

# Agriculture and Markets

## ARTICLE 10

### SALE AND ANALYSIS OF COMMERCIAL FERTILIZER

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§ 143. Definitions. When used in this article, unless otherwise expressly stated:

a. The term "commercial fertilizer" shall mean any substances containing one or more recognized plant nutrients which is used for its plant nutrient content, and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, agricultural liming material, wood ashes, gypsum and other products exempted by regulation of the commissioner.

\* b. The term "specialty fertilizer" shall mean a commercial fertilizer distributed primarily for non-farm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries, and such other use as the commissioner may define by regulation.

\* NB Effective until December 22, 2018

\* b. The term "specialty fertilizer" shall mean a commercial fertilizer distributed primarily for non-farm use, as the commissioner may define by regulation.

\* NB Effective December 22, 2018

c. The term "bulk fertilizer" shall mean a commercial fertilizer distributed in a non-packaged form.

d. The term "brand" shall mean a term, name, design, or trademark used in connection with one or several grades of commercial fertilizer.

e. The term "guaranteed analysis" shall mean a statement of the minimum percentage of plant nutrients claimed expressed in the order and form provided in section one hundred forty-four hereof.

f. The term "custom mix" means a mixture of fertilizer ingredients blended or manufactured to a particular customer's specifications and for his personal use and not offered for resale.

g. The term "grade" shall mean the percentages of total nitrogen, available phosphoric acid and soluble potash stated in the order and form required in the guaranteed analysis.

h. The term "official sample" means any sample of commercial fertilizer taken by the commissioner or his agent in accordance with section one hundred forty-six-a hereof and designated as "official" by the commissioner.

i. The term "ton" means a net weight of two thousand pounds avoirdupois.

j. The term "per cent" or "percentage" means the percentage by weight.

k. The term "distribute" means to offer for sale, sell, barter,

exchange or otherwise supply commercial fertilizers. The term "distributor" means any person who distributes and includes, but is not limited to, manufacturing plants, blending plants and bulk storage facilities.

1. The term "person" includes individual, partnership, association, firm or corporation.

m. The term "licensee" shall mean a person whose license, pursuant to section one hundred forty-six hereof, has been issued by the commissioner and is still in effect.

n. Words importing the singular number may extend and be applied to several persons or things and words importing the plural number may include the singular.

o. The term "fertilizer material" is a commercial fertilizer which either:

1. Contains important quantities of no more than one of the primary plant nutrients (nitrogen, phosphoric acid and potash), or

2. Has approximately eighty-five per cent of its plant nutrient content present in the form of a single chemical compound, or

3. Is derived from a plant or animal residue or by-product or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification and concentration.

p. The term "mixed fertilizer" is a commercial fertilizer containing any combination or mixture of fertilizer materials.

q. The term "label" means the display of all written, printed or graphic matter upon the immediate container or statement accompanying a commercial fertilizer.

r. The term "labelling" means all written, printed or graphic matter, upon or accompanying any commercial fertilizer, or advertisements, brochures, posters, television and radio announcements used in promoting the sale of such commercial fertilizers.

s. The term "commissioner" means the commissioner of agriculture and markets.

\* t. The term "agricultural and food analytical standards association" shall mean an independent, third-party, not-for-profit association that develops voluntary, globally accepted, consensus analytical standards and methods for ensuring quality measurements to address the purity and safety of agricultural materials and food and promotes global trade and public health and shall be further defined in regulations by the commissioner.

\* NB Effective December 22, 2018

§ 144. Guaranteed analysis. Guaranteed analysis shall contain a statement of chemical composition in the following form:

a. A statement of the minimum percentage of claimed plant nutrients shall be expressed in whole numbers or as decimal fractions for specialty fertilizers and in whole numbers for all other commercial fertilizers, as follows:

Total nitrogen (N).....percent  
Available phosphoric acid (P2O5) or available  
phosphate P2O5.....percent  
Soluble potash (K2O).....percent

b. For unacidulated mineral phosphatic materials and basic slag, bone, tankage and other organic phosphate materials, the total phosphoric acid and/or degree of fineness may also be guaranteed if expressed in whole

numbers.

c. Guarantees for plant nutrients except phosphoric acid and potash shall be expressed in the form of the element in a manner prescribed by the commissioner. The sources of such other nutrients (oxides, salt, chelates, etc.) may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed if approved in regulations promulgated by the commissioner.

d. A statement of the potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of one hundred pounds per ton, if required by regulation of the commissioner.

§ 145. Labelling. a. No commercial fertilizer shall be distributed in this state in containers unless there shall be placed on or affixed to the container a label setting forth in clearly legible form a statement which shall certify as follows:

(1) Net weight of the contents of the package.

(2) The brand and grade under which it is to be sold.

(3) The name, street or post-office address of the principal office of the licensee, distributor or person responsible for placing the commodity on the market.

(4) The guaranteed analysis as provided in section one hundred forty-four above.

b. If distributed in bulk, a written or printed statement of the information required in subdivision a of this section above shall accompany delivery and be supplied to the purchaser at the time of delivery.

c. The labelling of specialty fertilizers shall contain all the information required by the foregoing paragraphs of this section and such other information as shall be required by rule or regulation issued by the commissioner.

§ 146. Licensing. (a) No person shall distribute in this state any type of fertilizer until a license to distribute the same has been obtained from the commissioner by the person whose labelling is applied to such fertilizer upon payment of a one hundred fifty dollar fee. The initial license issued hereunder shall expire on December thirty-first of the next even numbered year following the year in which it was issued and each renewal of that license shall be for a two year period, ending on December thirty-first. Application for a renewal of such license shall be made biennially, upon a form prescribed by the commissioner and be submitted no later than thirty days prior to the expiration of the existing license.

(b) The application shall include: (1) The name and address of licensee;

(2) Name and address of each manufacturing plant, blending plant and bulk storage facility within New York state which distributes commercial fertilizer, and

(3) A list of the brand and product name of all commercial fertilizer distributed in this state.

\* (c) The licensee shall inform the director in writing of additional distribution points established during the period of the license.

\* NB Effective until December 22, 2018

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(d) The commissioner is authorized and empowered to revoke the license of any distributor of commercial fertilizer, or to refuse to grant or to renew the license of any distributor as herein provided, upon satisfactory evidence that the licensee or applicant has used fraudulent or deceptive practices in the evasion or attempted evasion of the provisions of this article, or of any rules or regulations promulgated hereunder or if the license application or the information furnished upon the sale of the commercial fertilizer is misleading or deceptive or tends to mislead or deceive as to its quality or the constituents or materials of which it is composed. No license shall be revoked or refused until the distributor shall have been given an opportunity to appear for a hearing before the commissioner.

\* § 146-a. Inspection, sampling, analysis. a. It shall be the duty of the commissioner, who may act through his authorized agent, to sample, inspect, and analyze commercial fertilizers distributed within this state at such time and place and to the extent he may deem necessary to determine whether such commercial fertilizers are in compliance with the provisions of this act. A sample to be designated an official sample shall be divided into two representative samples, each sealed, and one of such sealed samples shall be tendered, and if accepted, delivered to the custodian of the product; the other sample the commissioner shall analyze or cause to be analyzed. The methods of sampling and analysis shall be those the commissioner may require by regulation and which may be based on methods recommended in publications such as that of the association of official analytical chemists.

b. The results of the analysis of such sample shall be reported to the licensee within ninety days of the date of sampling and the commissioner shall publish or cause to be published at least annually a summary of all analyses made, together with such additional information as circumstances advise.

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\* § 146-a. Inspection, sampling, analysis. a. It shall be the duty of the commissioner, who may act through his authorized agent, to sample, inspect, and analyze commercial fertilizers distributed within this state at such time and place and to the extent he may deem necessary to determine whether such commercial fertilizers are in compliance with the provisions of this article. The methods of sampling and analysis shall be those the commissioner may require by regulation and be based on methods adopted by an agricultural and food analytical standards association, as further defined in regulations by the commissioner.

b. The results of the analysis of such sample shall be reported to the licensee within ninety days of the date of sampling and the commissioner shall publish or cause to be published at least annually a summary of all analyses made, together with such additional information as circumstances advise.

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§ 146-b. Misbranded or adulterated fertilizer. No commercial fertilizer shall be distributed in this state if it is deemed to be misbranded or adulterated.

(a) A commercial fertilizer shall be deemed to be misbranded:

(1) if its labelling is false or misleading in any particular; or

(2) if it purports to be or is represented as a commercial fertilizer, or is represented as containing a plant nutrient or commercial fertilizer unless such plant nutrient or commercial fertilizer conforms to the definition of identity, if any, prescribed by regulation of the commissioner; in the adopting of such regulations the commissioner shall give due regard to commonly accepted definitions and official fertilizer terms such as those employed by the association of American plant food control officials.

\* (b) A commercial fertilizer shall be deemed to be adulterated:

(1) if it contains any deleterious or harmful ingredient in sufficient amount to render it injurious to beneficial plant life when applied in accordance with directions for use on the label, or if adequate warning statements or directions for use, which may be necessary to protect plant life are not shown upon the label;

(2) if its composition falls below or differs from that which it is purported to possess by its labelling; or

(3) if it contains unwanted crop seed or weed seed.

\* NB Effective until December 22, 2018

\* (b) A commercial fertilizer shall be deemed to be adulterated:

(1) if it contains any deleterious or harmful ingredient in sufficient amount to render it injurious to beneficial plant life, animals, humans, aquatic life, soil, or water when applied in accordance with directions for use on the label, or if adequate warning statements or directions for use, which may be necessary to protect plant life, animals, humans, aquatic life, soil, or water are not shown upon the label;

(2) if its composition falls below or differs from that which it is purported to possess by its labelling;

(3) if it contains unwanted crop seed or weed seed; or

(4) if it contains metals in amounts greater than those levels the commissioner may establish by regulation, based upon the consensus research-based recommendations of an organization of state, territorial and international fertilizer control officials who administer fertilizer laws and regulations.

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§ 146-c. Reports and fees. Each licensee who distributes commercial fertilizers in this state shall furnish the commissioner with a written statement of the tonnage of each grade of commercial fertilizer, including zero tonnage if applicable, sold by him or her in this state during the calendar year to persons not required to be licensed under this article. The tonnage of grades of which less than fifty tons were sold shall be reported, either individually or combined under the heading of miscellaneous sales. This report shall be submitted in the form and with such frequency as the commissioner shall require by regulation. The licensee shall pay to the commissioner a sum equal to ten cents for each ton or portion thereof of commercial fertilizer distributed in this state to persons not required to be licensed under this article provided that such annual tonnage fee shall not be less than fifty dollars. This fee shall be remitted on or before February first and calculated based on the calendar year immediately preceding.

No information furnished under this section shall be disclosed in such a way as to divulge the method or scope of the operation of any person.

The commissioner shall publish at least annually a summary of the

tonnage reports submitted pursuant to this section.

The licensee shall make such other reports as the commissioner may require.

Failure to make such reports or to pay such fee shall be grounds for revocation of the license hereunder.

§ 146-d. Rules and regulations. The commissioner is hereby authorized, after public hearing, to adopt, promulgate and issue such rules and regulations as he may deem necessary to supplement, carry out and give full force and effect to the provisions of this article.

§ 146-e. Stop sale orders. The commissioner may issue and enforce a written or printed "stop sale, use or removal" order to the owner or custodian of any lot of commercial fertilizer and to hold at a designated place when the commissioner finds said commercial fertilizer is being offered or exposed for sale in violation of any of the provisions of this act until the law has been complied with and said commercial fertilizer is released in writing by the commissioner, or said violation has been otherwise legally disposed of by written authority. The commissioner shall release the commercial fertilizer so withdrawn when the requirements of the provisions of this act have been complied with.

§ 146-f. Ammonium nitrate security. (a) Ammonium nitrate retailers shall be registered with the department, and such registration shall be based on criteria set forth by the commissioner in consultation with or upon the recommendation of the director of the office of homeland security. Registration shall be required to sell or offer for sale ammonium nitrate or regulated ammonium nitrate materials. The commissioner shall charge an annual registration fee of no more than fifty dollars to ammonium nitrate retailers, provided, however, that retailers who pay fees under this article shall be exempt from such fee.

(b) Ammonium nitrate and regulated ammonium nitrate materials, while at all registered facilities, shall be secured to provide reasonable protection against vandalism, theft or other unauthorized access. Reasonable protection may include, but not be limited to ensuring that storage facilities are fenced and locked when unattended, and inspected daily for signs of attempted entry, vandalism and structural integrity. The commissioner in consultation with or upon the recommendation of the director of the office of homeland security, may suggest other security measures. The commissioner shall work in consultation with or upon the recommendation of the director of the state office of homeland security to provide information to ammonium nitrate retailers on appropriate security measures.

(c) (1) Ammonium nitrate retailers shall record the date of sale and quantity purchased along with a valid state or federal driver license number, or other picture identification card number approved for purchaser identification by the commissioner in consultation with or upon the recommendation of the director of state office of homeland security, as well as the name, current physical address, and telephone number for the purchaser of ammonium nitrate or regulated ammonium nitrate materials.

(2) Such information and any additional records as set forth by the

commissioner in consultation with or upon the recommendation of the director of the office of homeland security must be maintained by the ammonium nitrate retailer for a minimum of two years on a form or using a format developed by the commissioner in consultation with or upon the recommendation of the director of the office of homeland security.

(3) Ammonium nitrate retailers shall, in compliance with any federal and state requirements regarding the dissemination of such information, provide the commissioner and the director of the office of homeland security access to such records.

(d) For the purposes of this section, the following terms shall mean:

(1) "Ammonium nitrate" means chiefly the ammonium salt of nitric acid. It shall not contain less than thirty-three percent nitrogen, one-half of which is the ammonium form and one-half of which is the nitrate form.

(2) "Regulated Ammonium nitrate materials" means regulated ammonium nitrate materials fertilizer products which have been determined by the commissioner in consultation with or upon the recommendation of the director of the office of homeland security to warrant regulation based on the potential explosive capacity of its ammonium nitrate content.

(3) "Ammonium nitrate retailer" means any person or entity in this state that sells, offers for sale, or otherwise makes available, ammonium nitrate or regulated ammonium nitrate materials.

§ 146-g. Retail sale. Any retailer who sells or offers for sale to consumers specialty fertilizer in which the available phosphate (P205) content is greater than 0.67 percent, shall:

(a) display such phosphorus-containing specialty fertilizer separately from non-phosphorus specialty fertilizer; and

(b) post in the location where phosphorus-containing specialty fertilizer is displayed a clearly visible sign which is at least eight and one-half inches by eleven inches in size and states that:

"Phosphorus runoff poses a threat to water quality. Therefore, under New York law, phosphorus-containing fertilizer may only be applied to lawn or non-agricultural turf when:

(1) A soil test indicates that additional phosphorus is needed for growth of that lawn or non-agricultural turf; or

(2) The fertilizer is used for newly established lawn or non-agricultural turf during the first growing season."