

NEBRASKA COMMERCIAL FERTILIZER AND SOIL CONDITIONER ACT

- Administration:** This Act is administered by the Nebraska Department of Agriculture, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509. Telephone: (402) 471-2351.
- Revisions:** This Act was last revised during the 2015 Nebraska Legislature. This reproduction was prepared following that legislative session.
- Rules:** A regulation has been promulgated under this Act, known as Title 25, Chapter 6, Nebraska Administrative Code - Commercial Fertilizer and Soil Conditioner Inspection Fees.

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81-2,162.01. Act; administration. The Nebraska Commercial Fertilizer and Soil Conditioner Act shall be administered by the Director of Agriculture.

81-2,162.02. Terms, defined. For purposes of the Nebraska Commercial Fertilizer and Soil Conditioner Act, unless the context otherwise requires:

- (1) Director means the Director of Agriculture or his or her duly authorized agent;
- (2) Department means the Department of Agriculture;
- (3) Commercial fertilizer means any formula or product distributed for further distribution or ultimate use as a plant nutrient, intended to promote plant growth, containing one or more plant nutrients recognized by the Association of American Plant Food Control Officials in its official publication. The term commercial fertilizer shall not be deemed to include unmanipulated animal and vegetable manures but shall be deemed to include both finished products and fertilizer ingredients capable of being used in the formulation of a finished product;
- (4) Bulk means nonpackaged;
- (5) Custom-blended product means any individually compounded commercial fertilizer or soil conditioner mixed, blended, offered for sale, or sold in Nebraska to a person's specifications, when such person is the ultimate consumer, if the ingredients used in such product which are subject to the registration requirements of section 81-2,162.03 have been so registered;
- (6) Distribute means to offer for sale, sell, barter, or otherwise supply commercial fertilizers or soil conditioners;
- (7) Fineness means the percentage of weight of the material which will pass United States standard sieves of specified sizes;
- (8) Grade means the percentage of total nitrogen, available phosphate, and soluble potash;
- (9) Label means a display of written, printed, or other graphic matter upon the container in which a commercial fertilizer or soil conditioner is distributed, or a statement accompanying such product;
- (10) Labeling means the label and all other written, printed, or graphic matter accompanying the commercial fertilizer or soil conditioner at any time or to which reference is made on the label;

- (11) Official sample means any sample of commercial fertilizer or soil conditioner taken by the director or his or her agent;
- (12) Product means both commercial fertilizers and soil conditioners;
- (13) Ton means a net weight of two thousand pounds avoirdupois;
- (14) Percent or percentage means the percentage by weight;
- (15) Person includes individual, cooperative, partnership, limited liability company, association, firm, and corporation;
- (16) Sell or sale includes exchange;
- (17) Soil conditioner means any formula or product distributed, except unmanipulated animal and vegetable manures, which, when added to the soil, is intended to (a) change the physical condition of the soil or (b) produce a favorable growth, yield, or quality of crops or other soil characteristics but shall not mean a commercial fertilizer, a pesticide as defined in the Pesticide Act, or an agricultural liming material as defined in the Agricultural Liming Materials Act; and
- (18) Specialty product means a product for nonfarm use.

Source: Laws 2015, LB93, § 1. Effective Date: August 30, 2015

81-2,162.03. Soil conditioner; registration; expiration; application; contents; custom-blended products exempt; information required. (1) Each soil conditioner shall be registered before being distributed in this state. The distributor who first causes the distribution of the product into or within this state shall be responsible for compliance with the product registration requirements of this section. The application for registration shall be submitted to the director on forms furnished by the director and shall be accompanied by two copies of the labeling for such product. Upon approval by the director, a copy of the registration shall be furnished to the applicant. All registrations shall expire on December 31 of each year. The application shall include the following information:

- (a) The name and principal address of the person registering the product;
- (b) The name and principal address of the person guaranteeing the product, if different than the registrant;
- (c) The name and principal address of the person manufacturing the product, if different than the registrant;
- (d) The name and principal address of the person whose name appears on the label, if different than the registrant;
- (e) The name of the product, including any term, design, trademark, or chemical designation used in connection with the product; and
- (f) The percentage of every ingredient present in each soil conditioner.

(2) Custom-blended products shall be exempt from the requirements of this section, except that such products shall bear a tag or invoice stating the name and principal address of the manufacturer, the name and address of the purchaser, and the net weight or measure and the composition of the product by weight or percentage of ingredients used, and a duplicate copy of such information shall be kept by the manufacturer for use by the department for sampling and inspection purposes. All ingredients shall be subject to the inspection fee requirements of section 81-2,162.06 except those ingredients brought to the manufacturer by the ultimate user for custom blending.

(3) A product shall not be required to be registered under this section when the director knows, or has reason to know, that such product is currently registered pursuant to this section. The director shall consider two or more products to be the same product only if the characteristics of the products described under subdivisions (b) through (f) of subsection (1) of this section are the same.

81-2,162.04. Soil conditioner; label; contents; bulk; statement; common name; pesticide; how labeled. (1) Any packaged soil conditioner distributed in this state, except custom-blended products, shall have placed on or affixed to the package a label stating clearly and conspicuously (a) the net weight or measure of the product, (b) the information required by subdivisions (1)(c) and (d) of section 81-2,162.03, (c) the total percentage of all active ingredients in the soil conditioner, (d) the identification and percentage of each individual active ingredient, (e) the total percentage of the inactive ingredients, (f) the identification and percentage of each individual inactive ingredient which comprises more than two percent of the entire soil conditioner, and (g) under a category entitled other inactive ingredients, the total percentage of the remaining inactive ingredients which individually do not comprise two percent or more of the soil conditioner.

(2) If any soil conditioner is distributed in bulk, a written or printed statement of the weight and the information required by subdivisions (1)(c) and (d) of section 81-2,162.03 and by subdivisions (1)(c) through (g) of this section shall accompany delivery and be supplied to the purchaser.

(3) Whenever a soil conditioner is so comprised as to be recognized by a name commonly understood by ordinary individuals, such name shall be prominently and conspicuously displayed on the label.

(4) Notwithstanding any other provision of the Nebraska Commercial Fertilizer and Soil Conditioner Act, any soil conditioner which is also a pesticide, labeled in conformance with the Pesticide Act, shall be deemed to be labeled in conformance with the Nebraska Commercial Fertilizer and Soil Conditioner Act.

Source: Laws 2015, LB93, § 2. Effective Date: August 30, 2015

81-2,162.05. Commercial fertilizer; label affixed to package; contents; common name; custom-blended products; requirements. (1) Any packaged commercial fertilizer distributed in this state, except custom-blended products, shall have placed on or affixed to the package a label stating clearly and conspicuously:

- (a) The net weight or measure of the product;
- (b) The name and principal address of the manufacturer or distributor;
- (c) The name of the product, including any term, design, trademark, or chemical designation used in connection with the product;
- (d) The guaranteed analysis showing the minimum percentage of plant nutrients claimed in the following order and form:

Total Nitrogen.....percent
Ammoniacal Nitrogen
(Specialty products only).....percent
Nitrate Nitrogen
(Specialty products only).....percent
Water Insoluble Nitrogen
(Specialty products only).....percent
Available Phosphate (P₂O₅).....percent
Soluble Potash (K₂O).....percent

Unacidulated mineral phosphatic materials and basic slag shall be guaranteed as to both total available phosphate and the degree of fineness. Plant nutrients, other than nitrogen, phosphorus, and potassium, shall be guaranteed when present in significant quantities as determined by the director, which guarantees shall be expressed in elemental form. The director may also request that the sources of such nutrients be included on the label. Other beneficial substances, determinable by chemical methods, may be guaranteed only by permission of the director by and with the advice of the University of Nebraska Institute of Agriculture and Natural Resources;

(e) The sources from which the nitrogen, available phosphate (P₂O₅), and potash (K₂O) are derived; and

(f) The grade stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis, except as follows:

(i) Specialty products may be guaranteed in fractional units of less than one percent of the total nitrogen, available phosphate, and soluble potash; and

(ii) The director may allow types of fertilizer materials, bone meal, or manures to be guaranteed in fractional units.

(2) If distributed in bulk, a written or printed statement of the information required by subdivisions (a), (b), (c), and (d) of subsection (1) of this section shall accompany delivery and be supplied to the purchaser.

(3) Whenever a commercial fertilizer is so comprised as to be recognized by a name commonly understood by ordinary individuals, such name shall be prominently and conspicuously displayed on the label.

(4) Custom-blended products shall bear a tag or invoice stating the name and principal address of the manufacturer, the name and address of the purchaser, and the net weight or measure and the composition of the product by weight or percentage of ingredients used. A duplicate copy of such information shall be kept by the manufacturer for use by the department for sampling and inspection purposes.

Source: Laws 2015, LB93, § 3. Effective Date: August 30, 2015

81-2,162.06. Commercial fertilizer and soil conditioner; inspection fee; amount; tonnage report; additional administrative fee; confidential information. (1) There shall be paid to the director, for all commercial fertilizers and soil conditioners distributed in this state to the ultimate user, except custom-blended products, an inspection fee at the rate fixed by the director but not exceeding ten cents per ton. The fee shall be paid by the person distributing the product to the ultimate user.

(2) Payment of the inspection fee shall be evidenced by a statement made with documents showing that fees corresponding to the tonnage were received by the director.

(3) Every person who distributes commercial fertilizer or soil conditioners to the ultimate user in this state shall file, not later than the last day of January and July of each year, a semiannual tonnage report on forms provided by the department setting forth the number of net tons of commercial fertilizer and soil conditioners distributed in this state during the preceding six-month period, which report shall cover the periods from July 1 to December 31 and January 1 to June 30, and such other information as the director shall deem necessary. All persons required to be licensed pursuant to the Nebraska Commercial Fertilizer and Soil Conditioner Act shall file such report regardless of whether any inspection fee is due. Upon filing the report, such person shall pay the inspection fee at the rate prescribed pursuant to subsection (1) of this section. The minimum inspection fee required pursuant to this section shall be five dollars, and no inspection fee shall be paid more than once for any one product.

(4) If a person fails to report and pay the fee required by subsection (3) of this section by January 31 and July 31, the fee shall be considered delinquent and the person owing the fee shall pay an additional administrative fee of twenty-five percent of the delinquent amount for each month it remains unpaid, not to exceed one hundred percent of the original amount due. The department may waive the additional administrative fee based upon the existence and extent of any mitigating circumstances that have resulted in the late payment of such fee. The purpose of the additional administrative fee is to cover the administrative costs associated with collecting fees and all money collected as an additional administrative fee shall be remitted to the State Treasurer for credit to the Fertilizers and Soil Conditioners Administrative Fund.

Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided in this subsection shall constitute sufficient cause for the cancellation of all product registrations, licenses, or both on file for such person.

(5) No information furnished to the department under this section shall be disclosed in such a way as to reveal the operation of any person.

Source: Laws 2015, LB93, § 4. Effective Date: August 30, 2015

81-2,162.07. Enforcement of act; inspections; testing; methods of analysis; results; distribution. (1) To enforce the Nebraska Commercial Fertilizer and Soil Conditioner Act or the rules and regulations adopted pursuant to the act, the director may:

(a) For purposes of inspection, enter any location, vehicle, or both in which commercial fertilizers and soil conditioners are manufactured, processed, packed, transported, or held for distribution during normal business hours, except that in the event such locations and vehicles are not open to the public, the director shall present his or her credentials and obtain consent before making entry thereto unless a search warrant has previously been obtained. Credentials shall not be required for each entry made during the period covered by the inspection. The person in charge of the location or vehicle shall be notified of the completion of the inspection. If the owner of such location or vehicle or his or her agent refuses to admit the director to inspect pursuant to this section, the director may obtain a search warrant from a court of competent jurisdiction directing such owner or agent to submit the location, vehicle, or both as described in such search warrant to inspection;

(b) Inspect any location or vehicle described in this subsection, all pertinent equipment, finished and unfinished materials, containers and labeling, all records, books, papers, and documents relating to the distribution and production of commercial fertilizers and soil conditioners, and other information necessary for the enforcement of the act;

(c) Obtain samples of commercial fertilizers and soil conditioners. The owner, operator, or agent in charge shall be given a receipt describing the samples obtained; and

(d) Make analyses of and test samples obtained pursuant to subdivision (c) of this subsection to determine whether such commercial fertilizers and soil conditioners are in compliance with the act.

For purposes of this subsection, location shall include a factory, warehouse, or establishment.

(2) Sampling and analysis shall be conducted in accordance with methods published by the AOAC International or in accordance with other generally recognized methods.

(3) The director, in determining for administrative purposes whether any product is deficient in plant nutrients, shall be guided solely by the official sample as defined in subdivision (11) of section 81-2,162.02 and obtained and analyzed as provided for in subsection (2) of this section.

(4) The results of official analysis of any official sample shall be forwarded by the director to the person named on the label when the official sample is not in compliance with the act or the rules and regulations adopted pursuant to the act. Upon request made within ninety days of the analysis, the director shall furnish to the person named on the label a portion of the official sample. Following expiration of the ninety-day period, the director may dispose of such sample.

Source: Laws 2015, LB93, § 5. Effective Date: August 30, 2015

81-2,162.08. Commercial fertilizer; superphosphate; requirements. No superphosphate containing less than eighteen percent available phosphate nor any commercial fertilizer in which the sum of the guarantees for the nitrogen, available phosphate, and soluble potash totals less than twenty percent shall be distributed in this state except for fertilizers containing twenty-five percent or more of their nitrogen in water-insoluble form of plant or animal origin, in which case the total nitrogen, available phosphate, and soluble potash shall not total less than eighteen percent. This section shall not apply to specialty fertilizers.

Source: Laws 2015, LB93, § 6. Effective Date: August 30, 2015

81-2,162.11. Commercial fertilizer and soil conditioner; sales information; director make available; contents. The director shall annually make available, in such form as he or she may deem proper, information concerning the sales of commercial fertilizers and soil conditioners and a report of the results of the analysis based on official samples of commercial fertilizers and soil conditioners distributed within the state as compared with the analyses guaranteed under the provisions of the Nebraska Commercial Fertilizer and Soil Conditioner Act.

Source: Laws 2015, LB93, § 7. Effective Date: August 30, 2015

81-2,162.12. Commercial fertilizers and soil conditioners; rules and regulations. For the enforcement of the Nebraska Commercial Fertilizer and Soil Conditioner Act, the director is authorized to prescribe rules and regulations, after public hearing following due public notice, relating to the distribution of commercial fertilizers and soil conditioners as he or she may find necessary to carry into effect the full intent and meaning of the act.

81-2,162.13. Commercial fertilizer or soil conditioner; registration or license; cancellation; reasons; hearing. The director is authorized and empowered to cancel the registration or license of any person manufacturing or distributing any commercial fertilizer or soil conditioner or to refuse to register any soil conditioner upon satisfactory evidence that the registrant, licensee, or guarantor has used fraudulent or deceptive practices in the evasions or attempted evasions of the provisions of the Nebraska Commercial Fertilizer and Soil Conditioner Act or any rules and regulations promulgated thereunder. No license or registration shall be revoked or refused until the registrant, licensee, or guarantor has been given the opportunity to appear for a hearing before the director.

81-2,162.14. Commercial fertilizer or soil conditioner; stop-sale, stop-use, or removal order; effect; release, when. The director may issue and enforce a written or printed stop-sale, stop-use, or removal order to the owner or custodian of any lot of commercial fertilizer or soil conditioner and may require the owner or custodian to hold any lot at a designated place when the director has reason to believe the product is being offered or exposed for sale in violation of any of the provisions of the Nebraska Commercial Fertilizer and Soil Conditioner Act until the law has been complied with and such product is released in writing by the director or the violation has been otherwise legally disposed of by written authority. The director shall release the product so withdrawn when the requirements of the act have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid.

81-2,162.15. Commercial fertilizer or soil conditioner; noncompliance; condemnation; court order; opportunity to comply. Any lot of commercial fertilizer or soil conditioner not in compliance with the provisions of the Nebraska Commercial Fertilizer and Soil

Conditioner Act shall be subject to seizure on complaint of the director to a court of competent jurisdiction in the area in which such product is located. In the event the court finds such product to be in violation of the provisions of such act and orders the condemnation of such product, it shall be disposed of in any manner consistent with the quality of the product and the laws of the state. In no instance shall the disposition of such product be ordered by the court without first giving the claimant an opportunity to apply to the court for release of such product or for permission to process or relabel such product to bring it into compliance with the provisions of the act.

81-2,162.16. Commercial fertilizer or soil conditioner; rules and regulations; violation; notice; hearing; certification to county attorney or Attorney General. If it shall appear from the examination of any commercial fertilizer or soil conditioner that any of the provisions of the Nebraska Commercial Fertilizer and Soil Conditioner Act or the rules and regulations issued thereunder have been violated, the director shall cause notice of the violations to be given to the person from whom the sample was taken. Any person so notified shall be given opportunity to be heard under such rules and regulations as may be prescribed by the director. If it appears after such hearing, either in the presence or absence of the person so notified, that any of the provisions of the act or rules and regulations issued thereunder have been violated, the director may certify the facts to the county attorney of the county in which the violation occurred or to the Attorney General, as the case may be.

81-2,162.17. Commercial fertilizer or soil conditioner; act; violations; penalty. Any person violating any provisions of the Nebraska Commercial Fertilizer and Soil Conditioner Act or the rules and regulations issued thereunder, or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent the director in the performance of his or her duty pursuant to the act, shall be guilty of a Class II misdemeanor.

81-2,162.18. Commercial fertilizer or soil conditioner; unlawful practices; director; waiver, when. Nothing in the Nebraska Commercial Fertilizer and Soil Conditioner Act shall be construed as requiring the director to report for prosecution or for the institution of seizure proceedings for minor violations of such act when he or she believes that the public interest will be best served by a suitable notice of warning in writing.

81-2,162.19. Commercial fertilizer; Attorney General; county attorney; duties. It shall be the duty of each county attorney or the Attorney General, as the case may be, to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

81-2,162.20. Commercial fertilizer or soil conditioner; injunction; director; application; no bond required. The director is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of the Nebraska Commercial Fertilizer and Soil Conditioner Act, or any rules or regulations promulgated under the act, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

81-2,162.21. Commercial fertilizer or soil conditioner; sales or exchanges; restriction or avoidance; exception. Nothing in the Nebraska Commercial Fertilizer and Soil Conditioner Act shall be construed to restrict or avoid sales or exchanges of commercial fertilizers or soil conditioners to each other by importers, manufacturers, or manipulators who mix commercial fertilizers or soil conditioners for sale or as

preventing the free and unrestricted shipments of commercial fertilizers and soil conditioners to manufacturers or manipulators who have met the provisions of the act.

81-2,162.22. Act, how cited. Sections 81-2,162.01 to 81-2,162.28 shall be known and may be cited as the Nebraska Commercial Fertilizer and Soil Conditioner Act.

81-2,162.23. Manufacture or distribution of commercial fertilizers or soil conditioners; license required; exception; application; fee; posting of license; records; contents.

(1) No person shall manufacture or distribute commercial fertilizers or soil conditioners in this state unless such person holds a valid license for each manufacturing and distribution facility in this state. Any out-of-state manufacturer or distributor who has no distribution facility within this state shall obtain a license for his or her principal out-of-state office if he or she markets or distributes commercial fertilizer or soil conditioners in the State of Nebraska.

(2) An applicant for a license shall make application to the department on forms furnished by the department. Application forms shall be submitted to the department accompanied by an annual license fee of fifteen dollars. Licenses shall be renewed on or before January 1 of each year.

(3) A copy of the valid license shall be posted in a conspicuous place in each manufacturing or distribution facility.

(4) Persons distributing custom-blended products shall maintain records of purchase orders received for custom-blended products from the date such orders are received until such products are distributed, which records shall be sufficient to show the product ordered, date of such order, purchaser, and quantity of product ordered.

(5) The provisions of this section shall not apply to any retail store which sells or offers for sale less than a five-ton volume of commercial fertilizer or soil conditioners annually.

Source: Laws 2015, LB93, § 8. Effective Date: August 30, 2015

81-2,162.25. Misbranded commercial fertilizer or soil conditioner; distribution unlawful; how determined. No person shall distribute misbranded commercial fertilizers or soil conditioners. A commercial fertilizer or soil conditioner shall be deemed to be misbranded if:

(1) Its labeling is false or misleading in any particular;

(2) It is distributed under the name of another commercial fertilizer or soil conditioner;

(3) It is not labeled as required by the Nebraska Commercial Fertilizer and Soil Conditioner Act or the regulations promulgated under the act;

(4) It purports to be or is represented as a commercial fertilizer or soil conditioner or as containing an ingredient, for which a definition of identity or standard of quality has been prescribed by regulation of the department, unless it conforms to such definition and standard; or.

(5) Any word, statement, or other information required by the act or the regulations promulgated under the act to appear on the label is not prominently displayed with such conspicuousness, as compared with other words, statements, designs, or devices, on the label, and in such terms as to render it likely to be read and understood by an individual under customary conditions of purchase and use.

81-2,162.26. Adulterated commercial fertilizer or soil conditioner; distribution unlawful; how determined. No person shall distribute adulterated commercial fertilizers or soil conditioners. A commercial fertilizer or soil conditioner shall be deemed to be adulterated if:

- (1) It contains any toxic materials, other than pesticides registered pursuant to law, in quantities injurious to plant or animal health;
- (2) Any valuable constituent has been in whole or in part omitted or subtracted therefrom or any less valuable substance substituted therefor;
- (3) Its composition or quality falls below or differs from that which it is purported or is represented to possess by its label;
- (4) Warning statements or directions for use, as prescribed by the director to be shown on the label, are not displayed thereon; or
- (5) It contains amounts of crop seed, weed seed, or other foreign materials in excess of tolerances as may be established by rules and regulations of the department.

81-2,162.27. Fertilizers and Soil Conditioners Administrative Fund; created; use; investment. (1) All money received under the Nebraska Commercial Fertilizer and Soil Conditioner Act and the Agricultural Liming Materials Act shall be remitted to the State Treasurer for credit to the Fertilizers and Soil Conditioners Administrative Fund, which fund is hereby created. All money so received shall be used by the department for defraying the expenses of administering the Nebraska Commercial Fertilizer and Soil Conditioner Act and the Agricultural Liming Materials Act.

(2) Any unexpended balance in the Fertilizers and Soil Conditioners Administrative Fund at the close of any biennium shall, when reappropriated, be available for the uses and purposes of the fund for the succeeding biennium. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2015, LB93, § 9. Effective Date: August 30, 2015

81-2,162.28. Preemption of local law. The Nebraska Commercial Fertilizer and Soil Conditioner Act and any rules and regulations adopted and promulgated thereunder shall supersede and preempt any ordinance, rule, regulation, or resolution enacted by any political subdivision of the state regarding the regulation of fertilizer and soil conditioners. No political subdivision shall prohibit or in any other manner regulate any matter relating to the registration, labeling, or sale of fertilizer and soil conditioners. No political subdivision shall prohibit or in any other manner regulate any matter relating to the storage, transportation, distribution, notification of use, or use that is in addition to or in conflict with the Nebraska Commercial Fertilizer and Soil Conditioner Act and any rules and regulations adopted and promulgated thereunder. Nothing in this section shall be construed to preempt or otherwise limit the authority of any city or county to adopt and enforce zoning regulations or any natural resources district to enforce the Nebraska Ground Water Management and Protection Act.

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