Chapter 266 (Revised 2009)

FERTILIZERS

266.291. Definitions-The following words, terms, and phrases, when used in sections 266.291 to 266.351 have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Director" means the director of the Missouri agricultural experiment station at Columbia, Missouri;

(2) "Distributor" means any person who imports, consigns, manufactures, produces or compounds fertilizer, or offers for sale, sells, barters, or otherwise supplies fertilizers for consumption or use in this state; provided that this term shall not apply to any person who purchases fertilizer from a distributor registered under sections 266.291 to 266.351 and which fertilizer has been once sold in compliance with sections 266.291 to 266.351;

(3) "Essential plant nutrient" includes any element recognized as being directly required by any plant to complete its life cycle;

(4) "Fertilizer" includes any organic or inorganic material of natural or synthetic origin which is added to soil, soil mixtures, or solution to supplement nutrients and is claimed to contain one or more essential plant nutrients. The term "fertilizer" does not include unmanipulated animal and vegetable manure and agricultural liming materials used to reduce soil acidity;

(5) "Person" includes individuals, partnerships, associations, firms, corporations, estates, trusts, receivers, or trustees appointed by any state or federal court;

(6) "Sale", "sold", and "sells" include exchanges and consignments for sale and means any transfer or barter.

(7) "Variable rate technology" means the method of applying two or more fertilizer materials which are blended at variable rates by a spreading vehicle or device during the application process.

266.301. Permit required to sell fertilizer application.—It shall be unlawful for any distributor to sell, offer for sale or expose for sale for consumption or use in this state any fertilizer without first securing a permit from the director. Such permit shall be issued by the director with the approval of a governing body of the county in which the distributor is located. It shall be void if the holder thereof shall fail to comply with any of the conditions of such permit.

266.302. Certificate to report sales.—It shall be unlawful for any person to sell, offer for sale or expose for sale each fertilizer for use or consumption in this state which is misbranded. Any fertilizer shall be deemed to be misbranded if it fails to carry the printed statement required under section 266.321, or if the chemical composition of such fertilizer does not meet the guarantee expressed on said statement within allowable tolerances fixed by the director, or if the container for such fertilizer or any statement accompanying the same carries any false or misleading statement, or if false or misleading statements concerning its agricultural value are made on any advertising matter furnished by or for a consumer prior to selling, offering for sale or exposing for sale for consumption or use in this state any fertilizer.

266.311. Sale of misbranded fertilizer prohibited mis-branding defined.—It shall be unlawful for any person to sell, offer for sale or expose for sale any fertilizer for use or consumption in this state which is misbranded. Any fertilizer shall be deemed to be misbranded if it fails to carry the printed statement required under section 266.321, or if the chemical composition of such fertilizer does not meet the guarantee expressed on said statement within allowable tolerances fixed by the director, or if the container for such fertilizer or any statement accompanying the same carries any false or misleading statement, or if false or misleading statements concerning its agricultural value are made on any advertising matter accompanying or associated with such fertilizer.

266.321. Labeling information required each fertilizer sold, offered for sale or exposed for sale for consumption or use within this state shall bear thereon or have attached thereto in a conspicuous place a plainly written statement in the English language giving the following information:

1. Each container of fertilizer sold, offered for sale or exposed for sale for consumption or use within this state shall bear thereon or have attached thereto in a conspicuous place a plainly written statement in the English language giving the following information:

(a) The name, brand or trademark under which the fertilizer is sold;

(b) The name and address of the person guaranteeing the fertilizer;

(c) Net weight;

(d) The guaranteed chemical composition by weight of the fertilizer, expressed in the following terms:

(a) Percent of total nitrogen (N),

(b) Percent of available phosphorus (P2O5),

(c) Percent of soluble potash (K2O),

(d) Percent of available sulfur (S) or percentage of nitrogen, phosphorus, and potassium.

2. A fertilizer formulated according to specifications furnished by or for a consumer prior to mixing and intended to be applied using variable rate technology shall be accompanied by a plainly written statement which shows the guaranteed analysis and net weight of each material in the formulation and the name and address of the distributor and the consumer.

266.331. Sales to be reported fee to be set by rule.—Every distributor shall, within thirty days after the first six-months' period ending June thirtieth and December thirty-first, file with the director on forms supplied by him, a sworn certificate setting forth the information required by the director by rule. At the time of filing such certificate, each distributor of fertilizer, excluding manipulated animal or vegetable manure, shall pay to the director the fee prescribed by the director by rule, which fee shall not exceed one dollar per ton and one dollar ten cents per metric ton; except that sales to fertilizer manufacturers or exchanges between them are hereby exempted. Each distributor of fertilizer consisting of manipulated animal or vegetable manure shall pay to the director a fee for each ton of manure as prescribed by the director by rule, which fee shall not exceed two cents for each percent of nitrogen for manure containing less than five percent nitrogen; or which fee shall not exceed four cents for each percent nitrogen for manure containing at least ten percent nitrogen; or which fee shall not exceed six cents for each percent nitrogen for manure containing ten or more percent nitrogen. In the event that the director has not prescribed a fee under this section, the fees so paid to the director shall be used for defraying the expenses in administering sections 266.291 to 266.351 and the rules promulgated under sections 266.291 to 266.351, and for practical and scientific experiments by the Missouri agricultural experiment station in the value and proper use of fertilizer. Such fees may also be used to support such related research and methodology, publications, and educational programs extending the results of the fertilizer experiments as may be of practical use to the farmers of this state.

266.336. Advisory Council, membership, purpose.—There is hereby created an advisory council to the director, which shall be composed of fifteen members appointed by the director pursuant to this section. Of the fifteen members so appointed, five shall be actively employed as fertilizer manufacturers or distributors, five shall be actively engaged in the business of farming, and five shall be chosen from the residents at large of this state. The five members so chosen from the residents at large of this state shall be selected by the director with the approval of a majority of the other ten members of the advisory council.
2. The advisory council shall:
   (1) Meet at least once each year;
   (2) Annually review with the director the income received and expenditures made under sections 266.291 to 266.351;
   (3) Review and approve all rules, and revisions or rescissions thereof, to be promulgated by the director;
   (4) Consider all information and advise the director in determining the method and amount of fees to be assessed. In performing its duties under this subdivision, the advisory council shall represent the best interests of the Missouri farmers;
   (5) Serve in an advisory capacity in all matters pertaining to the administration of sections 266.291 to 266.351.

3. All members of the advisory council shall serve for terms of three years and until their successors are duly appointed and qualified; except that, of the members first appointed:
   (1) Two members who are actively employed as fertilizer manufacturers or distributors, two members actively engaged in the business of farming, and two members chosen from the residents of this state at large shall serve for terms of three years;
   (2) Two members who are actively employed as fertilizer manufacturers or distributors, two members actively engaged in the business of farming, and two members chosen from the residents of this state at large shall serve for terms of two years; and
   (3) The remaining three members shall serve for terms of one year.

4. All members shall be residents of this state. No member may serve more than two consecutive terms on the advisory council, but any member may be reappointed after he has not been a member of the advisory council for a period of at least three years.

5. All members shall be reimbursed for reasonable expenses incurred in the performance of their official duties in accordance with the reimbursement policy set by the director. All members shall serve without compensation, and compensation provided under this section shall be paid from fees collected under sections 266.291 to 266.351.

6. Every vacancy on the advisory council shall be filled by the director with the approval of a majority of the remaining members of the council. The person selected to fill any such vacancy shall possess the same qualifications required by this section as the member he replaces and shall serve until the end of the unexpired term of his predecessor.

266.341. Powers of Director—The duty of enforcing and administering provisions of sections 266.291 to 266.351 shall be vested in the director. The director shall, in accordance with chapter 536, RSMo, promulgate all rules necessary to provide for the efficient administration and enforcement of sections 266.291 to 266.351; except that, no rule or revision or rescission thereof, may be filed with the secretary of state until it has been approved by a majority of the members of the advisory council created in section 266.336. Any rule or portion of a rule promulgated and approved under any authority in this Act may be suspended by the Joint Committee on Administrative Rules at any time. No rule or portion of a rule promulgated under any authority granted in this Act shall become effective until it has been approved by the Joint Committee on Administrative Rules. If the Joint Committee on Administrative Rules disapproves or suspends a rule, the Joint Committee shall notify both the department or agency proposing the rule and the Secretary of State. The Secretary of State shall publish in the Missouri Register as soon as practicable, an order withdrawing the rule. The provisions of this Act are non-severable and the grant of rule making authority is essential to the provisions of sections 266.291 to 266.351 and the rules promulgated under sections 266.291 to 266.351 are being fully complied with.

266.343. Penalties for deficiency in fertilizer.—If any fertilizer offered for sale in this state shall upon official analysis prove deficient from its guarantee as stated on the bag or other container, penalties shall be assessed as follows:
   (1) For a single ingredient fertilizer containing nitrogen or available phosphate or soluble potash:
       (a) When the value of this ingredient is found to be deficient to the extent of three percent and not over five percent, the distributor shall be assessed a penalty equal to three percent of the total value, the penalty shall be three times the actual value of the shortage.
       (b) When the deficiency exceeds five percent of the actual value of fertilizer and fertilizer materials for the purpose of determining the amount of damages due when the official analysis show an excessive deficiency from the guaranteed analysis.
       (c) When the total combined values of the nitrogen or available phosphate or soluble potash, penalties shall be assessed according to (a), (b) or (c) as herein stated.
   (2) For multiple ingredient fertilizers containing two or more of the single ingredients: Nitrogen or available phosphate or soluble potash, subject to a penalty under (a), (b) and (c) only the larger penalty shall be assessed.
       (a) When the total values of the nitrogen or available phosphate or soluble potash found to be deficient to the extent of three percent and not over five percent, the distributor shall be liable for the actual deficiency in total value.
       (b) When the total values of the nitrogen or available phosphate or soluble potash, found to be deficient to the extent of over five percent, the distributor shall be liable for the actual deficiency in total value.
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6 CSR 250-11.010 Deficiency Penalties

PURPOSE: This rule delineates procedures to be followed in the assessment of penalties and in the disposition of deficient fertilizers.

(1) The market value of fertilizer and fertilizer materials shall be expressed as a dollar value per unit and/or per pound of each primary plant nutrient for the purpose of determining the amount of penalty due when the official analysis shows an excessive deficiency from the guaranteed analysis and these established values shall be reviewed and distributed at least annually.

(A) In event the actual retail price is substantially higher than the value as calculated at the established rates, the penalty shall be based on the retail price.

(2) Penalties shall be assessed on the quantity of fertilizer on hand when the sample is taken. Any lot subject to penalty may be required to be returned to the manufacturer and all costs involved in the return of such fertilizer shall be borne by the manufacturers. Any lot of fertilizer found subject to penalty shall be deemed misbranded and subject to an order to "stop sale".

6 CSR 250-11.030 Labeling Additional Plant Nutrients

PURPOSE: This rule prescribes the labeling for fertilizer other than nitrogen, phosphorus, and potassium.

(1) Essential plant nutrients in addition to nitrogen, phosphorus, and potassium, when mentioned in any form or manner shall be guaranteed.

(A) Guarantees shall be made on the elemental basis.

(B) Sources of elements guaranteed and proof of availability shall be provided the director of the Mo. Agricultural Experiment Station on request.

(C) The minimum percentages which may be claimed are as follows:

- Calcium (Ca), 1.00;
- Magnesium (Mg), 0.50;
- Sulfur (S), 1.00;
- Boron (B), 0.02;
- Chlorine (Cl), 0.10;
- Cobalt (Co), 0.0005;
- Copper (Cu), 0.05;
- Iron (Fe), 0.10;
- Manganese (Mn), 0.05;
- Molybdenum (Mo), 0.0005;
- Sodium (Na), 0.10;
- Zinc (Zn), 0.05;

(2) Guarantees or claims for the nutrients listed in 6 CSR 250-11.030(1)(C) are the only ones which will be accepted. Proposed labels and directions for use of the fertilizer shall be furnished by the director of the Mo. Agricultural Experiment Station upon request. Any of the above-listed elements which are guaranteed shall appear in the order listed, immediately following guarantees for the primary nutrients, nitrogen, phosphorus and potassium.

6 CSR 250-11.040 Inspection Fee

PURPOSE: This rule sets forth the inspection fee.

The fee provided to be established by rule under section 266.331 shall be fifty cents (50¢) for each ton (2000 pounds) of fertilizer reported. The last registered distributor selling fertilizer for use in Missouri shall be responsible for payment to the director the fee provided by this rule.
6 CSR 250-11.050 Semiannual Reporting Procedures

PURPOSE: The purpose of this rule is to establish fertilizer tonnage reporting procedures and clarify responsibility for the inspection fee when more than one distributor is involved.

(1) The semiannual report required by section 266.331 shall supply the information specified by either Option A or Option B as follows:
(A) The amount of fertilizer sold for consumption or use in the state during the period covered.
(B) The amount of fertilizer purchased, during the period covered, either for reformulation or for resale.

(2) Option A will be available to all distributors and required for all distributors either located outside of the state or selling fertilizers primarily to dealers for resale. Option B may be used only by distributors located within the state selling fertilizers direct to farmers. All fertilizer purchases by distributors choosing Option B must be reported. Any distributor changing from sales to input reporting will be required to submit a beginning inventory record and include this tonnage, with the inspection fee due, in his first semiannual report.

(3) Each eligible distributor will be required to choose either Option A or Option B and follow it as the exclusive reporting basis until a change to the other option is approved by the director. No change in reporting basis will be approved except at the beginning of a semiannual reporting period and following a request for change submitted at least thirty (30) days before the end of the then current reporting period.

(4) Under both reporting procedures, sales to other registered distributors are exempt from inspection fee, but must be reported as a sales transaction monthly. However, under Option B, any credit claimed for sales to registered distributors will be limited to the amount of fertilizers reported as purchases contained in the products sold.

6 CSR 250-11.060 Documentation of Tonnage

PURPOSE: The purpose of this rule is to establish the required documentation of fertilizer purchases or sales to be submitted to the director.

(1) The documentation required by section 266.341(3) shall consist of:
(A) For Option A—Invoice copies of sales, or summaries or transcripts (for example, computer printout) of such information including the name and address of the purchaser, the guaranteed analysis and the net weight of each shipment;
(B) For Option B—Invoice copies of shipments received or transcripts (for example, computer printouts) of such information including invoice number, the name and address of the supplier, the guaranteed analysis and the net weight of each shipment; and
(C) Such documents must be submitted to the director at least monthly, and no later than five (5) days after the end of the month covered.

6 CSR 250-11.070 Annual permit fee

PURPOSE: This rule establishes and annual fee for the permit to sell commercial fertilizer in the state.

The director will cause to be mailed each year on or about the 15th of April a renewal application form to all distributors currently selling fertilizer in the state to renew their permit required by section 255.301 for the coming year. The completed application for each location from which commercial fertilizers are distributed shall be returned to the director by June 1, accompanied by a permit fee of one hundred dollars ($100) US. New applications shall also be accompanied by a permit fee of one hundred dollars ($100) US. Permit fees collected will be used to defray administrative costs of distributor registration, with any permit fees collected in excess of administrative costs to be used to support related research proposals.

6 CSR 250-11.080 Collection fee for delinquent filing of a semiannual report

PURPOSE: This rule establishes a collection fee on distributors who do not file a semiannual report within thirty days after each six-month period.

(1) If the semiannual report described in section 266.331 is not filed and the payment of inspection fees is not made within 30 days after the end of the specified filing period, a collection fee amounting to ten percent (10%) of the amount due or fifty dollars ($50) US, whichever is greater, shall be assessed against the distributor and added to the amount due.