

PART III. FERTILIZERS

SUBPART 1. REGULATIONS FOR SALE OF FERTILIZERS

§1411. Definitions

In this Subpart, the following definitions shall apply:

- (1) "Adulteration" means any of the following situations:
 - (a) Where a commercial fertilizer contains any material not specifically declared to be a component of the fertilizer.
 - (b) Where materials which are likely to cause injury or damage to crop plants are present.
 - (c) Where materials containing nitrogen in a form which is but slightly available to plants are added to make up a part of the nitrogen guarantee.
 - (d) Where the actual analysis is lower than the guaranteed analysis.
- (2) "Brand" means name, trademark, or other designation under which a commercial fertilizer is sold.
- (3) "Commissioner" means the commissioner of agriculture and forestry and his duly authorized representatives.

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- (4) "Fertilizer" means all materials, not otherwise excluded from the definition, sold for the purpose of promoting the growth of plants or exerting beneficial action on the soil. Materials specifically excluded from the definition are: lime; limestone; marl; gypsum; sulphur; unground bones when unmixed with other substances; and manure or excrement from any domestic animal, provided it has not been dried or otherwise treated.
- (5) "Guarantor" means a person who manufactures, sells, or offers fertilizer for sale under his name or brand.
- (6) "Manufacture" means the mixing, comingling of brands, blending, extracting, compounding, or chemical reaction of a substance or substances.
- (7) "Package" means parcel, bag, or other container.
- (8) "Premise" means place, warehouse, store, truck, railroad car, boat, etc.
- (9) "Registrant" means a person who has been registered by the commission, as required by R.S. 3:1413.
- (10) "Sell", "sold", or "for sale" means the act of selling, exposing, or offering for sale, trading, using, or distributing.
- (11) "Specialty fertilizer" means any commercial fertilizer distributed in packages containing sixteen fluid ounces or less for liquids or one pound or less for solids and designed primarily for use on household plants grown for noncommercial purposes.
- (12) "State chemist" means the director of the Louisiana Agricultural Experiment Station of the Louisiana State University Agricultural Center, or his designee.

Acts 2010, No. 579, §1.

§1412. Powers and responsibilities

A. The commissioner, or his representative, shall have access to any premise where there is reason to believe that fertilizer sold, offered, or exposed for sale is present, or where there is bulk storage of dry or liquid fertilizer, and is empowered to examine any fertilizer found there as to labeling or weight and may open any package and take a sample for analysis. Samples taken are to be placed in a suitable container, properly labeled for identification, and submitted to the state chemist for analysis. No cause of action against a guarantor shall result from an analysis of a sample drawn from less than five percent of the original packages at the place of sampling where the lot sampled contains less than one thousand packages. Where the lot sampled contained one thousand or more packages, the sample shall be drawn from fifty packages in that lot. If there are less than ten packages in the lot, each package in the lot must be sampled; however, single samples may be taken from liquid fertilizers or those fertilizers sold in small packages. In case of question as to the accuracy of the analysis, and on written request from the

guarantor made within ten days after receipt of the analytical report, another sample may be drawn and submitted to a chemist, agreeable to the commissioner, for analysis. The cost of such analysis is to be borne by the guarantor.

B. The commission may publish, in written or electronic form accessible to the public, at least annually a report of all analyses of official samples made by the state chemist and any information resulting from analysis or inspection of fertilizers which the commission feels to be necessary in the public interest.

C. If a violation of any of the provisions of this Subpart occurs, the commissioner may issue a stop sale order preventing further sale, movement, or disturbance of any lot of fertilizer involved until settlement of all actions against the guarantor are made. On settlement of an action, the commissioner may take the following measures according to the nature of his findings:

(1) Release the fertilizer for sale.

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(2) Require the guarantor to take up the fertilizer and reimburse the purchaser.

(3) Sell the fertilizer at public auction.

(4) Destroy the fertilizer.

D. The commissioner, or his representative, shall have access to and the authority to inspect any records relating to the storage and distribution of fertilizer.

E. The commission, by regulation, may set design standards for the construction of fertilizer containment facilities in any area where bulk fertilizer, dry or liquid, is stored and to inspect such facilities for compliance with such standards. The purpose of the containment facilities shall be to protect the environment from pollution due to spillage, seepage, or run-off of fertilizer from bulk storage sites.

Acts 2010, No. 579, §1.

§1413. Restrictions on sale of fertilizer

A. Each person who manufactures, sells, or offers fertilizer for sale under his name or brand shall register with the commission. Such registration shall be renewed annually on January first. Renewal of registration may be denied by the commissioner for cause.

B. All fertilizers sold in the state must be labeled by tag or printed label if packaged and by invoice if in bulk to show:

(1) Name and address of registrant.

(2) Net weight of contents of package. Bulk deliveries must be accompanied by stamped weight tickets, unless otherwise provided by the commission.

(3) The minimum percent by weight of nitrogen (N).

²⁵(4) The minimum percent by weight of available phosphoric acid (P O).

²(5) The minimum percent by weight of soluble potash (K O).

(6) In the case of bone, rock phosphate, basic slag, and other materials of low available phosphorus, ²⁵the total content of phosphoric acid (P O) shall be guaranteed in lieu of available phosphoric acid ²⁵(P O).

(7) The commission shall be authorized to permit guarantees for phosphorus and potassium on an elemental basis and to make such changes in other provisions of this Subpart as are appropriate.

(8) Other elements having value as fertilizer: the minimum percent by weight shall be guaranteed on an elemental basis provided minimum levels set by the commission are met or exceeded.

C.(1) Every person manufacturing or selling fertilizer as defined in R.S. 3:1411 shall pay to the commission an inspection fee of one dollar per ton on all fertilizers sold in the state, provided that in lieu of the inspection fee, those selling small package goods in total amount of less than one hundred tons per year shall pay a one hundred dollar fee.

(2)(a) Payment of tonnage fee shall be on the basis of tonnage reports submitted by the registrant who prior to making sales must file a statement with the commission agreeing to keep such records as

are necessary to accurately indicate the tonnage and kind of fertilizer sold and must grant the commissioner the right to examine such records for verification of the statement of tonnage. The tonnage reports shall be made on forms supplied by the commissioner for supplying the necessary tonnage and statistical information. The tonnage reports and inspection fees shall be due and payable on the first day of July, the first day of October, the first day of January, and the first day of March.

(b) If the report is not filed and payment made within thirty days after the due date, a penalty of ten percent of the amount due shall be assessed against the registrant. If payment is not made within thirty

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days after the due date, the amount of fees due plus the penalty shall constitute a debt and shall become the basis for a judgment against the registrant.

(c) Any information as to the amount of fertilizer sold and business practices of the registrant obtained from tonnage reports and from inspection of records and books shall remain confidential and shall not be subject to disclosure as a public record.

²⁵D.(1) No superphosphate containing less than eighteen percent available phosphoric acid (P O) shall be sold in this state.

(2) The provisions of this Subsection shall not apply to specialty fertilizer as defined in R.S. 3:1411 or to mixtures whose primary purpose is to supply the so-called "minor elements".

E. However, upon a determination by the commissioner that a shortage of fertilizer exists to a degree sufficient to constitute an emergency, he may authorize the sale of basic slag with not less than three units of phosphate and six units of soluble potash to be used as fertilizer during such emergency.

Acts 2010, No. 579, §1.

§1414. Mixtures of graded, registered fertilizers; registration not required; sale prohibited

A. Notwithstanding any other law to the contrary, it shall be lawful for any farmer in this state to mix or cause to be mixed on his farm various grades of fertilizers without having to register the resulting mixture provided that he comply with the following conditions and restrictions:

(1) That he own all the component fertilizers that are to comprise the mixture.

(2) That all of the component fertilizers used in the mixture are registered in accordance with the provisions of this Subpart.

(3) That he use the mixture only for farming purposes on land which he farms.

B. It shall be unlawful for anyone to sell such mixture described in Subsection A of this Section, unless he first complies with the restrictions and conditions set forth in R.S. 3:1413.

Acts 2010, No. 579, §1.

§1415. Deficiency assessment

A. Whenever the commissioner determines, based on an analysis performed by the state chemist, that a given lot or shipment of fertilizer is deficient in one or more guaranteed plant foods, a deficiency assessment shall be assessed against the guarantor in accordance with the following provisions:

(1) Total nitrogen (N): a deficiency assessment of four times the value of the deficiency if such deficiency is in excess of 0.4 of one percent on goods that are guaranteed to contain eight percent or less of total nitrogen; 0.5 of one percent on goods that are guaranteed to contain more than eight percent and less than twenty-one percent; and 0.8 of one percent on goods guaranteed twenty-one percent or more.

²⁵(2) Available phosphoric acid (P O): a deficiency assessment four times the value of the deficiency if the deficiency is more than 0.4 of one percent on goods that are guaranteed to contain ten percent or less of available phosphoric acid; 0.5 of one percent on goods that are to contain more than ten percent and less than twenty-six percent; and 0.8 of one percent on goods that are guaranteed more than twenty-six percent.

²(3) Soluble potash (K O): a deficiency assessment of four times the value of the deficiency if such deficiency is in excess of 0.5 of one percent on goods that are guaranteed to contain eight percent or less; 0.6 of one percent on goods that are guaranteed to contain more than eight percent and less than twenty-one percent, and 1.00 percent on goods guaranteed over twenty-one percent.

(4) If a fertilizer is deficient in one ingredient, overages in either or both of the other ingredients,

in dollar value, may be applied to offset the deficiency, provided that a deficiency may not be cured if

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the deficiency in any one ingredient is more than twice the present tolerance. A fertilizer deficient in two of the three ingredients may not be cured by overages in the third ingredient.

(5) Other materials of value as fertilizer: the commission may adopt rules and regulations establishing the amount of deficiency in other guaranteed plant foods and a deficiency assessment four times the value of the deficiency.

(6) All deficiency assessments assessed under this Section shall be paid by the guarantor to the person who purchased the fertilizer for use, if known, within thirty days of notice by the commissioner to the registrant. If the purchaser-user of the fertilizer cannot be identified, the penalty shall be paid to the commission.

B. An appeal from a deficiency assessment shall be heard and decided in the same manner as provided for in R.S. 3:1418.

Acts 2010, No. 579, §1.

§1416. Cancellation of registration; causes for

Repeated failure of a registrant to meet the guaranteed weight or analysis of a fertilizer, or to fail to make payment of the inspection fee, or to fail to pay penalties assessed shall be considered just cause for cancellation of a manufacturer registration.

Acts 2010, No. 579, §1.

§1417. Violations

A. Failure to comply with the provisions of this Subpart or with the rules and regulations adopted pursuant to this Subpart constitutes a violation, including but not limited to:

(1) Interfering with the commissioner, the state chemist, or their representatives in the performance of their duties in carrying out the provisions of this Subpart.

(2) Falsifying a tonnage report or otherwise avoiding payment of the inspection fee.

(3) Making, on bags or packages or in any printed or advertising matter issued or circulated, any false or misleading statement concerning the value of a fertilizer.

(4) Adulterating any lot or shipment of fertilizer sold in this state.

(5) Failing to register with the commission as required.

(6) Failing to properly label fertilizer sold in this state or to provide labels for fertilizer.

(7) Failing to timely pay the fees, penalties, and other costs imposed.

(8) Failing to timely file the reports required by this Subpart or to fully report the information required by such reports.

(9) Altering, forging, counterfeiting, or using without authority any registration or other document provided for in this Subpart or in the rules or regulations adopted pursuant to the provisions of this Subpart.

B. Each violation shall be considered a separate offense, and each day on which a violation occurs or continues to occur shall be considered a separate offense.

Acts 2010, No. 579, §1.

§1418. Adjudicatory proceedings

A. Findings of violations and imposition of penalties may be made only by a ruling of the commission based upon an adjudicatory proceeding held in accordance with the provisions of the Administrative Procedure Act and this Section.

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B. Whenever the commissioner has any reason to believe that a violation of this Subpart or of any rules and regulations adopted pursuant to this Subpart has occurred, the commissioner may present the alleged violations to the commission for a determination.

C. A hearing officer shall be appointed by the office of the attorney general to preside over the

hearing.

D. Notice of the alleged violation, the date of the adjudicatory hearing, and the conduct of discovery shall be as provided in the Administrative Procedure Act.

E. The ruling of the commission shall be in writing and provided to the person charged with the violation, as provided by the Administrative Procedure Act.

F. Any appeal from a ruling of the commission shall be in accordance with the Administrative Procedure Act.

Acts 2010, No. 579, §1.

§1419. Penalty; fines

A. Whoever is found by the commission to have violated a provision of this Subpart or any rules or regulations adopted pursuant to this Subpart shall be fined not more than five hundred dollars per violation.

B. The commission may assess the cost of the adjudicatory proceeding and shall, by rule and regulation, determine the amount of costs to be assessed, which may include the cost of inspections, investigations, and laboratory analysis.

Acts 2010, No. 579, §1.

§1420. Enforcement

A. The commissioner may seek to collect any fee, penalty, or cost that may be due under this Subpart or the rules and regulations adopted pursuant to this Subpart.

B. The commissioner may institute civil proceedings in any court of proper jurisdiction and venue in order to:

- (1) Enforce the rulings of the commission; or
- (2) Collect any fee, penalty, or cost due under the provisions of this Subpart or the rules and regulations adopted pursuant to this Subpart; or
- (3) Seek injunctive relief to restrain and prevent violations of the provisions of this Subpart or of the rules and regulations adopted pursuant to this Subpart.

Acts 2010, No. 579, §1.

§1421. Disposition of funds

All fees, penalties, except for the deficiency assessments paid to a purchaser-user of fertilizer, as provided for in R.S. 3:1415, and other funds received under the provisions of this Subpart shall be received by the commission and disposed of in accordance with the following provisions:

(1)(a) All fees, penalties, and all other funds received by the commission under the provisions of this Subpart, subject to the exceptions contained in Article VII, Section 9 of the Constitution of Louisiana, shall be deposited immediately upon receipt into the state treasury and shall be credited to the Bond Security and Redemption Fund.

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(b) Out of the funds remaining in the Bond Security and Redemption Fund after a sufficient amount is allocated from that fund to pay all obligations secured by the full faith and credit of the state which become due and payable within any fiscal year, the treasurer, prior to placing the remaining funds in the state general fund, shall pay an amount equal to the total amount of funds paid into the state treasury by the commission under the provisions of this Chapter into a special fund which is hereby created in the state treasury and designated as the "Feed and Fertilizer Fund".

(c) All unexpended and unencumbered monies in the fund at the end of each fiscal year shall remain in the fund. The monies in the fund shall be invested by the treasurer in the same manner as monies in the state general fund. All interest earned on monies from the fund invested by the state treasurer shall be deposited in the fund.

(2) Subject to appropriation, the monies in the fund shall be used for the following purposes:

(a) To provide for the expenses of the programs established by this Chapter and the expenses of the office of agricultural and environmental sciences, as determined by the commissioner.

(b) To renovate, maintain, and equip a building on the Baton Rouge campus of the Louisiana State

University and Agricultural and Mechanical College to provide administrative offices and analytical laboratories to be used in connection with the programs established by this Chapter.

(c) To build, equip, and maintain a building to house the offices of the Department of Agriculture and Forestry.

(3) The Department of Agriculture and Forestry, or the Louisiana Agricultural Finance Authority on behalf of the Department of Agriculture and Forestry, may fund the anticipated funds appropriated from the Feed and Fertilizer Fund into revenue bonds for the purpose of renovating a building on the Baton Rouge campus of the Louisiana State University and Agricultural and Mechanical College to provide administrative offices and analytical laboratories to be used in connection with the programs established by this Chapter and for the purpose of acquiring, constructing, renovating, and equipping buildings and related facilities for use by the Department of Agriculture and Forestry in connection with promoting and assisting agriculture and forestry in this state. The Department of Agriculture and Forestry may pledge those funds to secure the repayment of revenue bonds or to secure a lease or purchase agreement entered into in connection with the issuance of revenue bonds for those purposes.

Acts 2010, No. 579, §1; Acts 2011, No. 31, §1.

§1422. Application of Subpart

None of the provisions of this Subpart apply to materials that are to be used in the manufacture of mixed fertilizer nor to fertilizers processed or manufactured in this state intended for sale or distribution in other states nor to fertilizers being transported through this state and destined for use in other states.

Acts 2010, No. 579, §1.

§1423. Local regulations

A. The regulation of fertilizer is preempted by this Subpart. No municipality, parish, local governmental entity, or governing authority of any group or association, private or public, having jurisdiction over a specific geographic area shall enact ordinances, laws, subdivision restrictions, or regulations regarding fertilizers that in any way affect the registration, sale, or application of fertilizer, except as provided herein.

B. Municipalities, parishes, and local governmental entities or governing authorities of any group or association may request that the rules and regulations applicable to the distribution, sale, or

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application of fertilizer be amended to provide for specific problems encountered in or by the entity, group, or association. The following provisions shall govern any such request:

(1) The request shall be addressed to the commissioner.

(2) The commission shall conduct a hearing.

(3) The commission shall make a preliminary determination as to the advisability of amending the state rules and regulations and shall transmit its determination to the commissioner.

(4) The commissioner shall make the final determination as to the desirability of amending the state rules and regulations.

(5) If the commissioner determines that the rules and regulations should be amended, a rule or regulation consistent with the commissioner's determination shall be adopted by the commission in accordance with the Administrative Procedure Act. If the commissioner determines that the rules or regulations should not be amended, a written notice of the decision shall be provided to the requesting party.

C. Municipalities, parishes, and local governmental entities may petition the commissioner for approval of an ordinance applicable to the distribution, sale, or application of fertilizer. The governing authority of a public or private group or association may petition the commissioner for approval of restrictions applicable to the specific geographic area over which the group or association has jurisdiction. The procedure for obtaining such approval shall be as follows:

(1) The proposed ordinance or restrictions shall be sent to the commissioner who shall refer the ordinance to the commission for a hearing.

(2) The commission shall make a preliminary determination as to the advisability of amending the

state rules and regulations and shall transmit its determination to the commissioner.

(3) Upon receipt of the recommendation of the commission, the commissioner shall approve or disapprove the proposed ordinance or restriction.

(4) Both the commission and the commissioner shall be guided by the provisions of this Section in making their respective determinations.

(5) The requesting party shall be notified by the decision in writing.

(6) Any governing authority aggrieved by a final decision of the commissioner shall have a right of judicial review of the administrative process pursuant to the provisions of the Administrative Procedure Act.

D. Notwithstanding the provisions of R.S. 3:1422, municipalities, parishes, and local governmental entities or governing authorities of a public or private group or association, having in effect, on July 1, 2008, an ordinance or restriction affecting the registration, sale, or application of fertilizer shall submit the ordinance to the commissioner on or before December 1, 2008, for approval pursuant to this Section. Any such ordinance or restriction received by the commissioner on or before December 1, 2008, shall continue in full force and effect unless the commissioner disapproves the ordinance or restriction in accordance with this Section. Any such ordinance not received by the commissioner on or before December 1, 2008, shall be void.