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RULE PROPOSALS

**AGRICULTURE
DIVISION OF MARKETING AND DEVELOPMENT**

48 N.J.R. 1987(a)

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Commercial Fertilizers and Soil Conditioners

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

Authorized By: State Board of Agriculture and 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 2016-164.

Submit comments by December 2, 2016, to:

Alfred W. Murray, Director
Division of Marketing and Development
New Jersey Department of Agriculture
PO Box 330
Trenton, New Jersey 08625-0330
or by e-mail at proposedrulesMarkets@ag.state.nj.us

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1, N.J.A.C. 2:69, Commercial Fertilizers and Soil Conditioners, was scheduled to expire September 2, 2016. As the agency submitted this notice of proposal to the Office of Administrative Law prior to that date, the expiration is extended 180 days to March 1, 2017, pursuant to N.J.S.A. 52:14B-5.1.c(2). The Department of Agriculture (Department) 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 originally promulgated. This chapter 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.

The Department utilizes the standards set forth in the Official Publication of the Association of American Plant Food Control Officials, Inc. (AAPFCO), a national organization open to active membership of all states. It works to develop and promote uniformity in state fertilizer laws. These standards guide fertilizer inspection techniques, as well as adequate labeling.

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 of the Official Publication is on file in the State Chemist's office, NJ Public Health, Environmental, and Agricultural Laboratories (NJPHEAL), 3 Schwarzkopf Drive, Ewing, New Jersey 08628. 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.aapfc.org>.

The Department utilizes the general methods for sampling and laboratory analyses as published in the Official Methods of Analysis of AOAC (Association of Official Analytical Chemists) International. A copy of the AOAC is on file in the State Chemist's office, NJPHEAL, 3 Schwarzkopf Drive, Ewing, New Jersey 08628. Copies may be obtained by contacting AOAC Customer Service at (301) 924-7077 Ext. 170, or by ordering on-line at <http://www.aoac.org>.

Proposed amendments to N.J.A.C. 2:69-1.6, 1.7, and 1.8 update the edition numbers and the contact information for obtaining or reviewing copies of the AOAC and AAPFCO publications.

Proposed amendments to N.J.A.C. 2:69-1.11(a) are necessary in order to provide timely reliable commercial values each year. Specifically, pursuant to N.J.S.A. 4:9-15.26, the State Board is charged with determining, and publishing annually, the values per pound of nitrogen, phosphoric acid, potash, and other plant nutrients used in commercial fertilizers. These values are market driven and the values are affected by other markets worldwide. The proposed amendments recognize that lead time is necessary to gather, evaluate, and assess the market data, and to obtain the State Board determination. This lead time has been substantially increased by the process necessary to propose and adopt amendments to these rules, so that commercial values' changes due to market shifts can be published in the New Jersey Register. The proposed amendments provide the methodology to allow the State Board to determine and make available to the public reliable values annually and provide for a transition period. The recommendation to the State Board, as well as the State Board review and evaluation procedure, will allow oral public comment at the open public meeting when the recommendation is received or written public comment is received at least 10 days before the next following open public meeting of the State Board. For transition, the current values are proposed to be amended with the proposed new annual update process and posted at <http://www.nj.gov/agriculture> upon the effective date of this change (N.J.A.C. 2:69-1.11) in the New Jersey Register. Thereafter, the penalties assessed against manufacturers for deficient fertilizers and soil conditioners will be based on these new values. The State Treasury will receive all unclaimed penalty fees.

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

Social Impact

The rules proposed for readoption with amendments of N.J.A.C. 2:69 will continue to provide a basis for fair competition in the fertilizer and [page=1988] 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 fertilizer and soil conditioners. 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 fertilizers and soil conditioners will more timely receive the commercial values. Therefore, the rules proposed for readoption with amendments will continue to have a positive social impact.

Economic Impact Consumers of fertilizers and soil conditioners will realize economic savings through accurate labeling. Fertilizer and soil conditioner 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 and soil conditioner manufacturer/distributor 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 2014-2015 season, 249 official samples were analyzed in the laboratory, of these 11.84 percent were deficient in nitrogen, 21.69 percent were deficient in available phosphoric acid, and 10.0 percent were deficient in soluble potash. As a result, \$ 10,193.89 in fines was refunded to consumers and \$ 4,691.63 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 Executive Order No. 27 (1994) and N.J.S.A. 52:14B-23 (P.L. 1995, c. 65) require administrative agencies which adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law.

The rules proposed for readoption with amendments 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 standards. Therefore, no Federal standards analysis is required.

Jobs Impact

It is not anticipated that the rules proposed for readoption with amendments will result in the generation or loss of jobs. However, it is anticipated that the rules proposed for readoption will positively affect New Jersey's agricultural industry, averting the permanent loss of jobs.

Agriculture

Industry Impact The rules proposed for readoption with amendments will have a positive impact on New Jersey agriculture by helping to maintain a viable agricultural industry in the Garden State as described in the Social Impact and Economic Impact statements above.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments have an impact on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., in that some commercial fertilizer and soil conditioner manufacturers/distributors are small businesses. The rules set forth compliance standards, as described in the Summary, Social Impact, and Economic Impact statements above. No recordkeeping or reporting requirements are imposed under the rules. However, the Department knows of no less restrictive a system than expressed in the standards, which are universally accepted and provide a level playing field for all manufacturers, enabling fair competition based on product quality.

The Department has determined that these rules proposed for readoption with amendments do not impose undue burdensome reporting, recordkeeping, or compliance requirements on either large or small businesses. The rules proposed for readoption with amendments protect the interest of New Jersey farmers and consumers by determining the manufacturer's compliance with the guaranteed content of commercial fertilizer and soil conditioners and by reducing the amount of misbranded and deficient products offered for sale, thereby, insuring the quality of commercial fertilizer and soil conditioners and promoting crop yield.

Given the preponderance of small manufacturers/distributors and the program's purpose to promote high quality commercial fertilizer and soil conditioner products, the Department has provided no lesser or differing requirements or exceptions based on business size.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will have an insignificant impact on the affordability of 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 proposed for readoption with amendments determine the manufacturer's compliance with the guaranteed content of commercial fertilizer and soil conditioners in order to reduce the amount of misbranded and deficient products offered for sale.

Smart Growth Development Impact Analysis

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 within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules proposed for readoption with amendments determine the manufacturer's compliance with the guaranteed content of commercial fertilizers and soil conditioners 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]):

SUBCHAPTER 1. GENERAL PROVISIONS

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] **18th** Edition) is to be used to test coated-slow release and occluded slow release nutrients in (g)2 and 3 above. AOAC International Method 945.01 ([15th] **18th** Edition) is to be used to test coated-slow release and occluded slow release nutrients in (g)2 and 3 above. AOAC International Method 945.01 ([15th] **18th** 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)] **18th (2015)** 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] **State Chemists Office, New Jersey Public Health, Environmental, and Agricultural Laboratories (NJPHEAL), 3 Schwarzkopf Drive, Ewing, New Jersey 08628**. Copies can be procured by [writing to AOAC International, 481 N. Frederick Ave, Suite 500, Gaithersburg, MD 20877-2417, USA] **contacting AOAC Customer Service at (301) 924-7077 Ext. 170**, 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] **2016** 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 [page=1989] of Agriculture, Health and Agriculture Building, John Fitch Plaza, Trenton, New Jersey 08625] **State Chemists Office, NJPHEAL, 3 Schwarzkopf Drive, Ewing, New Jersey 08628**. 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://aapfco.org>.

2:69-1.11 Commercial values

(a) The State Board of Agriculture, pursuant to N.J.S.A. 4:9-15.26, **annually** determines the commercial values of primary plant nutrients [to be:]. **The commercial values are determined by first conducting a survey within New Jersey and obtaining regional values through a survey of Pennsylvania, Delaware, and Maryland. These values are then assessed by the State Chemist and evaluated in accordance with recognized mathematical principles. The values recommended to the State Board by the State Chemist are to be reported at the open public meeting of the State Board. The State Board will consider the recommendation of the State Chemist and determine the commercial values to be in effect for that year at a subsequent open public meeting of the State Board.**

(b) **Public comments on the recommendation from the State Chemist may be submitted to the State Board in written or oral form. Oral comments shall be submitted at the open public meeting when the recommendation from the State Chemist is reported. Written comments shall be submitted at least 10 days prior to the next scheduled open public meeting of the State Board and sent to: agchem@ag.state.nj.us. The Board shall respond to all public comment through inclusion of comment and response in the minutes of the open public meeting at which the State Board determines the commercial values to be in effect for that year. These values shall be posted at <http://www.nj.gov/agriculture/>, pursuant to this subsection. These commercial values are provided each year per unit for the following:**

1. Nitrogen[: \$ 7.50 per unit];
2. Slowly released nitrogen:
 - i. Water insoluble nitrogen[: \$ 7.50 per unit];
 - ii. Coated available nitrogen[: \$ 6.00 per unit];

3. Available phosphoric acid[: \$ 5.50 per unit];

4. Soluble potash[: \$ 5.50 per unit].

[(b)] (c) [These values] **Values approved under this section** shall be [effective] **valid from July 1[, 2009] (or when approved, whichever is later) through June 30[, 2010].**