

New Mexico Fertilizer Act

Chapter 76, Article 11, Sections 1 through 20, NMSA, 1978.



NEW MEXICO DEPARTMENT OF AGRICULTURE
Las Cruces, New Mexico

ARTICLE 11
Fertilizers

Section

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76-11-1. Short title.

Chapter 76, Article 11 NMSA 1978 may be cited as the "New Mexico Fertilizer Act".

History: 1953 Comp., § 45-13-11, enacted by Laws 1963, ch. 184, § 1; 1975, ch. 181, § 1; 2013, ch. 112, § 1.

Annotations

The 2013 amendment, effective June 14, 2013, added the NMSA chapter and article for the New Mexico Fertilizer Act; and deleted "Article 13 of Chapter 45, NMSA 1978" and added "Chapter 76, Article 11 NMSA 1978".

76-11-2. Administration of act.

The New Mexico Fertilizer Act [Article 11 of Chapter 76 NMSA 1978] shall be administered by the board of regents of the New Mexico state university through the New Mexico department of agriculture.

History: 1953 Comp., § 45-13-12, enacted by Laws 1963, ch. 184, § 2; 1975, ch. 181, § 2.

Cross references. — As to department of agriculture under control of board of regents, see 76-1-1 NMSA 1978 et seq. Am. Jur. 2d, A.L.R. and C.J.S. references. — 15A Am. Jur. 2d Colleges and Universities §§ 5, 10, 11. 14A C.J.S. Colleges and Universities § 17.

76-11-3. Definitions.

As used in the New Mexico Fertilizer Act:

- A. "board" means the board of regents of New Mexico state university;
- B. "department" means the New Mexico department of agriculture;
- C. "fertilizer" means any substance that contains one or more recognized plant nutrients and that is used for its plant nutrient content and is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl limes, limestone, wood ashes, gypsum and other products exempt by rule of the board;
- D. "fertilizer material" means a fertilizer that either:
 - (1) contains important quantities of no more than one of the primary plant nutrients: nitrogen (N), phosphate (P₂O₅) and potash (K₂O);
 - (2) has eighty-five percent of its plant nutrient content present in the form of a single chemical compound; or
 - (3) is derived from a plant or animal residue or byproduct or a natural material deposit that has been processed in such a way that its content of plant nutrients has not been materially changed except by purification and concentration;

- E. "specialty fertilizer" means a fertilizer distributed primarily for nonfarm use such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries and may include fertilizers used for research or experimental purposes;
- F. "bulk fertilizers" means fertilizers distributed in a nonpackaged form;
- G. "brand" means a term, design or trademark under which one or more fertilizers or soil conditioners are distributed in New Mexico;
- H. "guaranteed analysis" means the minimum percentage of plant nutrients claimed in the order and form as prescribed by the board;
- I. "grade" means the percentages of total nitrogen, available phosphorus or phosphate and soluble potassium or soluble potash stated in whole numbers in the same terms, order and percentages as in the guaranteed analysis; provided, however, that fertilizer materials, bone meal, manures and similar raw materials may be guaranteed in fractional units;
- J. "official sample" means any sample of fertilizer or soil conditioner taken by the department unless designated otherwise;
- K. "ton" means a net weight of two thousand pounds avoirdupois;
- L. "percent" or "percentage" means the percentage by weight;
- M. "person" includes individual, partnership, association, firm and corporation;
- N. "distributor" means a person that imports, consigns, manufactures, produces, compounds, mixes or blends fertilizer or soil conditioner or that offers for sale, sells, barter or otherwise supplies fertilizer or soil conditioner in the state;
- O. "registrant" means the person that registers a fertilizer or soil conditioner under the provisions of the New Mexico Fertilizer Act;
- P. "label" means the display of all written, printed or graphic matter upon the immediate container or statement accompanying a fertilizer or soil conditioner;
- Q. "labeling" means all written, printed or graphic matter upon or accompanying a fertilizer or soil conditioner;
- R. "soil conditioner" means a substance or mixture of substances intended for sale, offered for sale or sold for manurial, soil enriching or soil corrective purposes or intended to be used for promoting or stimulating the growth of plants, increasing the productivity of plants, improving the quality of crops or producing a chemical or physical change in the soil, except fertilizer as defined in this section, unmanipulated animal and vegetable manures and other products exempted by rules of the board;

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- S. "blender" means a person or system engaged in the business of blending fertilizer, including both mobile and fixed equipment used in blending;
- T. "blending" means the physical mixing or combining of fertilizer materials and filler materials as provided in Paragraphs (1) through (3) of this subsection, including mixing through the simultaneous or sequential application of any of the combinations provided in this subsection, to produce a uniform mixture:
- (1) one or more fertilizer materials and one or more filler materials;
 - (2) two or more fertilizer materials; or
 - (3) two or more fertilizer materials and filler materials;
- U. "custom blend" means a fertilizer blended according to specifications provided to a blender in a soil test nutrient recommendation or to meet the specific consumer's request prior to blending;
- V. "deficiency" means the amount of nutrient found by analysis to be less than the guaranteed amount, which may result from a lack of nutrient ingredients or from lack of uniformity;
- W. "investigational allowance" means an allowance for variations inherent in the taking, preparation and analysis of an official sample of fertilizer; and
- X. "primary nutrient" means total nitrogen, available phosphate and soluble potash.

History: 1953 Comp., § 45-13-13, enacted by Laws 1963, ch. 184, § 3; 1975, ch. 181, § 3; 2013, ch. 112, § 2.

Annotations

The 2013 amendment, effective June 14, 2013, clarified terms and added new terms relating to blending and the nutrient content of fertilizer; in Subsections C through E, G, J and N through R, deleted "commercial" before "fertilizer"; in Subsections C and R, deleted "regulation" and added "rule"; in Subsection D, in Paragraph (1), after "nitrogen", added "(N)", after "nitrogen (N)", deleted "phosphoric acid", added "phosphate (P₂O₅)", and after "potash", deleted "or" and added "(K₂O)", in Paragraph (2), after "has", deleted "approximately", and in Paragraph (3), after "its content of", deleted "primary"; in Subsection I, after "phosphorus or", deleted "phosphoric acid" and added "phosphate"; and added Subsections S through X.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 3 C.J.S. Agriculture § 74.

76-11-4. Registration.

A. Each brand and grade of fertilizer and each soil conditioner product shall be registered before being distributed in the state. The application for registration shall be submitted to the department on

a form furnished by the department and shall be accompanied by a fee of five dollars (\$5.00) per brand or grade, except that those brands or grades sold in packages of five pounds or less shall be registered at a fee of fifteen dollars (\$15.00) each. Upon approval by the department, a copy of the registration shall be furnished to the applicant. All registrations expire on December 31 of each year.

B. A distributor shall not be required to register a brand of fertilizer or soil conditioner that is already registered under the New Mexico Fertilizer Act by another person.

C. A distributor shall not be required to register a fertilizer formulated according to specifications that are furnished by a consumer prior to mixing but shall be required to label the fertilizer as provided in Subsection C of Section 76-11-5 NMSA 1978.

History: 1953 Comp., § 45-13-14, enacted by Laws 1963, ch. 184, § 4; 1975, ch. 181, § 4; 2013, ch. 112, § 3.

Annotations

The 2013 amendment, effective June 14, 2013, expanded the scope of the registration requirement to apply to all fertilizers; and in Subsections A, B and C, deleted "commercial" before "fertilizer.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 3 Am. Jur. 2d Agriculture § 57.

Constitutionality, construction, and application of statutes relating to testing or sampling of agricultural fertilizers, 147 A.L.R. 765.

3 C.J.S. Agriculture § 77.

76-11-5. Labeling.

A. A fertilizer distributed in this state in containers shall have placed on or affixed to the container a label setting forth in clearly legible and conspicuous form the following information:

- (1) the net weight or other measure prescribed as satisfactory to the board;
- (2) brand and grade;
- (3) guaranteed analysis;
- (4) name and address of the registrant; and
- (5) directions for use for fertilizer distributed to a consumer.

B. If a fertilizer is distributed in bulk, a written or printed statement of the information required by Subsection A of this section shall accompany delivery and be supplied to the purchaser at time of delivery.

C. A fertilizer formulated according to specifications that are furnished by a consumer prior to mixing shall be labeled to show the net weight, guaranteed analysis and the name and address of the distributor.

D. Each brand of soil conditioner distributed in the state shall be accompanied by a legible label bearing the following information:

- (1) net weight or other measure prescribed as satisfactory by the board;
- (2) the brand name under which the soil conditioner is distributed;
- (3) an accurate statement of composition and purpose; and
- (4) the name and address of the registrant.

History: 1953 Comp., § 45-13-15, enacted by Laws 1963, ch. 184, § 5; 1975, ch. 181, § 5; 2013, ch. 112, § 4.

Annotations

The 2013 amendment, effective June 14, 2013, expanded the scope of the labeling requirements to apply to all fertilizers; required that labels include directions for use of the fertilizer; in Subsections A, B and C, deleted "commercial" before "fertilizer"; and added Paragraph (5) of Subsection A.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 3 Am. Jur. 2d Agriculture § 57.

3 C.J.S. Agriculture § 78.

76-11-6. Inspection fees.

A. There shall be paid to the department for all fertilizer and soil conditioner distributed in the state an inspection fee set by the board at a rate not to exceed thirty-five cents (\$.35) a ton; provided that sales to manufacturers or exchanges between them are exempted. Fees so collected shall be used for the payment of the costs of inspection, sampling and analysis and other expenses necessary for the administration of the New Mexico Fertilizer Act.

B. On individual packages of fertilizer or soil conditioner containing five pounds or less, there shall be paid in lieu of the annual registration fee of five dollars (\$5.00) per brand and grade of fertilizer and each soil conditioner product and the required inspection fee an annual registration fee and inspection fee of fifteen dollars (\$15.00). Where a person sells fertilizer or soil conditioner in packages of five pounds or less and in packages over five pounds, the annual registration and inspection fee of fifteen dollars (\$15.00) applies only to that portion sold in packages of five pounds or less, and that portion sold in packages over five pounds is subject to the inspection fee.

C. A person who distributes a fertilizer or soil conditioner in the state shall file with the department on forms furnished by the department a quarterly statement for the periods ending March 31, June 30, September 30 and December 31 setting forth the number of net tons of each fertilizer or soil conditioner distributed in the state during the quarter. The report is due on or before the last day of the month following the close of each quarter. The inspection fee shall be paid at the time of filing of the statement. If the tonnage report is not filed and the payment of inspection fee is not made within thirty days after the end of the quarter, a collection fee amounting to ten percent, but not less than ten dollars (\$10.00), of the amount shall be assessed against the registrant, and the amount of fees due constitutes a debt and becomes the basis of a judgment against the registrant.

D. When more than one person is involved in the distribution of fertilizer or soil conditioner, the first person who has the fertilizer or soil conditioner registered and who distributes to a nonregistrant dealer or consumer is responsible for reporting the tonnage and paying the inspection fee unless the report and payment have been previously made by a prior distributor.

History: 1953 Comp., § 45-13-16, enacted by Laws 1963, ch. 184, § 6; 1975, ch. 181, § 6; 2013, ch. 112, § 5.

Annotations

The 2013 amendment, effective June 14, 2013, required that fees be paid for all fertilizers; and in Subsections A, B, C and D, deleted "commercial" before "fertilizer".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 3 Am. Jur. 2d Agriculture § 57.

3 C.J.S. Agriculture § 76.

76-11-7. Inspection; sampling; analysis.

A. The department shall sample, inspect, make analyses of and test fertilizers and soil conditioners distributed within the state at a time and place and to the extent necessary to determine whether the fertilizer or soil conditioner is in compliance with the New Mexico Fertilizer Act. The department may enter upon public or private premises or carriers during the regular business hours in order to have access to fertilizer or soil conditioners and may examine records relating to the distribution of fertilizer and soil conditioners subject to the provisions of the New Mexico Fertilizer Act and the rules adopted pursuant to that act.

B. The methods of analysis and sampling shall be those adopted by the department from sources such as the association of official agricultural chemists. In cases not covered by such methods, or in

cases where methods in which improved applicability has been demonstrated are available, the department may adopt such appropriate methods from other sources.

C. The department, in determining for administrative purposes whether a fertilizer is deficient in plant food, shall be guided solely by the official sample, as defined by Section 76-11-3 NMSA 1978, obtained and analyzed as provided for in Subsection B of this section.

D. Upon request, the department shall furnish to the registrant a portion of any sample found subject to penalty or other legal action. Official samples establishing a penalty for nutrient deficiency shall be retained for a minimum of ninety days from issuance of a deficiency report.

History

History: 1953 Comp., § 45-13-17, enacted by Laws 1963, ch. 184, § 7; 1975, ch. 181, § 7; 2013, ch. 112, § 6.

Annotations

The 2013 amendment, effective June 14, 2013, expanded the scope of the inspection and sampling requirements to apply to all fertilizers; authorized the examination of records relating to distribution of fertilizers and soil conditioners; required the retention of samples; established a penalty for nutrient deficiency; in Subsections A and C, deleted "commercial" before "fertilizer"; in Subsection A, in the first sentence, after "to the extent", deleted "as it may be deemed", and in the second sentence, after "soil conditioners", added "and may examine records relating to the distribution of fertilizer and soil conditioners" and after "Fertilizer Act and the", deleted "regulations pertaining thereto" and added "rules adopted pursuant to the Act"; in Subsection B, added the second sentence; in Subsection C, deleted "of the New Mexico Fertilizer Act"; and in Subsection D, added the second sentence.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 3 Am. Jur. 2d Agriculture § 57.

Constitutionality of statute making certificate of result of chemical analysis evidence, 29 A.L.R. 290.

Constitutionality, construction and application of statutes relating to testing or sampling of agricultural fertilizers, 105 A.L.R. 348, 147 A.L.R. 765.

3 C.J.S. Agriculture § 76.

76-11-8. Plant food deficiency.

A. If the analysis shows that a fertilizer falls short of the guaranteed analysis in any one ingredient, penalty shall be assessed in accordance with the following:

(1) total nitrogen: a penalty of three times the value of the deficiency, if the deficiency is in excess of 0.20 of one percent on goods that are guaranteed two percent; 0.25 of one percent on goods that are guaranteed three percent; 0.35 of one percent on goods that are guaranteed four percent; 0.40 of one percent on goods that are guaranteed five percent up to and including eight percent; 0.50 of one percent on goods guaranteed above eight percent up to and including thirty percent; and 0.75 of one percent on goods guaranteed over thirty percent;

(2) available phosphoric acid or available phosphorus: a penalty of three times the value of the deficiency, if the deficiency exceeds 0.40 of one percent of available phosphate on goods that are guaranteed up to and including ten percent; 0.50 of one percent of available phosphate on goods that are guaranteed above ten percent up to and including twenty-five percent; and 0.75 of one percent of available phosphate on goods guaranteed over twenty-five percent. If guarantees are for available phosphorus, the deficiencies shall be calculated for the appropriate percentage of elemental phosphorus;

(3) soluble potash or soluble potassium: a penalty of three times the value of the deficiency, if the deficiency is in excess of 0.20 of one percent of soluble potash on goods that are guaranteed two percent; 0.30 of one percent of soluble potash on goods that are guaranteed three percent; 0.40 of one percent of soluble potash on goods guaranteed four percent; 0.50 of one percent of soluble potash on goods guaranteed above four percent up to and including eight percent; 0.60 of one percent of soluble potash on goods guaranteed above eight percent up to and including twenty percent; and 1.00 of one percent of soluble potash on goods guaranteed over twenty percent. If guarantees are for soluble potassium, the deficiencies shall be calculated for the appropriate percentage of elemental potassium; and

(4) deficiencies in any other constituent shall be evaluated by the department and penalties therefor prescribed by the board.

B. Nothing contained in this section shall prevent a person from appealing to a court of competent jurisdiction praying for judgment as to the justification of the penalties.

C. All penalties assessed under this section shall be paid to the consumer of the lot of fertilizer represented by the sample analyzed within three months after the date of notice from the department to the registrant. Receipts taken for penalty payments shall be promptly forwarded to the department. If the consumer cannot be found, the amount of the penalty shall be paid to the current school fund. If upon satisfactory evidence a person is shown to have altered the content of a fertilizer shipped to the person by a registrant or to have mixed or commingled fertilizer from two or more suppliers so that the result of either alteration changes the analysis of the fertilizer as originally guaranteed, that

person shall be responsible for obtaining a registration and shall be held liable for all penalty payments and be subject to other provisions of the New Mexico Fertilizer Act, including seizure, condemnation and stop sale; provided that this provision does not apply to a consumer who mixes or otherwise alters fertilizer for use on property owned or leased by the consumer.

History: 1953 Comp., § 45-13-18, enacted by Laws 1963, ch. 184, § 8; 1975, ch. 181, § 8; 2013, ch. 112, § 7.

Annotations

The 2013 amendment, effective June 14, 2013, required that a person who alters the content of fertilizer shipped from a registrant or mixes fertilizers from more than one supplier register and imposes penalties on that person; in Subsections A and C, deleted "commercial" before "fertilizer"; in Paragraph (2) of Subsection A, in the first sentence, in three places, deleted "phosphoric acid (P2O5)" and added "phosphate"; in Paragraph (3) of Subsection A, in the first sentence, in six places, after "potash", deleted "(K2O)"; and in Subsection C, in the second sentence, after "Receipts taken", deleted "therefor and found, and" and added "for penalty payments shall be", in the third sentence, after "shall be paid to the", deleted "common" and added "current", and added the fourth sentence.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 3 Am. Jur. 2d Agriculture §§ 70, 71.

3 C.J.S. Agriculture § 81.

76-11-9. Commercial value.

For the purpose of determining the commercial values to be applied under the provisions of Section 76-11-8 NMSA 1978, the department shall determine and publish annually the values per pound of nitrogen, available phosphate and soluble potash in fertilizers in the state. If guarantees are provided, the values shall be per pound of nitrogen, phosphorus and potassium. The values determined and published shall be used in determining and assessing penalties.

History: 1953 Comp., § 45-13-19, enacted by Laws 1963, ch. 184, § 9; 1975, ch. 181, § 9; 2013, ch. 112, § 8.

Annotations

The 2013 amendment, effective June 14, 2013, required the department to publish the values of phosphate and potash in all fertilizers; and in the first sentence, after "nitrogen, available", deleted "phosphoric acid" and added "phosphate", and after "soluble potash in", deleted "commercial".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 3 Am. Jur. 2d Agriculture §§ 70, 71.

3 C.J.S. Agriculture § 81.

76-11-10. Misbranding.

A person shall not distribute misbranded fertilizer or soil conditioner. A fertilizer or soil conditioner is misbranded if:

- A. its labeling is false or misleading in any particular;
- B. it is distributed under the name of another fertilizer or soil conditioner product;
- C. it is not labeled as required in Section 76-11-5 NMSA 1978 and in accordance with rules prescribed under the New Mexico Fertilizer Act; or
- D. it purports to be or is represented as a fertilizer or soil conditioner or is represented as containing a plant nutrient, fertilizer or soil conditioner unless such plant nutrient, fertilizer or soil conditioner conforms to the definition of identity, if any, prescribed by rule of the board; in adopting such rules, the board shall give due regard to commonly accepted definitions and official fertilizer terms such as those issued by the association of American plant food control officials.

History: 1953 Comp., § 45-13-20, enacted by Laws 1975, ch. 181, § 10; 2013, ch. 112, § 9.

Annotations

Repeals and reenactments. — Laws 1975, ch. 181, § 10, repeals 45-13-20, 1953 Comp., relating to false or misleading statements, and enacts the above section.

The 2013 amendment, effective June 14, 2013, prohibited the distribution of misbranded fertilizer and soil conditioner; in the introductory sentence and in Subsection D, deleted "commercial" before "fertilizer"; and in Subsections C and D, deleted "regulation" and added "rule."

Am. Jur. 2d, A.L.R. and C.J.S. references. — 3 Am. Jur. 2d Agriculture § 57.

3 C.J.S. Agriculture § 78.

76-11-10.1. Adulteration.

No person shall distribute an adulterated fertilizer product. A fertilizer shall be deemed to be adulterated if:

- A. it contains any deleterious or harmful substance in sufficient amount to render it injurious to beneficial plant life, animals, humans, aquatic life, soil or water when applied in accordance with directions for use on the label or if adequate warning statements or directions for use that may be necessary to protect beneficial plant life, animals, humans, aquatic life, soil or water are not shown on the label;

B. its composition falls below or differs from that which it is purported to possess by its labeling; or

C. it contains unwanted crop seed or weed seed.

History: Laws 2013, ch. 112, § 19.

Annotations

Effective dates. — Laws 2013, ch. 112 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

76-11-11. Tonnage reports.

The person transacting, distributing or selling fertilizer or soil conditioner to a nonregistrant shall mail the department a report showing the county of the consignee, the amounts in tons of each grade of fertilizer and each soil conditioner product and the form in which the fertilizer or soil conditioner was distributed such as bags, liquid, bulk or other forms. This information shall be reported by one of the following methods:

A. submitting a summary report approved by the department on or before the fifteenth day of each month covering shipments made during the preceding month; or

B. submitting a copy of the invoice within five business days after shipment. Information furnished to the department under this section shall not be disclosed in such a way as to divulge the operation of any person.

History: 1953 Comp., § 45-13-21, enacted by Laws 1963, ch. 184, § 11; 1971, ch. 203, § 1; 1975, ch. 181, § 11; 2013, ch. 112, § 10.

Annotations

The 2013 amendment, effective June 14, 2013, required tonnage reports for all fertilizers; and in the introductory paragraph, in two places, deleted "commercial" before "fertilizer".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 3 Am. Jur. 2d Agriculture §§ 70, 71.

3 C.J.S. Agriculture § 79.

76-11-12. Publications.

The board shall publish at least annually and in a form it deems proper:

A. information concerning the distribution of fertilizers and soil conditioners; and

B. results of analysis based on official samples of fertilizers and soil conditioners distributed within the state as compared with the analysis guaranteed in the registration and the label.

History: 1953 Comp., § 45-13-22, enacted by Laws 1963, ch. 184, § 12; 1975, ch. 181, § 12; 2013, ch. 112, § 11.

Annotations

The 2013 amendment, effective June 14, 2013, required the board to publish information and results of analysis for all fertilizers; and in Subsections A and B, deleted "commercial" before "fertilizer".

76-11-13. Rules.

For the enforcement of the New Mexico Fertilizer Act, the board may prescribe and, after public hearing following due public notice, adopt the rules relating to the distribution of fertilizers and soil conditioners that it may find necessary to carry into effect the full intent and meaning of the New Mexico Fertilizer Act. Under this section, the board may promulgate rules for the storing, hauling and handling of anhydrous ammonia and other gaseous or liquid fertilizers, and they shall have the same effect as law.

History: 1953 Comp., § 45-13-23, enacted by Laws 1963, ch. 184, § 13; 1967, ch. 69, § 1; 1975, ch. 181, § 13; 2013, ch. 112, § 12.

Annotations

The 2013 amendment, effective June 14, 2013, authorized the board to adopt rules relating to the distribution of all fertilizers; in the title of the section, deleted "regulations" and added "rules"; in the first and the second sentences, deleted "regulations" and added "rules"; and in the first sentence, deleted "commercial" before "fertilizer".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 3 Am. Jur. 2d Agriculture § 57.

3 C.J.S. Agriculture § 76.

76-11-14. Short weight.

If a fertilizer or soil conditioner in the possession of the consumer is found by the department to be short in weight or other measure prescribed by the board, the registrant of the fertilizer or soil conditioner shall, within thirty days after official notice from the department, pay to the consumer a penalty equal to four times the value of the actual shortage.

History: 1953 Comp., § 45-13-24, enacted by Laws 1963, ch. 184, § 14; 1975, ch. 181, § 14; 2013, ch. 112, § 13.

Annotations

The 2013 amendment, effective June 14, 2013, imposed the short weight penalty for all fertilizers; and in two places, deleted "commercial" before "fertilizer".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 3 C.J.S. Agriculture § 80.

76-11-15. Cancellation of registrations.

The department may cancel the registration of any brand of fertilizer or soil conditioner or refuse to register any brand of fertilizer or soil conditioner upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasions or attempted evasions of the provisions of the New Mexico Fertilizer Act or any rules promulgated under that act; provided that no registration shall be revoked or refused until the registrant is given an opportunity to appear for a hearing by the department.

History: 1953 Comp., § 45-13-25, enacted by Laws 1963, ch. 184, § 15; 1975, ch. 181, § 15; 2013, ch. 112, § 14.

Annotations

The 2013 amendment, effective June 14, 2013, authorized the board to cancel the registration for all brands of fertilizers; in two places, deleted "commercial" before the "fertilizer"; and deleted "regulations" and added "rules".

Law reviews. — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1967).

For article, "An Administrative Procedure Act For New Mexico," see 8 Nat. Resources J. 114 (1968).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 3 Am. Jur. 2d Agriculture § 57.

3 C.J.S. Agriculture §§ 75 to 76.

76-11-16. Stop sale orders.

The department may issue and enforce a written or printed "stop sale, use or removal" order to the owner or custodian of any lot of fertilizer or soil conditioner and to be held at a designated place when the department finds the fertilizer or soil conditioner is being offered or exposed for sale in violation of any of the provisions of the New Mexico Fertilizer Act until the law has been complied

with and the fertilizer or soil conditioner is released in writing by the department or the violation has been otherwise legally disposed of by written authority. The department shall release the fertilizer or soil conditioner so withdrawn when the requirements of the provisions of the New Mexico Fertilizer Act have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid.

History: 1953 Comp., § 45-13-26, enacted by Laws 1963, ch. 184, § 16; 1975, ch. 181, § 16; 2013, ch. 112, § 15.

Annotations

The 2013 amendment, effective June 14, 2013, authorized the department to issue stop sale orders for all fertilizers; and in four places, deleted "commercial" before "fertilizer".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 3 Am. Jur. 2d Agriculture §§ 70, 71.
3 C.J.S. Agriculture § 80.

76-11-17. Seizure; condemnation; sale.

A. Any lot of fertilizer or soil conditioner not in compliance with the provisions of the New Mexico Fertilizer Act is subject to seizure on complaint of the department to a court of competent jurisdiction in the area in which the fertilizer or soil conditioner is located.

B. In the event the court finds the fertilizer or soil conditioner to be in violation of the New Mexico Fertilizer Act and orders the condemnation of the fertilizer or soil conditioner, it shall be disposed of in any manner consistent with the quality of the fertilizer or soil conditioner and the laws of the state.

C. In no instance shall the disposition of the fertilizer or soil conditioner be ordered by the court without first giving the claimant an opportunity to apply to the court for release of the fertilizer or soil conditioner or for permission to process or relabel the fertilizer or soil conditioner to bring it into compliance with the New Mexico Fertilizer Act.

History: 1953 Comp., § 45-13-27, enacted by Laws 1963, ch. 184, § 17; 1975, ch. 181, § 17; 2013, ch. 112, § 16.

Annotations

The 2013 amendment, effective June 14, 2013, made all fertilizers subject to seizure and condemnation; in Subsections A, B, and C, deleted "commercial" before "fertilizer".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 3 Am. Jur. 2d Agriculture §§ 70, 71.
3 C.J.S. Agriculture § 80.

76-11-18. Violations.

A. If it appears from the examination of a fertilizer or soil conditioner that any of the provisions of the New Mexico Fertilizer Act or the rules issued pursuant to that act have been violated, the department shall cause notice of the violations to be given to the registrant, distributor or possessor from whom the sample was taken; a person notified shall be given opportunity to be heard under the rules prescribed by the board. If it appears after the hearing, either in the presence or the absence of the person notified, that any of the provisions of the New Mexico Fertilizer Act or rules issued pursuant to that act have been violated, the department may certify the facts to the proper district attorney.

B. A person convicted of violating any provision of the New Mexico Fertilizer Act or the rules issued pursuant to that act is guilty of a misdemeanor.

C. Nothing in the New Mexico Fertilizer Act shall require the department or its representative to report for prosecution or for the institution of seizure proceedings as a result of minor violations of the New Mexico Fertilizer Act when it believes that the public interests will be best served by a suitable notice of warning in writing.

D. The department may apply for and the court may grant a temporary or permanent injunction restraining a person from violating or continuing to violate any of the provisions of the New Mexico Fertilizer Act or any rule promulgated pursuant to that act, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond. History: 1953 Comp., § 45-13-28, enacted by Laws 1963, ch. 184, § 18; 1975, ch. 181, § 18; 2013, ch. 112, § 17.

Annotations

Cross references. — For injunctions, see Rules 1-065 and 1-066 NMRA.

The 2013 amendment, effective June 14, 2013, expanded the application of the act to all fertilizers; in Subsection A, in the first sentence, deleted "commercial" before "fertilizer"; and in Subsections A, B and D, deleted "regulations" and added "rules".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 3 C.J.S. Agriculture § 80.

76-11-19. Exchanges between manufacturers.

Nothing in the New Mexico Fertilizer Act shall be construed to restrict or avoid sales or exchanges of fertilizers or soil conditioners to each other by importers, manufacturers or manipulators that mix those materials for sale or as preventing the free and unrestricted shipments of fertilizer or soil

conditioners to manufacturers or manipulators that have registered their brands as required by the provisions of the New Mexico Fertilizer Act.

History: 1953 Comp., § 45-13-29, enacted by Laws 1963, ch. 184, § 19; 1975, ch. 181, § 19; 2013, ch. 112, § 18.

Annotations

The 2013 amendment, effective June 14, 2013, permitted the exchange of all fertilizers; and, in two places, deleted "commercial" before "fertilizer".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 3 C.J.S. Agriculture § 74.

76-11-20. Cooperation with other agencies.

The department may cooperate with and enter into agreements with other state agencies, other states and agencies of the federal government to carry out the provisions of the New Mexico Fertilizer Act.

History: Laws 2013, ch. 112, § 20.

Annotations

Effective dates. — Laws 2013, ch. 112 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.