RULES GOVERNING THE ARKANSAS POULTRY FEEDING OPERATIONS REGISTRATION PROGRAM

TITLE XIX

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RULES GOVERNING THE ARKANSAS POULTRY FEEDING OPERATIONS REGISTRATION PROGRAM

SUBTITLE I. GENERAL PROVISIONS

Section 1901.1 Purpose

A. These rules govern the Commission's Poultry Feeding Operation Registration Program.

B. Poultry Feeding Operations are registered to locate Litter sources and estimate the amount of Litter produced.

C. The Arkansas Soil and Water Conservation Commission shall operate an annual registration program for the purpose of assembling and maintaining information on the number, composition, and practices of Poultry Feeding Operations in the state.

Section 1901.2 Enabling and Pertinent Legislation

A. Arkansas Code Annotated §§15-20-201 et seq., "Arkansas Soil and Water Conservation Commission Act."

B. Ark. Code Ann. §§ 15-20-901 et seq., "Arkansas Poultry Feeding Operations Registration Act."

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

Section 1901.3 Definitions

The following definitions shall apply to all parts of this Title:

A. "Administrative Consent Order" means a legal agreement signed by the Director and the owner or operator of a Poultry Feeding Operation.

B. "Commission" means the Arkansas Soil and Water Conservation Commission, as defined in Ark. Code Ann. §§15-20-201 et seq.

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

D. "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.

E. "Director" means the Executive Director of the Arkansas Soil and Water Conservation Commission.

F. "Land Application" means the application of Litter, in whole or in part, to land.

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

H. "Litter Management System" means any method to dispose or use Litter.

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, livestock manure and Poultry Litter, compost as fertilizer, commercially manufactured chemical fertilizers, sewage sludge or combinations thereof.

J. "Permit" or "Permit Coverage" refers to an authorization to operate that is required by the Environmental Protection Agency's Concentrated Animal Feeding Operations (CAFO) program for Poultry Feeding Operations meeting the size thresholds listed on the Commission's registration form.

K. "Person" means any individual, partnership, company, association, fiduciary, corporation, or any organized group of Persons whether incorporated or not.

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

M. "Poultry Feeding Operation" means any lot or facility where two thousand five hundred (2,500) or more Poultry are housed or confined and fed or maintained on any one day in the preceding twelve-month period. For the purposes of determining the number of animals at an operation, multiple Poultry houses under common ownership are considered to be a single Poultry Feeding Operation if they adjoin each other or if they share a common area or system for the disposal of wastes.

N. "Poultry Integrator" means an entity that processes Poultry for commercial sale.

O. "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.

SUBTITLE II. REGISTRATION PROGRAM

Section 1902.1 Applicability

Persons in the state of Arkansas who own or operate Poultry Feeding Operations where 2,500 or more Poultry are housed or confined on any given day will be required to register annually with the Commission.

Section 1902.2 Registration Period

A. All Poultry Feeding Operations shall register from January 1 to March 31 each year and facilities constructed after March 31 of any year shall register during the next available period of registration.

B. Effective March 31, 2005, all Poultry Feeding Operations shall register in the manner denoted below or be deemed out of compliance and subject to penalties set forth in these regulations.

C. Facilities must annually renew registration by submitting a renewal form and the annual fee.

Section 1902.3 Registration Information

A. Operators shall submit to the Commission or Conservation Districts, on forms to be supplied by the Commission, the following information concerning the previous calendar year:

1. The number and type of birds housed or maintained by the operation;
2. The location of the operation by latitude and longitude and county, township, range, and section;
3. The business address of the owner of the facility;
4. The address of the facility if different from the owner's business address;
5. The type of waste handling system;
6. The type of Litter Management System used;
7. The type of Litter storage system used and the amount of Litter stored;
8. The method used for carcass disposal;
9. The acreage owned, controlled, or used by the Poultry Feeding Operation and used for Land Application of Litter;
10. Tons of Litter produced, removed, transferred or otherwise used by the Poultry Feeding Operation and the type of transfer or usage;
11. The Poultry Integrator or integrators with which the Poultry Feeding Operation has contracted to provide Poultry or Poultry Litter; and
12. Any other relevant information deemed necessary by the Commission.

B. The Conservation District office wherein the majority of the facility is located is available to assist the operator in filling out the registration form.

C. Conservation Districts will collect any fees accompanying the registration form and will deliver the fees to the appropriate agency or department, if applicable.

Section 1902.4 Submission of Materials

A. Registration materials shall be sent to either:

1. Poultry Feeding Operation Registration Program, Arkansas Soil and Water Conservation Commission; Conservation and Education Division; 101 E. Capitol, Suite 350, Little Rock, AR 72201, or

2. The Conservation District office wherein the majority of the facility is located.

B. If the operator is applying for a Permit or Permit Coverage under the Environmental Protection Agency's Concentrated Animal Feeding Operations program and does not directly submit the fee to the District, the operator must mail a copy of the form and fee to the address listed on the form.

Section 1902.5 Requirement to Keep Current Address on File

A. All Persons registering operations are required to provide the Commission or the District wherein the majority of the facility is located with current address and other requested contact information within fifteen (15) working days of change.

B. Mail will be addressed to the most recent address on file with the Commission or District. 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 the Commission or District with current address may be considered refusal to accept mail which is a violation of these rules and could result in disciplinary action.

Section 1902.6 Not a Public Record

A. Registration information collected about an individual Poultry Feeding Operation shall not be public record.

B. Summary information that prevents identification of individual Poultry Feeding Operations shall be a public record.

Section 1902.7 Fees

A. Operation owners shall pay an annual ten dollar ($10) fee for every Poultry Feeding Operation under the owner's control.

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

C. All registration fees collected by the Conservation District shall be used by the District to administer the Poultry Feeding Operation Registration Program.

D. All fees collected by the Commission 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 through Titles 19, 20, 21, and 22 of the Commission's rules.

SUBTITLE III. PENALTY FOR NONCOMPLIANCE

Section 1903.1 Noncompliance

The registered owner must comply with all conditions of registration. It shall be a violation of Ark. Code Ann. §§15-20-901 et seq. and these rules for any Person to:

1. Provide misleading, false, or fraudulent registration information; or
2. Fail to register annually or promptly provide any record or allow the Commission access to inspect any records required to be kept by these rules.

Section 1903.2 Review of Suspected Noncompliance

A. Upon complaint or suspicion of suspected violation of 1903.1, Commission or Conservation District staff may investigate an owner or operator of a Poultry Feeding Operation and may recommend disciplinary action to the Director.

1. Anyone providing information to the Commission about a possible violation must provide the substance of the complaint to the Commission in writing and must provide his legal name and current mailing and physical addresses where the complainant may be contacted. 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 1903.3 Administrative Penalties

A. Upon the first violation of these rules by an owner or operator within any one-year period, the owner or operator shall be issued a Warning Letter. For the second violation within any one-year period, the Director may assess not more than fifty dollars ($50) in cumulative civil penalties. Upon the third violation within any one-year period, the

Director may impose a penalty not to exceed five hundred dollars ($500) for each violation of Ark. Code Ann. §§15-20-901 et seq. and this Title.

B. A Warning Letter or Administrative Consent Order may be served by certified mail, restricted delivery, return receipt requested to the address on file with the Commission or District or by any means sufficient for service of process in a civil court action.

C. The owner or operator may choose to sign an Administrative Consent Order and thereby agree to the penalties contained within the Order. The owner or operator will also be deemed to have consented to the Order if he or she fails to respond to the Commission in writing within thirty (30) days of receipt of the Administrative Consent Order and the Commission has proof that the owner or operator was served with the Administrative Consent Order.

D. If the owner or operator disputes that a violation occurred or believes the assessed penalty is too harsh, the owner or operator must respond to the Administrative Consent Order within thirty (30) days by requesting a hearing before the Commission. The hearing will be conducted in accordance with Commission rules, Title I. The Commission has the burden of proving the alleged facts and violations of law stated in the Administrative Consent Order. The Commission and the Director may issue subpoenas to any witness requiring his or her attendance and testimony before the Commission as provided in Ark. Code Ann. § 15-22-208.

E. The Commission will not take final administrative action against Persons accused of violating this Title or Ark. Code Ann. §§15-20-901 et seq. until the accused Person has executed an Administrative Consent Order or been given opportunity for a hearing to review the decision under Commission Rules, Title I, Rules of Organization and General Operation of the Arkansas Soil and Water Conservation Commission.

SUBTITLE IV. JUDICIAL REVIEW

Section 1904.1 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.

RULES GOVERNING THE ARKANSAS POULTRY FEEDING OPERATIONS REGISTRATION PROGRAM

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RULES GOVERNING THE ARKANSAS POULTRY FEEDING OPERATIONS REGISTRATION PROGRAM

SUBTITLE I. GENERAL PROVISIONS

Section 1901.1 Purpose

A. These rules govern the Commission's Poultry Feeding Operation registration program.

B. Poultry Feeding Operations are registered to locate Litter sources and estimate the amount of Litter produced.

C. The Arkansas Soil and Water Conservation Commission shall operate an annual registration program for the purpose of assembling and maintaining information on the number, composition, and practices of Poultry Feeding Operations in the state.

Section 1901.2 Enabling and Pertinent Legislation

A. Arkansas Code Annotated §§15-20-201 et seq., "Arkansas Soil and Water Conservation Commission Act."

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The following definitions shall apply to all parts of this Title:

A. "Administrative Consent Order" means a legal agreement signed by the Director and the owner or operator of a Poultry Feeding Operation.

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

D. "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.

E. "Director" means the Executive Director of the Arkansas Soil and Water Conservation Commission.

F. "Land Application" means the application of Litter, in whole or in part, to land.

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

H. "Litter Management System" means any method to dispose or use Litter.

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, livestock manure and Poultry Litter, compost as fertilizer, commercially manufactured chemical fertilizers, sewage sludge or combinations.

J. "Permit" or "Permit Coverage" refers to an authorization to operate that is required by the Environmental Protection Agency's Concentrated Animal Feeding Operations (CAFO) program for Poultry Feeding Operations meeting the size thresholds listed on the Commission's registration form.

K. "Person" means any individual, partnership, company, association, fiduciary, corporation, or any organized group of Persons whether incorporated or not.

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

M. "Poultry Feeding Operation" means any lot or facility where two thousand five hundred (2,500) or more Poultry are housed or confined and fed or maintained on any one day in the preceding twelve-month period. For the purposes of determining the number of animals at an operation, multiple Poultry houses under common ownership are considered to be a single Poultry Feeding Operation if they adjoin each other or if they share a common area or system for the disposal of wastes.

N. "Poultry Integrator" means an entity that processes Poultry for commercial sale.

O. "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.

SUBTITLE II. REGISTRATION PROGRAM

Section 1902.1 Applicability

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A. All Poultry Feeding Operations shall register from January 1 to March 31 each year and facilities constructed after March 31 of any year shall register during the next available period of registration.

B. Effective March 31, 2005, all Poultry Feeding Operations shall register in the manner denoted below or be deemed out of compliance and subject to penalties set forth in these regulations.

C. Facilities must annually renew registration by submitting a renewal form and the annual fee.

Section 1902.3 Registration Information

A. Operators shall submit to the Commission or Conservation Districts, on forms to be supplied by the Commission, the following information concerning the previous calendar year:

1. The number and type of birds housed or maintained by the operation;
2. The location of the operation by latitude and longitude and county, township, range, and section;
3. The business address of the owner of the facility;
4. The address of the facility if different from the owner's business address;
5. The type of waste handling system;
6. The type of Litter Management System used;
7. The type of Litter storage system used and the amount of Litter stored;
8. The method used for carcass disposal;
9. The acreage owned, controlled, or used by the Poultry Feeding Operation and used for Land Application of Litter;
10. Tons of Litter produced, removed, transferred or otherwise used by the Poultry Feeding Operation and the type of transfer or usage;
11. The Poultry Integrator or integrators with which the Poultry Feeding Operation has contracted to provide Poultry or Poultry Litter; and
12. Any other relevant information deemed necessary by the Commission.

B. The Conservation District office wherein the majority of the facility is located is available to assist the operator in filling out the registration form.

C. Conservation Districts will collect any fees accompanying the registration form and will deliver the fees to the appropriate agency or department, if applicable.

Section 1902.4 Submission of Materials

A. Registration materials shall be sent to either:

1. Poultry Feeding Operation Registration, Arkansas Soil and Water Conservation Commission; Conservation and Education Division; 101 E. Capitol, Suite 350, Little Rock, AR 72201, or

2. The Conservation District office wherein the majority of the facility is located.

B. If the operator is applying for a Permit or Permit Coverage under the Environmental Protection Agency's Concentrated Animal Feeding Operations program and does not directly submit the fee to the District, the operator must mail a copy of the form and fee to the address listed on the form.

Section 1902.5 Requirement to Keep Current Address on File

A. All Persons registering operations are required to provide the Commission or the District wherein the majority of the facility is located with current address and other requested contact information within fifteen (15) working days of change.

B. Mail will be addressed to the most recent address on file with the Commission or District. 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 the Commission or District with current address may be considered refusal to accept mail which is a violation of these regulations and could result in disciplinary action.

Section 1902.6 Not a Public Record

A. Registration information collected about an individual Poultry Feeding Operation shall not be public record.

B. Summary information that prevents identification of individual Poultry Feeding Operations shall be a public record.

~~C. If the Poultry Feeding Operation is required by the Environmental Protection Agency's Concentrated Animal Feeding Operations (CAFO) program to obtain a Permit or Permit Coverage, information specific to that facility provided in the Permit or Permit Coverage application may be accessed by the agency or department administering the CAFO program upon request.~~

Section 1902.7 Fees

A. Operation owners shall pay an annual ten dollar ($10) fee for every Poultry Feeding Operation under the owner's control.

~~B. The Director may establish and collect fees for miscellaneous services provided by the Commission to offset administrative costs, including photocopying, handling and mailing, providing publications, presenting education programs, and processing dishonored checks.~~

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

C. All registration fees collected by the Conservation District shall be used by the District to administer the Poultry Feeding Operation Registration Program.

D. All fees collected by the Commission through any penalty assessed under this Title shall be deposited in the state treasury and shall be used ~~exclusively for the operation of the Nutrient Management training and certification program~~ to operate the programs administered by the Commission through Titles 19, 20, 21, and 22 of the Commission's rules.

SUBTITLE III. PENALTY FOR NONCOMPLIANCE

Section 1903.1 Noncompliance

The registered owner must comply with all conditions of registration. It shall be a violation of Ark. Code Ann. §§15-20-901 et seq. and these rules for any Person to:

1. Provide misleading, false, or fraudulent registration information; or
2. Fail to register annually or promptly provide any record or allow the Commission access to inspect any records required to be kept by these rules.

Section 1903.2 Review of Suspected Noncompliance

A. Upon complaint or suspicion of suspected violation of 1903.1, Commission or Conservation District staff or may investigate an owner or operator of a Poultry Feeding Operation and may recommend disciplinary action to the Director.

1. Anyone providing information to the Commission about a possible violation must provide the substance of the complaint to the Commission in writing and must provide his legal name and current mailing and physical addresses where the complainant may be contacted. 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 1903.3 Administrative penalties

A. Upon the first violation of these rules by an owner or operator within any one-year period, the owner or operator shall be issued a Warning Letter. For the second violation within any one-year period, the Director may assess not more than fifty dollars ($50) in cumulative civil penalties. Upon the third violation within any one-year period, the Director may impose a penalty not to exceed five hundred dollars ($500) for each violation of Ark. Code Ann. §§15-20-901 et seq. and this Title.

B. A Warning Letter or Administrative Consent Order may be served by certified mail, restricted delivery, return receipt requested to the address on file with the Commission or District or by any means sufficient for service of process in a civil court action.

C. The owner or operator may choose to sign an Administrative Consent Order and thereby agree to the penalties contained within the Order. The owner or operator will also be deemed to have consented to the Order if he or she fails to respond to the Commission in writing within ~~ten (10)~~ thirty (30) days of receipt of the Administrative Consent Order and the Commission has proof that the owner or operator was served with the Administrative Consent Order.

D. If the owner or operator disputes that a violation occurred or believes the assessed penalty is too harsh, the owner or operator must respond to the Administrative Consent Order within ~~ten (10)~~ thirty (30) days by requesting a hearing before the Commission. The hearing will be conducted in accordance with Commission rules, Title I. The Commission has the burden of proving the alleged facts and violations of law stated in the Administrative Consent Order. The Commission and the Director may issue subpoenas to any witness requiring his or her attendance and testimony before the Commission as provided in Ark. Code Ann. § 15-22-208.

E. The Commission will not take final administrative action against Persons accused of violating this Title or Ark. Code Ann. §§15-20-901 et seq. until the accused Person has executed an Administrative Consent Order or been given opportunity for a hearing to review the decision under Commission Rules, Title I, Rules of Organization and General Operation of the Arkansas Soil and Water Conservation Commission.

SUBTITLE IV. JUDICIAL REVIEW

Section 1904.1 Judicial Review

By law, a person who considers himself 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.

RULES GOVERNING THE ARKANSAS NUTRIENT MANAGEMENT PLANNER CERTIFICATION PROGRAM

TITLE XX

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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 ground water 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 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 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 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 Soil and Water Conservation 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."

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.B. DeLaune, P.A. Moore, Jr., D.K. Carman, T.C. Daniel, and A.N. Sharpley; Development and validation of a phosphorus index for

pastures fertilized with animal manure [CD-ROM]; International Symposium Addressing Animal Production and Environmental Issues; 2001.

C. "Certified Nutrient Planner" means a person who has been certified by the Commission as competent to develop Nutrient Management Plans.

D. "Commission" means the Arkansas Soil and Water Conservation 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 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 Soil and Water Conservation Commission.

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

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

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

K. "Nutrient Management Plan" means a documented record of how Nutrients will be managed on a Nutrient Management Unit prepared in accordance with United States Department of Agriculture Natural Resources Conservation Service conservation practice standards for Arkansas to guide and assist landowners and Operators in the use of fertilizers, Litter, sewage sludges, compost and other Nutrient sources for soil fertility and protection of the Waters Within the State.

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

M. "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 all of the following requirements:

1. Satisfactorily completing and submitting to the Commission an application form;
2. Attending the Certified Nutrient Planner training course provided by the commission or its Delegate;
3. Obtaining a passing score on the Certified Nutrient Planner examination administered by the Commission or its Delegate;
4. Submitting a $100.00 certification fee; and
5. Submitting a $25.00 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. 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 will continue action on the application.

Section 2002.3 Training Course

The Commission 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 or its Delegate shall administer Certified Nutrient Planner certification examinations at least once per year 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 a passing score 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 (10) 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 (5) 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 applicant to submit new testing fees.

Section 2002.5 Notification of Results

A. Each applicant shall be notified of results in writing within sixty (60) 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 Soil and Water Conservation Commission.

SUBTITLE III. MAINTAINING CERTIFICATION

Section 2003.1 Term of Certification

A. Certification shall be valid for a period of five (5) 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.

Section 2003.2 Renewal of Certification

A. A Certified Nutrient Planner 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 $100 renewal fee to the Commission; and

3. Completion of at least four (4) hours of continuing education pre-approved by the Commission within the last five (5) years.

B. If the Certified Nutrient Planner has knowingly violated Commission rules or refused to pay fines assessed by the Commission, the Commission may choose not to renew certification.

Section 2003.3 Requirement to Keep Current Address on File

A. A Certified Nutrient Planner is required to provide the Commission with current address and other requested contact information within fifteen (15) 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 2003.4 Continuing Education

A. A Certified Nutrient Planner must have proof of four (4) 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 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 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 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 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 Nutrient Planners are also responsible for obtaining proof of attendance and sending that proof into the Commission when certification is renewed.

SUBTITLE IV. RECORDKEEPING

Section 2004.1 Maintaining Plans

A. The Commission 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 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, containing the following information:

1. name and certificate number of the Certified Nutrient Planner; and
2. number of Nutrient Management Plans completed.

SUBTITLE V. FEES

Section 2005.1 Fees

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

B. The Commission will assess the following fees:

1. certification = $100.00;
2. examination fee = $25.00; and
3. re-certification = $100.00.

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

SUBTITLE VI. PENALTY FOR NONCOMPLIANCE

Section 2006.1 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 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 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 2006.2 Review of Suspected Noncompliance

A. Upon complaint or suspicion of suspected violation of 2006.1, Commission or Conservation District staff may investigate and recommend disciplinary action to the Director.

1. Anyone providing information to the Commission about a possible violation must provide the substance of the complaint to the Commission in writing and must provide his legal name and current mailing and physical addresses where the complainant may be contacted. 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 2006.3 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) in cumulative civil penalties. Upon the third violation within any one-year period, the

Director may impose a penalty not to exceed one thousand dollars ($1,000) for each violation of Ark. Code Ann. §§15-20-1001 et seq. and this Title. Following the third violation, the Commission may also choose to suspend, revoke, annul or withdraw the Certified Nutrient 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 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 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 (30) days by requesting a hearing before the Commission. The hearing will be conducted in accordance with Commission Rules, Title I. The Commission has the burden of proving the alleged facts and violations of law stated in the Administrative Consent Order. The Commission and the Director may issue subpoenas to any witness requiring his or her attendance and testimony before the Commission as provided in Ark. Code Ann. § 15-22-208.

E. The Commission will not take final administrative action against persons accused of violating this Title or Ark. Code Ann. §§ 15-20-1001 et seq. until the accused person has executed an Administrative Consent Order or been given opportunity for a hearing to review the decision under Title I.

Section 2006.4 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 2006.5 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 2006.6 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 VII. APPEALS PROCEDURE

Section 2007.1 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.

RULES GOVERNING THE ARKANSAS NUTRIENT MANAGEMENT PLANNER CERTIFICATION PROGRAM

TITLE XX

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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 ground water 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 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 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 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 Soil and Water Conservation 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."

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.B. DeLaune, P.A. Moore, Jr., D.K. Carman, T.C. Daniel, and A.N. Sharpley; Development and validation of a phosphorus index for

pastures fertilized with animal manure [CD-ROM]; International Symposium Addressing Animal Production and Environmental Issues; 2001.

C. "Certified Nutrient Planner" means a person who has been certified by the Commission as competent to develop Nutrient Management Plans.

D. "Commission" means the Arkansas Soil and Water Conservation 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 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 Soil and Water Conservation Commission.

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

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

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

K. ~~"Nutrient Management Plan" means any plan prepared to assist land owners and operators in the proper management of Nutrient sources for maximum soil fertility and protection of the waters within the state~~. "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. "Poultry" means chickens, turkeys, ducks, geese and any other domesticated birds.

M. "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.

(Definitions for Nutrient Applicator and Protective Rate were removed because the definitions were not relevant to the purpose of this title)

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 all of the following requirements:

1. Satisfactorily completing and submitting to the Commission an application form;
2. Attending the Certified Nutrient Planner training course provided by the commission or its Delegate;
3. Obtaining a passing score on the Certified Nutrient Planner examination administered by the Commission or its Delegate;
4. Submitting a $100.00 certification fee; and
5. Submitting a $25.00 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 ~~April 1, 2004~~ 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. 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 will continue action on the application.

Section 2002.3 Training Course

The Commission 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.

(Deleted description of training course.)

Section 2002.4 Examination

A. The Commission or its Delegate shall administer Certified Nutrient Planner certification examinations at least once per year 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 a passing score 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 (10) 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 (5) 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 applicant to submit new testing fees.

Section 2002.5 Notification of Results

A. Each applicant shall be notified of results in writing within sixty (60) 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 Soil and Water Conservation Commission.

SUBTITLE III. MAINTAINING CERTIFICATION

Section 2003.1 Term of Certification

A. Certification shall be valid for a period of ~~three (3)~~ five (5) years and will automatically expire on January 1 of the ~~third~~ 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 examinations unless waived by the Commission for good cause.

Section 2003.2 Renewal of Certification

A. A Certified Nutrient Planner 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 $100 renewal fee to the Commission; and
3. Completion of at least four (4) hours of continuing education pre-approved by the Commission within the last ~~three (3)~~ five (5) years.

B. If the Certified Nutrient Planner has knowingly violated Commission rules or refused to pay fines assessed by the Commission, the Commission may choose not to renew certification.

Section 2003.3 Requirement to Keep Current Address on File

A. A Certified Nutrient Planner is required to provide the Commission with current address and other requested contact information within fifteen (15) 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 2003.4 Continuing Education

A. A Certified Nutrient Planner must have proof of four (4) approved continuing education credits completed during the ~~three~~ 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 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 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 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 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 Nutrient Planners are also responsible for obtaining proof of attendance and sending that proof into the Commission when certification is renewed.

SUBTITLE IV. RECORDKEEPING

Section 2004.1 Maintaining Plans

A. The Commission 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 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, containing the following information:

1. Name and certificate number of the Certified Nutrient Planner; and
2. Number of Nutrient Management Plans completed.

SUBTITLE V. FEES

Section 2005.1 Fees

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

B. The Commission will assess the following fees:

1. certification = $100.00;
2. examination fee = $25.00; and
3. re-certification = $100.00.

C. All fees collected by the Commission through any penalty assessed under this Title shall be deposited in the state treasury and shall be used ~~exclusively for the operation of the Nutrient management training and certification program~~ to operate the programs

administered by the Commission through Titles 19, 20, 21, and 22 of the Commission's rules.

SUBTITLE VI. PENALTY FOR NONCOMPLIANCE

Section 2006.1 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 with any misleading, false or fraudulent plan;
3. ~~Offer or perform Nutrient planning as a nutrient planner certified under these rules without certification;~~
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 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 2006.2 ~~2006.3~~ Review of Suspected Noncompliance

A. Upon complaint or suspicion of suspected violation of 2006.1, Commission or Conservation District staff may investigate and recommend disciplinary action to the Director.

1. Anyone providing information to the Commission about a possible violation must provide the substance of the complaint to the Commission in writing and must provide his legal name and current mailing and physical addresses where the complainant may be contacted. 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 ~~2006.2~~ 2006.3 Administrative Penalties

~~A. The Commission may impose a fine not to exceed one thousand dollars ($1,000) for each violation of Ark. Code Ann. §§15-20-1001 et seq. and this Title.~~

~~B. The Commission may also choose to suspend, revoke, annul or withdraw the planner's certification.~~

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) in cumulative civil penalties. Upon the third violation within any one-year period, the Director may impose a penalty not to exceed one thousand dollars ($1,000) for each violation of Ark. Code Ann. §§15-20-1001 et seq. and this Title. Following the third violation, the Commission may also choose to suspend, revoke, annul or withdraw the Certified Nutrient 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 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 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 ~~ten (10)~~ thirty (30) days by requesting a hearing before the Commission. The hearing will be conducted in accordance with Commission Rules, Title I. The Commission has the burden of proving the alleged facts and violations of law stated in the Administrative Consent Order. The Commission and the Director may issue subpoenas to any witness requiring his or her attendance and testimony before the Commission as provided in Ark. Code Ann. § 15-22-208.

E. The Commission will not take final administrative action against persons accused of violating this Title or Ark. Code Ann. §§ 15-20-1001 et seq. until the accused person has executed an Administrative Consent Order or been given opportunity for a hearing to review the decision under Title I.

Section 2006.4 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 2006.5 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 2006.6 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 VII. APPEALS PROCEDURE

Section 2007.1 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.

RULES GOVERNING THE ARKANSAS NUTRIENT MANAGEMENT APPLICATOR CERTIFICATION PROGRAM

TITLE XXI

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SUBTITLE I. GENERAL PROVISIONS

Section 2101.1 Purpose

A. These rules govern the 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, Certified Nutrient Planners must develop plans in accord with Certified Nutrient Planner training.

C. The Commission may issue distinct classifications of certification.

D. Persons making Nutrient application to Nutrient Surplus Areas on or after the effective date of Title 22, Rules Governing the Arkansas Soil Nutrient and Poultry Litter Application and Management Program, must become certified.

E. Persons making Nutrient application outside Nutrient Surplus Areas are not required to become certified.

Section 2101.2 Enabling and Pertinent Legislation

A. Arkansas Code Annotated §§ 15-20-201 et seq., "Arkansas Soil and Water Conservation Commission Act."
B. Ark. Code Ann. §§ 15-20-1001 et seq., "Arkansas Soil Nutrient Management Planner and Applicator Certification Act."
C. Ark. Code Ann. §§ 25-15-201 et seq., "Arkansas Administrative Procedure Act."

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 Soil and Water Conservation 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 Soil and Water Conservation 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. “Warning Letter” means a written description signed by the Director of a violation of this Title and the necessary corrective action. A Warning Letter cannot be used to assess civil penalties, is not appealable to the Commission, and is not final agency action.

Section 2101.4 Duties of other State Agencies

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

Section 2101.5 Distinction between Private and Commercial Applicators

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

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

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

C. A Certified Private Applicator may apply Poultry Litter produced on a farm under his ownership or control to land not under his ownership or control without being considered a Certified Commercial Applicator so long as he does not derive a substantial portion of his income from such application.

D. A Certified Private Applicator who owns or operates a Poultry farm and who owns cleanout equipment may assist others in the cleanout of Poultry houses and the application of Poultry Litter from those houses without being a Certified Commercial Applicator so long as he does not derive a substantial portion of his income from such cleanout work.

Section 2101.6 Persons Who May Apply Nutrients without Obtaining Applicator Certification

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

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

SUBTITLE II. PRIVATE APPLICATOR CERTIFICATION

Section 2102.1 Requirements for Private Applicator Certification

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

1. Satisfactorily completing and submitting an application form to the Commission;
2. Attending the Certified Private Applicator training course on proper Nutrient application provided by the Commission or its Delegate; and
3. Submitting a $30.00 certification fee.

B. No examination is required for Certified Private Applicator applicants.

Section 2102.2 Review of Application

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

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

C. If the applicant meets all requirements and attends the Certified Private Applicator training course, certification will be issued.

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

Section 2102.3 Private Applicator Certification Training

The Commission or its Delegate shall periodically provide Certified Private Applicator training sessions.

SUBTITLE III. COMMERCIAL APPLICATOR CERTIFICATION

Section 2103.1 Requirements for Commercial Applicator Certification

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

1. Satisfactorily completing and submitting an application form to the Commission;
2. Attending the Certified Commercial Applicator training course on proper Nutrient application provided by the Commission or its Delegate;

3. Obtaining a passing score on the Certified Commercial Applicator examination administered by the Commission or its Delegate;
4. Submitting a $60.00 certification fee; and
5. Submitting a $25.00 testing fee.

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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 (10) 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 (5) 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 (60) days of the completion of the examination and shall also receive notice of whether certification has been approved.

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

SUBTITLE IV. MAINTAINING CERTIFICATION

Section 2104.1 Term of Certification

A. Certification shall be valid for a period of five (5) 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 (4) hours of continuing education pre-approved by the Commission within the last five (5) 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 (15) 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 (4) approved continuing education credits completed during the previous five (5) years to renew his or her certification. Each continuing education credit refers to an hour of instruction, approved for credit by the Commission and designed to provide further knowledge of Nutrient management application.

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

Section 2104.5 Approval of Third Party Courses

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

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

SUBTITLE V. RECORD-KEEPING

Section 2105.1 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 (5) years from the date the application was made, including:

1. Type and amount of Nutrients applied by field;
2. The source or sources of Nutrients applied by field;
3. The location of the field or fields where Nutrients were applied;
4. The date of application by field;
5. The application rate used by field;
6. The name and address of the person or business for whom the Nutrients were applied; and
7. The cover vegetation by field.

C. A Certified Commercial Applicator shall provide the landowner with a copy of the application record.

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

SUBTITLE VI. FEES

Section 2106.1 Fees

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

B. The Commission will assess the following fees:

1. certification fee for Certified Private Applicator = $30.00;
2. certification fee for Certified Commercial Applicator = $60.00;
3. examination fee = $25.00;
4. re-certification fee for Certified Private Applicator = $30.00; and
5. re-certification fee for Certified Commercial Applicator = $60.00.

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

SUBTITLE VII. PENALTY FOR NONCOMPLIANCE

Section 2107.1 Noncompliance

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

1. Provide misleading, false, or fraudulent information in applying for certification;
2. Provide the Commission with any misleading, false or fraudulent application record;

3. Fail to promptly provide any application record or to allow the Commission access to inspect any records required to be kept by these rules; or
4. Violate any other requirement imposed by rule in this Title.

Section 2107.2 Review of Suspected Noncompliance

A. Upon complaint or suspicion of suspected violation of 2107.1, Commission or Conservation District staff may investigate and recommend disciplinary action to the Director.

1. Anyone providing information to the Commission about a possible violation must provide the substance of the complaint to the Commission in writing and must provide his legal name and current mailing and physical addresses where the complainant may be contacted. 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 2107.3 Administrative Penalties

A. Upon the first violation of these rules by a Certified Nutrient Applicator within any one-year period, the Applicator shall be issued a Warning Letter. For the second violation within any one-year period, the Director may assess not more than fifty dollars ($50) in cumulative civil penalties. Upon the third violation within any one-year period, the Director may impose a penalty not to exceed one thousand dollars ($1,000) for each violation of Ark. Code Ann. §§15-20-1001 et seq. and this Title. Following the third violation, the Commission may also choose to suspend, revoke, annul or withdraw the Certified Nutrient Applicator's certification.

B. A Warning Letter or Administrative Consent Order may be served by certified mail, restricted delivery, return receipt requested to the address on file with the Commission or District or by any means sufficient for service of process in a civil court action.

C. The alleged violator may choose to sign an Administrative Consent Order and thereby agree to the penalties contained within the Order. The Certified Nutrient Applicator will also be deemed to have consented to the Order if he or she fails to respond and the

Commission has received a certified mail receipt or other proof showing that the alleged violator was served with the Administrative Consent Order.

D. If the alleged violator disputes that a violation occurred or believes the assessed penalty is too harsh, the Certified Nutrient Applicator must respond to the Administrative Consent Order within thirty (30) days by requesting a hearing before the Commission. The hearing will be conducted in accordance with Commission Rules, Title I. The Commission has the burden of proving the alleged facts and violations of law stated in the Administrative Consent Order. The Commission and the Director may issue subpoenas to any witness requiring his or her attendance and testimony before the Commission as provided in Ark. Code Ann. § 15-22-208.

E. The Commission will not take final administrative action against persons accused of violating this Title or Ark. Code Ann. §§ 15-20-1001 et seq. until the accused person has executed an Administrative Consent Order or been given opportunity for a hearing to review the decision under Title I.

Section 2107.4 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 2107.5 Reinstatement after Suspension

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

Section 2107.6 Re-certification after Revocation

No Certified Nutrient Applicator whose certification has been revoked will be re-certified until the individual satisfies any condition imposed by the Commission or the Director as a condition of re-certification. No individual will be re-certified unless the Commission approves re-certification by a majority vote.

SUBTITLE VIII. APPEALS PROCEDURE

Section 2108.1 Judicial Review

By law, a person who considers himself or herself injured in his or her person, business, or property by an executed Administrative Consent Order or a Commission order following a hearing has the right to appeal the case to District Court in his county of residence, the county where he does business, or in Pulaski County within thirty days of the decision. The executed Administrative Consent Order or the Commission decision shall constitute final agency action for the purpose of judicial review. Judicial review of final agency action shall be as provided by the Arkansas Administrative Procedure Act, §§ 25-15-201 et. seq.

RULES GOVERNING THE ARKANSAS NUTRIENT MANAGEMENT APPLICATOR CERTIFICATION PROGRAM

TITLE XXI

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VIII. APPEALS PROCEDURE

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SUBTITLE I. GENERAL PROVISIONS

Section 2101.1 Purpose

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

~~B. Certified Nutrient Applicators apply Nutrients according to Nutrient Management Plans or at a Protective Rate designated by the Commission to protect ground water and surface water from excessive Nutrient enrichment.~~

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, Certified Nutrient Planners must develop plans in accord with Certified Nutrient Planner training.

C. The Commission may issue distinct classifications of certification.

D. Persons making Nutrient application to Nutrient Surplus Areas on or after the effective date of Title 22, Rules Governing the Arkansas Soil Nutrient and Poultry Litter Application and Management Program, must become certified.

E. Persons making Nutrient application outside Nutrient Surplus Areas are not required to become certified.

Section 2101.2 Enabling and Pertinent Legislation

A. Arkansas Code Annotated §§ 15-20-201 et seq., "Arkansas Soil and Water Conservation Commission Act."
B. Ark. Code Ann. §§ 15-20-1001 et seq., "Arkansas Soil Nutrient Management Planner and Applicator Certification Act."
C. Ark. Code Ann. §§ 25-15-201 et seq., "Arkansas Administrative Procedure Act."

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 Soil and Water Conservation 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 Soil and Water Conservation 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 any plan prepared to assist land owners and operators in the proper management of Nutrient sources for maximum soil fertility and protection of the waters within the state.~~ "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. "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.

(Arkansas Phosphorus Index, Protective Rate, and Poultry Feeding Operation were removed because the definitions were not relevant to the purpose of this title. Definitions for Certified Commercial Applicator and Certified Private Applicator were removed from Section 2101.3 but are addressed in 2101.5)

Section 2101.4 Duties of other State Agencies

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

~~**Section 2101.2 Distinction between Private and Commercial Applicators and Exceptions to Certification Requirements**~~

~~A. Certified Private Applicators apply Nutrients to land owned in whole or part by them or to land that is under their control through a property interest other than ownership. For example, a farmer farming someone else's land through a land rental agreement would apply to be certified as a Certified Private Applicator rather than a Certified Commercial Applicator. Similarly, a gardener who works exclusively for one landowner and applies Nutrients incident to other services provided to the landowner would apply to be certified as a Certified Private Applicator.~~

~~1. 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.~~

~~2. 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.~~

~~3. When application by a Certified Applicator is required, a person may apply Nutrients without obtaining certification while acting under the supervision and control of a Certified Private Applicator as a volunteer or an employee.~~

~~B. A person seeking certification to apply Nutrients who derives a substantial portion of income from the application of Nutrients to land not under his ownership or control would apply to be certified as a Certified Commercial Applicator.~~

~~1. When application by a Certified Applicator is required, a Certified Commercial Applicator who is the owner or operator of a commercial fertilizer or Nutrient business may accept responsibility for compliance with these rules by employees under his direction and control. Such employees, while acting under his direction and control, shall not be required to obtain certification.~~

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.

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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.

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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.

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

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The Commission or its Delegate shall periodically provide Certified Private Applicator training sessions.

(deleted description of training session)

SUBTITLE III. COMMERCIAL APPLICATOR CERTIFICATION

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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;

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The Commission or its Delegate shall periodically provide Certified Commercial Applicator training prior to scheduled examinations.

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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 (10) 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 (5) 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 (60) days of the completion of the examination and shall also receive notice of whether certification has been approved.

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

SUBTITLE IV. MAINTAINING CERTIFICATION

Section 2104.1 Term of Certification

A. Certification shall be valid for a period of ~~three (3)~~ five (5) years and will automatically expire on January 1 of the ~~third~~ 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 (4) hours of continuing education pre-approved by the Commission within the last ~~three (3)~~ five (5) 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 (15) 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 (4) approved continuing education credits completed during the previous ~~three (3)~~ five (5) years to renew his or her certification. Each continuing education credit refers to an hour of instruction, approved for credit by the Commission and designed to provide further knowledge of Nutrient management application.

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

Section 2104.5 Approval of Third Party Courses

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

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

SUBTITLE V. RECORD-KEEPING

Section 2105.1 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 (5) years from the date the application was made, including:

1. Type and amount of Nutrients applied by field;
2. The source or sources of Nutrients applied by field;
3. The location of the field or fields where Nutrients were applied;
4. The date of application by field;
5. The application rate used by field;
6. The name and address of the person or business for whom the Nutrients were applied; and
7. The cover vegetation by field.

C. A Certified Commercial Applicator shall provide the landowner with a copy of the application record.

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

SUBTITLE VI. FEES

Section 2106.1 Fees

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

B. The Commission will assess the following fees:

1. certification fee for Certified Private Applicator = $30.00;
2. certification fee for Certified Commercial Applicator = $60.00;
3. examination fee = $25.00;
4. re-certification fee for Certified Private Applicator = $30.00; and
5. re-certification fee for Certified Commercial Applicator = $60.00.

C. All fees collected by the Commission through any penalty assessed under this Title shall be deposited in the state treasury and shall be used ~~exclusively for the operation of the Nutrient Management training and certification program~~ to operate the programs administered by the Commission through Titles 19, 20, 21, and 22 of the Commission's rules.

SUBTITLE VII. PENALTY FOR NONCOMPLIANCE

Section 2107.1 Noncompliance

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

1. Provide misleading, false, or fraudulent information in applying for certification;
2. Provide the Commission with any misleading, false or fraudulent application record;
3. ~~Offer or perform Nutrient Application as a Certified Nutrient Applicator certified under these rules without certification;~~
3. Fail to promptly provide any application record or to allow the Commission access to inspect any records required to be kept by these rules; or
4. Violate any other requirement imposed by rule in this Title.

Section 2107.2 Review of Suspected Noncompliance

A. Upon complaint or suspicion of suspected violation of 2107.1, Commission or ~~local~~ Conservation District staff may investigate and recommend disciplinary action to the Director.

1. Anyone providing information to the Commission about a possible violation must provide the substance of the complaint to the Commission in writing and must provide his legal name and current mailing and physical addresses where the complainant may be contacted. 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 2107.3 Administrative Penalties

A. Upon the first violation of these rules by a Certified Nutrient Applicator within any one-year period, the Applicator shall be issued a Warning Letter. For the second violation within any one-year period, the Director may assess not more than fifty dollars ($50) in cumulative civil penalties. Upon the third violation within any one-year period, the Director may impose a penalty not to exceed one thousand dollars ($1,000) for each

violation of Ark. Code Ann. §§15-20-1001 et seq. and this Title. Following the third violation, the Commission may also choose to suspend, revoke, annul or withdraw the Certified Nutrient Applicator's certification.

B. A Warning Letter or Administrative Consent Order may be served by certified mail, restricted delivery, return receipt requested to the address on file with the Commission or District or by any means sufficient for service of process in a civil court action.

C. The alleged violator may choose to sign an Administrative Consent Order and thereby agree to the penalties contained within the Order. The Certified Nutrient Applicator will also be deemed to have consented to the Order if he or she fails to respond and the Commission has received a certified mail receipt or other proof showing that the alleged violator was served with the Administrative Consent Order.

D. If the alleged violator disputes that a violation occurred or believes the assessed penalty is too harsh, the Certified Nutrient Applicator must respond to the Administrative Consent Order within ~~ten (10)~~ thirty (30) days by requesting a hearing before the Commission. The hearing will be conducted in accordance with Commission Rules, Title I. The Commission has the burden of proving the alleged facts and violations of law stated in the Administrative Consent Order. The Commission and the Director may issue subpoenas to any witness requiring his or her attendance and testimony before the Commission as provided in Ark. Code Ann. § 15-22-208.

E. The Commission will not take final administrative action against persons accused of violating this Title or Ark. Code Ann. §§ 15-20-1001 et seq. until the accused person has executed an Administrative Consent Order or been given opportunity for a hearing to review the decision under Title I.

Section 2107.4 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 2107.5 Reinstatement after Suspension

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

Section 2107.6 Re-certification after Revocation

No Certified Nutrient Applicator whose certification has been revoked will be re-certified until the individual satisfies any condition imposed by the Commission or the Director as a condition of re-certification. No individual will be re-certified unless the Commission approves re-certification by a majority vote.

SUBTITLE VIII. APPEALS PROCEDURE

Section 2108.1 Judicial Review

By law, a person who considers himself or herself injured in his or her person, business, or property by an executed Administrative Consent Order or a Commission order following a hearing has the right to appeal the case to District Court in his county of residence, the county where he does business, or in Pulaski County within thirty days of the decision. The executed Administrative Consent Order or the Commission decision shall constitute final agency action for the purpose of judicial review. Judicial review of final agency action shall be as provided by the Arkansas Administrative Procedure Act, §§ 25-15-201 et. seq.

RULES GOVERNING THE ARKANSAS SOIL NUTRIENT AND POULTRY LITTER APPLICATION AND MANAGEMENT PROGRAM

TITLE XXII

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RULES GOVERNING THE ARKANSAS SOIL NUTRIENT AND POULTRY LITTER APPLICATION AND MANAGEMENT PROGRAM

TITLE XXII

SUBTITLE I. GENERAL PROVISIONS

Section 2201.1 Purpose

The Arkansas Soil and Water Conservation Commission developed this Title to encourage prudent practices regarding the application and management of soil Nutrients and Poultry Litter to protect and enhance the State's surface water quality while allowing for optimum soil fertility and proper plant growth. The primary goal of this Title is to maintain the benefits derived from the wise use of Poultry Litter, commercial fertilizers, and other soil Nutrients while avoiding unwanted effects from excess Nutrient Applications on the waters within the State. In furtherance of this goal, these Rules provide requirements applicable to Nutrient Surplus Areas, Nutrient Management Plans, and Poultry Litter Management Plans. These rules are designed to protect the waters within the State from adverse effects of excess nutrients while allowing for maximum soil fertility and proper plant growth.

Section 2201.2 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 Soil and Water Conservation Commission."
C. Ark. Code Ann. §§ 15-20-901 et seq., "Arkansas Poultry Feeding Operations Registration Act."
D. Ark. Code Ann. §§ 15-20-1001 et seq., "Arkansas Soil Nutrient Management Planner and Applicator Certification Act."
E. Ark. Code Ann. §§ 15-20-1101 et seq., "Arkansas Soil Nutrient Application and Poultry Litter Utilization Act."
F. Ark. Code Ann. §§ 25-15-201 et seq., Arkansas Administrative Procedure Act.

Section 2201.3 Powers of the Commission

A. The Arkansas Soil and Water Conservation Commission is authorized to develop all regulations necessary to implement the Arkansas Soil Nutrient Application and Poultry Litter Utilization Act, taking into consideration the following factors:

1. The current and projected level of Nutrients in the soil within the area;
2. The current or potential impacts of surplus Nutrients within the area;
3. Litter produced and applied in the area;
4. Commercial fertilizer, compost and other sources of Nutrients applied within the area;

5. The current or projected Nutrient needs within the area, including the Nutrient level necessary to maintain soil fertility, current and future cropping patterns, and those crops' demand for Nutrients;
6. The soil type, geology, hydrology and other physical characteristics of the area; and
7. The types of water bodies and the uses of the waters within the area.

B. When developing regulations necessary to implement this program, the Commission may also consider the culture of the affected areas including the traditions, the way people have lived, worked their land, and earned their livelihood.

C. The Commission may delegate portions of the program developed hereunder for implementation to the Executive Director, to Conservation Districts designated by the Commission, or both.

D. The Commission may, in its discretion, defer mandatory compliance with portions of the program related to regulation of Nutrient Application, Nutrient Management Plans, and Poultry Litter Management Plans, for up to two (2) years if the Commission deems it necessary to allow development of Nutrient Management Plans and Poultry Litter Management Plans.

Section 2201.4 Definitions

As used in this Title, the following terms shall have the definitions below unless otherwise specifically stated herein.

A. "Administrative Consent Order" means a legal agreement signed by the Director and a violator of this title through which the violator agrees to pay a fine, take a required corrective action, refrain from an activity, or a combination of the listed actions. It describes the actions to be taken by all signatories and may be enforced in court.

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. B. DeLaune, P. A. Moore, Jr., D. K. Carman, T. C. Daniel, and A. N. Sharpley; Development and validation of a Phosphorus Index for pastures fertilized with animal manure [CD-ROM]; International Symposium Addressing Animal Production and Environmental Issues; 2001.

C. "Certified Nutrient Applicator" may refer to either a Certified Commercial Applicator or a Certified Private Applicator and means a person who has been certified by the Commission as competent to apply Nutrients to land pursuant to Commission Rules Governing the Arkansas Nutrient Management Applicator Certification Program, Title XXI.

D. "Certified Nutrient Planner" means a person who has been certified by the Commission as competent to develop Nutrient Management Plans pursuant to Commission Rules Governing the Arkansas Nutrient Management Planner Certification Program, Title XX.

E. "Commission" means the Arkansas Soil and Water Conservation Commission.

F. "Compost" means a process which biologically stabilizes livestock and poultry mortalities, making them suitable for disposal by Land Application. The process uses a simple mixture of dry Poultry manure (Litter), carcasses, and a bulking agent or aeration medium such as hay or straw. Only enough water is added to keep the material moist and the mixture should never be saturated. Compost does not include composted plant material with no animal carcasses or manure added that is used as a soil amendment and not principally for its Nutrient value.

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

H. "Crop" means any managed vegetative cover.

I. "Director" means the Executive Director of the Arkansas Soil and Water Conservation Commission.

J. "Land Application" means the spreading on or incorporation of Litter into the soil mantle primarily for beneficial purposes.

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

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

M. "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 including, without limitation, substances in Litter, compost as fertilizer, commercially manufactured chemical and organic fertilizers, sewage sludge and combinations thereof.

N. "Nutrient Application" means the process by which Persons apply Nutrients to soil or associated Crops.

O. "Nutrient Applicator" means any Person who applies Nutrients to soil or associated Crops.

P. "Nutrient Management Plan" means a documented record of how Nutrients will be managed on a Nutrient Management Unit and is 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.

Q. "Nutrient Management Unit" means the field, group of fields, or other land units, that collectively include all land area on which Nutrients will or may be applied and managed pursuant to a Nutrient Management Plan.

R. "Nutrient Surplus Area" means a defined geographic area, declared by Ark. Code Ann. § 15-20-1104 and described more specifically in Subtitle II of these Rules, 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.

S. "Operator" means the Person(s) with control over the day-to-day operation of, or decision-making authority over, the facility, process, or physical location to which the term is applied.

T. "Person" means any legal entity including, without limitation, any individual, partnership, company, association, fiduciary, corporation, limited liability company, cooperative, or any organized group of persons whether incorporated or not.

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

V. "Poultry Feeding Operation" means any lot or facility where two thousand five hundred (2,500) or more Poultry are housed or confined and fed or maintained on any one day in the preceding twelve-month period. For the purposes of determining the number of animals at an operation, multiple Poultry houses under common ownership are considered to be a single Poultry Feeding Operation if they adjoin each other or if they share a common area or system for the disposal of wastes.

W. "Poultry Litter Management Plan" means the documented plan for use, disposal, and storage of Litter by Poultry Feeding Operations as further described in Subtitle IV of these Rules.

X. "Protective Rate" or "Arkansas Protective Rate" means the application rate approved by the Commission for designated Nutrients that provides for proper Crop utilization and prevention of significant impact to Waters Within the State.

Y. "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.

Z. "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, surface and underground, natural or artificial, public or private, that are contained within, flow through, or border upon this State or any portion of this State.

Section 2201.5 Severability

If any provision of this Title or the application thereof to any Person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Title which can be given effect without the invalid provision or application, and to this end the provisions of this Title shall be considered severable.

SUBTITLE II. NUTRIENT SURPLUS AREAS

Section 2202.1 Declared Nutrient Surplus Areas

Act 1061 of 2003 (codified at Ark. Code Ann. § 15-20-1104) declared the following areas to be Nutrient Surplus Areas:

1. The Illinois River watershed, included within Benton, Washington, and Crawford counties;
2. The Spavinaw Creek watershed, included within Benton County;
3. The Honey Creek watershed, included within Benton County;
4. The Little Sugar Creek watershed, included within Benton County;
5. The upper Arkansas River watershed, which includes Lee Creek within Crawford and Washington counties, and Massard Creek within Sebastian County;
6. The Poteau River watershed, included within Scott, Sebastian, and Polk counties;
7. The Mountain Fork of the Little River watershed, included within Polk County; and
8. The upper White River watershed above its confluence with the Buffalo River, included within Baxter, Benton, Carroll, Washington, Madison, Franklin, Newton, Searcy, Marion, and Boone counties.

Section 2202.2 Geographic Boundaries of Nutrient Surplus Areas

A. The Commission further defines the geographic boundaries of the designated Nutrient Surplus Areas listed in Section 2202.1 by utilizing the National Datasets for Natural Resource Analysis. Hydrologic Units have been classified based on data compiled by United States Geological Survey, Natural Resources Conservation Service and others. Each hydrologic unit is identified by a unique hydrologic unit code (HUC). Detailed maps and digital coverage of the boundaries are available at the Commission office or District office. Hydrologic unit codes for the Nutrient Surplus Areas are as follows:

1. Illinois River watershed: HUC 11110103

2. Spavinaw Creek watershed: HUC 11070209

3. Honey Creek watershed: HUC 11070206

4. Little Sugar Creek watershed: HUC 11070208

5. Upper Arkansas River watershed (which includes Lee Creek within Crawford and Washington counties, and Massard Creek within Sebastian County):

HUC 11110104

6. Poteau River watershed: HUC 11110105

7. Mountain Fork of the Little River watershed: HUC 11140108

8. Upper White River watershed above its confluence with the Buffalo River:

HUC 11010001 and HUC 11010003

B. See Appendix A for general coverage map.

Section 2202.3 Requirements Applicable to Nutrient Surplus Areas

A. Except as provided in Subsection G of this Section, it shall be unlawful for any Person to apply Nutrients to soils or associated Crops within a Nutrient Surplus Area unless the Nutrient Application is performed in compliance with a Nutrient Management Plan prepared by a Certified Nutrient Planner or at the Protective Rate set forth in Section 2202.5.

B. Except as provided in Subsection G of this Section, it shall be unlawful for any owner or Operator of land within a Nutrient Surplus Area to allow the application of Nutrients to soils or associated Crops on that land unless the Nutrient Application is performed in compliance with a Nutrient Management Plan prepared by a Certified Nutrient Planner or at the Protective Rate set forth in Section 2202.5.

C. It shall be unlawful for any Person to apply Nutrients to soils or associated Crops within a Nutrient Surplus Area unless the Nutrient Application is done in compliance with the time, place, and manner restrictions determined necessary by the Commission and set forth in Section 2202.4.

D. It shall be unlawful for any Poultry Feeding Operation to operate within a Nutrient Surplus Area unless the Poultry Feeding Operation develops and implements a Poultry Litter Management Plan or applies Nutrients at the Protective Rate.

E. Except as provided in Subsection G of this Section, it shall be unlawful for any Person other than a Certified Nutrient Applicator to make a Nutrient Application within a Nutrient Surplus Area unless the person making application is a volunteer or an employee under the direction or control of a Certified Nutrient Applicator.

F. Except as provided in Subsection G of this Section, Nutrient Application within a Nutrient Surplus Area shall be documented in records maintained by the Nutrient Applicator and the owner or Operator of the land where Nutrient Application is made, in sufficient detail to demonstrate that the Nutrient Application was conducted in compliance with these Rules. Such records shall be maintained for a minimum of five years or for such longer period of time as may be required by an approved Nutrient Management Plan, and shall be available for inspection by the Commission or Conservation District employees upon request. Records maintained by commercial fertilizer distributors or applicators may be relied upon to meet this requirement.

G. 1. Nutrient Application within a Nutrient Surplus Area on residential lands of two and one-half (2.5) acres or less ("Residential Nutrient Application") shall be applied at a rate not to exceed the Protective Rate set forth in Section 2202.5 and in compliance with the time, place, and manner restrictions set forth in Section 2202.4, or in compliance with an approved Nutrient Management Plan.

2. A Nutrient Management Plan is not required for Residential Nutrient Application as defined in this Subsection, but may be voluntarily obtained.

3. The landowner or resident making a Residential Nutrient Application, as defined in this Subsection, is not required to be a Certified Nutrient Applicator, but is required to maintain documentation of each Nutrient Application for a minimum of five years sufficient to demonstrate compliance with the Time, Place, and Manner Restrictions in Section 2202.4 and either the Protective Rate requirements in Section 2202.5 or an approved Nutrient Management Plan.

H. Upon written request, the Executive Director may waive any provision of these rules consistent with the purposes of this Title as set forth in Section 2201.1.

Section 2202.4 Time, Place, and Manner Restrictions

A. The time, place, and manner restrictions in this Section apply to all Nutrient Applications within a Nutrient Surplus Area.

B. Nutrients shall be evenly distributed over application sites. Application shall be made only at the rates and in the manner specified in a Nutrient Management Plan rather than at the Protective Rate when the Owner has obtained a Nutrient Management Plan. If the Owner or Operator does not have a Nutrient Management Plan, then Nutrient Application shall not exceed the Protective Rate.

C. Nutrient Application shall not be undertaken when soil is saturated, frozen, or covered with ice or snow.

D. Nutrients shall not be applied in any manner that will allow excessive Nutrients to enter Waters Within the State or to run onto adjacent property.

E. Nutrient application directly to water intended to increase fish production shall not be permitted unless the Executive Director determines that nutrients may be applied without adversely affecting water quality.

Section 2202.5 Protective Rate

A. All Nutrient Applications within a Nutrient Surplus Area must comply with the Protective Rate set forth in this Section unless a different rate is specified in an approved Nutrient Management Plan.

B. The Protective Rate is the rate of a designated Nutrient that provides for proper crop use and prevents significant impact to waters within the state. A soil test is required before applying commercial fertilizers containing phosphorus at the Protective Rate. Poultry litter may be applied without a soil test at a maximum rate of 1.5 tons per acre. Commercial fertilizer containing nitrogen but not phosphorus may also be applied without a soil test. Specific rates are set out in Appendix B of these rules.

C. An owner or Operator who is unable to obtain soil test results within a reasonable period of time due to laboratory backlog may use the written Nutrient Application recommendation of a qualified person until January 1, 2009. Qualified persons include conservation district water quality technicians, United States Department of Agriculture employees knowledgeable in soil science, Certified Commercial Applicators, Certified Nutrient Planners, and American Society of Agronomy Certified Crop Advisors.

1. An owner or Operator who makes application in accordance with the written recommendation of a qualified person and maintains records of the written recommendation will be deemed to have complied with the requirements of this Title.

2. An owner or Operator who makes application in accordance with the written recommendation of a qualified person and maintains records of the written recommendation will not be assessed a penalty by the Commission for over application of nutrients or for failure to apply at the protective rate or in accordance with a nutrient management plan.

SUBTITLE III. NUTRIENT MANAGEMENT PLANS

2203.1 Obtaining a Nutrient Management Plan

A. Any Person seeking a Nutrient Management Plan should contact the local Conservation District and request a Plan. The Person seeking a Nutrient Management Plan may also contact third parties who have obtained certification from the Commission to develop Plans.

B. A Certified Planner will certify by his signature that each Plan he drafts meets all applicable standards and will provide a copy to the Owner for review. The Certified Planner will also provide a copy of each drafted Plan to the Conservation District where a majority of the facility is located. The Conservation District board will review each Plan to determine whether it meets all applicable standards. If the standards are met, the Conservation District shall approve the Plan and retain one copy. If the Conservation District board does not approve a Plan, it shall provide the Owner written notice of the denial and its basis.

C. An Owner may appeal a Conservation District denial of Plan approval or any provision of a certified and approved Nutrient Management Plan within 90 days by applying in writing to the Executive Director. The Owner must follow the Plan during the appeal process. The Executive Director will consider appeals only when the Owner asserts that the applicable standards were not followed in drafting the Plan or that a Conservation District failed to approve a Plan which meets those standards. The Executive Director may deny the appeal, modify the Plan, or approve

the Plan. The Owner may appeal an unfavorable decision to the full Commission upon written application within 30 days. The Commission's decision may be appealed as provided in Section 2206.4.

D. Any Plan obtained by a Person prior to the effective date of these rules meets the requirements of this Title if developed using the Arkansas Phosphorus Index.

Section 2203.2 Substitution of Existing Regulatory Permit for Nutrient Management Plan

A. If a Nutrient Application process within a Nutrient Surplus Area is a part of a process or system for which a permit has been issued and is in effect pursuant to the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. §§ 8-4-101 et seq., or other similar federal or state law, and if the permit contains conditions regulating Nutrient Application acceptable to the Conservation District, then the permit may be substituted for and serve as the Nutrient Management Plan.

B. Before such permit is effective as a substitute for a Nutrient Management Plan, the permittee must submit a complete copy of the permit to the local Conservation District and request approval in writing.

C. Upon approval by the Conservation District, the permit shall be substituted for and serve as the Nutrient Management Plan required by these Rules, and all other requirements of these Rules shall apply.

Section 2203.3 Contents of a Nutrient Management Plan

A. A Nutrient Management Plan shall contain sufficient documentation to demonstrate that Nutrients will be managed within the Nutrient Management Unit in compliance with these Rules and in a manner sufficient to protect the Waters Within the State.

B. A proposed Nutrient Management Plan shall address the following major elements: (1) general site information, (2) applicable permits and certifications, (3) Nutrient Application site information, (4) Nutrient Application plans, (5) actual activity records, and (6) operation and maintenance. The precise content of a Nutrient Management Plan will vary as necessary to meet the needs of the specific Nutrient Management Unit addressed. Unless clearly inapplicable, a Nutrient Management Plan shall address all of the items listed under the six major elements shown below in this Section.

1. General site information

a. Names, phone numbers, and addresses of the owner(s) and Operator(s) of all lands within the Nutrient Management Unit.

b. Location of site: legal description of all lands in the Nutrient Management Unit, driving instructions from the nearest municipality, street address, and emergency 911 coordinates.

c. Sketch or aerial photograph of farmstead and all fields in the Nutrient Management Unit.

d. Operation procedures.
e. Existing documentation of present facility components that would aid in evaluating existing conditions.

2. Applicable permits and certifications
a. Federal, State, or local permits or ordinances, if applicable.
b. Operator or manager certifications, if applicable.
c. Certification number of Certified Nutrient Planner responsible for developing plan.
d. Records of inspections or site assessments, if applicable.

3. Nutrient Application site information
a. Date Plan was prepared.
b. Written agreements, if any, relating to Nutrient Application.
c. Aerial maps of Nutrient Application areas.
d. Individual field maps with marked conservation features, setbacks, buffers, waterways, Poultry houses or facilities, surface water features, and environmentally sensitive areas such as sinkholes, wells, gullies, tile inlets, etc.
e. Landowner and Operator names, addresses, and phone numbers.
f. Eight-digit watershed codes for Nutrient Application sites.
g. Specific and unique field identification codes, if applicable.
h. Land use designation, if applicable.
i. Soil map with appropriate interpretations.
j. Calculations, assumptions, interpretations, and narrative description demonstrating appropriate application of the Phosphorus Index in development of the proposed Nutrient Application rates.
k. Land treatment practices planned, applied, and level of treatment provided.

4. Nutrient Application
a. Crop types, realistic yield targets, and expected Nutrient uptake amounts, if available.
b. Application equipment descriptions and methods of application.
c. Expected application seasons and estimated days of application per season.
d. Proposed Nutrient Application rates; i.e., amounts per acre (volume in gallons or tons per acre, and pounds of plant available nitrogen, phosphorus as P_20_5, and potassium as K_20 per acre), and detailed information on the calculations, assumptions, and interpretations used to determine application rates.
e. Estimate of acres needed to apply Litter generated on the Nutrient Management Unit or by any related Poultry Feeding Operation, if applicable, consistent with application of the Phosphorus Index and respecting any guidelines published for nitrogen and other Nutrient loading limits.

5. Actual activity records
a. Soil tests – not more than five years old.
b. Litter test results – not more than five years old.
c. Planned and applied rates, methods of application, and timing (month and year) of all sources of Nutrients applied.
d. Current and planned Crop rotation.
e. Records of any spill events.

6. Operation and Maintenance

a. Reasonably detailed operation and maintenance procedures and schedules for all aspects of the Nutrient Management Plan including, by way of example, holding systems, Litter storage, Land Application, application equipment, soil and Nutrient source sampling techniques, etc.

b. Description of recordkeeping procedures including records for date and location of each Nutrient Application, amount of Litter or other Nutrients applied, phosphorus content of the soil, phosphorus content of Litter or other Nutrient source, application rates used, source of Litter or other Nutrients, and total acreage of Nutrient Applications.

c. Designation of when periodic review and revision of the Plan will occur. See Section 2203.5.

Section 2203.4 Additional Plan content

The Certified Nutrient Planner should incorporate additional Plan requirements as appropriate if required by incentive programs which apply to a specific owner or Operator.

Section 2203.5 Review and Revision of Nutrient Management Plans

A. Nutrient Management Plans shall be reviewed by the owner or Operator of the Nutrient Management Unit at least annually to determine if adjustments or modifications are needed.

B. Plans would need to be modified if the facilities were expanded, total acreage receiving Nutrient Application changes, use of acreage changes, or facilities are under control of a different owner or Operator.

C. Nutrient Management Plans shall be reviewed thoroughly by a Certified Nutrient Planner every five years and a report of the five-year review shall be provided to the local Conservation District within one hundred twenty (120) days following the end of the fifth annual growing period identified in the Plan. The five-year review shall update the existing Plan with recent soil and Litter testing data. All other information required to be included in a Nutrient Management Plan in Section 2203.3 of this Subtitle shall be updated with current information.

Section 2203.6 Recordkeeping Requirements

A. Records required to be compiled or kept by these Rules or by the provisions of any approved Nutrient Management Plan shall be maintained by the owner and Operator of the lands within the Nutrient Management Unit for a minimum period of five years and shall be available for inspection by the Commission or Conservation District employees upon reasonable request. Such records shall not be public records.

B. Records required to be compiled or kept by these Rules or by the provisions of any approved Nutrient Management Plan relating to the activities of a Nutrient Applicator shall be maintained by the Nutrient Applicator for a minimum period of five years and shall be available

for inspection by the Commission or Conservation District employees upon reasonable request. Such records shall not be public records.

C. Owners, Operators, and Applicators may rely on records maintained by commercial fertilizer distributors and applicators to meet these requirements.

SUBTITLE IV. POULTRY LITTER MANAGEMENT PLANS

Section 2204.1 Obtaining a Poultry Litter Management Plan

A. Any Person seeking a Poultry Litter Management Plan should contact the local Conservation District and request information on how to obtain a Plan. The Person seeking a Poultry Litter Management Plan may also contact third parties who have obtained certification form the Commission to develop Plans.

B. A Certified Planner will certify by his signature that each Plan he drafts meets all applicable standards and will provide a copy to the Owner for review. The Certified Planner will also provide a copy of each drafted Plan to the Conservation District where a majority of the facility is located. The Conservation District board will review each Plan to determine whether it meets all applicable standards. If the standards are met, the Conservation District shall approve the Plan and retain one copy. If the Conservation District board does not approve a Plan, it shall provide the Owner written notice of the denial and its basis.

C. An Owner may appeal a Conservation District denial of Plan approval or any provision of a certified and approved Nutrient Management Plan within 90 days by applying in writing to the Executive Director. The Owner must follow the Plan during the appeal process. The Executive Director will consider appeals only when the Owner asserts that the applicable standards were not followed in drafting the Plan or that a Conservation District failed to approve a Plan which meets those standards. The Executive Director may deny the appeal, modify the Plan, or approve the Plan. The Owner may appeal an unfavorable decision to the full Commission upon written application within 30 days. The Commission's decision may be appealed as provided in Section 2206.4.

D. Any Plan obtained by a Person prior to the effective date of these rules meets the requirements of this Title if the Plan was developed using the Arkansas Phosphorus Index.

Section 2204.2 Contents of a Poultry Litter Management Plan

A. A Poultry Litter Management Plan shall contain sufficient documentation to demonstrate that Litter and associated Nutrients will be managed in compliance with these Rules and in a manner sufficient to protect the Waters Within the State.

B. A proposed Poultry Litter Management Plan shall address the following major elements: (1) general site information, (2) production information, (3) applicable permits and certifications, (4) Land Application site information, (5) Land Application plans, (6) actual activity records, (7) mortality disposal procedures, and (8) operation and maintenance. The precise content of a

Poultry Litter Management Plan will vary as necessary to meet the needs of the specific Poultry Feeding Operation(s) addressed in the Plan. Unless clearly inapplicable, a Poultry Litter Management Plan shall address all of the items listed under the eight major elements shown below in this Section.

1. General site information
   a. Names, phone numbers, and addresses of the owner(s) and Operator(s) of the Poultry Feeding Operation.
   b. Location of Poultry Feeding Operation: legal description of all lands and facilities in the Poultry Feeding Operation, driving instructions from the nearest municipality, street address, and emergency 911 coordinates.
   c. Sketch or aerial photograph of Poultry Feeding Operation.
   d. Operation procedures specific to the Poultry Feeding Operation, including an emergency action plan for Litter storage and handling.
   e. Any other information requested by the Commission.
2. Poultry production information
   a. Poultry types, phases of production, and length of confinement for each type.
   b. Animal count and average weight.
   c. Calculated Litter volumes.
   d. Litter storage type, volume, and approximate time period of storage.
3. Applicable permits and certifications
   a. Federal, State, or local permits or ordinances, if applicable.
   b. Operator or manager certifications, if applicable.
   c. Certification number of Certified Nutrient Planner responsible for developing Poultry Litter Management Plan.
   d. Records of inspections or site assessments, if applicable.
4. Land Application site information
   a. Date Plan was prepared.
   b. Written agreements, if any, relating to Litter transfers and Land Application.
   c. Aerial maps of Land Application areas.
   d. Individual field maps with marked conservation features, setbacks, buffers, waterways, Poultry houses or facilities, surface water features, and environmentally sensitive areas such as sinkholes, wells, gullies, tile inlets, etc.
   e. Landowner and Operator names, addresses, and phone numbers.
   f. Eight-digit watershed codes for the Land Application sites.
   g. Specific and unique field identification codes, if applicable.
   h. Land use designation, if applicable.
   i. Soil map with appropriate interpretations.
   j. Calculations, assumptions, interpretations, topographic maps, and narrative description demonstrating appropriate application of the Phosphorus Index in development of the proposed Land Application rates.
   k. Land treatment practices planned, applied, and level of treatment provided.
5. Land Application
   a. Crop types.
   b. Application equipment descriptions and methods of application.
   c. Expected application seasons and estimated days of application per season.

d. Proposed Land Application rates; i.e., amounts per acre (volume in gallons or tons per acre, and pounds of plant available nitrogen, phosphorus as P_20_5, and potassium as K_20 per acre), and detailed information on the calculations, assumptions, and interpretations used to determine application rates.
e. Estimate of acres needed to apply Litter generated by the Poultry Feeding Operation, consistent with application of the Phosphorus Index and respecting any guidelines published for nitrogen and other Nutrient loading limits.

6. Actual activity records
a. Soil tests – not more than five years old.
b. Litter test results – not more than five years old.
c. Planned and applied rates, methods of application, and timing (month and year) of all sources of Nutrients applied.
d. Current and planned Crop rotation.
e. Actual Crop yield and harvest from Land Application sites.
f. Records of internal inspections for Litter storage, handling, and application system components.
g. Records of any spill events.
h. Records of all Land Applications, both within and outside of Nutrient Surplus Areas.
i. For any Litter not land applied, records demonstrating that the Litter was converted to a non-nutrient use or other use acceptable to the Commission.

7. Mortality disposal
a. Plan for mortality disposal including approved site for catastrophic die-off.
b. Methods and equipment used to implement the disposal plan, including any applicable permits.

8. Operation and Maintenance
a. Reasonably detailed operation and maintenance procedures and schedules for all aspects of the Poultry Litter Management Plan including, by way of example, Litter storage and handling systems, Land Application, application equipment, soil and Litter sampling techniques, etc.
b. Description of recordkeeping procedures including records for date and location of each Land Application, amount of Litter or other Nutrients applied, phosphorus content of the soil, phosphorus content of Litter or other Nutrient source, application rates used, source of Litter or other Nutrients, and total acreage of Land Applications.
c. Designation of the annual growing period that will be used for purpose of periodic review and revision of the Plan. See Section 2204.3.

Section 2204.3 Review and Revision of Poultry Litter Management Plans

A. Poultry Litter Management Plans shall be reviewed by the owner or Operator at least annually to determine if adjustments or modifications are needed.

B. Plans shall be modified if facilities are expanded, total acreage receiving Nutrient Application changes, use of acreage changes, or facilities are under control of a different Operator.

C. Poultry Litter Management Plans shall be reviewed thoroughly by a Certified Nutrient Planner every five years, and a report of the five-year review shall be provided to the Commission within one hundred twenty (120) days following the end of the fifth annual growing period identified in the Plan. The five-year review shall update the existing Plan with recent soil and Litter testing data. All other information required to be included in a Poultry Litter Management Plan in Section 2204.2 of this Subtitle shall be updated with current information.

Section 2204.4 Recordkeeping Requirements

A. Records required to be compiled or kept by these Rules or by the provisions of any approved Poultry Litter Management Plan shall be maintained by the owner and Operator of the Poultry Feeding Operation for a minimum period of five years and shall be available for inspection by the Commission or Conservation District employees upon reasonable request. Such records shall not be public records.

B. Records required to be compiled or kept by these Rules or by the provisions of any approved Poultry Litter Management Plan relating to the activities of a Nutrient Applicator shall be maintained by the Nutrient Applicator for a minimum period of five years and shall be available for inspection by the Commission or Conservation District employees upon reasonable request. Such records shall not be public records.

C. Owners, Operators, and Applicators may rely on records maintained by commercial fertilizer distributors and applicators to meet these requirements.

Section 2204.5 Comprehensive Nutrient Management Plans

If an owner or operator obtains a comprehensive nutrient management plan properly developed by the United States Department of Agriculture, the Arkansas Soil and Water Conservation Commission, or a Conservation District and based on the Arkansas Phosphorus Index, then he is not required to obtain a Nutrient Management Plan, a Poultry Litter Management Plan, or apply at the Protective Rate.

SUBTITLE V. SALE OR TRANSFER OF LITTER

Section 2205.1 No Responsibility of Transferor for Use of Litter After Transfer

Upon the sale or transfer of Litter from a Poultry Feeding Operation within a Nutrient Surplus Area to any user, the Poultry Feeding Operation shall not be responsible for the use of the Litter by the purchaser or other transferee. Notwithstanding the foregoing, the Poultry Feeding Operation remains responsible for use of the Litter in compliance with this Title until actual possession of the Litter transfers to the purchaser or transferee and the Litter is removed from the Poultry Feeding Operation premises.

Section 2205.2 Responsibility of Litter User

Any Person receiving Litter from a Poultry Feeding Operation within a Nutrient Surplus Area who intends to use the Litter for a purpose other than Land Application must use the Litter in a manner approved by the Commission. If the Person receiving the Litter intends to transfer the Litter to others, the Person must keep transfer records.

SUBTITLE VI. ENFORCEMENT

Section 2206.1 Commission Right to Inspect

A. Commission and Conservation District employees may enter upon and inspect private property to determine compliance with the requirements of this Title.

B. Prior to entering a facility where Poultry is regularly kept, Commission and Conservation District employees shall provide the owner or Operator with twenty-four (24) hours notice.

C. Documentation of bio-security measures taken and bio-security certification received by the Commission agent, including a bio-security log book, shall be made available to the owner or Operator upon request.

D. Upon notice of disease outbreak by the Arkansas Livestock and Poultry Commission, inspection under this Title shall be automatically suspended until notification by the Arkansas Livestock and Poultry Commission that it is safe to resume inspections.

Section 2206.2 Administrative Enforcement Procedures

A. Upon complaint or suspicion of suspected violation of any provision of this Title, Commission staff may investigate or cause an investigation to be undertaken and may recommend disciplinary action to the Director.

1. Anyone providing information to the Commission about a possible violation must provide the substance of the complaint to the Commission in writing and must provide his legal name and current mailing and physical addresses where the complainant may be contacted. 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 2206.3 Administrative Penalties

A. Upon the first violation of these rules within any one-year period, the alleged violator shall be issued a Warning Letter. For the second violation within any one-year period, the Director may assess not more than fifty dollars ($50) in cumulative civil penalties. Upon the third violation within any one-year period, the Director may impose a penalty not to exceed two thousand five hundred dollars ($2,500.00) for each violation of Ark. Code Ann. §§15-20-1101 et seq. and this Title.

1. Any fees collected by the Commission 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 through Titles 19, 20, 21, and 22 of the Commission's rules.

B. A Warning Letter or Administrative Consent Order may be served by certified mail, restricted delivery, return receipt requested to the address on file with the Commission or District or by any means sufficient for service of process in a civil court action.

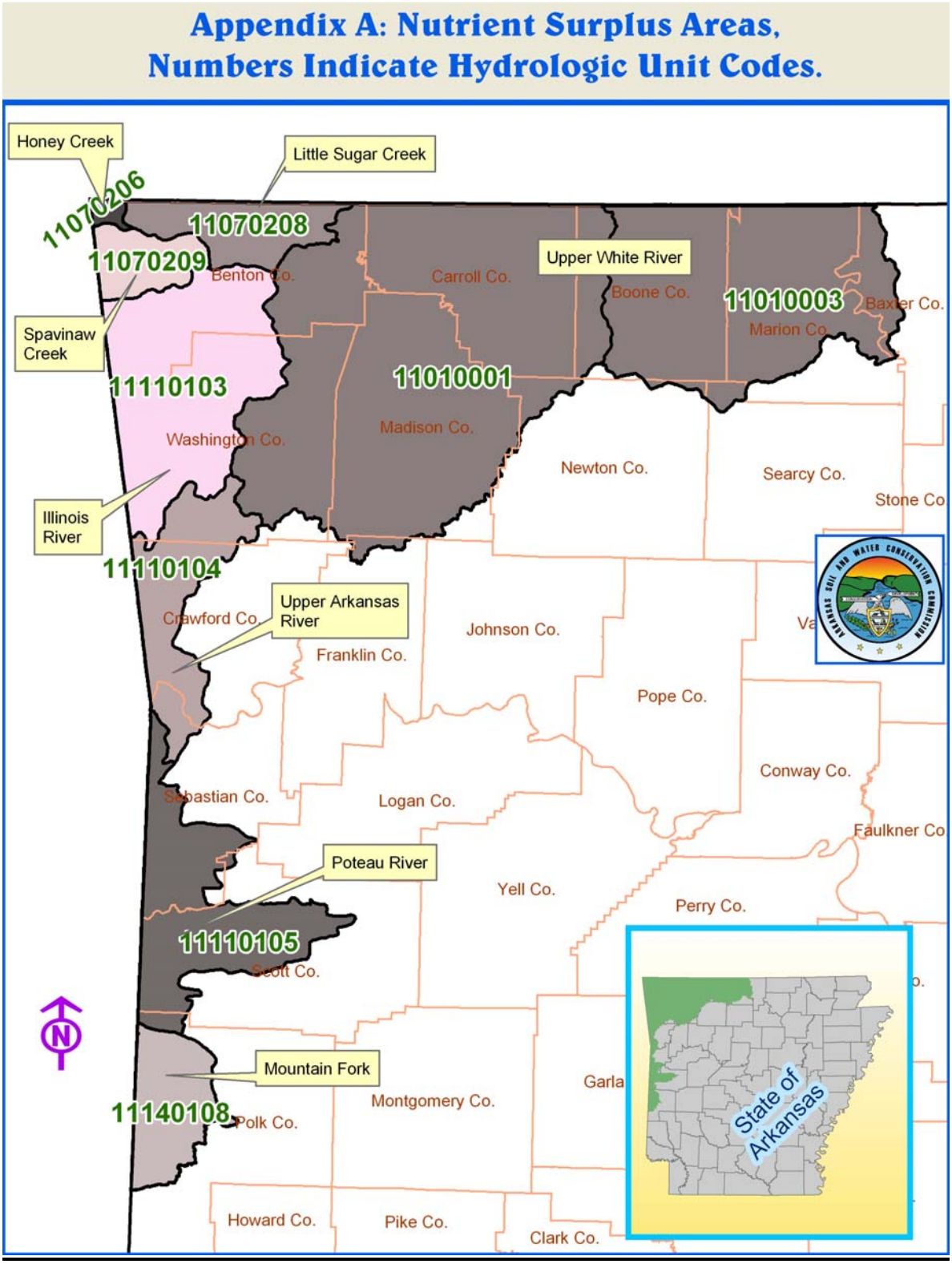
C. The Person receiving an Administrative Consent Order may choose to sign the Administrative Consent Order and thereby agree to the penalties and other terms and conditions contained within the Order. If the Person receiving an Administrative Consent Order fails to respond in writing to the Commission within thirty days after receipt of the Administrative Consent Order, and receipt has been confirmed by a certified mail receipt or proof of personal service, the Person will be deemed to have agreed to the penalties and other terms and conditions contained within the Order, which shall become final.

D. Upon receipt of an Administrative Consent Order, the Person to whom the Order is directed may object and request a hearing before the Commission by delivering such request in writing to the Commission within thirty days, setting forth the reasons why the Person disagrees with the allegations in the Order and any proposed penalty. The hearing will be conducted in accordance with Commission Rules, Title I. The Commission has the burden of proving the alleged facts and violations of law stated in the Administrative Consent Order. The Commission and the Director may issue subpoenas to any witness requiring his or her attendance and testimony before the Commission as provided in Ark. Code Ann. § 15-22-208.

E. The Commission will not take final administrative action against a Person accused of violating this Title or Ark. Code Ann. §§ 15-20-1101 et seq. until the accused Person has consented to an Administrative Consent Order or until the Person has had an opportunity for a hearing to review the suspected violation and proposed penalty under Commission Rules, Title I. The final decision of the Commission shall include findings of fact and conclusions of law, and shall otherwise conform to the requirements of Ark. Code Ann.§ 25-15-210.

Section 2206.4 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.


Appendix A: Nutrient Surplus Areas,
Numbers Indicate Hydrologic Unit Codes.
Honey Creek
Little Sugar Creek
11070206
11070208
11070209
Benton Co.
Carroll Co.
Upper White River
Boone Co.
11010003
Baxter Co.
Marion Co.
Spavinaw Creek
11110103
11010001
Madison Co.
Washington Co.
Newton Co.
Searcy Co.
Stone Co
Illinois River
11110104
Crawford Co.
Upper Arkansas River
Franklin Co.
Johnson Co.
Pope Co.
Conway Co.
Sebastian Co.
Logan Co.
Faulkner Co
Poteau River
Yell Co.
Perry Co.
11110105
Scott Co.
Mountain Fork
Montgomery Co.
11140108
Polk Co.
Howard Co.
Pike Co.
Clark Co.
State of Arkansas

Tables derived from: Moore, P.A. and J. Barrentine. 2004. Determining the protective rates of poultry litter and commercial fertilizers for Arkansas. Lead Agency, USDA-ARS, Poultry Production and Product Safety Research Unit. Cooperating Agency, Crop Soil & Environmental Science Department, University of Arkansas. Funding Agency, Arkansas Soil & Water Conservation Commission.

If a 1:10 ratio of Mehlich III extractant is used to conduct a soil test and the test results are given as pounds of Phosphorus per acre, multiply the P lbs/acre figures in the left-hand column of these tables by 1.3 to determine application rates.

If a 1:10 ratio of Mehlich III extractant is used to conduct a soil test and soil test results are given as parts per million, divide the P lbs/acre in the left-hand column of these tables by 2 (to obtain parts per million), then multiply that figure by 1.3 to determine application rates.

Table1 – Maximum poultry litter application rates allowed with the Arkansas Phosphorus Index for normal conditions (moderate runoff class, less than 1 ton erosion/acre, surface applied in spring, hayed & grazed). Alum-treated litter rates were calculated conservatively using 50% reduction in soluble P, rather than 75% reduction for the two ton rate. Values are in tons/acre.

Soil test P (lbs P/acre)	**Litter**	**1200 lbs alum/flock**	**2000 lbs alum/flock**	**4000 lbs alum/flock**
0 – 100	3.0	3.4	4.0	N rate
100 – 300	2.8	3.2	3.7	N rate
300 – 400	2.6	3.0	3.5	N rate
400 – 600	2.3	2.6	3.1	N rate
600 – 800	2.0	2.3	2.7	4.0
800 – 1000	1.6	1.8	2.1	3.2
1000 – 1100	1.5	1.7	2.0	3.0

Table 2 – Protective rate of poultry litter as a function of soil test phosphorus and alum use. Calculated with the Arkansas Phosphorus Index under severe conditions (high runoff class, 1-2 tons/acre erosion, surface applied in spring, hayed & grazed). Alum-treated litter rates were

calculated conservatively using 50% reduction in soluble P, rather than 75% reduction for the two ton rate. Values are in tons/acre.

Soil test P (lbs P/acre)	**Litter**	**1200 lbs alum/flock**	**2000 lbs alum/flock**	**4000 lbs alum/flock**
0 – 100	2.3	2.6	3.1	4.6
100 – 300	2.0	2.3	2.7	4.0
300 – 400	1.8	2.1	2.4	3.6
400 – 600	1.5	1.7	2.0	3.0
600 – 800	1.1	1.3	1.5	2.2
800 – 1000	0.8	0.9	1.1	1.6
1000 – 1100	0.7	0.8	0.9	1.4

Table 3– Protective rate of commercial P fertilizer for grasses and clover. Values in lbs P_2O_5/acre.

	Low soil test p (0-50 lbs/acre)	**Med. Soil test P (50-100 lbs/acre)**	**High soil test P (>100 lbs/acre)**	**Soil test P not know**
Fertilizer application rate (lbs P_2O_5/acre)	80	40	0	0

Table 4- Protective Rate of Commercial Phosphate Fertilizer for Row Crops (in lbs P_2O_5/acre). Commercial P fertilizer should not be applied if soil test P is unknown.

Crop	**Low Soil Test P 0-50 lbs P/acre**	**Medium Soil Test P 50-100 lbs P/acre**	**High Soil Test P >100 lbs P/acre**
Corn	80	50	0
Cotton	60	30	0
Grain Sorghum	60	40	0
Rice	40	0	0
Soybeans	40	0	0
Wheat	60	30	0

Table 5- Protective Rate of Commercial Phosphate Fertilizer for Fruits and Vegetables (in lbs P_2O_5/acre). Commercial P fertilizer should not be applied if soil test P is unknown.

Crop	**Low Soil Test P 0-50 lbs P/acre**	**Medium Soil Test P 50-100 lbs P/acre**	**High Soil Test P >100 lbs P/acre**
Sweet Corn	80	40	0
Irish Potatoes	80	40	0
Tomatoes	80	60	0
Okra, Eggplant, Peppers, Cabbage, Broccoli, and Cauliflower	80	60	0
Sweet Potatoes	80	80	0
Watermelon, Cantaloupe, Squash, and Pumpkins	60	50	0
Cucumbers	80	70	0
Spinach, Collards, Mustard Greens, Kale, and Turnip Greens	60	60	0
Snapbeans	90	45	0
Pole Beans, Lima Beans, Dry Beans, and English Peas	80	40	0
Southern or Summer Peas	80	40	0
Grapes	80	30	0

Strawberries	90	90	0
Blackberries and Raspberries	60	30	0
Blueberries	60	0	0

Table 6- Protective Rate of Commercial Phosphate Fertilizer for Trees and Ornamentals (in lbs P_2O_5/acre). Commercial P fertilizer should not be applied if soil test P is unknown.

Crop	**Low Soil Test P 0-50 lbs P/acre**	**Medium Soil Test P 50-100 lbs P/acre**	**High Soil Test P >100 lbs P/acre**
Fruit Trees - Pears, Cherries, Apples, Peaches, Plums and Figs	0.3 lbs P_2O_5/tree	0	0
Pecans and Walnuts	80	40	0
Pine Nursery Seedlings	60	30	0
Christmas Trees	50	0	0
Ornamentals	50	50	0

Table 7 – Protective rate for commercial P fertilizer for grasses and legumes. Values are in lbs product/acre.

Fertilizer Type	**Low soil test P (0-50 lbs/acre)**	**Med. Soil test P (50-100 lbs/acre)**	**High soil test P (>100bs/acre)**	**Soil test P not known**
0-46-0	175	88	0	0
13-13-13	600	300	0	0
10-20-10	400	200	0	0
Miracle Grow (20-27-5)	300	150	0	0
Scott's weed And Feed (28-3-3)	Base rate on nitrogen needs	Base rate on nitrogen needs	0	0

Table 8 – Protective rate for commercial N fertilizer. Values in lbs/acre.

Forage type	**Low soil test P (0-50 lbs/acre)**	**Med. Soil test P (50-100 lbs/acre) applications**	**High soil test P (>100 lbs/acre)**	**Additional applications**
Warm season grasses	80	80	80	Add 50-60 lbs N/acre as needed
Cool season grasses	45	45	50	Add 50-60 lbs N/acre as needed
Improved warm season pastures	45	45	50	Add 50-60 lbs N/acre as needed
Alfalfa	0	0	0	
Warm season grass/clover	0	0	0	Add 80 lbs N/acre when clover is dormant
Cool season grass/clover	60	60	60	
Cool season grass on warm season grass	60	60	60	Add 60-80 lbs N/acre as needed
Warm season Perennial legume	0	0	0	

Table 9– Protective rate for commercial N fertilizer. Values in lbs/acre.

Forage type	**N Rate**	**Additional application**
Warm season grasses	80	Add 50-60 lbs N/acre as needed
Cool season grasses	45	Add 50-60 lbs N/acre as needed
Improved warm season pastures	45	
Alfalfa	0	
Warm season grass/clover	0	Add 80 lbs N/acre when clover is dormant
Cool season grass/clover	60	
Cool season grass on warm season grass	60	Add 60-80 lbs N/acre as needed
Warm season perennial legume	0	

Table 10 - Protective Rate of Commercial Nitrogen Fertilizer for Row Crops (in lbs N/acre).

Crop	**lbs N/acre**	**Comments**
Corn	120	Based on yield of 125 bushels/acre; increase N rate by 30 lbs/acre for each 25 bushel increase in yield
Cotton	100	Reduce N rate if soil nitrate levels are high based on University of Arkansas recommendations
Grain Sorghum	100	Increase rate by 30 lbs/acre when yields are greater than 6,000 lbs/acre or when irrigated
Rice	75-150	Adjust N rates according to variety grown and crop rotation as recommended by University of Arkansas.
Soybeans	0	
Wheat	90	

Table 11 - Protective Rate of Commercial Nitrogen Fertilizer for Fruits and Vegetables (in lbs N/acre).

Crop	lbs N/acre	Comments
Sweet Corn	50	Sidedress 50 lbs N/acre when plants are 12"
Irish Potatoes	50	Sidedress 40 lbs N/acre when plants are 6"
Tomatoes	40	Sidedress 30 lbs N/acre when fruit set begins
Okra, Eggplant, Peppers, Cabbage, Broccoli, and Cauliflower	40	Sidedress 30 lbs N/acre when appropriate
Sweet Potatoes	40	
Watermelon, Cantaloupe, Squash, and Pumpkins	30	Sidedress 30 lbs N/acre at flowering
Cucumbers	40	Sidedress 40 lbs N/acre when vines start to run
Spinach, Collards, Mustard Greens, Kale, and Turnip Greens	30	Sidedress 30 lbs N/acre after stand is assured
Snapbeans	30	

Pole Beans, Lima Beans, Dry Beans, and English Peas	20	
Southern or Summer Peas	20	
Grapes	30	Sidedress additional 30 lbs N/acre each month during the growing season, as needed
Strawberries	90	
Blackberries and Raspberries	30	Sidedress 30 lbs N/acre following harvest
Blueberries	60	Apply additional 30-60 lbs N/acre/year when plants are 3 to 4 years old, as needed

Table 12 - Protective Rate of Commercial Nitrogen Fertilizer for Trees and Ornamentals (in lbs N/acre).

Crop	**lbs N/acre**
Fruit Trees - Pears, Cherries, Apples, Peaches, Plums and Figs	0.3 lbs N/tree
Pecans and Walnuts	40
Pine Nursery Seedlings	30
Christmas Trees	20
Ornamentals	25

RULES GOVERNING THE ARKANSAS SOIL NUTRIENT AND POULTRY LITTER APPLICATION AND MANAGEMENT PROGRAM

TITLE XXII

TABLE OF CONTENTS

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RULES GOVERNING THE ARKANSAS SOIL NUTRIENT AND POULTRY LITTER APPLICATION AND MANAGEMENT PROGRAM

TITLE XXII

SUBTITLE I. GENERAL PROVISIONS

Section 2201.1 Purpose

The Arkansas Soil and Water Conservation Commission developed this Title to encourage prudent practices regarding the application and management of soil Nutrients and Poultry Litter to protect and enhance the State's surface water quality while allowing for ~~maximum~~ optimum soil fertility and proper plant growth. The primary goal of this Title is to maintain the benefits derived from the wise use of Poultry Litter, commercial fertilizers, and other soil Nutrients while avoiding unwanted effects from excess Nutrient Applications on the waters within the State. In furtherance of this goal, these Rules provide requirements applicable to Nutrient Surplus Areas, Nutrient Management Plans, and Poultry Litter Management Plans. These rules are designed to protect the waters within the State from adverse effects of excess nutrients while allowing for maximum soil fertility and proper plant growth.

Section 2201.2 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 Soil and Water Conservation Commission."
C. Ark. Code Ann. §§ 15-20-901 et seq., "Arkansas Poultry Feeding Operations Registration Act."
D. Ark. Code Ann. §§ 15-20-1001 et seq., "Arkansas Soil Nutrient Management Planner and Applicator Certification Act."
E. Ark. Code Ann. §§ 15-20-1101 et seq., "Arkansas Soil Nutrient Application and Poultry Litter Utilization Act."
F. Ark. Code Ann. §§ 25-15-201 et seq., Arkansas Administrative Procedure Act.

Section 2201.3 Powers of the Commission

A. The Arkansas Soil and Water Conservation Commission is authorized to develop all regulations necessary to implement the Arkansas Soil Nutrient Application and Poultry Litter Utilization Act, taking into consideration the following factors:

1. The current and projected level of Nutrients in the soil within the area;
2. The current or potential impacts of surplus Nutrients within the area;
3. Litter produced and applied in the area;
4. Commercial fertilizer, compost and other sources of Nutrients applied within the area;

5. The current or projected Nutrient needs within the area, including the Nutrient level necessary to maintain soil fertility, current and future cropping patterns, and those crops' demand for Nutrients;
6. The soil type, geology, hydrology and other physical characteristics of the area;
7. The types of water bodies and the uses of the waters within the area; and
8. Any other relevant information necessary to affect the purposes of this subchapter.

B. When developing regulations necessary to implement this program, the Commission may also consider the culture of the affected areas including the traditions, the way people have lived, worked their land, and earned their livelihood.

C. The Commission may delegate portions of the program developed hereunder for implementation to the Executive Director, to Conservation Districts designated by the Commission, or both.

~~D. The Commission may assess and collect fees, in an amount to be set from time to time by the Commission, to recover the costs of implementing and administering the provisions of these Rules.~~

D. The Commission may, in its discretion, defer mandatory compliance with portions of the program related to regulation of Nutrient Application, Nutrient Management Plans, and Poultry Litter Management Plans, for up to two (2) years if the Commission deems it necessary to allow development of Nutrient Management Plans and Poultry Litter Management Plans.

Section 2201.4 Definitions

As used in this Title, the following terms shall have the definitions below unless otherwise specifically stated herein.

A. "Administrative Consent Order" means a legal agreement signed by the Director and a violator of this title through which the violator agrees to pay a fine, take a required corrective action, refrain from an activity, or a combination of the listed actions. It describes the actions to be taken by all signatories and may be enforced in court.

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.B. DeLaune, P.A. Moore, Jr., D.K. Carman, T.C. Daniel, and A.N. Sharpley; Development and validation of a Phosphorus Index for pastures fertilized with animal manure [CD-ROM]; International Symposium Addressing Animal Production and Environmental Issues; 2001.

C. "Certified Nutrient Applicator" may refer to either a Certified Commercial Applicator or a Certified Private Applicator and means a Person ~~that has shown to the Commission that he or she has the minimal knowledge and technical competence necessary to properly apply Nutrients and has been certified by the~~ who has been certified by the Commission as competent to apply

Nutrients to land pursuant to Commission Rules Governing the Arkansas Nutrient Management Applicator Certification Program, Title XXI.

D. "Certified Nutrient Planner" means any natural Person ~~that has shown to the Commission that he or she has the minimal knowledge and technical competence necessary to prepare Nutrient Management Plans and has been certified by the Commission~~ who has been certified by the Commission as competent to develop Nutrient Management Plans pursuant to Commission Rules Governing the Arkansas Nutrient Management Planner Certification Program, Title XX.

E. "Commission" means the Arkansas Soil and Water Conservation Commission.

F. "Compost" means a process which biologically stabilizes livestock and poultry mortalities , making them suitable for disposal by Land Application. The process uses a simple mixture of dry Poultry manure (Litter), Poultry carcasses, and a bulking agent or aeration medium such as hay or straw. Only enough water is added to keep the material moist and the mixture should never be saturated. Compost does not include composted plant material with no animal carcasses or manure added that is used as a soil amendment and not principally for its Nutrient value.

~~F. "Comprehensive Nutrient Management Plan" means an integrated plan that combines the required elements of both a Nutrient Management Plan and a Poultry Litter Management Plan.~~

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

H. "Crop" means any managed vegetative cover.

I. "Director" means the Executive Director of the Arkansas Soil and Water Conservation Commission.

J. "Land Application" means the spreading on or incorporation of Litter into the soil mantle primarily for beneficial purposes.

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

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

M. "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 including, without limitation, substances in Litter, compost as fertilizer, commercially manufactured chemical and organic fertilizers, sewage sludge and combinations thereof.

N. "Nutrient Application" means the process by which Persons apply Nutrients to soil or associated Crops.

O. "Nutrient Applicator" means any Person who applies Nutrients to soil or associated Crops.

P. "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.

Q. "Nutrient Management Unit" means the field, group of fields, or other land units, that collectively include all land area on which Nutrients will or may be applied and managed pursuant to a Nutrient Management Plan.

R. "Nutrient Surplus Area" means a defined geographic area, declared by Ark. Code Ann. § 15-20-1104 and described more specifically in Subtitle II of these Rules, 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.

S. "Operator" means the Person(s) with control over the day-to-day operation of, or decision-making authority over, the facility, process, or physical location to which the term is applied.

T. "Person" means any legal entity including, without limitation, any individual, partnership, company, association, fiduciary, corporation, limited liability company, cooperative, or any organized group of persons whether incorporated or not.

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

V. "Poultry Feeding Operation" means any lot or facility where two thousand five hundred (2,500) or more Poultry are housed or confined and fed or maintained on any one day in the preceding twelve-month period. For the purposes of determining the number of animals at an operation, multiple Poultry houses under common ownership are considered to be a single Poultry Feeding Operation if they adjoin each other or if they share a common area or system for the disposal of wastes.

W. "Poultry Litter Management Plan" means the documented plan for use, disposal, and storage of Litter by Poultry Feeding Operations as further described in Subtitle IV of these Rules.

X. "Protective Rate" or "Arkansas Protective Rate" means the application rate approved by the Commission for designated Nutrients that provides for proper Crop utilization and prevention of significant impact to Waters Within the State.

Y. "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.

Z. "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, surface and underground, natural or artificial, public or private, that are contained within, flow through, or border upon this State or any portion of this State.

Section 2201.5 Severability

If any provision of this Title or the application thereof to any Person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Title which can be given effect without the invalid provision or application, and to this end the provisions of this Title shall be considered severable.

SUBTITLE II. NUTRIENT SURPLUS AREAS

Section 2202.1 Declared Nutrient Surplus Areas

Act 1061 of 2003 (codified at Ark. Code Ann. § 15-20-1104) declared the following areas to be Nutrient Surplus Areas:

1. The Illinois River watershed, included within Benton, Washington, and Crawford counties;
2. The Spavinaw Creek watershed, included within Benton County;
3. The Honey Creek watershed, included within Benton County;
4. The Little Sugar Creek watershed, included within Benton County;
5. The upper Arkansas River watershed, which includes Lee Creek within Crawford and Washington counties, and Massard Creek within Sebastian County;
6. The Poteau River watershed, included within Scott, Sebastian, and Polk counties;
7. The Mountain Fork of the Little River watershed, included within Polk County; and
8. The upper White River watershed above its confluence with the Buffalo River, included within Baxter, Benton, Carrol, Washington, Madison, Franklin, Newton, Searcy, Marion, and Boone counties.

Section 2202.2 Geographic Boundaries of Nutrient Surplus Areas

A. The Commission further defines the geographic boundaries of the designated Nutrient Surplus Areas listed in Section 2202.1 by utilizing the National Datasets for Natural Resource Analysis. Hydrologic Units have been classified based on data compiled by United States Geological Survey, Natural Resources Conservation Service and others. Each hydrologic unit is identified by a unique hydrologic unit code (HUC). Detailed maps and digital coverage of the boundaries are available at the Commission office or District office. Hydrologic unit codes for the Nutrient Surplus Areas are as follows:

1. Illinois River watershed: HUC 11110103

2. Spavinaw Creek watershed: HUC 11070209

3. Honey Creek watershed: HUC 11070206

4. Little Sugar Creek watershed: HUC 11070208

5. Upper Arkansas River watershed (which includes Lee Creek within Crawford and Washington counties, and Massard Creek within Sebastian County): HUC 11110104

6. Poteau River watershed: HUC 11110105

7. Mountain Fork of the Little River watershed: HUC 11140108

8. Upper White River watershed above its confluence with the Buffalo River:

HUC 11010001 and HUC 11010003

B. See Appendix A for general coverage map.

Section 2202.3 Requirements Applicable to Nutrient Surplus Areas

A. Except as provided in ~~Subsection F~~ Subsection G this Section, it shall be unlawful for any Person to apply Nutrients to soils or associated Crops within a Nutrient Surplus Area unless the Nutrient Application is performed in compliance with a Nutrient Management Plan, prepared by a Certified Nutrient Planner, or at the Protective Rate set forth in Section 2202.5.

B. Except as provided in ~~Subsection F~~ Subsection G of this Section, it shall be unlawful for any owner or Operator of land within a Nutrient Surplus Area to allow the application of Nutrients to soils or associated Crops on that land unless the Nutrient Application is performed in compliance with a Nutrient Management Plan, prepared by a Certified Nutrient Planner, or at the Protective Rate set forth in Section 2202.5.

C. It shall be unlawful for any Person to apply Nutrients to soils or associated Crops within a Nutrient Surplus Area unless the Nutrient Application is done in compliance with the time, place, and manner restrictions determined necessary by the Commission and set forth in Section 2202.4.

~~C.~~ D. It shall be unlawful for any Poultry Feeding Operation to operate within a Nutrient Surplus Area unless the Poultry Feeding Operation develops and implements a Poultry Litter Management Plan or applies Nutrients at the Protective Rate.

~~D~~E. Except as provided in ~~Subsection F~~ Subsection G of this Section, it shall be unlawful for any Person other than a Certified Nutrient Applicator to make a Nutrient Application within a Nutrient Surplus Area unless the person making application is a volunteer or an employee under the direction or control of a Certified Nutrient Applicator.

~~E~~F.. Except as provided in ~~Subsection F~~ Subsection G of this Section, Nutrient Application within a Nutrient Surplus Area shall be documented in records maintained by the Nutrient Applicator, and the owner and Operator of the land where Nutrient Application is made, in sufficient detail to demonstrate that the Nutrient Application was conducted in compliance with these Rules. Such records shall be maintained for a minimum of five years or for such longer period of time as may be required by an approved Nutrient Management Plan, and shall be available for inspection by the Commission or Conservation District employees upon request. Records maintained by commercial fertilizer distributors or applicators may be relied upon to meet this requirement.

~~F~~G. (1) Nutrient Application within a Nutrient Surplus Area on residential lands of two and one-half (2.5) acres or less ("Residential Nutrient Application") shall be applied at a rate not to exceed the Protective Rate set forth in Section 2202.5 and in compliance with the time, place, and manner restrictions set forth in Section 2202.4, or in compliance with an approved Nutrient Management Plan.

(2) A Nutrient Management Plan is not required for Residential Nutrient Application as defined in this Subsection, but may be voluntarily obtained.

(3) The landowner or resident making a Residential Nutrient Application, as defined in this Subsection, is not required to be a Certified Nutrient Applicator, but is required to maintain documentation of each Nutrient Application for a minimum of five years sufficient to demonstrate compliance with the Time, Place, and Manner Restrictions in Section 2202.4 and either the Protective Rate requirements in Section 2202.5 or an approved Nutrient Management Plan.

H. Upon written request, the Executive Director may waive any provision of these rules consistent with the purposes of this Title as set forth in Section 2201.1.

Section 2202.4 Time, Place, and Manner Restrictions

A. The time, place, and manner restrictions in this Section apply to all Nutrient Applications within a Nutrient Surplus Area.

B. Nutrients shall be evenly distributed over application sites. Application shall be made only at the rates and in the manner specified in a Nutrient Management Plan, ~~If no Nutrient Management Plan is required by these Rules, Nutrient Application shall not exceed the Protective Rate set forth in Section 2202.5.~~ rather than at the Protective Rate when the Owner has obtained a Nutrient Management Plan. If the Owner or Operator does not have a Nutrient Management Plan, then Nutrient Application shall not exceed the Protective Rate.

C. Nutrient Application shall not be undertaken when soil is saturated, frozen, or covered with ice or snow~~, or during rainy weather or when significant precipitation is reasonably anticipated in the next twenty-four hours.~~

D. Nutrients shall not be applied ~~to slopes with a grade of more than fifteen percent (15%) or~~ in any manner that will allow excessive Nutrients to enter Waters Within the State or to run onto adjacent property.

~~E. Application of Nutrients shall not be made within one hundred feet of streams (including intermittent streams), ponds, lakes, springs, sinkholes, wells, waterways, irrigation systems, or drainage systems.~~

E. Nutrient application directly to water intended to increase fish production shall not be permitted unless the Executive Director determines that nutrients may be applied without adversely affecting water quality.

Section 2202.5 Protective Rate

A. All Nutrient Applications within a Nutrient Surplus Area must comply with the Protective Rate set forth in this Section unless a different rate is specified in an approved Nutrient Management Plan.

B. The Protective Rate is the rate approved by the Commission as the rate of a designated Nutrient that provides for proper crop use and prevents significant impact to waters within the state. A soil test is required before applying commercial fertilizers containing phosphorus at the Protective Rate. Poultry litter may be applied without a soil test at a maximum rate of 1.5 tons per acre. Commercial fertilizer containing nitrogen but not phosphorus may also be applied without a soil test. Specific rates are set out in Appendix B of these rules. ~~The Protective Rates are derived from Tables 5, 6, 8, 9, 11, and 12 of P. A. Moore and J. Barrentine. 2004. Determining the Protective Rates of Poultry Litter and commercial fertilizers for Arkansas. Lead Agency, USDA-ARS, Poultry Production and Product Safety Research Unit. Cooperating Agency, Crop Soil & Environmental Science Department, University of Arkansas. Funding Agency, Arkansas Soil & Water Conservation Commission.~~

C. An owner or Operator who is unable to obtain soil test results within a reasonable period of time due to laboratory backlog may use the written Nutrient Application recommendation of a qualified person until January 1, 2009. Qualified persons include conservation district water quality technicians, United States Department of Agriculture employees knowledgeable in soil science, Certified Commercial Applicators, Certified Nutrient Planners, and American Society of Agronomy Certified Crop Advisors.

1. An owner or Operator who makes application in accordance with the written recommendation of a qualified person and maintains records of the written recommendation will be deemed to have complied with the requirements of this Title.

2. An owner or Operator who makes application in accordance with the written recommendation of a qualified person and maintains records of the written recommendation will not be assessed a penalty by the Commission for over application of nutrients or for failure to apply at the protective rate or in accordance with a nutrient management plan.

SUBTITLE III. NUTRIENT MANAGEMENT PLANS

2203.1 Obtaining a Nutrient Management Plan

A. Any Person seeking a Nutrient Management Plan should contact the local Conservation District and request a Plan. The Person seeking a Nutrient Management Plan may also contact third parties who have obtained certification from the Commission to develop Plans.
~~B. As long as the Person receiving the plan verifies that his or her plan was developed by a Certified Nutrient Planner, the Person has satisfied the Commission's requirement to have a Nutrient Management Plan for Nutrient Application.~~

B. A Certified Planner will certify by his signature that each Plan he drafts meets all applicable standards and will provide a copy to the Owner for review. The Certified Planner will also provide a copy of each drafted Plan to the Conservation District where a majority of the facility is located. The Conservation District board will review each Plan to determine whether it meets all applicable standards. If the standards are met, the Conservation District shall approve the Plan and retain one copy. If the Conservation District board does not approve a Plan, it shall provide the Owner written notice of the denial and its basis.

C. An Owner may appeal a Conservation District denial of Plan approval or any provision of a certified and approved Nutrient Management Plan within 90 days by applying in writing to the Executive Director. The Owner must follow the Plan during the appeal process. The Executive Director will consider appeals only when the Owner asserts that the applicable standards were not followed in drafting the Plan or that a Conservation District failed to approve a Plan which meets those standards. The Executive Director may deny the appeal, modify the Plan, or approve the Plan. The Owner may appeal an unfavorable decision to the full Commission upon written application within 30 days. The Commission's decision may be appealed as provided in Section 2206.4.

D. Any Plan obtained by a Person prior to the effective date of these rules meets the requirements of this Title if developed using the Arkansas Phosphorus Index.

Section 2203.2 Substitution of Existing Regulatory Permit for Nutrient Management Plan

A. If a Nutrient Application process within a Nutrient Surplus Area is a part of a process or system for which a permit has been issued and is in effect pursuant to the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. §§ 8-4-101 et seq., or other similar federal or state law, and if the permit contains conditions regulating Nutrient Application acceptable to the Conservation District, then the permit may be substituted for and serve as the Nutrient Management Plan.

B. Before such permit is effective as a substitute for a Nutrient Management Plan, the permittee must submit a complete copy of the permit to the local Conservation District and request approval in writing.

C. Upon approval by the Conservation District, the permit shall be substituted for and serve as the Nutrient Management Plan required by these Rules, and all other requirements of these Rules shall apply.

Section 2203.3 Contents of a Nutrient Management Plan

A. A Nutrient Management Plan shall contain sufficient documentation to demonstrate that Nutrients will be managed within the Nutrient Management Unit in compliance with these Rules and in a manner sufficient to protect the Waters Within the State.

B. A proposed Nutrient Management Plan shall address the following major elements: (1) general site information, (2) applicable permits and certifications, (3) Nutrient Application site information, (4) Nutrient Application plans, (5) actual activity records, and (6) operation and maintenance. The precise content of a Nutrient Management Plan will vary as necessary to meet the needs of the specific Nutrient Management Unit addressed. Unless clearly inapplicable, a Nutrient Management Plan shall address all of the items listed under the six major elements shown below in this Section.

1. General site information
   a. Names, phone numbers, and addresses of the owner(s) and Operator(s) of all lands within the Nutrient Management Unit.
   b. Location of site: legal description of all lands in the Nutrient Management Unit, driving instructions from the nearest municipality, street address, and emergency 911 coordinates.
   c. Sketch or aerial photograph of farmstead and all fields in the Nutrient Management Unit.
   d. Operation procedures.
   e. Existing documentation of present facility components that would aid in evaluating existing conditions.
2. Applicable permits and certifications
   a. Federal, State, or local permits or ordinances, if applicable.
   b. Operator or manager certifications, if applicable.
   c. Certification number of Certified Nutrient Planner responsible for developing plan.
   d. Records of inspections or site assessments, if applicable.
3. Nutrient Application site information
   a. Date Plan was prepared.
   b. Written agreements, if any, relating to Nutrient Application.
   c. Aerial maps of Nutrient Application areas.
   d. Individual field maps with marked conservation features, setbacks, buffers, waterways, Poultry houses or facilities, surface water features, and environmentally sensitive areas such as sinkholes, wells, gullies, tile inlets, etc.
   e. Landowner and Operator names, addresses, and phone numbers.
   f. Eight-digit watershed codes for Nutrient Application sites.
   g. Specific and unique field identification codes, if applicable.
   h. Land use designation, if applicable.

i. Soil map with appropriate interpretations.
j. Calculations, assumptions, interpretations, and narrative description demonstrating appropriate application of the Phosphorus Index in development of the proposed Nutrient Application rates.
k. Land treatment practices planned, applied, and level of treatment provided.

4. Nutrient Application

a. Crop types, realistic yield targets, and expected Nutrient uptake amounts, if available.
b. Application equipment descriptions and methods of application.
c. Expected application seasons and estimated days of application per season.
d. Proposed Nutrient Application rates; i.e., amounts per acre (volume in gallons or tons per acre, and pounds of plant available nitrogen, phosphorus as P_20_5, and potassium as K_20 per acre), and detailed information on the calculations, assumptions, and interpretations used to determine application rates.
e. Estimate of acres needed to apply Litter generated on the Nutrient Management Unit or by any related Poultry Feeding Operation, if applicable, consistent with application of the Phosphorus Index and respecting any guidelines published for nitrogen and other Nutrient loading limits.

5. Actual activity records

a. Soil tests – not more than ~~three~~ five years old.
b. Litter test ~~annually for each individual Poultry house supplying litter~~ results – not more than five years old.

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c. Planned and applied rates, methods of application, and timing (month and year) of all sources of Nutrients applied.
d. Current and planned Crop rotation.
e. Records of any spill events.

6. Operation and Maintenance

a. Reasonably detailed operation and maintenance procedures and schedules for all aspects of the Nutrient Management Plan including, by way of example, holding systems, Litter storage, Land Application, application equipment, soil and Nutrient source sampling techniques, etc.
b. Description of recordkeeping procedures including records for date and location of each Nutrient Application, amount of Litter or other Nutrients applied, phosphorus content of the soil, phosphorus content of Litter or other Nutrient source, application rates used, source of Litter or other Nutrients, and total acreage of Nutrient Applications.
c. Designation of when periodic review and revision of the Plan will occur. See Section 2203.5.

Section 2203.4 Additional Plan content

The Certified Nutrient Planner should incorporate additional Plan requirements as appropriate if required by incentive programs which apply to a specific owner or Operator.

Section 2203.5 Review and Revision of Nutrient Management Plans

A. Nutrient Management Plans shall be reviewed by the owner or Operator of the Nutrient Management Unit at least annually to determine if adjustments or modifications are needed.

B. Plans would need to be modified if the facilities were expanded, total acreage receiving Nutrient Application changes, use of acreage changes, or facilities are under control of a different owner or Operator.

C. Nutrient Management Plans shall be reviewed thoroughly by a Certified Nutrient Planner every five years and a report of the five-year review shall be provided to the local Conservation District within one hundred twenty (120) days following the end of the fifth annual growing period identified in the Plan. The five-year review shall update the existing Plan with recent soil and Litter testing data. All other information required to be included in a Nutrient Management Plan in Section 2203.3 of this Subtitle shall be updated with current information.

Section 2203.6 Recordkeeping Requirements

A. Records required to be compiled or kept by these Rules or by the provisions of any approved Nutrient Management Plan shall be maintained by the owner and Operator of the lands within the Nutrient Management Unit for a minimum period of five years and shall be available for inspection by the Commission or Conservation District employees upon reasonable request. Such records shall not be public records.

B. Records required to be compiled or kept by these Rules or by the provisions of any approved Nutrient Management Plan relating to the activities of a Nutrient Applicator shall be maintained by the Nutrient Applicator for a minimum period of five years and shall be available for inspection by the Commission or Conservation District employees upon reasonable request. Such records shall not be public records.

C. Owners, Operators, and Applicators may rely on records maintained by commercial fertilizer distributors and applicators to meet these requirements.

SUBTITLE IV. POULTRY LITTER MANAGEMENT PLANS ~~AND COMPREHENSIVE NUTRIENT MANAGEMENT PLANS~~

Section 2204.1 Obtaining a Poultry Litter Management Plan

A. Any Person seeking a Poultry Litter Management Plan should contact the local Conservation District and request information on how to obtain a Plan. The Person seeking a Poultry Litter Management Plan may also contact third parties who have obtained certification form the Commission to develop Plans.

~~B. As long as the Person receiving the plan verifies that his or her plan was developed by a Certified Nutrient Planner, the Person has satisfied the Commission's requirement to have a Poultry Litter Management Plan for Nutrient Application.~~

B. A Certified Planner will certify by his signature that each Plan he drafts meets all applicable standards and will provide a copy to the Owner for review. The Certified Planner will also provide a copy of each drafted Plan to the Conservation District where a majority of the facility is located. The Conservation District board will review each Plan to determine whether it meets all applicable standards. If the standards are met, the Conservation District shall approve the Plan and retain one copy. If the Conservation District board does not approve a Plan, it shall provide the Owner written notice of the denial and its basis.

C. An Owner may appeal a Conservation District denial of Plan approval or any provision of a certified and approved Nutrient Management Plan within 90 days by applying in writing to the Executive Director. The Owner must follow the Plan during the appeal process. The Executive Director will consider appeals only when the Owner asserts that the applicable standards were not followed in drafting the Plan or that a Conservation District failed to approve a Plan which meets those standards. The Executive Director may deny the appeal, modify the Plan, or approve the Plan. The Owner may appeal an unfavorable decision to the full Commission upon written application within 30 days. The Commission's decision may be appealed as provided in Section 2206.4.

D. Any plan obtained by a Person prior to the effective date of these rules will be deemed sufficient to meet the requirements of this Title so long as the Plan was developed using the Arkansas Phosphorus Index.

Section 2204.2 Contents of a Poultry Litter Management Plan

A. A Poultry Litter Management Plan shall contain sufficient documentation to demonstrate that Litter and associated Nutrients will be managed in compliance with these Rules and in a manner sufficient to protect the Waters Within the State.

B. A proposed Poultry Litter Management Plan shall address the following major elements: (1) general site information, (2) production information, (3) applicable permits and certifications, (4) Land Application site information, (5) Land Application plans, (6) actual activity records, (7) mortality disposal procedures, and (8) operation and maintenance. The precise content of a Poultry Litter Management Plan will vary as necessary to meet the needs of the specific Poultry Feeding Operation(s) addressed in the Plan. Unless they are clearly inapplicable, a Poultry Litter Management Plan shall address all of the items listed under the eight major elements shown below in this Section.

1. General site information

a. Names, phone numbers, and addresses of the owner(s) and Operator(s) of the Poultry Feeding Operation.

b. Location of Poultry Feeding Operation: legal description of all lands and facilities in the Poultry Feeding Operation, driving instructions from the nearest municipality, street address, and emergency 911 coordinates.

c. Sketch or aerial photograph of Poultry Feeding Operation.

d. Operation procedures specific to the Poultry Feeding Operation, including an emergency action plan for Litter storage and handling.

e. Any other information requested by the Commission.

2. Poultry production information

a. Poultry types, phases of production, and length of confinement for each type.
b. Animal count and average weight.
c. Calculated Litter volumes.
d. Litter storage type, volume, and approximate time period of storage.

3. Applicable permits and certifications

a. Federal, State, or local permits or ordinances, if applicable.
b. Operator or manager certifications, if applicable.
c. Certification number of Certified Nutrient Planner responsible for developing Poultry Litter Management Plan.
d. Records of inspections or site assessments, if applicable.

4. Land Application site information

a. Date Plan was prepared.
b. Written agreements, if any, relating to Litter transfers and Land Application.
c. Aerial maps of Land Application areas.
d. Individual field maps with marked conservation features, setbacks, buffers, waterways, Poultry houses or facilities, surface water features, and environmentally sensitive areas such as sinkholes, wells, gullies, tile inlets, etc.
e. Landowner and Operator names, addresses, and phone numbers.
f. Eight-digit watershed codes for the Land Application sites.
g. Specific and unique field identification codes, if applicable.
h. Land use designation, if applicable.
i. Soil map with appropriate interpretations.
j. Calculations, assumptions, interpretations, topograpic maps, and narrative description demonstrating appropriate application of the Phosphorus Index in development of the proposed Land Application rates.
k. Land treatment practices planned, applied, and level of treatment provided.

5. Land Application

a. Crop types.
b. Application equipment descriptions and methods of application.
c. Expected application seasons and estimated days of application per season.
d. Proposed Land Application rates; i.e., amounts per acre (volume in gallons or tons per acre, and pounds of plant available nitrogen, phosphorus as P_20_5, and potassium as K_20 per acre), and detailed information on the calculations, assumptions, and interpretations used to determine application rates.
e. Estimate of acres needed to apply Litter generated by the Poultry Feeding Operation, consistent with application of the Phosphorus Index and respecting any guidelines published for nitrogen and other Nutrient loading limits.

6. Actual activity records

a. Soil tests – not more than ~~three~~ five years old.
b. Litter test ~~annually for each individual Poultry house~~ results– not more than five years old.
c. Planned and applied rates, methods of application, and timing (month and year) of all sources of Nutrients applied.
d. Current and planned Crop rotation.

e. Actual Crop yield and harvest from Land Application sites.
f. Records of internal inspections for Litter storage, handling, and application system components.
g. Records of any spill events.
h. Records of all Land Applications, both within and outside of Nutrient Surplus Areas.
i. For any Litter not land applied, records demonstrating that the Litter was converted to a non-nutrient use or other use acceptable to the Commission.

7. Mortality disposal
a. Plan for mortality disposal including approved site for catastrophic die-off.
b. Methods and equipment used to implement the disposal plan, including any applicable permits.

8. Operation and Maintenance
a. Reasonably detailed operation and maintenance procedures and schedules for all aspects of the Poultry Litter Management Plan including, by way of example, Litter storage and handling systems, Land Application, application equipment, soil and Litter sampling techniques, etc.
b. Description of recordkeeping procedures including records for date and location of each Land Application, amount of Litter or other Nutrients applied, phosphorus content of the soil, phosphorus content of Litter or other Nutrient source, application rates used, source of Litter or other Nutrients, and total acreage of Land Applications.
c. Designation of the annual growing period that will be used for purpose of periodic review and revision of the Plan. See Section 2204.3.

Section 2204.3 Review and Revision of Poultry Litter Management Plans

A. Poultry Litter Management Plans shall be reviewed by the owner or Operator at least annually to determine if adjustments or modifications are needed.

B. Plans shall be modified if facilities are expanded, total acreage receiving Nutrient Application changes, use of acreage changes, or facilities are under control of a different Operator.

C. Poultry Litter Management Plans shall be reviewed thoroughly by a Certified Nutrient Planner every five years, and a report of the five-year review shall be provided to the Commission within one hundred twenty (120) days following the end of the fifth annual growing period identified in the Plan. The five-year review shall update the existing Plan with recent soil and Litter testing data. All other information required to be included in a Poultry Litter Management Plan in Section 2204.2 of this Subtitle shall be updated with current information.

Section 2204.4 Recordkeeping Requirements

A. Records required to be compiled or kept by these Rules or by the provisions of any approved Poultry Litter Management Plan shall be maintained by the owner and Operator of the Poultry Feeding Operation for a minimum period of five years and shall be available for

inspection by the Commission or Conservation District employees upon reasonable request. Such records shall not be public records.

B. Records required to be compiled or kept by these Rules or by the provisions of any approved Poultry Litter Management Plan relating to the activities of a Nutrient Applicator shall be maintained by the Nutrient Applicator for a minimum period of five years and shall be available for inspection by the Commission or Conservation District employees upon reasonable request. Such records shall not be public records.

C. Owners, Operators, and Applicators may rely on records maintained by commercial fertilizer distributors and applicators to meet these requirements.

Section 2204.5 Comprehensive Nutrient Management Plans

~~A. If the owner or Operator of a Poultry Feeding Operation within a Nutrient Surplus Area is also the owner or Operator of a Nutrient Management Unit or other land where Nutrient Application is made, that Person may satisfy the requirements for both a Poultry Litter Management Plan and a Nutrient Management Plan by preparing a single consolidated Comprehensive Nutrient Management Plan.~~ If an owner or operator obtains a comprehensive nutrient management plan properly developed by the United States Department of Agriculture, the Arkansas Soil and Water Conservation Commission, or a Conservation District and based on the Arkansas Phosphorus Index, then he is not required to obtain a Nutrient Management Plan, a Poultry Litter Management Plan, or apply at the Protective Rate.

~~B. A Comprehensive Nutrient Management Plan shall include all requirements for a Poultry Litter Management Plan set forth in Subtitle IV and all requirements for a Nutrient Management Plan set forth in Subtitle III of these Rules. Elements common to both types of plans need to be included only once, without duplication, in the Comprehensive Nutrient Management Plan.~~

~~C. All requirements for Poultry Litter Management Plans apply to Comprehensive Nutrient Management Plans.~~

SUBTITLE V. SALE OR TRANSFER OF LITTER

Section 2205.1 No Responsibility of Transferor for Use of Litter After Transfer

Upon the sale or transfer of Litter from a Poultry Feeding Operation within a Nutrient Surplus Area to any user, the Poultry Feeding Operation shall not be responsible for the use of the Litter by the purchaser or other transferee. Notwithstanding the foregoing, the Poultry Feeding Operation remains responsible for use of the Litter in compliance with this Title until actual possession of the Litter transfers to the purchaser or transferee and the Litter is removed from the Poultry Feeding Operation premises.

Section 2205.2 Responsibility of Litter User

~~A. Any Person receiving Litter from a Poultry Feeding Operation within a Nutrient Surplus Area shall use the Litter in compliance with the approved Poultry Litter Management Plan held by the Poultry Feeding Operation that supplied the Litter unless an approved Nutrient Management Plan required by these Rules applies to the use, in which case the person shall use the litter in compliance with the applicable Nutrient Management Plan. It is the responsibility of the person receiving Litter from a Poultry Feeding Operation to obtain a copy and determine the requirements for complying with the applicable Poultry Litter Management Plan~~.

~~B.~~ Any Person receiving Litter from a Poultry Feeding Operation within a Nutrient Surplus Area who intends to use the Litter for a purpose other than Land Application must use the Litter in a manner approved by the Commission. If the Person receiving the Litter intends to transfer the Litter to others, the Person must keep transfer records.

(Deleted Subtitle describing the Litter Utilization Committee. Although language was taken verbatim from the Arkansas Code, the Commission received public comment requesting that the language be struck,)

SUBTITLE VI. ENFORCEMENT

Section 2206.1 Commission Right to Inspect

A. Commission and Conservation District employees may enter upon and inspect private property to determine compliance with the requirements of this Title.

B. Prior to entering a facility where Poultry is regularly kept, Commission and Conservation District employees shall provide the owner or Operator with twenty-four (24) hours notice.

C. Documentation of bio-security measures taken and bio-security certification received by the Commission agent, including a bio-security log book, shall be made available to the owner or Operator upon request.

D. Upon notice of disease outbreak by the Arkansas Livestock and Poultry Commission, inspection under this Title shall be automatically suspended until notification by the Arkansas Livestock and Poultry Commission that it is safe to resume inspections.

Section 2206.2 Administrative Enforcement Procedures

A. Upon complaint or suspicion of suspected violation of any provision of this Title, Commission staff may investigate or cause an investigation to be undertaken and may recommend disciplinary action to the Director.

1. Anyone providing information to the Commission about a possible violation must provide the substance of the complaint to the Commission in writing and must provide his legal

name and current mailing and physical addresses where the complainant may be contacted. 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 2206.3 Administrative Penalties

A. Upon the first violation of these rules within any one-year period, the alleged violator shall be issued a Warning Letter. For the second violation within any one-year period, the Director may assess not more than fifty dollars ($50) in cumulative civil penalties. Upon the third violation within any one-year period, the Director may impose a penalty not to exceed two thousand five hundred dollars ($2,500.00) for each violation of Ark. Code Ann. §§15-20-1101 et seq. and this Title.

1. Any fees collected by the Commission 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 through Titles 19, 20, 21, and 22 of the Commission's rules.

B. A Warning Letter or Administrative Consent Order may be served by certified mail, restricted delivery, return receipt requested to the address on file with the Commission or District or by any means sufficient for service of process in a civil court action.

C. The Person receiving an Administrative Consent Order may choose to sign the Administrative Consent Order and thereby agree to the penalties and other terms and conditions contained within the Order. If the Person receiving an Administrative Consent Order fails to respond in writing to the Commission within ~~ten~~ thirty days after receipt of the Administrative Consent Order, and receipt has been confirmed by a certified mail receipt or proof of personal service, the Person will be deemed to have agreed to the penalties and other terms and conditions contained within the Order, which shall become final.

D. Upon receipt of an Administrative Consent Order, the Person to whom the Order is directed may object and request a hearing before the Commission by delivering such request in writing to the Commission within thirty days, setting forth the reasons why the Person disagrees with the allegations in the Order and any proposed penalty. The hearing will be conducted in accordance with Commission Rules, Title I. The Commission has the burden of proving the alleged facts and violations of law stated in the Administrative Consent Order. The Commission and the Director may issue subpoenas to any witness requiring his or her attendance and testimony before the Commission as provided in Ark. Code Ann. § 15-22-208.

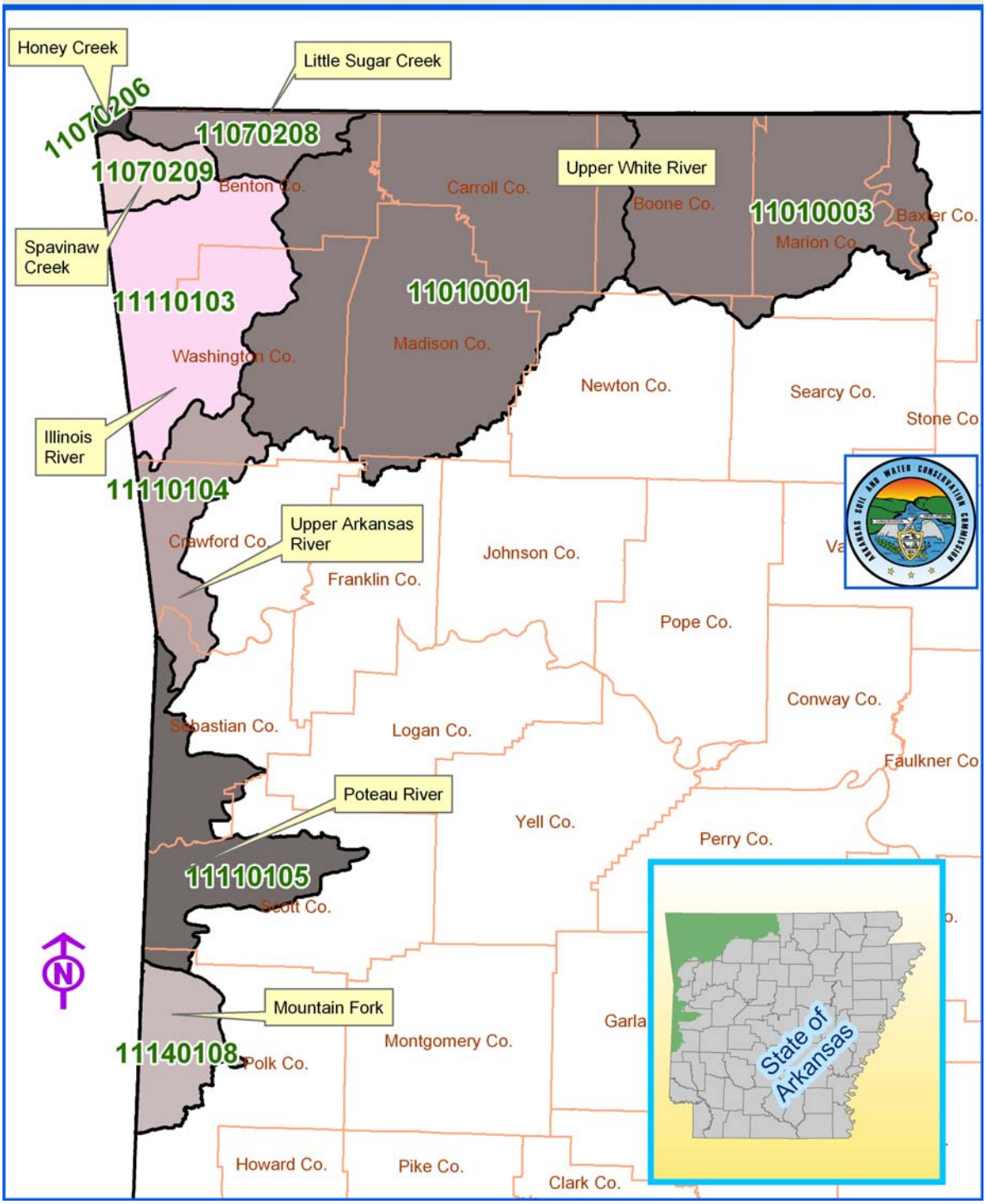
E. The Commission will not take final administrative action against a Person accused of violating this Title or Ark. Code Ann. §§ 15-20-1101 et seq. until the accused Person has consented to an Administrative Consent Order or until the Person has had an opportunity for a hearing to review the suspected violation and proposed penalty under Commission Rules, Title I. The final decision of the Commission shall include findings of fact and conclusions of law, and shall otherwise conform to the requirements of Ark. Code Ann.§ 25-15-210.

Section 2206.4 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.

(Deleted Subtitle stating that Title 22 would not supersede the requirements of the Arkansas Water and Air Pollution Control Act administered by ADEQ. Although language was taken almost verbatim from the Arkansas Code, the Commission received public comment requesting that the language be struck.)

Appendix A: Nutrient Surplus Areas, Numbers Indicate Hydrologic Unit Codes.



Tables derived from: Moore, P.A. and J. Barrentine. 2004. Determining the protective rates of poultry litter and commercial fertilizers for Arkansas. Lead Agency, USDA-ARS, Poultry Production and Product Safety Research Unit. Cooperating Agency, Crop Soil & Environmental Science Department, University of Arkansas. Funding Agency, Arkansas Soil & Water Conservation Commission.

If a 1:10 ratio of Mehlich III extractant is used to conduct a soil test and the test results are given as pounds of Phosphorus per acre, multiply the P lbs/acre figures in the left-hand column of these tables by 1.3 to determine application rates.

If a 1:10 ratio of Mehlich III extractant is used to conduct a soil test and soil test results are given as parts per million, divide the P lbs/acre in the left-hand column of these tables by 2 (to obtain parts per million), then multiply that figure by 1.3 to determine application rates.

Table ~~5~~ 1 – Maximum poultry litter application rates allowed with the Arkansas Phosphorus Index for normal conditions (moderate runoff class, less than 1 ton erosion/acre, surface applied in spring, hayed & grazed). Alum-treated litter rates were calculated conservatively using 50% reduction in soluble P, rather than 75% reduction for the two ton rate. Values are in tons/acre.

Soil test P (lbs P/acre)	**~~Normal~~ Litter**	**1200 lbs alum/flock**	**2000 lbs alum/flock**	**4000 lbs alum/flock**
0 – 100	3.0	3.4	4.0	N rate
100 – 300	2.8	3.2	3.7	N rate
300 – 400	2.6	3.0	3.5	N rate
400 – 600	2.3	2.6	3.1	N rate
600 – 800	2.0	2.3	2.7	4.0
800 – 1000	1.6	1.8	2.1	3.2

1000 – 1100	1.5	1.7	2.0	3.0

Table ~~6~~ 2 – Protective rate of poultry litter as a function of soil test phosphorus and alum use. Calculated with the Arkansas Phosphorus Index under severe conditions (high runoff class, 1-2 tons/acre erosion, surface applied in spring, hayed & grazed). Alum-treated litter rates were calculated conservatively using 50% reduction in soluble P, rather than 75% reduction for the two ton rate. Values are in tons/acre.

Soil test P (lbs P/acre)	**~~Normal~~ Litter**	**1200 lbs alum/flock**	**2000 lbs alum/flock**	**4000 lbs alum/flock**
0 – 100	2.3	2.6	3.1	4.6
100 – 300	2.0	2.3	2.7	4.0
300 – 400	1.8	2.1	2.4	3.6
400 – 600	1.5	1.7	2.0	3.0
600 – 800	1.1	1.3	1.5	2.2
800 – 1000	0.8	0.9	1.1	1.6
1000 – 1100	0.7	0.8	0.9	1.4

Table ~~8~~ 3– Protective rate of commercial P fertilizer for grasses and clover. Values in lbs P_2O_5/acre.

	Low soil test p (0-50 lbs/acre)	**Med. Soil test P (50-100 lbs/acre)**	**High soil test P (>100 lbs/acre)**	**Soil test P not know**
Fertilizer application rate (lbs P_2O_5/acre)	80	40	0	0

Table 4- Protective Rate of Commercial Phosphate Fertilizer for Row Crops (in lbs P_2O_5/acre). Commercial P fertilizer should not be applied if soil test P is unknown.

Crop	**Low Soil Test P 0-50 lbs P/acre**	**Medium Soil Test P 50-100 lbs P/acre**	**High Soil Test P >100 lbs P/acre**
Corn	80	50	0
Cotton	60	30	0
Grain Sorghum	60	40	0
Rice	40	0	0
Soybeans	40	0	0
Wheat	60	30	0

Table 5- Protective Rate of Commercial Phosphate Fertilizer for Fruits and Vegetables (in lbs P_2O_5/acre). Commercial P fertilizer should not be applied if soil test P is unknown.

Crop	**Low Soil Test P 0-50 lbs P/acre**	**Medium Soil Test P 50-100 lbs P/acre**	**High Soil Test P >100 lbs P/acre**
Sweet Corn	80	40	0
Irish Potatoes	80	40	0
Tomatoes	80	60	0
Okra, Eggplant, Peppers, Cabbage, Broccoli, and Cauliflower	80	60	0
Sweet Potatoes	80	80	0
Watermelon, Cantaloupe, Squash, and Pumpkins	60	50	0
Cucumbers	80	70	0
Spinach, Collards, Mustard Greens, Kale, and Turnip Greens	60	60	0
Snapbeans	90	45	0
Pole Beans, Lima Beans, Dry Beans, and English Peas	80	40	0

Southern or Summer Peas	80	40	0
Grapes	80	30	0
Strawberries	90	90	0
Blackberries and Raspberries	60	30	0
Blueberries	60	0	0

Table 6- Protective Rate of Commercial Phosphate Fertilizer for Trees and Ornamentals (in lbs P_2O_5/acre). Commercial P fertilizer should not be applied if soil test P is unknown.

Crop	**Low Soil Test P 0-50 lbs P/acre**	**Medium Soil Test P 50-100 lbs P/acre**	**High Soil Test P >100 lbs P/acre**
Fruit Trees - Pears, Cherries, Apples, Peaches, Plums and Figs	0.3 lbs P_2O_5/tree	0	0
Pecans and Walnuts	80	40	0
Pine Nursery Seedlings	60	30	0
Christmas Trees	50	0	0
Ornamentals	50	50	0

Table ~~9~~ 7 – Protective rate for commercial P fertilizer for grasses and legumes. Values are in lbs product/acre.

Fertilizer Type	**Low soil test P (0-50 lbs/acre)**	**Med. Soil test P (50-100 lbs/acre)**	**High soil test P (>100bs/acre)**	**Soil test P not known**
0-46-0	175	88	0	0
13-13-13	600	300	0	0
10-20-10	400	200	0	0
Miracle Grow (20-27-5)	300	150	0	0
Scott's weed And Feed (28-3-3)	Base rate on nitrogen needs	Base rate on nitrogen needs	0	0

Table ~~11~~ 8 – Protective rate for commercial N fertilizer. Values in lbs/acre.

Forage type	**Low soil test P (0-50 lbs/acre)**	**Med. Soil test P (50-100 lbs/acre) applications**	**High soil test P (>100 lbs/acre)**	**Additional applications**
Warm season grasses	80	80	80	Add 50-60 lbs N/acre as needed
Cool season grasses	45	45	50	Add 50-60 lbs N/acre as needed
Improved warm season pastures	45	45	50	Add 50-60 lbs N/acre as needed
Alfalfa	0	0	0	
Warm season grass/clover	0	0	0	Add 80 lbs N/acre when clover is dormant
Cool season grass/clover	60	60	60	
Cool season grass on warm season grass	60	60	60	Add 60-80 lbs N/acre as needed
Warm season Perennial legume	0	0	0	

Table ~~12~~ 9– Protective rate for commercial N fertilizer. Values in lbs/acre.

Forage type	**N Rate**	**Additional application**
Warm season grasses	80	Add 50-60 lbs N/acre as needed
Cool season grasses	45	Add 50-60 lbs N/acre as needed
Improved warm season pastures	45	
Alfalfa	0	
Warm season grass/clover	0	Add 80 lbs N/acre when clover is dormant
Cool season grass/clover	60	
Cool season grass on warm season grass	60	Add 60-80 lbs N/acre as needed
Warm season perennial legume	0	

Table 10 - Protective Rate of Commercial Nitrogen Fertilizer for Row Crops (in lbs N/acre).

Crop	**lbs N/acre**	**Comments**
Corn	120	Based on yield of 125 bushels/acre; increase N rate by 30 lbs/acre for each 25 bushel increase in yield
Cotton	100	Reduce N rate if soil nitrate levels are high based on University of Arkansas recommendations
Grain Sorghum	100	Increase rate by 30 lbs/acre when yields are greater than 6,000 lbs/acre or when irrigated
Rice	75-150	Adjust N rates according to variety grown and crop rotation as recommended by University of Arkansas.
Soybeans	0	
Wheat	90	

Table 11 - Protective Rate of Commercial Nitrogen Fertilizer for Fruits and Vegetables (in lbs N/acre).

Crop	lbs N/acre	Comments
Sweet Corn	50	Sidedress 50 lbs N/acre when plants are 12"
Irish Potatoes	50	Sidedress 40 lbs N/acre when plants are 6"
Tomatoes	40	Sidedress 30 lbs N/acre when fruit set begins
Okra, Eggplant, Peppers, Cabbage, Broccoli, and Cauliflower	40	Sidedress 30 lbs N/acre when appropriate
Sweet Potatoes	40	
Watermelon, Cantaloupe, Squash, and Pumpkins	30	Sidedress 30 lbs N/acre at flowering
Cucumbers	40	Sidedress 40 lbs N/acre when vines start to run
Spinach, Collards, Mustard Greens, Kale, and Turnip Greens	30	Sidedress 30 lbs N/acre after stand is assured
Snapbeans	30	

Pole Beans, Lima Beans, Dry Beans, and English Peas	20	
Southern or Summer Peas	20	
Grapes	30	Sidedress additional 30 lbs N/acre each month during the growing season, as needed
Strawberries	90	
Blackberries and Raspberries	30	Sidedress 30 lbs N/acre following harvest
Blueberries	60	Apply additional 30-60 lbs N/acre/year when plants are 3 to 4 years old, as needed

Table 12 - Protective Rate of Commercial Nitrogen Fertilizer for Trees and Ornamentals (in lbs N/acre).

Crop	**lbs N/acre**
Fruit Trees - Pears, Cherries, Apples, Peaches, Plums and Figs	0.3 lbs N/tree
Pecans and Walnuts	40
Pine Nursery Seedlings	30
Christmas Trees	20
Ornamentals	25