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RULE PROPOSALS

**AGRICULTURE
DIVISION OF MARKETING AND DEVELOPMENT**

41 N.J.R. 2366(a)

Proposed Readoption with Amendments: N.J.A.C. 2:69

[Click here to view Interested Persons Statement](#)

Commercial Fertilizers and Soil Conditioners

Authorized By: State Board of Agriculture, Douglas H. Fisher, Secretary, Department of Agriculture.

Authority: N.J.S.A. 4:9-15.26 and 15.33.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2009-181.

Submit comments by August 14, 2009:

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New Jersey Department of Agriculture
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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 2:69, Commercial Fertilizers and Soil Conditioners, which was scheduled to expire May 25, 2009, is now scheduled to expire on November 21, 2009. The Department of Agriculture proposes to readopt these rules with amendments, as they have been found to be necessary, reasonable and proper for

the purposes for which they were promulgated. Readoption is necessary because N.J.A.C. 2:69 was originally promulgated to (1) protect farmers and consumers by determining the manufacturer's compliance with the guaranteed content of commercial fertilizers and soil conditioners and (2) to reduce the amount of misbranded and deficient products offered for sale thereby insuring the quality and quantity of fertilizers and soil conditioners and promoting crop yield. Currently, the Department utilizes the standards set forth in the 2008 edition of the Official Publication of the Association of American Plant Food Control Officials, Inc. (AAPFCO). The AAPFCO standards are recognized by the industry as the most comprehensive and current standards available. They are accepted throughout most of the United States. A copy is on file in the Director's office, Division of Marketing and Development, New Jersey Department of Agriculture, Health and Agriculture Building, John Fitch Plaza, Trenton, New Jersey 08625-0330. Copies may be procured by writing to Jamey Johnson, No. 1 Natural Resources Dr., Little Rock, AR 72205 or by ordering on-line at <http://www.aapfco.org>.

The Department is currently utilizing the general methods for sampling and laboratory analyses as published in the Official Methods of Analysis of AOAC (Association of Official Analytical Chemists) International, 17th edition as amended and supplemented. A copy of this edition is on file in the Director's office at the address named above. Copies may be obtained by writing to AOAC International, 481 N. Frederick Ave., Suite 500, Gaithersburg, MD 20877-2417, 1-800-379-2622 or by ordering on-line at <http://www.aoac.org>.

The purposes of the proposed amendments are to extend the effective dates of the commercial values of primary plant nutrients, pursuant to N.J.S.A. 4:9-15.26, and update the edition number, revise the AOAC sections' numbers and the contact information for obtaining copies of the AOAC and AAPFCO publications. The current values have been reviewed and although there is no change in the values, the effective dates are being amended to reflect the required annual update. The penalties assessed against manufacturers for deficient fertilizers will be based on these values. The State Treasury will receive all unclaimed penalty fees.

As the Department has provided a 60-day comment period on this proposed readoption, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

Readoption of N.J.A.C. 2:69 will continue to provide a basis for fair competition in the fertilizer and soil conditioner industries as well as to protect farmers and consumers who purchase commodities covered in this chapter.

Both consumers and manufacturers are affected by the testing of commercial commodities. The purpose is to assure adequate and accurate labeling information. The labeling allows the purchase of product with a known quality and the easy comparison of the product with other similar products on the market. N.J.A.C. 2:69-1.1 through 1.13 will continue to protect purchasers of fertilizers and soil conditioners by reducing the amount of misbranding and promoting crop yield.

The proposed amendments will ensure that all consumers of fertilizer will have monetary protection when deficient fertilizers are detected and manufacturers will exhibit more care in controlling their formulating processes to avoid a penalty. Therefore, the rules proposed for readoption with amendments will continue to have a positive social impact.

Economic Impact

Consumers of fertilizers will realize economic savings through accurate labeling. Fertilizer manufacturers will be able to compete on an equal basis through the use of the same standards in formulating their products. Economy of scale will be realized by the opening up of all markets in the United States to any commercial fertilizer manufacturer through one uniform labeling system. The savings from these economies of scale will then be able to be passed on to the consumer. There is no increased cost to the Department of Agriculture by the continuation of these standards.

If a deficiency is found, consumers will be equitably compensated for their losses. If no customer can be identified, the money goes to the State Treasury.

In the 2007-2008 season, 311 official samples were analyzed in the laboratory; of these, 7.49 percent were deficient in nitrogen, 4.01 percent were deficient in available phosphoric acid and 9.57 percent were deficient in soluble potash. As a result, \$ 4,899 in fines was refunded to consumers and \$ 1,845 was transmitted to the State Treasurer. Therefore, the rules proposed for readoption with amendments will continue to have a positive economic impact.

Federal Standards Statement

A Federal standards analysis is not required because the rulemaking requirements of the Director of the Division of Marketing and Development, New Jersey Department of Agriculture are dictated by the New Jersey Commercial Fertilizer and Soil Conditioner Law, N.J.S.A. 4:9-15.26 and 15.33, and are not subject to any Federal requirements or standards.

Jobs Impact

The rules proposed for readoption with amendments will have no impact on the number of jobs generated or lost in the State of New Jersey.

Agriculture Industry Impact

The Social and Economic Impacts above describe the impact of the rules proposed for readoption with amendments on the agriculture industry.

Regulatory Flexibility Analysis

Both large and small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., are affected by the rules proposed for readoption with amendments. However, differing standards are not deemed necessary because the requirements are not burdensome and because, while these rules may have an economic impact on these [page=2367] businesses, the Department knows of no less restrictive a system than expressed in the standards. In order to document label claims, minimal recordkeeping or reporting requirements required under these rules are necessary. The standards expressed in these rules, provide the least costly and best protection available, are almost universally accepted and provide a level playing field for all manufacturers, enabling fair competition based on product quality.

Further, there is no way to protect the consumers of these products without a method of guaranteeing compliance with label claims so there is no way to exempt small businesses from these rules. It is important that consumers be able to rely upon labeling, which provides comparable information and a method of guaranteeing compliance with label claims. The nutrient values are used in setting the penalties of manufacturers for compensation to farmers, all of whom are considered small businesses under the Act, when they purchase products that do not meet the analysis as advertised. The rule proposed for readoption as amended in that way provides some measure of protection to small businesses.

There are no professional services required to comply nor will any initial capital outlays be required of any business as a result of the rules proposed for readoption with amendments.

Smart Growth Impact

The Department does not anticipate that the rules proposed for readoption with amendments will have any impact on the achievement of smart growth or the implementation of the State's Development and Redevelopment Plan.

Housing Affordability Impact

The rules proposed for readoption with amendments will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules determine the manufacturer's compliance with the guaranteed content of commercial fertilizers in order to reduce the amount of misbranded and deficient products offered for sale.

Smart Growth Development Impact

The rules proposed for readoption with amendments will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2 or with designated centers under the State Development and Redevelopment Plan in New Jersey because the rules determine the manufacturer's compliance with the guaranteed content of commercial fertilizers in order to reduce the amount of misbranded and deficient products offered for sale.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:69.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

2:69-1.6 Slowly available plant nutrients

(a)-(g) (No change.)

(h) The term "water insoluble nitrogen" is acceptable only when material in (g)1 above is used. Until more appropriate methods are developed, AOAC **International Method 970.04 (15th Edition)** [method 2.074 (13th ED) (including all further amendments and supplements thereto)] is to be used to test coated-slow release and occluded slow release nutrients in (g)2 and 3 above. AOAC [2.072 (13th ED) (including all further amendments and supplements thereto)] **International Method 945.01 (15th Edition)** is to be used to test coated-slow release and occluded slow release nutrients in (g)2 and 3 above. AOAC [2.072 (13th ED) (including all further amendments and supplements thereto)] **International Method 945.01 (15th Edition)** shall be used to determine the water insoluble nitrogen in (g)1 above.

2:69-1.7 General methodology for sampling and laboratory analyses

(a) (No change.)

(b) A copy of the 17th (2000) edition of the Official Methods of Analysis of AOAC (Association of Official Analytical Chemists), International is on file in the Director's Office, Division of Marketing and Development, New Jersey Department of Agriculture Building, John Fitch Plaza, Trenton, New Jersey 08625. Copies can be procured by writing to AOAC International, [Wachovia Bank Lockbox, PO Box 75198, Baltimore, MD 21275-5198 USA] **481 N. Frederick Ave, Suite 500, Gaithersburg, MD 20877-2417, USA or by calling 1-800-379-2622 or by ordering on-line at <http://www.aoac.org>.**

2:69-1.8 General rules regarding fertilizers

(a) (No change.)

(b) A copy of the current edition of the Official Publication of the American Plant Food Control Officials is on file in the Director's Office, Division of Marketing and Development, New Jersey Department of Agriculture, Health and Agriculture Building, John Fitch Plaza, Trenton, New Jersey 08625. Copies may be procured by writing to [Joel M. Padmore, North Carolina Department of Agriculture, 4000 Reedy Creek Road, Raleigh, NC 27607] **Jamey Johnson, No. 1 Natural Resources Dr., Little Rock, AR 72205 or by ordering on-line at <http://www.aapfco.org>.**

2:69-1.11 Commercial values

(a) (No change)

(b) These values shall be effective from July 1, [2008] **2009** through June 30, [2009] **2010**.