

TEXAS ADMINISTRATIVE CODE

TITLE 4. AGRICULTURE

CHAPTER 65

COMMERCIAL FERTILIZER RULES

(Amended January 2, 2017)

**Adopted by the
TEXAS FEED AND FERTILIZER CONTROL SERVICE**

**Under the
TEXAS AGRICULTURE CODE (1981)
(As amended)**

**Texas A&M University System
Texas Agricultural Experiment Station
Office of the Texas State Chemist
Tim Herrman, State Chemist & Director
College Station, TX**

Website: OTSC.TAMU.EDU

TEXAS ADMINISTRATIVE CODE

Title 4. AGRICULTURE

Part III. TEXAS FEED AND FERTILIZER CONTROL SERVICE

Chapter 65. COMMERCIAL FERTILIZER RULES

| | page |
|--|------|
| SUBCHAPTER A. GENERAL PROVISIONS | |
| §65.1. Definitions | 1 |
| §65.2. Commercial Fertilizer | 2 |
| SUBCHAPTER B. PERMITTING AND REGISTRATION | |
| §65.6. Distribution of Ammonium Nitrate or Ammonium Nitrate Material | 2 |
| §65.11. Application for Registration | 3 |
| §65.13. Waste Products Distributed as Fertilizers | 4 |
| SUBCHAPTER C. LABELING | |
| §65.17. General Requirements | 5 |
| §65.23. Name and Address of Manufacturer Required | 9 |
| §65.24. Warnings or Cautionary Statements Required | 9 |
| §65.26. Requirements for Fertilizers Suitable for Use in Organic Production Programs..... | 11 |
| §65.27. Additives in Fertilizer | 11 |
| §65.28. Trademarks, Trade Names, Common Names, Emphasis on a Particular Component | 11 |
| §65.29. Specialty Fertilizers | 12 |
| §65.30. Slow Release Fertilizer | 12 |
| §65.31. Net Weight | 13 |
| SUBCHAPTER D. INSPECTION FEES | |
| §65.41. Assessment..... | 13 |
| §65.42. Statistical and Tonnage Reporting and Inspection Fee | 14 |
| SUBCHAPTER E. INSPECTION, SAMPLING, AND ANALYSIS | |
| §65.51. Sampling and Analytical Procedures | 14 |
| §65.52. Investigational Allowances..... | 15 |
| SUBCHAPTER F. ADMINISTRATIVE HEARINGS | |
| §65.91. Cost of Preparing Agency Record | 15 |

Subchapter A. General Provisions

§65.1. Definitions

Except where otherwise provided, the terms and definitions adopted by the Association of American Plant Food Control Officials in its last published official publication are adopted by reference as the terms and definitions to control in this part. (The publication is available from the Association of American Plant Food Control Officials.) In addition, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Available Phosphate/Phosphorous/Phosphoric Acid as P_2O_5 refer solely and exclusively to those compounds containing orthophosphate, i.e., compounds possessing a formal +5 electrical charge on each of the constituent phosphorous atoms.

(2) Inorganic Fertilizer. A mineral, nutrient source containing less than 5.0% carbonaceous material.

(3) Natural. Materials - animal, plant, or mineral - found solely in or produced solely by nature which have neither been mixed with any synthetic material nor changed from their initial physical state except by washing, air-drying, chopping, grinding, shredding, or pelleting and not changed in its chemical state except by biological degradation or chemical change initiated solely under normal conditions of aging, rainfall, sun-curing or sun-drying, composting, rotting, enzymatic or anaerobic bacterial action, or any combination thereof.

(4) Organic. When applied to a product, to a compound, to a mixture of compounds or to a specific constituent used as an ingredient means that the claim of the product, compound, mixture of compounds or constituent to be organic has been allowed or allowed with restriction by the United States Department of Agriculture's National Organic Program or the Texas Department of Agriculture's Organic Certification Program. (Materials described as organic must still conform to the Texas Commercial Fertilizer Control Act if they are used in fertilizer.)

(5) Person. Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

(6) Salvage. When applied to plant nutrients or additives, refers only to those products that have been damaged by natural causes, such as fire, water, hail, or windstorm, or by conveyance mishap.

(7) Specialty Fertilizer. Fertilizer distributed primarily for non-farm use, including use on or in home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, or nurseries. The term does not include the excreta of an animal, plant remains, or a mixture of those substances, for which no claim of essential plant nutrients is made.

(8) Acceptable Forms of Identification. The only acceptable form of identification, to provide personal information for the purchase of ammonium nitrate or ammonium nitrate materials, is U.S. government identification issued by a Federal, state, outlying possession, or local government agency that includes a photograph and an expiration date. These may include a valid U.S. passport, a valid U.S. military identification card, a driver's license or non-driver identification card issued by a state, Federal, outlying possession, or local U.S. government agency.

§65.2. Commercial Fertilizer

All plant nutrients and additives, not salvage nutrients or salvage additives which conform to other requirements of the rules or the Texas Fertilizer Control Act, shall be suitable for use for or in a commercial fertilizer.

Subchapter B. Permitting and Registration

§65.6. Distribution of Ammonium Nitrate or Ammonium Nitrate Material

- (a) Registration for ammonium nitrate or ammonium nitrate material: In addition to a permit to manufacture or distribute fertilizer and a registration for commercial fertilizer, as required in The Agriculture Code, Chapter 63, §63.031, an additional registration must be obtained to offer for sale or sell ammonium nitrate or ammonium nitrate material. The registration must be renewed on forms prescribed by the Service at the beginning of each fiscal year and accompanied by the fee specified on the form.
- (b) Refusal to sell: The sale of ammonium nitrate or ammonium nitrate material may be refused to any person attempting to purchase under unusual patterns or circumstances, such as, out of season, outside their normal purchasing area, a person that is unknown to the registered facility or to a person that lacks clear knowledge of the use of ammonium nitrate or ammonium nitrate material for agronomic purposes. Refusal of sale shall be reported to the Service at the time sale is refused.

(c) Training and Documentation: Employees of facilities that are registered to offer for sale or sell ammonium nitrate or ammonium nitrate material must be trained in the law, rules, policies, and procedures for the sale of ammonium nitrate and documentation of the training maintained on-site. Documentation shall include procedures for daily inspection as required in the Agriculture Code, Chapter 63 §63.153, and a record of the inspection. Evidence of vandalism or theft shall be reported to the Service at the time of daily inspection and corrective actions documented.

(d) Risk Management. A person that stores ammonium nitrate or ammonium nitrate material shall:

1) provide evidence of compliance with the Texas Commission on Environmental Quality Tier II Chemical Reporting Program and Department of Homeland Security Chemical Facility Anti-Terrorism Standards registration requirements;

2) post the National Fire Protection Association 704 Warning Placards on the outside of the storage area; and

3) store ammonium nitrate or ammonium nitrate material in a separate structure. Combustible or flammable material must be separated by at least 30 feet.

§65.11. Application for Registration

(a) Each brand name under which a commercial fertilizer will be marketed must be registered before the product is distributed.

(b) All applications for registration of specialty fertilizers, pesticide/fertilizer mixtures or fertilizers intended for use in organic food or fiber production programs shall include the labeling information for the product required by the Act, §63.051.

(c) The Service may require the labeling information for other products as a condition of registration.

(d) The net weight shall be provided as a condition of registration for specialty products packaged and marketed in containers weighing one pound or less whose net contents are declared on the label in conformity with the United States Fair Packaging and Labeling Act, 15 United States Code §1415, et seq., and regulations promulgated thereunder.

(e) The Service may require independent chemical analysis by a

qualified chemist to confirm guarantees as a condition of registration.

- (f) All applications for registration of pesticide/fertilizer mixtures must be accompanied by appropriate certification from the Texas Department of Agriculture that the pesticide is approved for use.

§65.13. Waste Products Distributed as Fertilizers

- (a) No person shall sell, offer or expose for sale, or distribute in this state, any industrial or municipal product originally designated as a waste by any governmental agency -- federal, state or local -- intended for, promoted or represented, advertised as or distributed as a fertilizer as defined in the Texas Agriculture Code, Chapter 63, §63.002 prior to registering the same as specified in §63.031.
- (b) In addition to other requirements of the Law and the Rules, applications for registration of sewage, sludge, and septage or mixed fertilizer containing same shall be accompanied by the following:
 - (1) A detailed description of the facilities, equipment and method of manufacture to be used in processing, manufacturing and testing of the product.
 - (2) A sampling schedule, a full description of all tests made prior to application for registration and the results of such tests which shall include, but not necessarily be limited to, those pollutants and pathogens required to be tested by United States Environmental Protection Agency Code of Federal Regulations, Title 40 CFR: Protection of Environment, Part 503 Standards for the Use or Disposal of Sewage Sludge.
 - (3) A schedule for periodic testing which initially shall be conducted on each production run no less than once (1) each calendar quarter.
 - (A) Less frequent testing may be allowed where data show continued uniformity and a consistent margin of compliance.
 - (B) More frequent testing shall be required where the data show the process is not under control.
 - (C) Sequential testing shall again be required when periodic analysis or any other information available to

the manufacturer indicates that:

- (i) changes are made in the manufacturing process;
- or
- (ii) new or expanded sources of the raw ingredients are used.

- (4) A statement that any product consisting in whole or part of sewage, septage or sludge meets the CFR Part 503 and specifically it meets the requirements of 503.32(a) and one of the vector attraction reduction requirements in 503.33(b)(1) through 503.33(b)(8).

Subchapter C. Labeling

§65.17. General Requirements

(a) Primary Plant Nutrients

- (1) Nitrogen, available phosphate and potassium shall be guaranteed on the label of a commercial fertilizer in either of the following forms:

(A) Abbreviated Label

| | |
|---|------|
| Total Nitrogen (N) | ___% |
| Available Phosphate (as P ₂ O ₅) | ___% |
| Soluble Potash (K ₂ O) | ___% |

or

(B) Expanded Label

| | |
|---|------|
| Total Nitrogen (N) | ___% |
| ___% Ammoniacal Nitrogen | |
| ___% Nitrate Nitrogen | |
| ___% Water Insoluble Nitrogen | |
| ___% Urea Nitrogen | |
| ___% (Other recognized and determinable forms of N) | |
| Available Phosphate (as P ₂ O ₅) | ___% |
| Soluble Potash (K ₂ O) | ___% |

- (2) Plant nutrients other than nitrogen, available phosphate, and potassium, when mentioned in any form or manner on the label of a fertilizer product other than in the list of ingredients shall be guaranteed.

- (A) Guarantees other than nitrogen, phosphate, and potassium shall be expressed on an elemental basis as a percentage by weight.
 - (B) Any guarantees or claims for plant nutrients shall appear in the order given, shall immediately follow the guarantees for the nitrogen, available phosphate, and potassium. Absent evidence that an unlisted nutrient fulfills the requirement of subsection (e)(3)-(4) of this section, the only guarantees are as follows:
 - (i) Inorganic: Calcium (Ca), Magnesium (Mg), Sulfur (S), Boron (B), Chlorine (Cl), Cobalt (Co), Copper (Cu), Iron (Fe), Manganese (Mn), Molybdenum (Mo), Sodium (Na), Selenium (Se), Vanadium (V), Zinc (Zn).
 - (ii) Organic: Humic acid.
- (b) The label shall:
- (1) list all components of the fertilizer; or
 - (2) bear a statement which says in effect, "Information about the components of this lot of fertilizer may be obtained by writing to (name and address of manufacturer/guarantor) and giving the lot number which is found (statement notes location on package);" or
 - (3) conform to §65.26(2) of this title (relating to Requirements for Fertilizers Suitable for Use in Organic Production Programs).
- (c) The component of a fertilizer must be denoted by its usual or common name or by a name:
- (1) as accepted by the United States Department of Agriculture's National Organic Program; or
 - (2) as defined by a term promulgated by the Association of American Plant Food Control Officials; or
 - (3) as approved by the Texas Department of Agriculture's Organic Certification Program; or
 - (4) as approved by the Service.

- (d) The label shall display:
 - (1) directions for use which include both an amount to be applied per unit area and a frequency of use per year; or
 - (2) a statement which says in effect, "For the agronomic application rates suitable for your geographical area or the maximum allowable non-nutrient application rates per acre, consult a trained soil specialist or write to (name and address of manufacturer/guarantor)."
- (e) The registrant of a fertilizer shall furnish to the Service upon request:
 - (1) the proposed label;
 - (2) the source of the elements guaranteed;
 - (3) proof that any non-nutritional fertilizer components or additives guaranteed or claimed on the label provide:
 - (A) long-term safety to animals, plants, and the environment; and
 - (B) availability and efficacy;
 - (4) a method acceptable to the Service for determining any nutrient at 50% of the level guaranteed on the label; and
 - (5) the levels of arsenic, cadmium, cobalt, mercury, molybdenum, nickel, lead and selenium in the product.
- (f) Registrants who elect to have their labels conform to subsection(b)(2) and/or subsection(d)(2) of this section shall keep the requisite production and formulation records by customer, by invoice, by lot/batch numbers for 18 months from the production date and make such available to the public on written request and to the Service at any time.
- (g) Registrants who elect to have their labels conform to subsection(d)(2) of this section shall not distribute any lot of fertilizer when any one of the elements listed in Table 1 exceeds the limiting value shown.

| Table 1 Allowable Concentration of Trace Elements in Commercial Fertilizers When Conforming to §65.17(d)(2) | |
|--|---------------------|
| Element | Maximum, ppm |
| Arsenic | 41 |
| Cadmium | 39 |
| Copper | 1500* |
| Lead | 300 |
| Mercury | 17 |
| Molybdenum | 18* |
| Nickel | 420 |
| Selenium | 100* |
| Zinc | 2800* |

*When not guaranteed

- (h) Any guarantee of the degree of fineness of unacidulated phosphatic materials stated on the label of a fertilizer product shall be stated in terms of the percentage of the material that will pass the United States standard sieve series number 200 (200 mesh, dry sieve method), adopted by reference under §65.51 of this title (relating to Sampling and Analytical Procedures).
- (i) Any guarantee of the degree of fineness of basic slag stated on the label of a fertilizer product shall be stated in terms of the percentage of the material that will pass the United States standard sieve series number 100 (100 mesh, dry sieve method), adopted by reference under §65.51 of this title.

§65.23. Name and Address of Manufacturer Required

- (a) The name and principal mailing address of the manufacturer or person responsible for distribution shall be required on the label of a commercial fertilizer.
- (b) The principal mailing address shall include the street address, city, state, and zip code; provided however, that the street address may be omitted if the address is listed in a current city directory or telephone directory.
- (c) The label may bear the name of the distributor as well as the manufacturer, provided that the guarantor of the product is specifically stated.

§65.24. Warnings or Cautionary Statements Required

A warning or cautionary statement is required on any fertilizer product which:

- (1) contains 0.10% or more boron in water soluble form. The statement shall include:
 - (A) the word "Warning" or "Caution" conspicuously displayed;
 - (B) the crop(s) for which the fertilizer is recommended; and
 - (C) that the use of the fertilizer on any crop(s) other than those recommended may result in serious injury to the crop(s);
- (2) contains 0.001% or more of molybdenum. The statement shall include:
 - (A) the word "Warning" or "Caution" conspicuously displayed; and
 - (B) that the application of fertilizers containing molybdenum may result in forage crops containing levels of molybdenum which are toxic to ruminant animals;

- (3) when applied according to the directions for use adds to the land levels of trace elements exceeding the limits set forth in Table 2, subparagraph (B) of this paragraph.
- (A) The statement, conspicuously displayed, shall read
 “WARNING: Application according to the directions for use EXCEEDS the allowable limits of certain trace elements which can be applied to one acre of land in a calendar year.”
- (B) (See Table 2 below)

| Table 2 Cumulative Element Loading Rate When Conforming to §65.17(d)(1) | |
|--|----------------------|
| Element | lbs/acre/year |
| Arsenic | 0.37 |
| Cadmium | 0.35 |
| Copper | 13.4* |
| Lead | 2.68 |
| Mercury | 0.15 |
| Molybdenum | 0.16* |
| Nickel | 3.75 |
| Selenium | 0.89* |
| Zinc | 25.0* |

*When not guaranteed

§65.26. Requirements for Fertilizers Suitable for Use in Organic Production Programs

In addition to conforming to all other aspects of the rules, fertilizers claiming or implying suitability for use in an organic food or fiber production program shall:

- (1) bear a legend on the label not unduly conspicuous in relation to the display of the registrant or guarantor of the product noting its acceptability for use in organic production programs;
- (2) list each component in order of predominance by weight;
- (3) not contain any ingredient, raw material or filler prohibited by the organizations listed in §65.17(c) of this title (relating to General Requirements) for use in these fertilizers.

§65.27. Additives in Fertilizer

When a pesticide or any other additive, other than plant nutrients, is incorporated in a commercial fertilizer, the fertilizer mixture must be registered and guaranteed with respect to the kind and percentage of each of these additives as well as to claimed plant nutrient elements, all of which must be determinable by accepted laboratory methods. The labeling shall, in addition to other required information, state in a prominent manner the purpose for which the combined fertilizer and additive is recommended. It must be shown by scientific data that each additive is present in sufficient quantities to impart a distinctive characteristic to the product.

§65.28. Trademarks, Trade Names, Common Names, Emphasis on a Particular Component

The trademark, trade name, or common name of a component and/or emphasis on one or more components or ingredients may form part of the label of a commercial fertilizer provided that:

- (1) such trademark, trade name, common name, or emphasis on a particular component contributes significantly in conveying to the purchaser important information respecting a distinctive characteristic of the product;

- (2) the display of the trademark or trade name on the label of the product is not unduly conspicuous in relation to the display of the registrant or guarantor of the product and other required information;
- (3) the common name and percentage of the component is given, and the percentage is determinable by accepted laboratory methods;
- (4) it can be shown by scientific data that the component is present in sufficient quantities to impart a distinctive characteristic to the product.

§65.29. Specialty Fertilizers

Specialty fertilizer products packaged or marketed in containers weighing one pound or less may bear a declaration of the net contents of the container made in conformity with the United States Fair Packaging and Labeling Act, 15 United States Code §1415, et seq., and regulations promulgated thereunder.

§65.30. Slow Release Fertilizer

- (a) No fertilizer label shall bear a statement that connotes or implies that certain plant nutrients contained in a fertilizer are released slowly over a period of time, unless the slow release components are identified and guaranteed at a level of at least 15% of the total guarantee for that nutrient(s).
- (b) The terms, "water insoluble," "coated slow release," "slow release," "controlled release," "slowly available water soluble," and "occluded slow release" are accepted as descriptive. However, the Service may require the manufacturer to provide data substantiating the claim (from tests carried out under guidance of a recognized reputable researcher acceptable to the Service). A laboratory procedure, acceptable to the Service for evaluating the release characteristics of the product(s), may also be required.
- (c) If an amount of nitrogen is designated as slow release "nitrogen-containing organic" or "organic nitrogen," then:
 - (1) 60% of that amount must be water-insoluble and coated urea may not be included in meeting the 60% requirement;

- (2) at least 15% of total nitrogen guaranteed -- not just that designated "nitrogen-containing organic" or "organic nitrogen" -- must be water-insoluble.

§65.31. Net Weight

- (a) Net weight may be determined and reported from data obtained:
 - (1) by scales for packaged, bulk, dry, and liquid;
 - (2) by calculation from volume and specific gravity/density for bulk liquids only.
- (b) Conformance to weight guarantee shall be judged solely by use of certified scale defined in accordance with Texas Department of Agricultural Standards.
- (c) Dip sticks, uncalibrated meters, or sight gauges shall not be used for estimation of volume in this chapter. Scales not certified in accordance with the Texas Department of Agriculture Standards shall not be used for net weights.

Subchapter D. Inspection Fees

§65.41. Assessment

- (a) Any change regarding inspection fees may be assessed preceding any quarter of the year.
- (b) If the inspection fee is reduced or increased, the registrants and other affected persons will be notified 30 days prior to the effective date of the change.
- (c) The flat rate inspection fee, provided for in the Act, §63.071(c), shall apply to those registered products packaged only in containers of five pounds or less. It shall not apply to products distributed both in containers of five pounds or less and larger container sizes.
- (d) Tonnage inspection fees shall be assessed on the basis of the avoirdupois system of 2,000 pounds per ton.
- (e) Tonnage inspection fees shall be assessed on "as distributed basis."

§65.42. Statistical and Tonnage Reporting and Inspection Fees

- (a) The sales of commercial fertilizers designed for general purpose on-the-farm use shall be reported as follows.
 - (1) If more than one registrant is involved in the distribution of a commercial fertilizer, the registrant who distributes the fertilizer to a non-registrant shall submit all quarterly tonnage fees required by the Act, §63.072. Registrants who are consumers shall submit all quarterly tonnage reports and remit all tonnage fees required by the Act, §63.072.
 - (2) Such registrant(s) shall further submit a quarterly statistical tonnage report which shall list the total fertilizer tonnage distributed in the state during the preceding quarter by county, grade, and type (e.g., bulk, liquid, or packaged). The quarterly statistical tonnage report shall be submitted on forms prescribed by the Service or on forms containing commensurate information organized in a manner convenient and useful to the Service.
- (b) The sales of commercial fertilizers designed for non-general, agricultural uses such as use in home gardens, on flowers, shrubs, potted plants, etc., shall be reported as follows.
 - (1) The person in whose name the fertilizer is registered shall submit all reports and pay all fees required by the Act and this chapter.
 - (2) The total fertilizer tonnage distributed in this state during the preceding quarter shall be reported without regard to county, grade, or type on forms prescribed by the Service.
- (c) The reporting of tonnage is not required for products distributed solely in packages of five pounds or less on which a flat rate inspection fee has been paid.

Subchapter E. Inspection, Sampling, and Analysis

§65.51. Sampling and Analytical Procedures

- (a) The Service hereby adopts by reference the most recent edition of the *Official Methods of Analysis* of the *AOAC International* as delineating the sampling and analytical procedures to be applied in the administration of the Act and this title.

- (b) The Service may substitute alternate methods for any AOAC sampling or analytical procedure if it deems the alternate procedure more appropriate to the circumstance and sampling and there is scientific data or reasoning to support the substitution.
- (c) Copies of sampling or analytical procedures can be obtained by writing to Office of the Texas State Chemist, P.O. Box 3160, College Station, TX 77841 or by writing to AOAC International, 481 North Frederick Avenue, Suite 500, Gaithersburg, Maryland 20877.

§65.52. Investigational Allowances

The Service hereby adopts by reference the investigational allowances appearing in the latest official publication of the Association of American Plant Food Control Officials to be applied in the administration of the Act and this title. Information on location and cost of the official publication is available from the Office of the Texas State Chemist or the Association of American Plant Food Control Officials.

Subchapter F. Administrative Hearings

§65.91. Cost of Preparing Agency Record.

- (a) The Service requires that a party who appeals a final decision in a contested case pay all of the costs associated with preparation of the original or certified copy of the record of the agency's proceedings that is required to be sent to the reviewing court.
- (b) A charge imposed under subsection (a) of this section is a court cost and shall be assessed by the court in accordance with the Texas Rules of Civil Procedure.

NOTES

