

## CHAPTER 4.1-40 FERTILIZER AND SOIL CONDITIONER

### 4.1-40-01. Definitions.

As used in this chapter:

1. "Brand" means a term, design, or trademark, used in connection with one or several grades of fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendments, or plant amendments.
2. "Bulk" means in a nonpackaged form.
3. "Compost" means a material derived primarily or entirely from biological decomposition of vegetative organic matter or animal manure that may have inorganic fertilizer added to promote decomposition.
4. "Deficiency" means an amount of plant nutrient or active ingredient found by analysis to be less than the amount guaranteed, resulting from a lack of plant nutrient, active ingredients, or uniformity.
5. "Distributor" means a person who imports, consigns, manufactures, produces, compounds, mixes, or blends or who sells or offers for sale fertilizer, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments in this state.
6. "End user" means a person who uses a fertilizer, fertilizer materials, micronutrients, specialty fertilizers, soil amendment, or plant amendment in a manner for which the product was intended.
7. "Fertilizer" means any substance 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, marl, lime, limestone, wood ashes, and other products excluded by rule of the commissioner.
8. "Fertilizer material" means a fertilizer which:
  - a. Contains no more than one of the primary plant nutrients;
  - b. Has approximately eighty-five percent of its primary plant nutrient content present in the form of a single chemical compound; or
  - c. Is derived from a plant or animal residue or byproduct or a natural material deposit and has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification or concentration.
9. "Grade" means the percentages of total nitrogen, available phosphate, and soluble potassium or soluble potash stated in the same terms, order, and percentages as in the "guaranteed analysis".
10. "Guaranteed analysis" means the minimum percentage of plant nutrients claimed.
11. "Investigational allowance" means an allowance for variations inherent in the taking, preparation, and analysis of an official sample of fertilizer, soil amendment, or plant amendment.
12. "Label" means all written, printed, or graphic materials upon or accompanying any fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant amendment and any printed material or media announcements used in promoting their sale.
13. "Licensee" means a person licensed by the commissioner to distribute fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant amendment.
14. "Manipulated" means to have manufactured, blended, or mixed fertilizers, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments, or to have treated in any manner any animal or vegetable manures, including mechanical drying, grinding, pelleting, and other means, or by adding other chemicals or substances.
15. "Micronutrient" means a fertilizer that contains only essential chemical elements that are required at low levels for normal plant growth.

16. "Mobile mechanical unit" means any portable machine or apparatus used to blend, mix, or manufacture fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, or plant amendments.
17. "Official sample" means any sample of fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant amendment, taken and designated as "official" by the commissioner.
18. "Organic" in reference to fertilizer nutrients, means only naturally occurring substances, generally recognized as the hydrogen compounds of carbon and their derivatives or synthetic products of similar composition with a water insoluble nitrogen content of at least sixty percent of the guaranteed total nitrogen.
19. "Percent" or "percentage" means the percentage by weight.
20. "Plant amendment" means a substance applied to plants or seeds which is intended to improve germination, growth, yield, product quality, reproduction, flavor, or other desirable characteristics of plants except fertilizers, unless the fertilizer is represented to contain, as an active ingredient, a substance other than a primary plant nutrient or micronutrient, or is represented as promoting plant growth by supplying something other than a primary plant nutrient or micronutrient.
21. "Plant nutrient" means a substance generally recognized as beneficial for plant growth, including nitrogen, phosphorus, potassium, calcium, magnesium, sulfur, boron, chlorine, cobalt, copper, iron, manganese, molybdenum, sodium, and zinc.
22. "Primary plant nutrients" means nitrogen, phosphate, and potash.
23. "Registrant" means the person who registers fertilizers, soil amendments, or plant amendments under this chapter.
24. "Sell" when applied to fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, or plant amendments means:
  - a. Transferring or offering to transfer ownership through a sale, exchange, gift, or distribution; or
  - b. Receiving, accepting, holding, or possessing for sale, exchange, gift, or distribution.
25. "Soil amendment" means any substance intended to improve the characteristics of the soil except unmanipulated animal or vegetable manures, pesticides, and fertilizers, unless the fertilizer is represented to contain, as an active ingredient, a substance other than a primary plant nutrient or micronutrient or is represented as promoting plant growth by supplying something other than a primary plant nutrient or micronutrient.
26. "Specialty fertilizer" means a fertilizer distributed primarily for nonfarm use.
27. "Ton" means a net weight of two thousand pounds avoirdupois [907.18 kilograms].

#### **4.1-40-02. Product registration - Fees.**

1. Each brand and grade of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, and plant amendment must be registered in the name of the person whose name appears upon the label before being offered for sale or distributed in this state.
2. The application for registration must be submitted to the commissioner on a form furnished by the commissioner and must be accompanied by:
  - a. A current product label; and
  - b. A fee of fifty dollars per product.
3. Each brand and grade registration is effective for a two-year period beginning July first and ending June thirtieth of each even-numbered year.
4. Any request for a registration renewal received after July thirty-first must be assessed a penalty of one hundred dollars per product.
5.
  - a. A distributor is not required to register any product listed in subsection 1 if that product is already registered by another person, providing the label complies with the issued registration.

- b. A distributor is not required to register a custom-blended fertilizer combination, blended to the customer's specification, if the fertilizer combination provided contains only products registered under subsection 1.
  - c. Compost that is transferred between parties without compensation does not require registration.
6. The agriculture commissioner shall forward all fees received under this section to the state treasurer for deposit in the environment and rangeland protection fund.

**4.1-40-03. Distributor's license - Fees.**

1. A person may not distribute any fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment in this state without first obtaining a distributor's license from the commissioner.
2. A license is required for each location or mobile mechanical unit used by a distributor in the state.
3. The application for a license must be submitted on a form furnished by the commissioner and must be accompanied by a fee of one hundred dollars.
4. A license is effective for a two-year period beginning July first and ending June thirtieth of each even-numbered year.
5. Any license renewal application received after July thirty-first must be assessed a penalty of one hundred dollars per location.
6. Any license issued under this section:
  - a. Is not transferable;
  - b. Must be conspicuously posted at each location used by the distributor; and
  - c. Must be carried in each mobile mechanical unit operated by the distributor in the state.
7. The requirements of this section do not apply to persons that distribute only:
  - a. Specialty fertilizers to end users; or
  - b. Seed inoculants.
8. The agriculture commissioner shall forward all fees received under this section to the state treasurer for deposit in the environment and rangeland protection fund.

**4.1-40-04. Proof of effectiveness.**

The commissioner may require proof of claims made for any product covered by this chapter and may require proof of value when used as directed or recommended. The commissioner must rely on data from scientifically designed and reported studies conducted under conditions similar to those in this state under which the product is intended to be used. The commissioner may accept or reject other sources of proof as supplemental evidence.

**4.1-40-05. Guaranteed analysis.**

1. Guaranteed analysis must be claimed as follows:
  - a. Total Nitrogen (N) \_\_\_\_\_ percent;
  - b. Available Phosphate ( $P_2O_5$ ) \_\_\_\_\_ percent; and
  - c. Soluble Potash ( $K_2O$ ) \_\_\_\_\_ percent.
2. The total phosphate or degree of fineness, or both, may also be guaranteed, in the case of unacidulated mineral phosphatic materials and basic slag, bone, tankage, and other organic phosphatic materials.
3. Rules implemented under this chapter may allow or require guarantees for plant nutrients other than nitrogen, phosphorus, and potassium.
  - a. Guarantees under this subsection must be expressed in the form of the element.
  - b. The commissioner may require that the sources of other nutrients, including oxides, salt, and chelates, be stated on the application for registration and included as a parenthetical statement on the label.

- c. Other beneficial substances or compounds, determinable by laboratory methods, may be guaranteed with permission of the commissioner after consultation with the director of the North Dakota state university extension service.
- 4. Any guaranteed plant nutrients, other substances, or compounds are subject to inspection and analysis according to the methods and rules prescribed by the commissioner.
- 5.
  - a. The commissioner, by rule, may require potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of one hundred pounds [45.36 kilograms] per ton [907.18 kilograms].
  - b. The guaranteed analysis of a soil amendment or plant amendment must be an accurate statement of composition, including the percentages of each ingredient. If the product is a microbiological product, the number of viable micro-organisms per milliliter for a liquid or the number of viable micro-organisms per gram for a dry product must also be listed.

**4.1-40-06. Label requirement.**

Any fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment distributed in this state must be labeled.

- 1. If the product is in a container, the label must be plainly printed in English and conspicuously placed on or attached to the container. The label must include:
  - a. The net weight of the product;
  - b. The brand;
  - c. The grade, unless no primary nutrients are claimed;
  - d. The guaranteed analysis;
  - e. The name and address of the registrant; and
  - f. For soil or plant amendments, the purpose for which the product is used.
- 2. If the product is distributed in bulk, a document providing the same information required in subsection 1 must accompany the delivery and be provided to the end user at the time of delivery.
- 3. A fertilizer formulated according to specifications furnished by a consumer prior to mixing must be labeled to show the net weight, the guaranteed analysis or amount of each plant nutrient it contains in pounds [kilograms], and the name and address of the registrant.

**4.1-40-07. Inspection fees - Tonnage reports - Penalty.**

- 1.
  - a. An inspection fee of ten dollars or twenty cents per ton [907.18 kilograms], whichever is greater, must be paid to the commissioner on all fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendments, and plant amendments distributed in this state.
  - b. This subsection does not apply to:
    - (1) Exchanges of product between manufacturers and distributors; or
    - (2) Individual fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, or plant amendments sold exclusively in packages of ten pounds [4.54 kilograms] or less.
- 2.
  - a. On or before January thirty-first, each licensed person who distributes a fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment in this state shall:
    - (1) File with the commissioner a form stating the number of net tons [kilograms] of each listed product distributed in this state during the preceding calendar year; and
    - (2) Submit to the commissioner the inspection fee required by this section.
  - b. If a person fails to submit an inspection fee, at the time and in the manner required by this section, the commissioner may impose a penalty of ten dollars or ten percent of the amount due, whichever is greater.
  - c. The requirements of subdivisions a and b apply only to the last licensed person to handle the same lot of fertilizer.

3. Each distributor shall keep all records regarding purchases and sales for a period of three years. The records may be examined by the commissioner upon request.
4. The agriculture commissioner shall forward all fees received under this section to the state treasurer for deposit in the environment and rangeland protection fund.

#### **4.1-40-08. Inspection, sampling, analysis.**

1. To determine compliance with this chapter and rules implemented under this chapter, the commissioner may enter real property during regular business hours and access any structure or personal property to sample, inspect, analyze, and test fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant amendments distributed in this state.
2. The commissioner shall adopt methods of analysis and sampling from reputable sources such as the Journal of the AOAC International.
3. A single package may constitute an official sample. In determining whether any fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment is deficient, the commissioner shall only consider the analysis of the official sample.
4. If the results of the commissioner's official analysis indicate that a fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment may be the subject of a penalty or other legal action, the commissioner shall forward the analysis to the registrant at least ten days before the report is submitted to the purchaser. If during the ten-day period no adequate evidence to the contrary is made available to the commissioner by the registrant, the report becomes official.
5. The commissioner shall retain any official samples found to be deficient for thirty days following the issuance of the analytical report.
6. Upon request, the commissioner shall furnish to the registrant a portion of any sample found to be the subject of a penalty or other legal action.

#### **4.1-40-09. Misbranding.**

1. A person may not distribute a misbranded fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment.
2. A fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment is misbranded if:
  - a. False or misleading statements concerning the product are disseminated in any manner or by any means;
  - b. The product label carries a false or misleading statement;
  - c. The product is distributed under the name of another product;
  - d. The product is not labeled as required by this chapter or rules implemented under this chapter; or
  - e. The product is inaccurately represented as a fertilizer, or is inaccurately represented as containing a plant nutrient or fertilizer unless the plant nutrient or fertilizer conforms to the definition, if any, prescribed in rule by the commissioner.
3. In adopting rules, the commissioner shall consider commonly accepted definitions and official fertilizer terms such as those issued by the association of American plant food control officials.

#### **4.1-40-10. Publications.**

The commissioner may publish:

1. Information concerning the distribution of fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant amendments; and
2. Results of analyses based on official samples of fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant amendments distributed within the state as compared with the analyses guaranteed under sections 4.1-40-05 and 4.1-40-06.

#### **4.1-40-11. Rules.**

The commissioner may adopt and enforce rules relating to investigational allowances, definitions, records, licensing, inspection, analysis, labeling, storage, and distribution of fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant amendments.

#### **4.1-40-12. Deficiencies.**

1. A product is deficient if:
  - a. One or more of its guaranteed primary plant nutrients falls below the investigational allowances and compensations established by rule;
  - b. One or more other guaranteed active ingredients falls below the investigational allowances and compensations established by rule; or
  - c. The overall index value of the fertilizer is shown below the level established by rule.
2. A nonuniformity deficiency in an official sample of mixed fertilizer is not distinguishable from a deficiency due to actual plant nutrient shortage and is properly subject to official action.
3. To determine the commercial index value to be applied, the commissioner shall determine at least annually the values per unit of nitrogen, available phosphate, and soluble potash in fertilizers in this state.
4. Any fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant amendment in the possession of a consumer found by the commissioner to be short in weight, a penalty must be assessed to the registrant of the product. Within thirty days after official notice from the commissioner, the registrant of the product shall pay a penalty equal to four times the value of the actual shortage to the consumer.

#### **4.1-40-13. Cancellation of registrations.**

1. The commissioner, upon compelling evidence that a registrant, licensee, or distributor used fraudulent or deceptive practices in the evasion or attempted evasion of this chapter or any implemented rule, may:
  - a. Cancel the registration of any brand of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment;
  - b. Cancel the license of any distributor;
  - c. Refuse to register any brand of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment; or
  - d. Refuse to license any distributor.
2. The commissioner shall provide an opportunity for a hearing prior to refusing a registration or revoking a license.

#### **4.1-40-14. Stop-sale orders.**

The commissioner may issue a "stop-sale, use, or removal" order to the owner or custodian of any lot of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment, if the commissioner finds that the product is being offered for sale in violation of this chapter or any implemented rule. The order must remain in effect until the commissioner:

1. Determines that the violation has been corrected;
2. Gives written authorization for the disposal of the product; or
3. Gives written authorization for the product to be offered for sale.

#### **4.1-40-15. Seizure, condemnation, and sale.**

1. Any lot of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment, not in compliance with this chapter or implemented rules, is subject to seizure upon the filing of a complaint by the commissioner with the district court of the county in which the product is located.

2. If the court finds the product to be in violation of this chapter or any implemented rule and orders its condemnation, the product must be disposed of in any manner consistent with the quality of the product and the laws of the state.
3. Before ordering the disposition of a product, a court shall give the claimant an opportunity to apply for the release of the product or for permission to process or relabel the product to bring it into compliance with this chapter and implemented rules.

**4.1-40-16. Violations - Criminal penalty.**

1. If evidence from the examination of any fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment indicates this chapter or the implemented rules have been violated, the commissioner shall notify the registrant, licensee, manufacturer, distributor, or possessor from whom the sample was taken of the violation. Any person notified must be given an opportunity to be heard. After the hearing, either in the presence or absence of the person so notified, the commissioner may certify the facts to the proper prosecuting attorney if evidence exists this chapter or the implemented rules have been violated.
2. Any person violating this chapter or the implemented rules or that impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the commissioner in the performance of the commissioner's duty under this chapter is guilty of a class A misdemeanor.
3. All prosecutions involving the composition of a lot of fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, or plant amendments, require a certified copy of the official analysis signed by the person performing the analysis or that person's assigned agent. The certified and signed copy of the official analysis is prima facie evidence of the composition.
4. The commissioner is not required to initiate prosecution or seizure proceedings for minor violations of the chapter if the commissioner believes the public interest will be best served by a suitable written warning.
5. The commissioner may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate this chapter or any implemented rule, notwithstanding the existence of other remedies at law. An injunction under this section must be issued without bond.

**4.1-40-17. Violations - Civil penalty.**

Any person that violates this chapter or an implemented rule is subject to a civil penalty in an amount up to two thousand five hundred dollars per violation. The civil penalty may be imposed by a court or by the agriculture commissioner in an administrative hearing.

**4.1-40-18. Exchanges between manufacturers.**

This chapter may not be construed to restrict or avoid sales or exchanges of fertilizers, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments to each other by importers, manufacturers, or manipulators that mix fertilizers, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments for sale or as preventing the free and unrestricted shipments of fertilizer, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments to manufacturers or manipulators that have registered their brands as required by this chapter.