

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Amend the Maine Commercial Fertilizer Law

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 7 MRSA §742, sub-§1 is repealed.

Sec. 2. 7 MRSA §742, sub-§9, is amended to read:

9. Guaranteed analysis. "Guaranteed analysis":

A. "Guaranteed analysis" shall mean the minimum percentage of plant nutrients claimed in the following order and form:

Total Nitrogen (N) per cent

Available Phosphoric Acid (P₂O₅)..... per cent

Soluble Potash (K₂O) per cent; and

Magnesium (mg) per cent

B. "Guaranteed analysis" in paragraph A includes:

(1) For unacidulated mineral phosphatic materials and basic slag, both total and available phosphorus or phosphoric acid and the degree of fineness. For bone, tankage and other organic phosphatic materials, total phosphorus or phosphoric acid; and

(2) Additional plant nutrients expressed as the elements, when permitted by the commissioner.

(3) ~~(rp)Potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of 100 pounds per ton, when permitted by regulation.~~

(4) ~~(rp)For agricultural lime the minimum percentages of total calcium and total magnesium, and for gypsum the minimum percentage of calcium and sulfur.~~

Sec. 3. 7 MRSA §744 is amended to read:

§ 744. Labeling

Any commercial fertilizer distributed in this State in containers ~~shall~~must have placed on or affixed to the container a label setting forth in clearly legible form the information required by section 743, subsections 1 to ~~4~~5.

If distributed in bulk, a written or printed statement of the information required by section 743, subsections 1 to ~~4~~5, ~~shall~~must accompany delivery and be supplied to the purchaser at time of delivery.

Sec. 4. 7 MRSA §745, as amended by PL 2005, c. 512, §42, is further amended to read:

§ 745. Inspection, sampling and analysis

The commissioner shall inspect and sample for analysis in accordance with section 490 commercial fertilizers distributed within this State to the extent as the commissioner ~~deems~~considers necessary to determine compliance with this subchapter. The commissioner is authorized to enter upon any public or private premises during regular business hours in order to have access to commercial fertilizers, subject to this subchapter and the rules adopted pursuant to section 748.

The methods of sampling, sample preparation and analysis are those adopted from sources such as ~~the Journal of the Association of Official Agricultural Chemists~~AOAC International. The commissioner, in determining for administrative purposes whether a commercial fertilizer is deficient in any component, is guided solely by the official sample as defined and obtained and analyzed as provided for in this section.

When the inspection and analysis of an official sample indicate a commercial fertilizer has been adulterated or misbranded, the commissioner shall forward the results of the analysis to the distributor or manufacturer. Upon request within 30 days, the commissioner shall furnish to the registrant a portion of the sample concerned.

Sec. 5. 7 MRSA §747, sub-§3 is amended to read:

3. Other materials. If it is found to contain any pulverized leather, hair, ground hoofs, horns, wool waste, peat, garbage tankage or any nitrogenous ingredients derived from any inert material ~~whatsoever~~, unless the same has been so treated as to be available as plant food as determined by the methods adopted by ~~the Association of Official Agricultural Chemists~~AOAC International, without an explicit printed statement of fact, conspicuously affixed to the package of ~~such~~the fertilizer and accompanying and going with every lot or package of the same, in which fertilizer ~~the above-named materials~~ named in this subsection aid in making up the required or guaranteed analysis.

Sec. 6. 7 MRSA §748, sub-§3 is enacted to read:

3. Establishment of allowances. The commissioner shall establish by rule allowances for deviations from the guaranteed analysis for plant nutrients and from the overall index value of a fertilizer. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 7. 7 MRSA §750, sub-§2, as enacted by PL 2003, c. 452, Pt. B, §11 and affected by Pt. X, §2, is amended to read:

2. Penalty. The following penalties apply to violations of this section.

A. A person who violates subsection 1 commits a civil violation for which a fine of not more than ~~\$100~~\$500 may be adjudged.

B. A person who violates subsection 1 after having previously violated subsection 1 commits a civil violation for which a fine of not more than ~~\$200~~\$1,000 may be adjudged.

Sec. 8. 7 MRSA §751 is enacted to read:

§ 751. Assessments for deficiencies

In addition to any fine adjudged under section 750, an assessment for deficiencies in a fertilizer must be made in accordance with this section. For the purposes of this section, a deficiency occurs when an investigational analysis determines that the allowances established in rules adopted under section 748, subsection 3 have been exceeded.

1. Primary plant nutrients; overall index. An assessment of 2 times the commercial value of the deficiency or deficiencies as determined under subsection 3 must be made if:

- A. The analysis determines that a fertilizer is deficient in one or more of its guaranteed primary plant nutrients; or
- B. The analysis determines that the overall index value is deficient.

When a fertilizer is subject to an assessment under both paragraphs A and B, the larger assessment applies.

2. Other deficiencies. When a fertilizer is labeled to guarantee or a bulk fertilizer is accompanied by a statement guaranteeing that the fertilizer contains recognized plant nutrients other than nitrogen, available phosphate or soluble potash, the commissioner may evaluate the fertilizer and prescribe an assessment for deficiencies in any of the claimed nutrients based on commercial values determined under subsection 3.

3. Determination of commercial value. For the purpose of determining the commercial value of fertilizer, the commissioner shall use the amount originally invoiced to the consumer per unit of nitrogen, available phosphate, soluble potash or other nutrients that the registrant is required to or may guarantee. The values derived from the invoice must be used in determining the assessment.

4. Payment to consumer; commissioner. Assessments made under subsections 1 and 2 must be paid by the registrant to the consumer of the lot of fertilizer represented by the sample analyzed. The commissioner shall send notification of the amount of the assessment with the results of the analysis sent in accordance with section 745. Assessments must be made within 30 days of the date of the notification. If the consumer cannot be located, the registrant shall submit the assessment to the commissioner for deposit in the commercial fertilizer account under subsection 5.

5. Commercial fertilizer account. The commissioner shall deposit all assessments submitted to the commissioner in accordance with subsection 4 in a dedicated account established within the department. The account is a nonlapsing interest-bearing account. Funds from the account may only be used to pay costs of sampling and analyzing fertilizer.

Effective September 20, 2007