 2102.1 Requirements for Private Applicator Certification.

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

1. Satisfactorily completing and submitting an application form to the Commission;
2. Attending the certified private applicator training course on proper nutrient application provided by the Commission or its delegate; and
3. Submitting a \$ 30.00 certification fee.

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

Section 2102.2 Review of Application.

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

B. The Commission will inform the applicant in writing if it determines that the application is incomplete and will specify why the application is incomplete. When a completed application, supplemental application, or requested information is returned, the Commission staff will continue action on the application.

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

D. An applicant denied certification may request review of the decision pursuant to Commission Rules, Title I, Rules of Organization and General Operation.

Section 2102.3 Private Applicator Certification Training.

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

Section 2103.1 Requirements for Commercial Applicator Certification.

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

1. Satisfactorily completing and submitting an application form to the Commission;
2. Attending the certified commercial applicator training course on proper Nutrient application provided by the Commission or its delegate;
3. Obtaining a passing score on the certified commercial applicator examination administered by the Commission or its delegate;
4. Submitting a \$ 60.00 certification fee; and
5. Submitting a \$ 25.00 testing fee.

Section 2103.2 Review of Application.

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

B. The Commission will inform the applicant in writing if it determines that the application is incomplete and will specify why the application is incomplete. When a completed application, supplemental application, or requested information is returned, the Commission staff will continue action on the application.

Section 2103.3 Certified Commercial Applicator Training.

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

Section 2103.4 Examination.

A. The Commission or its delegate will periodically provide written examinations to certified commercial applicator applicants for a \$ 25.00 examination fee that must be paid prior to sitting for the test. The Commission may limit the number of applicants taking the examination based upon available examination space.

B. The Commission shall establish passing scores for the examination based on the Commission's determination of the level of examination performance required to show minimal acceptable competence.

C. If an applicant does not achieve a passing score on the examination, he or she may retake the examination at the next scheduled time. An applicant may retake the examination one time with no additional charge by resubmitting the application for certification.

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

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

Section 2103.5 Notification of Commercial Applicator Certification.

A. Each applicant shall be notified of results in writing within sixty days of the completion of the examination and shall also receive notice of whether certification has been approved.

B. An applicant denied certification for a reason other than test failure may request review of the decision pursuant to Commission Rules, Title I, Rules of Organization and General Operation.

Section 2104.1 Term of Certification.

A. Certification shall be valid for a period of five years and will automatically expire on January 1 of the fifth year following certification if the certified nutrient applicator fails to properly renew certification.

B. Following the expiration of a certificate, reinstatement may be accomplished only by reapplication and compliance with all requirements, including the examination requirements for certified commercial applicators unless waived by the Commission for good cause.

Section 2104.2 Renewal of Certification.

A. A certified private applicator must renew certification prior to the certificate's expiration date by complying with all of the following requirements:

1. Submission of the renewal application form and
2. Payment of a \$ 30.00 renewal fee to the Commission.

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

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

C. If the certified nutrient applicator has knowingly violated Commission rules or refused to pay fines assessed by the Commission, the Commission may choose to deny re-certification.

Section 2104.3 Requirement to Keep Current Address on File.

A. A certified nutrient applicator is required to provide the Commission with current address and other requested contact information within fifteen working days of change so that the Commission can advise him or her of updates to law and rules as well as provide notice of complaints and hearings.

B. Service of notice sent by mail will be addressed to the most recent address on file with the Commission. Registered or certified mail sent with proper postage and to the last known address that is returned unclaimed shall be considered adequate notification of notice served.

C. Failure to update Commission staff with current address may be considered refusal to accept mail which is a violation of this Title and could result in disciplinary action.

Section 2104.4 Continuing Education for Commercial Applicators.

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

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

Section 2104.5 Approval of Third Party Courses.

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

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

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 2106.1 Maintaining Records.

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

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

1. Type and amount of nutrients applied by field;
2. The source or sources of nutrients applied by field;
3. The location of the field or fields where nutrients were applied;
4. The date of application by field;

5. The application rate used by field;

6. The name and address of the person or business for whom the nutrients were applied; and

7. The cover vegetation by field.

C. A certified commercial applicator shall provide the landowner with a copy of the application record.

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