



University of Arkansas Division of Agriculture

An Agricultural Law Research Project

## **Applicator Certification & Education Statutes & Regulations**

**Ohio**

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## Applicator Certification & Education

### STATE OF OHIO

1) **ORC Ann. §§ 905.321, 322; OAC Ann. 901:5-4-01–901:5-4-05**

2) **ORC Ann. § 903.07; OAC Ann. 901:10-1-06**

*The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the Ohio Legislative Service Commission.*

1) **ORC Ann. §§ 905.321, 322; OAC Ann. 901:5-4-01–901:5-4-05**

#### **§ 905.321 Certification required.**

(A) Beginning September thirtieth of the third year after the effective date of this section, no person shall apply fertilizer for the purposes of agricultural production unless that person has been certified to do so by the director of agriculture under this section and rules or is acting under the instructions and control of a person who is so certified.

(B) A person shall be certified to apply fertilizer for purposes of agricultural production in accordance with rules. A person that has been so certified shall comply with requirements and procedures established in those rules.

(C) A person that has been licensed as a commercial applicator under section 921.06 of the Revised Code or as a private applicator under section 921.11 of the Revised Code may apply to be certified under this section, but shall not be required to pay the application fee for certification established in rules adopted under section 905.322 of the Revised Code.

#### **§ 905.322 Fertilizer applicator certification program; rules and requirements.**

(A) The director of agriculture shall adopt rules in accordance with Chapter 119. of the Revised Code that do all of the following:

(1) Create a fertilizer applicator certification program pursuant to section 905.321 of the Revised Code that does all of the following:

(a) Educates an applicant for certification on the time, place, form, amount, handling, and application of fertilizer;

(b) Serves as a component of a comprehensive state nutrient reduction strategy addressing all sources of relevant nutrients;

(c) Supports generally practical and economically feasible best management practices.

(2) Establish all of the following concerning certifications that are required by section 905.321 of the Revised Code:

(a) The amount of the fee that must be submitted with an application for certification, if applicable, provided that the fee shall not exceed the fee established in rules adopted under section 921.16 of the Revised Code for a private pesticide applicator license issued under section 921.11 of the Revised Code;

(b) Information that must be included with an application for certification;

(c) Procedures for the issuance, renewal, and denial of certifications;

(d) Grounds for the denial of certifications;

(e) Requirements and procedures governing training that must be successfully completed in order for a person to be certified;

(f) Requirements for the maintenance of records by a person that is certified, including, but not limited to, the date of application of fertilizer, the place of application of fertilizer, the rate of application of fertilizer, an analysis of the fertilizer, and the name of the person applying the fertilizer. The rules shall stipulate that the records shall be maintained for not more than three years from the date of the fertilizer application and shall not be required to be submitted to the director or the director's designee, but shall be made available to the director or the director's designee for review upon request.

(3) Establish requirements and procedures with which a licensee or registrant must comply when filing an annual tonnage report under section 905.36 of the Revised Code, including the date on which the report must be filed.

(B) The director may adopt rules in accordance with Chapter 119. of the Revised Code that do all of the following:

(1) Establish criteria in accordance with which a person may be exempt from any training that is required in order to be certified under section 905.321 of the Revised Code;

(2) Specify any type of cultivation that is to be excluded from the definition of "agricultural production";

(3) Define “under the instructions and control” for the purpose of section 905.321 of the Revised Code.

**901:5-4-01. Definitions.**

(A) "Agricultural nutrient training" means the educational programs which satisfy the requirements of rule 901:5-4-03 of the Administrative Code and which have been approved by the director.

(B) "Agricultural production" means the cultivation, primarily for sale, of plants or any parts of plants on more than fifty acres. "Agricultural production" does not include the use of start-up fertilizer applied through a planter.

(C) "Applicator" means an individual who has applied fertilizer.

(D) "Certificate Holder" means a person who has been certified to apply fertilizer under section 905.321 of the Revised Code and rules adopted in this chapter.

(E) "Director" means the director of the Ohio department of agriculture or an authorized representative thereof.

(F) "Department" means the Ohio department of agriculture.

(G) "Farm operator" means a person who owns, leases, rents, or otherwise controls the land which has had fertilizer applied to it.

(H) "Fertilizer" means any substance containing nitrogen, phosphorus, or potassium or any recognized plant nutrient element or compound, which is used for its plant nutrient content or for compounding mixed fertilizers. Fertilizer does not include lime, limestone, marl, unground bone, water, residual farm products, and animal and vegetable manures unless mixed with fertilizer materials or distributed with a guaranteed analysis.

(I) "Fertilizer application records" means the records required to be created and maintained in accordance with paragraph (A) of rule 901:5-4-04 of the administrative code.

(J) "Fertilizer certificate" means the certificate issued to a person who has been certified to apply fertilizer by the Ohio department of agriculture under Chapter 905. of the Revised Code and the rules adopted under this chapter.

(K) "Immediate family member" means an individual's spouse, parents, children, grandparents, siblings, grandchildren, brother-in-law, sister-in-law, daughter-in-law, son-in-law, mother-in-law, father-in-law, step-parents, step-children, step-siblings, or a legal guardian.

(L) "Under the instructions and control" means that a certificate holder has instructed an applicator as to when, where, and how to apply fertilizer and is located within twenty-five miles distance or two hours time from the applicator at the time of application of fertilizer.

**901:5-4-02. Fertilizer applicator certification.**

(A) Beginning September 30, 2017, no person shall apply fertilizer for the purposes of agricultural production unless either of the following applies:

- (1) That person has been issued a fertilizer certificate by the director; or
- (2) That person is acting under the instructions and control of a certificate holder and is either:
  - (a) An immediate family member of the certificate holder; or
  - (b) An individual employed by the same business or farm as the certificate holder.

(B) An applicant shall be issued a fertilizer certificate if the applicant has satisfied the requirements set out in Chapter 905. of the Revised Code and the rules adopted thereunder, and the following have been received by the director:

- (1) The fee as set forth in paragraph (D) of this rule;
- (2) A completed formal application; and
- (3) Certificate showing that the applicant has successfully completed a fertilizer education course as set forth in rule 901:5-4-03 of the Administrative Code.

(C) A completed formal application on a form prescribed by the director shall include the following:

- (1) Name of the applicant;
- (2) Address of applicant;
- (3) Applicant's date of birth;
- (4) Name of employer, if applicable;
- (5) Address of employer, if applicable;
- (6) Phone number of the applicant; and either

(7) Pesticide applicator license number, if applicable; or

(8) The last four digits of the applicant's social security number.

(D) The initial fee and the renewal fee for a fertilizer certificate shall be thirty dollars per certification period. These fees are non-refundable. These fees are not applicable to the following individuals:

(1) A person who holds a valid and current commercial applicator license under section 921.06 of the Revised Code; and,

(2) A person who holds a valid and current private applicator license under section 921.11 of the Revised Code.

(E) Except for as provided below, the certification period for certificate holders shall commence on the first day of April and shall expire the last day of March of the third year following issuance of the certificate.

(1) The certification period for certificate holders who hold a valid and current commercial applicator license under section 921.06 of the Revised Code shall commence on the first day of October and shall coincide with the certification period associated with their commercial applicator license.

(2) The certification period for certificate holders who hold a valid and current private applicator license under section 921.11 of the Revised Code shall commence on the first day of April and shall coincide with the certification period associated with their private applicator license.

(F) Certificate holders who have completed the renewal education requirements found in paragraph (C) of rule 901:5-4-03 of the Administrative Code but have failed to complete the renewal application process prior to the expiration of their certificate may renew their certificate within one hundred and eighty days after the date of expiration without having to comply with the education requirements of a new applicant found in paragraph (B) of rule 901:5-4-03 of the Administrative Code.

### **901:5-4-03. Education requirements.**

(A) Each applicant for a fertilizer certificate shall successfully complete a department approved agricultural nutrient training course which, at a minimum, educates the applicant on the following:

(1) The proper times to apply fertilizer, including time of day and time of season;

(2) The proper place to apply fertilizer;

- (3) The form of fertilizer that should be applied;
- (4) The proper amount of fertilizer to be applied;
- (5) The storage and handling of fertilizer; and
- (6) The proper fertilizer application techniques.

(B) Each applicant for an initial fertilizer certificate shall complete one of the following educational requirements, if applicable, within twelve months prior to applying for certification:

- (1) A minimum of three hours of agricultural nutrient training as set forth in this rule.
- (2) Individuals whom have demonstrated that they possess adequate knowledge of the fertilizer training requirements set forth in this rule by successfully passing a fertilizer examination approved by the department within twelve months of applying for certification.

(C) Each applicant whom possesses a valid and current fertilizer certificate and wishes to renew their certificate shall complete one of the following educational requirements:

- (1) One hour of agricultural nutrient training as set forth in this rule.
- (2) Individuals may demonstrate that they possess adequate knowledge of the fertilizer training requirements set forth in this rule by successfully passing a fertilizer examination approved by the department within twelve months of applying for certification.
- (3) Individuals whom have obtained their fertilizer certificate within twelve months of applying for a renewal certificate are not required to complete the renewal educational requirements found in paragraphs (C)(1) and (C)(2) of this rule.

(D) Opportunity to take a fertilizer applicator course will be provided at such times and places as approved by the director in consideration of the number and location of requests for courses.

(E) The following individuals are exempted from the education requirements found in this rule:

- (1) Individuals whom have provided evidence that they have completed the training provided in accordance with the "certified crop advisor" program conducted by the "American society of agronomy."

(2) Individuals who hold a valid and current livestock managers certification under section 903.07 of the Revised Code.

**901:5-4-04. Recordkeeping.**

(A) All fertilizer certificate holders shall maintain fertilizer application records. For each application of fertilizer applied for the primary purpose of agricultural production, the certificate holder or the applicator acting under their instructions and control shall document the following information within twenty-four hours of application:

- (1) The date of the application of fertilizer;
- (2) The place of application of fertilizer;
- (3) The number of acres applied;
- (4) The rate of application of fertilizer;
- (5) The total amount of fertilizer applied, by weight or volume;
- (6) An analysis of the fertilizer applied;
- (7) The name of the individual who applied the fertilizer;
- (8) The name of the certificate holder, if applicable;
- (9) The soil conditions at the time of the application;
- (10) The type of application method (soil injected, incorporated, surface, etc.);
- (11) The weather conditions at the time of application, including temperature and precipitation;
- (12) The weather forecast for the day following application; and
- (13) For surface application only, whether the land at the time of application was frozen and/or snow covered.

(B) All individuals acting under the instructions and control of a certificate holder shall transmit all fertilizer application records to the certificate holder within ten days of application.

(C) Fertilizer application records shall be maintained for a period of three years. If applicable, the employer of a certificate holder may elect to maintain the fertilizer application records. If elected, the employer shall maintain the fertilizer application records for a period of three years even if the employee-employer relationship has ended.



The employer must make the records available to the certificate holder and the department of agriculture, upon request.

(D) All fertilizer certificate holders shall transmit all fertilizer application records to the farm operator within thirty days of application.

(E) Fertilizer certificate holders are not required to submit these records to the director, but the records shall be made available to the director or the director's designee for review upon request.

#### **901:5-4-05. Criteria for decision-making.**

The director may deny, suspend, or revoke a fertilizer applicator certificate if the certificate holder or certificate applicant has:

(A) Provided false or misleading information on the application for or renewal application of the fertilizer applicator certificate;

(B) Failed to provide the fee as required in paragraph (D) of rule 901:5-4-02 of the Administrative Code;

(C) Failed to complete the fertilizer applicator education course as outlined in rule 901:5-4-03 of the Administrative Code;

(D) Recklessly applied fertilizer in such a manner that an emergency exists that presents a clear and present danger to human or animal health;

(E) Failed to maintain records as required in rule 901:5-4-04 of the Administrative Code; and

(F) A history of violations of the rules of this chapter.

## **2) ORC Ann. § 903.07**

### **§ 903.07 Livestock manager certification.**

(A) On and after the date that is established in rules by the director of agriculture, both of the following apply:

(1) The management and handling of manure at a major concentrated animal feeding facility, including the land application of manure or the removal of manure from a manure storage or treatment facility, shall be conducted only by or under the supervision of a person holding a livestock manager certification issued

under this section. A person managing or handling manure who is acting under the instructions and control of a person holding a livestock manager certification is considered to be under the supervision of the certificate holder if the certificate holder is responsible for the actions of the person and is available when needed even though the certificate holder is not physically present at the time of the manure management or handling.

(2) No person shall transport and land apply annually or buy, sell, or land apply annually the volume of manure established in rules adopted by the director under division (D)(5) of section 903.10 of the Revised Code unless the person holds a livestock manager certification issued under this section.

(B) The director shall issue a livestock manager certification to a person who has submitted a complete application for certification on a form prescribed and provided by the director, together with the appropriate application fee, and who has completed successfully the required training and has passed the required examination. The director may suspend or revoke a livestock manager certification and may reinstate a suspended or revoked livestock manager certification in accordance with rules.

(C) Information required to be included in an application for a livestock manager certification, the amount of the application fee, requirements regarding training and the examination, requirements governing the management and handling of manure, including the land application of manure, and requirements governing the keeping of records regarding the handling of manure, including the land application of manure, shall be established in rules.

### **OAC Ann. § 901:10-1-06**

#### **§ 901:10-1-06 Certified livestock manager.**

(A) Purpose and applicability.

(1) The management and handling of manure at a major concentrated animal feeding facility, shall be conducted by or under the supervision of a person that has a current livestock manager certification and that is reasonably available to the facility.

(2) No person who is a livestock manure broker shall buy, sell, or land apply annually more than four thousand five hundred dry tons of manure or more than twenty-five million gallons of liquid manure unless the person is a certified livestock manager.

(3) No person who is a livestock manure applicator shall land apply and transport annually more than four thousand five hundred dry tons of manure or more than twenty-five million gallons of liquid manure unless the person is a certified livestock manager.

(4) Any person subject to this rule who is either a livestock manure broker or a livestock manure applicator shall maintain an operating record on forms provided by the department and other forms selected by the livestock manure broker or livestock manure applicator and approved by the director. The operating record shall be retained for a minimum period of five years, shall be made available to the director upon request, and shall record and document in accordance with paragraph (B) of rule 901:10-2-16 of the Administrative Code.

(5) In order for a person to manage or handle manure at a major concentrated animal feeding facility or for a person to either transport and land apply manure or to, buy, sell or land apply annually more than four thousand five hundred dry tons of solid manure or more than twenty-five million gallons of liquid manure in this state, they shall obtain a livestock manager certification from the department. In the alternative, the person may present a certified copy of an equivalent and valid manure manager certification from another state, which has been verified by the director or his designated representative, together with the appropriate fee as listed in the fee rule.

(6) This rule does not apply to a person who is an owner or operator of a concentrated animal feeding facility permitted by the director in accordance with section 903.02 of the Revised Code or section 903.03 of the Revised Code, unless that person applies other manure from another animal feeding facility, concentrated animal feeding facility, or major concentrated animal feeding facility in excess of four thousand five hundred tons per year of solid manure or more than twenty-five million gallons of liquid manure per year.

(7) A person is considered to be under supervision of a certified livestock manager if the holder of the certification is reasonably available, but not necessarily physically present, during the management and handling of manure. The certified livestock manager cannot claim the lack of presence as a defense under Chapter 903. of the Revised Code.

(B) Application and certification procedures.

(1) In order to be a certified livestock manager, the applicant must meet the requirements in paragraphs (D)(1) to (D)(5) of this rule.

(2) The applicant for a livestock manager certification shall file an application on a form provided by the director. The application shall include but not be limited to: address and telephone number of the applicant; the results of the applicant's test results for any examination completed by the applicant as described in paragraphs (D)(1) to (D)(5) of

this rule; and if applicable, the quantity of manure managed or handled by the applicant.

(3) All certifications issued shall expire on December thirty-first of the third year after the year in which the certificate was issued and each December thirty-first triennially thereafter, unless renewed in accordance with this rule. Any certification issued shall be valid for three years and thereafter be subject to renewal. A renewal shall be valid for three years.

(4) The department shall charge an appropriate fee as listed in the fee rule 901:10-1-04 of the Administrative Code for the issuance and renewal of a livestock manager certification.

(5) In order for a certification to be renewed, the holder must accumulate ten hours of continuing education credit over a three year period immediately preceding the date of application.

(C) Enforcement.

(1) The director may suspend, revoke or deny a livestock manager certification if the certified livestock manager:

(a) Engages in fraud or deceit in obtaining a certification; or

(b) Fails to exercise reasonable care, judgment or use of the manager's knowledge and ability in the performance of the duties of a certified livestock manager; or

(c) Is incompetent or otherwise unable to properly perform the duties of a certified livestock manager; or

(d) Has violated or caused to be violated any provision of rules of Chapter 903. of the Revised Code.

(2) If a livestock manager certification is suspended, the suspension shall be in effect for a period of not less than two hundred seventy days. After the required two hundred seventy days has passed and if there is substantial evidence that the conditions leading to the suspension have been corrected, the director may issue a certificate to reinstate the suspended livestock manager certification. A person may apply in writing for reinstatement. The petition must include any relevant facts concerning changes to conditions under which suspension or revocation occurred.

(3) If a livestock manager certification is revoked, the livestock manager has a right to a hearing in accordance with Chapter 119. of the Revised Code.

(4) If a livestock manager certificate is denied, the livestock manager is entitled to a hearing in accordance with Chapter 119. of the Revised Code.

(5) If a certified livestock manager fails to renew his certification within thirty days of its expiration, he or she must make application for certification and meet the requirements of paragraph (B) of this rule.

(6) Violations of section 903.07 of the Revised Code and division (E) of section 903.10 of the Revised Code and this rule will be considered to be category II and low gravity as set forth in rule 901:10-5-04 of the Administrative Code.

(D) Training and examination procedures.

(1) The department may offer a training program and an examination for a livestock manager certification. The applicant shall have knowledge of information on topics that include calculating nutrient values in manure, devising and implementing a plan for the land application of manure, removing manure held in a manure storage or treatment facility and following best management practices for disposal of dead animals and manure management, including practices that control odor and protect the environment. The applicant shall be expected to have knowledge of how to devise and implement a manure management plan and an insect and rodent control plan. In addition, the applicant shall understand the laws and rules related to animal feeding facilities.

(2) An applicant for a livestock manager certification shall pay a fee as required by rule 901:10-1-04 of the Administrative Code.

(3) The director may specify other types of recognized training programs that, if completed, are considered to satisfy the training and examination requirement.

(4) The director has determined that the following training and certification programs satisfy this rule:

(a) If an applicant for a livestock manager certification demonstrates that he or she has the knowledge of information of the topics set forth in paragraph (D)(1) of this rule and that he or she has completed the training provided in accordance with the "certified crop advisor" program conducted by the "American Society of Agronomy" and demonstrates that he or she has successfully passed the examination, then the applicant will be eligible for a certificate issued in accordance with this rule; or

(b) If the applicant for a livestock manager certificate demonstrates that he or she has the knowledge of the information of the topics set forth in paragraph (D)(1) of this rule and that he or she has completed the training and certification of the United States department of agriculture natural resource conservation service relating to being a certified planner to prepare comprehensive nutrient management plans, then the applicant will be eligible for a certificate issued in accordance with this rule.

(5) The department may cooperate with or enter into cooperative agreements with any official agency of the federal government, of this state or its subdivisions, or other academic or private institutions for the purpose of administration of the training and examination portions of Chapter 903. of the Revised Code.

(6) In accordance with section 903.20 of the Revised Code, the director may call upon the concentrated animal feeding facility advisory committee to assist in establishing the standards of training and examination.

(7) Training and examination opportunities will be provided at such times and places as determined by the department in consideration of the number and location of requests.