

**TEXAS COMMERCIAL
FERTILIZER CONTROL ACT**

TEXAS AGRICULTURE CODE (1981)

CHAPTER 63
(As amended May 21, 2015)

**Texas A&M University System
Texas Agricultural Experiment Station
Office of the Texas State Chemist
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This publication is provided as a service to assist in the administration of the Act. Rules adopted for implementation of the Act are available upon request by contacting:

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CHAPTER 63
THE TEXAS AGRICULTURE CODE (1981)

SUBCHAPTER A GENERAL PROVISIONS

§Section 63.001. Definitions.

In this Chapter:

- (1) "Board" means The Board of Regents of The Texas A&M University System.
- (2) "Brand" means the term, design, trade mark, or other specific designation under which commercial fertilizer is distributed.
- (3) "Bulk" means any lot of commercial fertilizer that is not in a closed container at the time it passes to the possession of the consumer and includes that fertilizer at any stage of distribution.
- (4) "Container" means a bag, box, carton, bottle, object, barrel, package, apparatus, device, appliance, or other item of any capacity into which a commercial fertilizer is packed, poured, stored, or placed for handling, transporting, or distributing.
- (5) "Customer-formula fertilizer" means a mixture of commercial fertilizers or fertilizer materials and other agricultural products such as seed and pesticides, any part of which is furnished by the person who processed, mixed, blended, or prepared the mixture and which is formulated according to the specific instructions of the purchaser.
- (6) "Director" means the Director of the Texas Agricultural Experiment Station.
- (7) "Distribute" means sell, offer for sale, expose for sale, consign for sale, barter, exchange, transfer possession or title, or otherwise supply.
- (8) "Fertilizer material" means a solid or non-solid substance or compound that contains an essential plant nutrient element in a form available to plants and is used primarily for its essential plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop or for compounding a mixed fertilizer. The term does not include animal manure, plant remains, or a mixture of those substances, for which no specific nutrient analysis claim indicates guaranteed nutrient levels.
- (9) "Grade" means the percentages stated in whole numbers of total nitrogen, available phosphate (P₂O₅), and soluble potash (K₂O) guaranteed in fertilizer.
- (10) "Label" means a display of written, printed, or graphic matter on or affixed to a container or on an invoice or delivery slip.
- (11) "Mixed fertilizer" means a solid or non-solid product that results from the combination, mixture, or simultaneous application of two or more fertilizer materials by a manufacturer, processor, mixer, or contractor. The term may include a specialty fertilizer or manipulated manure, but does not include animal manure, plant remains, or a mixture of those substances, for which no specific nutrient analysis claim indicates guaranteed nutrient levels

(12) "Manipulated manure" means a substance composed of animal manure, plant remains, or a mixture of those substances, for which a specific nutrient analysis claim indicates guaranteed nutrient levels.

(13) "Official sample" means a sample taken by the Service and designated as official by the Service.

(14) "Registrant" means a person who registers a commercial fertilizer under this Chapter.

(15) "Service" means the Texas Feed and Fertilizer Control Service.

(16) "Specialty fertilizer" means a 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 animal manure, plant remains, or a mixture of those substances, for which no specific nutrient analysis claim indicates guaranteed nutrient levels.

(17) "Ton" means a net weight of 2,000 pounds avoirdupois or 1,000 kilograms metric.

(18) "Weight" means the net weight of a container of commercial fertilizer expressed in either the avoirdupois or metric system.

§63.002. Commercial Fertilizer.

- (a) Except as otherwise provided by this section, a substance is a commercial fertilizer subject to this Chapter if it is:
- (1) a fertilizer material;
 - (2) a mixed fertilizer;
 - (3) a customer-formula fertilizer
 - (4) another substance, material, or element, including a pesticide, that is intended for use or is used as an ingredient or component of a mixture of materials that is used, designed or represented for use, or claimed to have value, in promoting plant growth.
- (b) Unprocessed, unpackaged, or unmanipulated lime, limestone, marl, or gypsum is not a commercial fertilizer subject to this Chapter.
- (c) Animal manure, plant remains, or mixtures of those substances are not commercial fertilizers subject to this Chapter if no specific nutrient analysis claim indicates guaranteed nutrient levels.
- (d) A plant food element or additive other than nitrogen, phosphorus, or potassium, determinable by an acceptable laboratory method, may be incorporated into a commercial fertilizer and guaranteed only if, and in the manner, authorized by rule of the Director. Any additional plant food element or additive is subject to the inspection, analysis, and other provisions of this Chapter.

§63.003. Administration.

- (a) The Texas Feed and Fertilizer Control Service is under the direction of the Director of the Texas Agricultural Experiment Station, who is responsible for exercising the powers and performing the duties assigned to the Service by this Chapter.

(b) The Service may employ personnel necessary to perform its duties.

(c) The Director may appoint a State Chemist whose responsibilities may include the making of chemical analyses and tests required by this Chapter.

§63.004. Rules; Standards.

Following a public hearing, the Service may adopt rules relating to the distribution of commercial fertilizers that the Service finds necessary to carry into full effect the intent and meaning of this Chapter including rules defining and establishing standards for commercial fertilizer. To the extent practicable, rules that define and establish standards for commercial fertilizer shall be in harmony with the official standards of the Association of American Plant Food Control Officials.

§63.005. Publications.

- (a) At least annually, the Service shall publish:
- (1) information concerning the sales of commercial fertilizers, together with data on those sales that the Service considers advisable,
 - (2) the results of the analyses of official samples of commercial fertilizers sold within the state as compared to the guaranteed analyses of those fertilizers;
 - (3) a financial statement showing the receipt and expenditure of funds under this Chapter; and
 - (4) other information relating to fertilizer as the Service considers necessary or desirable to the public interest.
- (b) The Service shall prescribe the form of a publication required under this section.
- (c) The report on sales of commercial fertilizers shall separately show information concerning the sales for the fall and spring seasons.
- (d) A publication under this section may not disclose the scope of operations of any person.

§63.006. Application.

(a) This Chapter does not apply to, restrict, or void the sale of a commercial fertilizer by an importer, manufacturer, or manipulator to an importer, manufacturer, or manipulator who mixes fertilizers for distribution. This Chapter does not prevent the free and unrestricted shipment of a commercial fertilizer to a manufacturer or manipulator who has registered the brand name as required by this Chapter.

(b) This Chapter does not apply to the mixing, milling, or processing of a material produced by a purchaser of commercial fertilizer or acquired by the purchaser from a source other than the person who mixed or processed the material.

§63.007. Effect On Other Laws.

This chapter supersedes an ordinance or rule adopted by a political subdivision to regulate the registration, packaging, labeling, sale, storage, distribution, use and application of fertilizers.

§63.0025. Certain Analyses Not Guarantee of Nutrient Levels.

A representative laboratory analysis conducted for purposes of fulfilling a requirement established by a federal agency or a state agency other than the department may not:

- (1) be considered a guarantee of nutrient levels for:
 - (A) fertilizer material,
 - (B) mixed fertilizer,
 - (C) manipulated manure; or
 - (D) specialty fertilizer; or
- (2) be used to determine whether animal manure, plant remains, or mixtures of those substances are commercial fertilizers under Section 63.002 (c).

SUBCHAPTER B. GRADES

§63.021. Grade Statements.

Any statement of the grade of a commercial fertilizer shall be stated in whole numbers in the following order:

- (1) total nitrogen;
- (2) available phosphate; and
- (3) soluble potash.

SUBCHAPTER C. PERMIT AND REGISTRATION

§63.031. Permit and Registration Required.

(a) A person may not manufacture or distribute a commercial fertilizer in this state without a valid current permit issued by the Service and a person may not manufacture or distribute a commercial fertilizer in this state, other than customer-formula fertilizer, unless the person first registers the fertilizer with the Service.

(b) An application for a permit or registration shall be submitted on a form prescribed by the Service.

(c) Registration is required for each distinct mixture, formulation or type of commercial fertilizer manufactured or distributed in this state.

(d) A person is not required to register a commercial fertilizer that has been registered by another person.

§63.032. Application for Registration.

(a) Each application for registration of commercial fertilizer shall include the following information relating to the fertilizer:

- (1) the name and principal address of the person responsible for manufacture and distribution;
- (2) the brand or the name under which the fertilizer is to be distributed; and

(3) other information that the Service may by rule require.

(b) The Service may prescribe and furnish forms for registration of commercial fertilizers under this Chapter. The Service shall provide a registrant with a copy of the approved registration.

§63.033. Term of Permit and Registration.

A permit or registration issued under this Chapter is permanent unless:

- (1) the Service revokes, suspends, annuls, or amends the permit or registration;
- (2) the permittee or registrant withdraws or cancels the permit or registration; or
- (3) the Service requires a new permit or new registration.

§63.034. Refusal or Revocation of Permit.

Following notice and a hearing, the Service may revoke, suspend, annul, or amend an existing permit or may refuse to issue a permit if it finds that the permittee or applicant has:

- (1) been convicted of a crime for which a permit may be revoked, suspended, annulled, amended, or refused under Chapter 53, Occupations Code;
- (2) refused or after notice failed to comply with this Chapter and rules adopted under this Chapter; or
- (3) used fraudulent or deceptive practices in attempting evasion of this Chapter or a rule adopted under this Chapter.

§63.035. Refusal or Revocation of Registration.

Following notice and a hearing, that Service may revoke, suspend, annul, or amend an existing registration of or may refuse a registration to a commercial fertilizer if the Service finds that:

- (1) the commercial fertilizer:
 - (A) is not in compliance with this Chapter or a rule adopted under this Chapter; or
 - (B) contains a pesticide as defined by Chapter 76 of this code that has not been registered in accordance with that Chapter; or
- (2) the registrant or applicant has:
 - (A) been convicted of a crime for which registration may be revoked, suspended, annulled, amended, or refused under Chapter 53, Occupations Code;
 - (B) refused or after notice failed to comply with this Chapter and rules adopted under this Chapter; or
 - (C) used fraudulent or deceptive practices in attempted evasion of this Chapter or a rule adopted under this Chapter.

SUBCHAPTER D. LABELING

§63.051. Labeling of Commercial Fertilizer.

(a) Except as provided by Subsection (d) of this section, each container of commercial fertilizer distributed in this state, other than customer-formula fertilizer, must have a label with the following information:

- (1) the name and principal address of the person responsible for manufacture and distribution;
- (2) the brand, grade, and name under which the fertilizer is to be distributed;
- (3) the net weight of the fertilizer in the container;
- (4) the guaranteed analysis of the plant nutrients in the fertilizer, listing the minimum percentages of primary, secondary, and micro plant nutrients, and other additives, in accordance with rules of the Service; and
- (5) other information that the Service may by rule prescribe.

(b) The guaranteed analysis of any unacidulated mineral phosphatic materials and basic slag shall guarantee both the total and available phosphate and the degree of fineness. The guaranteed analysis of bone, tankage, and other organic phosphate materials shall guarantee the total phosphate. All materials included in the guaranteed analysis are subject to inspection and determination by laboratory procedures in accordance with rules of the Service.

(c) The manufacturer or other person distributing packaged commercial fertilizer shall affix the label required by this section to the container of fertilizer or cause it to be printed on the side of the container in the manner prescribed by the Service. The label information must be grouped together and plainly printed in English in the size or of type prescribed by the Service.

(d) The manufacturer or other person distributing commercial fertilizer in bulk or in a container that holds an amount exceeding 110 pounds dry weight or 55 gallons liquid shall at the time of delivery furnish the purchaser with a written or printed statement showing the information required by this section.

§63.052. Misleading Label.

The label of a commercial fertilizer may not be misleading in any particular.

§63.053. Labeling of Customer-Formula Fertilizer.

A person distributing customer-formula fertilizer in this state shall at the time of delivery furnish to the purchaser a label showing:

- (1) the name and address of the purchaser;
- (2) the date of sale;
- (3) the grade of the mixture;
- (4) the guaranteed analysis of the plant nutrients and other additives;

- (5) the net weight of the fertilizer; and
- (6) the name and address of the registrant.

§63.054. General Label Restrictions..

Except as authorized by this Chapter or a rule of the Service, the label of a commercial fertilizer may not:

- (1) advertise, name, promote, emphasize, or otherwise direct attention to one or more components or ingredients in the product unless the percentage and common name of the component or ingredient is clearly and prominently declared; or
- (2) contain the name of another manufacturer or person or a product of another manufacturer or person.

SUBCHAPTER E. FEES

§63.071. Inspection Fee.

(a) For each state fiscal year, the registrant of a commercial fertilizer shall pay to the Service an inspection fee as prescribed by this section.

(b) Except as otherwise provided by this section, the inspection fee for a commercial fertilizer distributed in this state is 36 cents per ton of fertilizer.

With the approval of the Board, the Director may reduce or increase the inspection fee in increments of two cents per ton per fiscal year.

(c) A person distributing in this state a commercial fertilizer product packaged in individual containers of five pounds or less shall pay, for each distinct commercial fertilizer product so distributed, a flat rate inspection fee of \$50 for each fiscal year or part of a fiscal year in which the distribution is made.

(d) A registrant paying an inspection fee under Subsection (b) of this section shall pay in advance a minimum annual inspection fee of \$100 per fiscal year. All advance inspection fees collected under this section shall be credited towards the first tonnage inspection owed by the registrant accruing in that fiscal year.

(e) If more than one person is involved in the distribution of a commercial fertilizer, the last person who distributes to a dealer or consumer who is a non-registrant shall pay the fee.

(f) A person is not required to pay an inspection fee on a portion of a customer-formula fertilizer that is produced by the purchaser or acquired by the purchaser from a source other than the person who mixed, milled, or processed the mixture.

(g) A person is not required to pay an inspection fee on compost as defined by Section 361.421, Health and Safety Code.

§63.072. Tonnage Report and Inspection Fee Payment.

(a) The person responsible for paying a fertilizer inspection fee shall file with the Service a sworn report either stating that no tonnage of commercial fertilizer was distributed during the preceding reporting period or setting forth the tonnage of all the commercial fertilizer that the person manufactured or distributed in this state during the preceding reporting period. The person shall file the report:

- (1) quarterly if the total amount of inspection fees in a year is \$100 or more; or
- (2) annually if the total amount of inspection fees in a year is less than \$100.

(b) Each tonnage report must be accompanied by payment of the inspection fee due based on the tonnage reported for that quarter or year, as applicable.

(c) A tonnage report and inspection fee payment is due:

- (1) on or before the 31st day following the last day of November, February, May, and August, for persons reporting quarterly, and
- (2) on or before the 31st day following the last day of August, for persons reporting annually.

(d) The Service may prescribe and furnish forms as necessary under this section.

§63.073. Penalty for Late Filing or Payment.

(a) If a person does not file a report or pay the inspection fee as required by Section 63.072, the registrant shall pay a penalty equal to 15 per cent of the inspection fee due or \$50, whichever is greater.

(b) A penalty, together with the delinquent inspection fee, is due before the 61st day following the last day of the quarter, for quarterly reports, or of August, for annual reports. The Service shall cancel the registration of a registrant who fails to pay the penalty and delinquent inspection fee within that time period.

§63.074. Records; Additional Reports; Audits.

(a) For the purpose of determining the accurate tonnage of commercial fertilizers distributed in this state or identifying or verifying tonnage reports, the Service may require each registrant to maintain records or file additional reports.

(b) The Service is entitled to examine at reasonable times the records maintained under this section.

(c) A registrant shall preserve and maintain in usable condition all records required by this section and shall retain the records for a period of at least two years. The Service may require a registrant to retain records for a period longer than two years if the Service determines it to be in the public interest.

(d) If a registrant is located outside this state, the registrant shall maintain the records and information required by this section in this state or pay all costs incurred in the auditing of records at another location. The Service shall promptly furnish to the registrant an itemized statement of any costs incurred in an out-of-state audit and the registrant shall pay the costs before the 31st day following the date of the statement.

§63.075. Disposition and Use of Fees.

(a) The Service shall deposit fees collected under this subchapter in the same manner as other local institutional funds of the Texas A&M University System. The fees shall be set apart as a special fund to be known as the Texas Fertilizer Control Fund.

(b) The Texas Fertilizer Control Fund shall be used, with the approval and consent of the Board of Regents of The Texas A&M University System, for administering and enforcing this Chapter, including paying the cost of:

- (1) salaries;
- (2) equipment and facilities;
- (3) registration;
- (4) publication of bulletins and reports; and
- (5) inspection, sampling, and analysis.

(c) Any fees collected under this subchapter that, in the judgment of the Board, are not needed for the proper and efficient enforcement and administration of this Chapter may, with approval of the Board, be used for research relative to the value of commercial fertilizers.

SUBCHAPTER F. INSPECTION, SAMPLING, AND ANALYSIS

§63.091. Inspection and Sampling; Entry Power.

In order to determine if commercial fertilizer is in compliance with this Chapter, the Service is entitled to:

- (1) enter during regular business hours and inspect any place of business, mill, plant, building, or vehicle, and to open any bin, vat, or parcel, that is used in the manufacture, transportation, importation, sale, or storage of a commercial fertilizer or is suspected of containing a commercial fertilizer; and
- (2) take samples from fertilizer found during that inspection.

§63.092. Procedure for Sampling and Analysis.

The Service by rule shall prescribe the procedures for sampling and analysis of commercial fertilizers. The procedures must, to the extent practicable, be in accordance with the official methods of the Association of Official Analytical Chemists or other methods that the Service considers authentic by research and investigation.

§63.093. Identification of Sample.

(a) Each sample taken shall be sealed with a label placed on the container of the sample showing:

- (1) the serial number of the sample;
- (2) the date on which the sample was taken; and
- (3) the signature of the person who took the sample.

(b) Each sample shall be sent to the Service. In addition, a report shall be sent to the Service stating :

- (1) the name or brand of commercial fertilizer sampled;
- (2) the serial number of the sample;
- (3) the manufacturer or guarantor of the sample, if know;
- (4) the name of the person in possession of the lot sampled;
- (5) the date and place of taking the sample; and
- (6) the name of the person who took the sample.

(c) For the purpose of properly identifying a sample with the lot sampled, the Service is entitled to examine and copy any invoice, transportation record, or other record pertaining to the lot.

§63.094. Independent Analysis of Sample.

(a) If the Service finds through chemical analysis or other method that a commercial fertilizer is in violation of a provision of this Chapter, the Service shall notify the manufacturer or other person who caused the fertilizer to be distributed. The notice must be in writing and give full details of the findings of the Service.

(b) After receiving a notice under Subsection (a) of this section, the manufacturer or other person who caused the fertilizer to be distributed may request that the Service submit portions of the sample analyzed to other chemists for independent analysis. After receiving a request, the Service shall submit two portions of the sample analyzed to two qualified chemists selected by the Service. If requested, the Service shall also submit one portion of the sample to the person requesting independent analysis. A request under this subsection must be filed with the Service before the 16th day following the day on which notice is given.

(c) Each of the chemists selected by the Service under Subsection (b) of this section shall analyze the portion of the sample and certify findings to the Service under oath. The findings shall be prepared in duplicate and the Service shall forward one copy of each chemist's findings to the person who requested the independent analysis.

(d) The three chemical analyses obtained under this section may be considered in determining whether a violation of this Chapter has occurred.

(e) Except as provided by this subsection, the person requesting independent analysis under this section shall pay the costs of the analysis. If as a result of the independent analysis the Service determines that a violation has not occurred, the Service shall pay the cost of the analysis.

§63.095. Testing of the Sample on Request.

In accordance with the rules of the Director, any person may submit a sample of a commercial fertilizer to the Director for analysis. The results of the analysis shall be for informational purposes only, may not identify the manufacturer, and may not be published.

SUBCHAPTER G. ENFORCEMENT; REMEDIES

§63.121. Stop Sale Order.

(a) If the Service has reasonable cause to believe that a commercial fertilizer is being distributed in violation of a provision of this Chapter, the Service shall affix to the container of the fertilizer a written notice containing:

- (1) an order to stop the sale of the fertilizer; and
- (2) a warning to all persons not to dispose of the fertilizer in any manner until the Service or a court gives permission or until the stop-sale order expires.

(b) If the Service finds that a commercial fertilizer is in compliance with this Chapter, the Service shall immediately remove the stop-sale order.

(c) A stop-sale order expires at the end of the 30th day following the day on which it was affixed unless, prior to that time, the Service has instituted proceedings under Section 63.122 of this code to condemn the fertilizer.

§63.122. Condemnation of Fertilizer.

(a) If, after examination and analysis, the Service finds that a commercial fertilizer is in violation of a provision of this Chapter, the Service shall petition the district or county court in whose jurisdiction the fertilizer is located for an order for the condemnation and confiscation of the fertilizer. If the court determines that the fertilizer is in violation of this Chapter, the fertilizer shall be disposed of by sale or destruction in accordance with the order of the court.

(b) If a condemned commercial fertilizer is sold under Subsection (a) of this section, the proceeds of the sale, less court costs and charges, shall be paid into the State Treasury.

(c) If the court finds that a violation of this Chapter may be corrected by proper processing or labeling, the court may order that the fertilizer be delivered to the registrant for processing or labeling under the supervision of the Service. Before entering that order, the court shall:

- (1) enter the decree;
- (2) require that all costs, fees, and expenses be paid; and
- (3) require the registrant to post good and sufficient bond conditioned on the proper labeling and processing of the fertilizer.

(d) The registrant of the fertilizer shall pay all costs incurred by the Service in the supervision of labeling or processing under Subsection (c) of this section. The court shall return the bond to the registrant when the Service notifies the court that the commercial fertilizer is no longer in violation of this Chapter and that the registrant has paid the expenses of supervision.

§63.123. Warnings.

If the Service determines that a violation of this Chapter is of a minor nature and that public interest will be served and protected by the issuance of a written warning, the Service may issue the warning instead of proceeding to condemn the fertilizer, report the violation for prosecution, or take other administrative action.

§63.124. Injunction.

(a) The Service may sue in the name of the Director to enjoin a violation of the Chapter.

(b) The Service may request a Prosecuting Attorney or the Attorney General to sue to enjoin a violation or threatened violation of this Chapter.

§63.125. Suit to Recover Fees.

The Service may sue to recover an inspection fee or penalty due under Subchapter E of this Chapter. Venue for a suit under this section is in Brazos County.

§63.126. Prosecutions.

Each District Attorney, Criminal District Attorney, or County Attorney to whom the Service reports a violation of this Chapter shall cause appropriate proceedings to be instituted and prosecuted in the proper court without delay in the manner provided by law

§63.127. Venue for Civil and Criminal Actions.

Except as provided by Section 63.125 of this Chapter, venue for a civil action or criminal prosecution under this Chapter is in the county in which the commercial fertilizer is located at the time the alleged violation is discovered by or made known to the Service.

§63.128. Appeal of Administrative Order or Ruling.

(a) A person at interest who is aggrieved by an order or ruling of the Service may appeal the order or ruling in the manner provided for contested cases under Chapter 2001, Government Code.

(b) Appeal under this section is by trial de novo.

SUBCHAPTER H. PENALTIES

§63.141. General Penalty.

(a) A person commits an offense if the person violates a provision of this Chapter.

(b) An offense under this section is a Class C misdemeanor unless it is shown that the person has previously committed an offense under this subchapter, in which event it is a Class B misdemeanor

§63.142. Distribution of Misbranded Fertilizer.

(a) A person commits an offense if the person distributes, conspires to distribute, or causes another person to distribute commercial fertilizer that:

- (1) carries a false or misleading statement on, attached to or accompanying the container;
- (2) makes a false or misleading statement concerning its agricultural value on the container or in any advertising matter accompanying or associated with it;

- (3) is of a composition, quantity, or quality that is below or is different from that which it is represented to be on its label;
- (4) has a container that is made, formed, or filled in a manner that is misleading; or
- (5) purports to be or is represented as a commercial fertilizer for which a definition of identity and a standard have been prescribed by rule, but does not conform to the definition or standard.

(b) An offense under this section is a Class C misdemeanor unless it is shown that the person has previously been convicted of an offense under this subchapter, in which event it is a Class B misdemeanor.

§63.143. Distribution of Adulterated Fertilizer.

(a) A person commits an offense if the person distributes, conspires to distribute, or causes another person to distribute commercial fertilizer that:

- (1) has been damaged in a manner that reduces its value;
- (2) has damage or an inferiority that has been concealed;
- (3) has added to it a substance that increases its bulk or weight, reduces its quality or strength, or makes it appear better or of greater value than it is;
- (4) has had an ingredient omitted or extracted, in whole or in part; or
- (5) contains or bears a poisonous or deleterious substance that may render it injurious to plants under ordinary conditions of use.

(b) An offense under this section is a Class C misdemeanor unless it is shown that the person has previously been convicted of an offense under this subchapter, in which event it is a Class B misdemeanor.

§63.144. Distribution of Commercial Fertilizer Without Registration, Labeling, or payment.

(a) A person commits an offense if the person distributes, conspires to distribute, or causes another person to distribute commercial fertilizer:

- (1) that is required to be registered but is not registered in accordance with Subchapter C of this Chapter;
- (2) that is not labeled in accordance with Subchapter D of this Chapter; or
- (3) for which an inspection fee has not been paid in accordance with Subchapter E of this Chapter.

(b) An offense under this section is a Class C misdemeanor unless it is shown that the person has previously been convicted of an offense under this subchapter, in which event it is a Class B misdemeanor.

§63.145. Refusal of Inspection or Sampling.

(a) A person commits an offense if the person refuses, conspires to refuse, or causes another person to refuse to permit entry, inspection, sampling, or the examination and copying of invoices or transportation records under Subchapter F of this Chapter.

(b) An offense under this section is a Class C misdemeanor unless it is shown that the person has previously been convicted of an offense under this subchapter, in which event it is a Class B misdemeanor.

§63.146. Refusal to Pay Inspection Fee or Submit Records.

(a) A person commits an offense if the person refuses, conspires to refuse, or causes another person to refuse to make records available, furnish reports, permit the examination of records, or pay an inspection fee in accordance with Subchapter E of this Chapter.

(b) An offense under this section is a Class C misdemeanor unless it is shown that the person has previously been convicted of an offense under this subchapter, in which event it is a Class B misdemeanor.

SUBCHAPTER I. AMMONIUM NITRATE

§63.151. Definitions.

In this subchapter:

- (1) "Ammonium nitrate" means ammonium salt of nitric acid that contains more than 33 percent nitrogen, one-half of which is the 50 ammonium form and one-half of which is the nitrate form.
- (2) "Ammonium nitrate material" means solid fertilizer that includes ammonium nitrate as a component, if the fertilizer's nitrogen content derived from the ammonium nitrate is at least 28 percent of the fertilizer by weight.
- (3) "Ammonium nitrate storage facility" means a facility that stores ammonium nitrate material or ammonium nitrate to be used in ammonium nitrate material and includes the premises on which a facility is located.
- (4) "Fire marshal" means the state fire marshal or a local fire marshal, fire chief, or volunteer fire chief having jurisdiction over the area in which an ammonium nitrate storage facility is located.
- (5) "Operator" means the person who controls the day-to-day operations of an ammonium nitrate storage facility.

§63.152. Registration Required.

(a) A person may not produce, store, transfer, offer for sale or sell ammonium nitrate or ammonium nitrate material unless the person holds a certificate of registration issued by the service under this subchapter.

(b) An application for a registration by any person that owns an ammonium nitrate facility must be:

- (1) submitted on a form prescribed by the service that includes:
 - (A) the name, address, and telephone number of each ammonium nitrate facility owned by that person;
 - (B) the name of the person designated by that person as the point of contact for each such facility; and
- (2) accompanied by a fee in an amount sufficient to cover the service's costs to administer this subchapter.

(c) A person who engages in the sale of ammonium nitrate or ammonium nitrate material must display the person's registration in conspicuous public view in the person's place of business.

§63.153. Security Requirements.

A person who engages in the sale of ammonium nitrate or ammonium nitrate material shall take steps to secure the ammonium nitrate or ammonium nitrate material stored at the person's facility against vandalism, theft, or other unauthorized access, including:

- (1) ensuring that a storage facility is fenced or otherwise enclosed and locked when unattended;
- (2) inspecting a storage facility daily for signs of vandalism and to verify its structural integrity; and
- (3) establishing and maintaining ongoing inventory control procedures for the ammonium nitrate or ammonium nitrate material.

§63.154. Sale of Ammonium Nitrate.

(a) Before completing a sale of ammonium nitrate or ammonium nitrate material, a person that engages in those sales shall:

- (1) require the person making the purchase to:
 - (A) display a driver's license or other form of identification containing the person's photograph;
 - (B) provide the other personal information required by Subdivision (2); and
 - (C) sign for the purchase; and
- (2) make a record of the sale, including:
 - (A) the name of the person making the purchase;
 - (B) the date of the purchase;

- (C) the purchaser's address, date of birth, and phone number;
- (D) the form of identification the purchaser presented;
- (E) whether the purchase is being made on behalf of another person; and;
- (F) the amount and brand name of the ammonium nitrate or ammonium nitrate material purchased.

(b) The Service shall:

- (1) adopt rules allowing a person to refuse to sell ammonium nitrate or ammonium nitrate material based on the season or the location of the sale; and
- (2) distribute forms to each person registered under this subchapter to be used to record the information required under Subsection (a).

§63.155. Maintenance of Records.

A person who offers to sell or sells ammonium nitrate or ammonium nitrate material shall maintain each record made under Section 63.154 until at least the second anniversary of the date the record is made and shall make each record only available on request by:

- (1) the Office of the Texas State Chemist;
- (2) the Department of Public Safety; or
- (3) a law enforcement agency of the United States.

§63.156. Suspension of Registration.

If the Service finds that a person registered under this subchapter offered to sell or sold ammonium nitrate or ammonium nitrate material in violation of this subchapter or a rule adopted under this subchapter, the Service may:

- (1) suspend a person's registration for a period of 90 days for a first violation; and
- (2) suspend a person's registration for a period of at least 90 days or revoke the person's registration for a second or subsequent violation.

§63.157. Criminal Penalty.

(a) A person commits an offense if the person:

- (1) tampers with ammonium nitrate or ammonium nitrate material stored on the property of another; or
- (2) presents false identification to purchase ammonium nitrate or ammonium nitrate material.

(b) A person commits an offense if the person purchases ammonium nitrate or ammonium nitrate material with the intent to manufacture an explosive device.

(c) A person commits an offense if the person offers to sell or sells ammonium nitrate or ammonium nitrate material and does not hold a registration issued under this subchapter.

- (d) An offense under Subsection (a) or (c) is a Class A misdemeanor.
- (e) An offense under Subsection (b) is a felony of the third degree.
- (f) It is an exception to the application of Subsection (b) that the person holds a permit or license issued under 18 U.S.C. Section 843.
- (g) If conduct constituting an offense under this section is also an offense under another law, the actor may be prosecuted under this section, the other law, or both.

§63.158. Fire Prevention at Ammonium Nitrate Storage Facilities.

- (a) The owner or operator of an ammonium nitrate storage facility shall, on request, at a reasonable time:
 - (1) allow a fire marshal to enter the facility to make a thorough examination of the facility; and
 - (2) allow the local fire department access to the facility to perform a pre-fire planning assessment.
- (b) A fire marshal who determines the presence of one or more of the following hazardous conditions that endangers the safety of a structure or its occupants by promoting or causing fire or combustion shall notify the owner or operator of the facility of the need to correct the condition. The hazardous conditions are:
 - (1) the presence of a flammable substance;
 - (2) a dangerous or dilapidated wall, ceiling, or other structural element;
 - (3) improper electrical components, heating, or other building services or facilities;
 - (4) the presence of a dangerous chimney, flue, pipe, main, or stove, or of dangerous wiring;
 - (5) the dangerous storage of substances other than ammonium nitrate or ammonium nitrate material, including storage or use of hazardous substances; or
 - (6) inappropriate means of egress, fire protection, or other fire-related safeguard.
- (c) The owner or operator of an ammonium nitrate storage facility shall:
 - (1) on request by a fire marshal or the service provide evidence of compliance with:
 - (A) Chapter 505 or 507, Health and Safety Code, as applicable; and
 - (B) United States Department of Homeland Security registration requirements;
 - (2) post National Fire Protection Association 704 warning placards on the outside of the storage area;
 - (3) storage ammonium nitrate or ammonium nitrate material:

- (A) in a fertilizer storage compartment or bin constructed of wood, metal, or concrete that is protected against impregnation by the ammonium nitrate or ammonium nitrate material; and

- (B) separately from any non-fertilizer materials, and

- (4) separate ammonium nitrate or ammonium nitrate material from combustible or flammable material by 30 feet or more.

- (d) A fire marshal who identifies the existence of a hazardous condition under Subsection (b) or a violation of Subsection (a) or (c) shall notify the service of the condition or violation.

- (e) If notified by a fire marshal of a hazardous condition under Subsection (b), the service may direct the owner or operator of the facility to correct the condition.

- (f) If notified by the fire marshal of a violation of Subsection (a) or (c), the service shall:
 - (1) direct the owner or operator of the facility to correct the violation as provided by Subsection (g); or
 - (2) take appropriate enforcement action as authorized by this chapter.

- (g) If directed by the service to correct a hazardous condition or a violation, an owner or operator shall remedy the condition or violation before the expiration of a period specified by the service, which may not exceed 10 days. If the service determines that the condition or violation has not been remedied before the expiration of the specified period, the service shall take appropriate enforcement action as authorized by this chapter.

- (h) Section 419.909 (b), Government Code, does not apply to an examination of an ammonium nitrate storage facility by a fire marshal under this section.