

266.291. Definitions. — The following words, terms, and phrases, when used in sections 266.291 to 266.351 have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) **“Director”** means the director of the Missouri agricultural experiment station at Columbia, Missouri;

(2) **“Distributor”** means any person who imports, consigns, manufactures, produces or compounds fertilizer, or offers for sale, sells, barter, or otherwise supplies fertilizers for consumption or use in this state; provided that this term shall not apply to any person who purchases fertilizer from a distributor registered under sections 266.291 to 266.351 and which fertilizer has been once sold in compliance with sections 266.291 to 266.351;

(3) **“Essential plant nutrient”** includes any element recognized as being directly required by any plant to complete its life cycle;

(4) **“Fertilizer”** includes any organic or inorganic material of natural or synthetic origin which is added to soil, soil mixtures, or solution to supplement nutrients and is claimed to contain one or more essential plant nutrients. The term “fertilizer” does not include unmanipulated animal and vegetable manure and agricultural liming materials used to reduce soil acidity;

(5) **“Person”** includes individuals, partnerships, associations, firms, corporations, estates, trusts, receivers, or trustees appointed by any state or federal court;

(6) **“Sale”, “sold”, and “sells”** include exchanges and consignments for sale and means any transfer or barter;

(7) **“Variable rate technology”** means the method of applying two or more fertilizer materials which are blended at variable rates by a spreading vehicle or device during the application process.

(L. 1953 p. 9 § 266.290, A.L. 1985 S.B. 65, A.L. 1997 S.B. 179)

266.301. Permit required to sell fertilizer — application. — It shall be unlawful for any distributor to sell, offer for sale or expose for sale for consumption or use in this state any fertilizer without first securing a permit from the fertilizer control board. Such permit shall expire on the thirtieth day of June of each year. Application for such permit shall be on forms furnished by the fertilizer control board.

(L. 1953 p. 9 § 266.300, A.L. 2016 S.B. 655)

266.311. Sale of misbranded fertilizer prohibited. — It shall be unlawful for any person to sell, offer for sale or expose for sale any fertilizer for use or consumption in this state which is misbranded. Any fertilizer shall be deemed to be misbranded if it fails to carry the printed statement required under section 266.321, or if the chemical composition of such fertilizer does not meet the guarantee expressed on said statement within allowable tolerances fixed by the fertilizer control board, or if the container for such fertilizer or any statement accompanying the same carries any false or misleading statement, or if false or misleading statements concerning its agricultural value are made on any advertising matter accompanying or associated with such fertilizer.

(L. 1953 p. 9 § 266.330, A.L. 2016 S.B. 655)

266.321. Information required on containers. — 1. Each container of fertilizer sold, offered for sale or exposed for sale for consumption or use within this state shall bear thereon or have attached thereto in a conspicuous place a plainly written statement in the English language giving the following information:

(1) The name, brand or trademark under which the fertilizer is sold;

(2) The name and address of the person guaranteeing the fertilizer;

(3) Net weight;

(4) The guaranteed chemical composition by weight of the fertilizer, expressed in the following terms:

(a) Percent of total nitrogen (N),

(b) Percent of available phosphate (P₂O₅),

(c) Percent of soluble potash (K₂O).

Unacidulated mineral phosphatic materials and basic slag shall be guaranteed as to both total and available phosphate, and the degree of fineness as expressed in percentage passing through standard mesh sieves. In the case of bone, tankage, and other natural organic phosphate materials, only total

phosphate must be guaranteed. If any fertilizer is sold, offered for sale, or exposed for sale in bulk, such plainly written statement herein required shall accompany each lot and parcel of such fertilizer.

2. A fertilizer formulated according to specifications furnished by or for a consumer prior to mixing and intended to be applied using variable rate technology shall be accompanied by a plainly written statement which shows the guaranteed analysis and net weight of each material used in the formulation and the name and address of the distributor and the consumer.

(L. 1953 p. 9 § 266.310, A.L. 1985 S.B. 65, A.L. 1997 S.B. 179)

266.331. Sales to be reported — fees. — Every distributor shall, within thirty days after each six-months' period ending June thirtieth and December thirty-first, file with the fertilizer control board on forms supplied by the fertilizer control board a sworn certificate setting forth the information required by rule. At the time of filing said certificate, each distributor of fertilizer, excluding manipulated animal or vegetable manure, shall pay to the director the fee prescribed by rule, which fee shall not exceed one dollar per ton and one dollar ten cents per metric ton; except that, sales to fertilizer manufacturers or exchanges between them are hereby exempted. Each distributor of fertilizer consisting of manipulated animal or vegetable manure shall pay to the director a fee paid for each ton of manure as prescribed by rule, which fee shall not exceed two cents for each percent nitrogen for manure containing less than five percent nitrogen; or which fee shall not exceed four cents for each percent nitrogen for manure containing at least five but less than ten percent nitrogen; or which fee shall not exceed six cents for each percent nitrogen for manure containing ten or more percent nitrogen. In the event that the fertilizer control board has not prescribed a fee under this section, each distributor required to pay a fee under this section shall pay a fee of one and one-half cents for each one hundred pounds of fertilizer sold during the period covered by the certificate filed under this section. The director is hereby authorized to collect fees and hold all fees in a separate fund that shall be utilized by the fertilizer control board to administer sections 266.291 to 266.351.

(L. 1953 p. 9 § 266.320, A.L. 1959 H.B. 236, A.L. 1985 S.B. 65, A.L. 2009 H.B. 734, A.L. 2016 S.B. 655)

266.336. Fertilizer control board created — appointment, qualifications — meetings — duties — authorized agents, duties — terms — expenses, how paid. — 1. There is hereby created a “Fertilizer Control Board”. The fertilizer control board shall be composed of thirteen members. Of the thirteen members, five shall be actively employed as fertilizer manufacturers or distributors and five shall be actively engaged in the business of farming. The nonprofit corporation organized under Missouri law to promote the interests of the fertilizer industry shall nominate persons employed as fertilizer manufacturers or distributors, and Missouri not-for-profit organizations that represent farmers shall nominate persons engaged in the business of farming. Such nominations shall be submitted to the director, and the director shall select members from these nominations. Three at large members shall be selected by the director with the approval of a majority of the other ten members of the fertilizer control board.

2. The fertilizer control board shall:

(1) Meet at least twice each year with meetings conducted according to bylaws;

(2) Review and approve the income received and expenditures made under sections 266.291 to 266.351;

(3) In accordance with this section and chapter 536, adopt, amend, promulgate, or repeal after due notice and hearing rules and regulations to enforce, implement, and effectuate the powers and duties of sections 266.291 to 266.351. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2016, shall be invalid and void;

(4) Revoke or suspend a permit, or refuse to issue a permit, to any distributor who has knowingly violated any of the provisions of sections 266.291 to 266.351, or has failed or neglected to pay the fees or penalties provided for in sections 266.291 to 266.351. The board shall conduct a hearing if requested by the distributor to review all penalties assessed and permit decisions made by the board.

Upon completion of a hearing, the board shall determine if penalty modifications are warranted giving consideration to the history of previous violations, the seriousness of the violation, any overage in any other ingredients, demonstrated good faith of the distributor, and any other factors deemed appropriate. Any penalty modification must comply with section 266.343;

(5) Determine the method and amount of fees to be assessed. In performing its duties under this subdivision, the fertilizer control board shall represent the best interests of the Missouri farmers and Missouri agribusinesses;

(6) Secure access to a laboratory with necessary equipment, and employees as may be necessary, to aid in the administration of sections 266.291 to 266.351;

(7) Pursue nutrient research, educational, and outreach programs to ensure the adoption and implementation of practices that optimize nutrient use efficiency, ensure soil fertility, and address environmental concerns with regard to fertilizer use extending the results of the fertilizer experiments that may be of practical use to the farmers and agribusinesses of this state;

(8) Exercise general supervision of the administration and enforcement of sections 266.291 to 266.351, and all rules and regulations and orders promulgated under such sections;

(9) Institute and prosecute through the attorney general of the state suits to collect any fees due under sections 266.301 to 266.347 which are not promptly paid.

3. Authorized agents of the fertilizer control board are hereby authorized and empowered to:

(1) Only to the extent necessary to determine general compliance, collect samples, inspect, and make analysis of fertilizer sold, offered, or exposed for sale within this state; except that, samples taken of fertilizer sold in bulk shall be taken from the bulk container immediately after mixing on the premises of the mixing facility or, when not possible, to be sampled from the bulk container wherever found. All samples shall have a preliminary analysis completed within five business days of the sample being obtained. If requested, a portion of any sample found subject to penalty or other legal action shall be provided to the distributor liable for the penalty;

(2) Only to the extent necessary to determine general compliance, inspect and audit the books of every distributor who sells, offers for sale, or exposes for sale fertilizer for consumption or use in this state to determine whether or not the provisions of sections 266.291 to 266.351 are being fully complied with;

(3) Require every distributor to file documentation as prescribed by rules promulgated under sections 266.291 to 266.351. Such documents shall not be required more often than six-month intervals, and all such documents shall be returned to the distributor upon request;

(4) Enter upon any public or private premises during regular business hours in order to have access to fertilizer subject to sections 266.291 to 266.351 and the rules and regulations promulgated under sections 266.291 to 266.351, and to take samples and inspect such fertilizer;

(5) Issue and enforce a written or printed "stop-sale, use, or removal" order to the owner or custodian of any fertilizer that is found to be in violation of any of the provisions of sections 266.291 to 266.351, which such order prohibiting the further sale of such fertilizer until sections 266.291 to 266.351 have been complied with or otherwise disposed of;

(6) Publish each year the full and detailed report giving the names and addresses of all distributors registered under sections 266.291 to 266.351, the analytical results of all samples collected, and a statement of all fees and penalties received and expenditures made under sections 266.291 to 266.351;

(7) Establish from information secured from manufacturers and other reliable sources, the market value of fertilizer and fertilizer materials for the purpose of determining the amount of damages due when the official analysis shows an excessive deficiency from the guaranteed analysis;

(8) Retain, employ, provide for, and compensate such consultants, assistants, and other employees on a full- or part-time basis and contract for goods and services as may be necessary to carry out the provisions of sections 266.291 to 266.351, and prescribe the times at which they shall be appointed and their powers and duties.

4. The filling of vacancies, the selection of officers, the conduct of its meetings, and all other matters concerning the fertilizer control board shall be outlined in the bylaws established by the fertilizer control board. All members of the fertilizer control board shall serve for terms of three years and until their successors are duly appointed and qualified; except that, of the members first appointed:

(1) Two members who are actively employed as fertilizer manufacturers or distributors, two members actively engaged in the business of farming, and one at large member shall serve for terms of three years;

(2) Two members who are actively employed as fertilizer manufacturers or distributors, two members actively engaged in the business of farming, and one at large member shall serve for terms of two years; and

(3) The remaining three members shall serve for terms of one year.

5. All members shall be residents of this state. No member may serve more than two consecutive terms on the fertilizer control board, but any member may be reappointed after he has not been a member of the advisory council for a period of at least three years.

6. All members shall be reimbursed for reasonable expenses incurred in the performance of their official duties in accordance with the reimbursement policy set by the fertilizer control board bylaws. All reimbursements paid under this section shall be paid from fees collected under sections 266.291 to 266.351.

(L. 1985 S.B. 65, A.L. 2016 S.B. 655)

266.343. Penalties for deficiency in fertilizer. — If any fertilizer offered for sale in this state shall upon official analysis prove deficient from its guarantee as stated on the bag or other container, penalties shall be assessed as follows:

(1) For a single ingredient fertilizer containing nitrogen or available phosphate or soluble potash:

(a) When the value of this ingredient is found to be deficient from the guarantee to the extent of three percent and not over five percent, the distributor shall be liable for the actual deficiency;

(b) When the deficiency exceeds five percent of the total value, the penalty shall be three times the actual value of the shortage;

(2) For multiple ingredient fertilizers containing two or more of the single ingredients: nitrogen or available phosphate or soluble potash, penalties shall be assessed according to (a), (b) or (c) as herein stated. When a multiple ingredient fertilizer is subject to a penalty under (a), (b) and (c) only the larger penalty shall be assessed.

(a) When the total combined values of the nitrogen or available phosphate or soluble potash is found to be deficient to the extent of three percent and not over five percent, the distributor shall be liable for the actual deficiency in total value.

(b) When the deficiency exceeds five percent of the total value, the penalty shall be three times the actual value of the shortage.

(c) When either the nitrogen, available phosphate or soluble potash value is found deficient from the guarantee to the extent of ten percent up to the maximum of two units (two percent plant food), the distributors shall be liable for the value of such shortages;

(3) Total penalties assessed upon a distributor shall not exceed five thousand dollars per calendar year or the amount of the current value of the plant food deficiency, whichever is greater. A distributor who knowingly violates the provisions of sections 266.291 to 266.351 shall be assessed a penalty of not more than twenty-five thousand dollars for each offense.

(L. 1959 H.B. 236 § 266.345, A.L. 1997 S.B. 179, A.L. 2016 S.B. 655)

266.347. Penalties payable to purchaser or director, collection procedure. — 1. The penalties assessed under section 266.343 shall be paid by the distributor to the purchaser of such fertilizer, and in the event such purchaser cannot be ascertained, then said penalty shall be paid to the director under section 266.331 and shall be used in accordance with the provisions of such section.

2. Where the preliminary analysis shows that a fertilizer has a potential plant food deficiency, the distributor shall be provided preliminary notification within two business days by telephone or email in addition to a notification letter delivered by mail. Once the analysis is certified, a written certification of penalties assessed under section 266.343 shall be mailed to the distributor liable for the penalty.

3. Any decision, finding, order or ruling of the fertilizer control board made pursuant to the provisions of sections 266.291 through 266.351 shall be subject to judicial review in the manner provided by chapter 536.

4. If any distributor shall fail to pay any penalty assessed after the time for judicial review has

expired, or after any judgment or decree approving such assessment has become final, the person entitled to such penalty under the provisions of subsection 1 shall be entitled to bring a civil action to recover the same, and in such civil action such persons shall be entitled to recover from the distributor the amount of the penalty, a reasonable attorney's fee and costs of the action.

(L. 1959 H.B. 236 § 266.350, A.L. 2016 S.B. 655)

266.351. Violation a misdemeanor. — In addition to the civil penalties provided herein, each violation of any provision of sections 266.291 to 266.351 shall be deemed a misdemeanor.

(L. 1953 p. 9 § 266.350, A.L. 1959 H.B. 236 § 266.355)

RULES ADOPTED UNDER THE MISSOURI FERTILIZER LAW

Title 6—DEPARTMENT OF HIGHER EDUCATION Division 255—Fertilizer Control Board

Chapter 1—Organization and Description

6 CSR 255-1.010 General Organization

PURPOSE: The purpose of this rule is to comply with section 536.023, RSMo which requires each agency to adopt, as a rule, a description of its operation and the methods whereby the public may obtain information or make submissions or requests.

(1) The Fertilizer Control Board was created by Senate Bill 655, Second Regular Session, 98th General Assembly, 2016. All fertilizer fees collected by the Director of the Agricultural Experiment Station (a unit of the University of Missouri) shall be utilized by the board. Board membership is determined by the by-laws of the board. The board shall— (A) Determine the method and amount of fees to be assessed; (B) Adopt, amend, promulgate, or repeal rules and regulations to administer, implement, and enforce the Missouri Fertilizer Law; (C) Exercise general supervision of the administration and enforcement of the Missouri Fertilizer Law; (D) Provide systems of registry, field inspections, laboratory analysis, penalty and enforcement procedures, and publications of results necessary to assure the quality of fertilizers offered for sale in this state; (E) Pursue research, educational, and outreach programs; and (F) Retain, employ, provide for, and compensate such consultants, assistants, and other employees on a full- or part-time basis and contract for goods and services as may be necessary.

(2) For information concerning the Fertilizer Control Board and administration of the Missouri Fertilizer Law, the public may visit, or write to, 428 E. Capitol Street, Suite 303, Jefferson City, MO 65102 or call (573) 6366131.

AUTHORITY: sections 266.331 and 266.336, RSMo 2016.* Emergency rule filed May 24, 2017, effective June 3, 2017, expired Nov. 29, 2017. Original rule filed May 24, 2017, effective Nov. 30, 2017.

*Original authority: 266.331, RSMo 1953, amended 1959, 1985, 2009, 2016 and 266.336, RSMo 1985, amended 2016.

Chapter 10—Administration of Missouri Fertilizer Law

6 CSR 255-10.010 Tonnage Fee

PURPOSE: This rule sets forth the tonnage fee to be paid by fertilizer distributors.

(1) The fee provided to be established by this rule under section 266.331, RSMo, shall be sixty cents (60¢) for each ton of fertilizer reported with a minimum reporting fee of fifty dollars (\$50) per reporting period. The last registered distributor selling fertilizer for use in Missouri shall be responsible for payment to the director of the fee provided by this rule.

AUTHORITY: sections 266.331 and 266.336, RSMo 2016.* Emergency rule filed May 24, 2017, effective June 3, 2017, expired Nov. 29, 2017. Original rule filed May 24, 2017, effective Nov. 30, 2017.

*Original authority: 266.331, RSMo 1953, amended 1959, 1985, 2009, 2016 and 266.336, RSMo 1985, amended 2016.

6 CSR 255-10.020 Permit Fee

PURPOSE: This rule sets forth the permit fee to be paid by fertilizer distributors.

(1) New applications for permits as well as renewal applications shall be accompanied by the annual permit fee of one hundred dollars (\$100). The director shall collect fees and hold all fees in a separate fund that shall be utilized by the Fertilizer Control Board.

AUTHORITY: sections 266.331 and 266.336, RSMo 2016.* Emergency rule filed May 24, 2017, effective June 3, 2017, expired Nov. 29, 2017. Original rule filed May 24, 2017, effective Nov. 30, 2017.

*Original authority: 266.331, RSMo 1953, amended 1959, 1985, 2009, 2016 and 266.336, RSMo 1985, amended 2016.