

# **05hr\_CRule\_04-140\_AC-Ag\_pt01b**



Details:

(FORM UPDATED: 07/12/2010)

## **WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS**

### **2005-06**

(session year)

### **Assembly**

(Assembly, Senate or Joint)

### **Committee on ... Agriculture (AC-Ag)**

### **COMMITTEE NOTICES ...**

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**
- Record of Comm. Proceedings ... **RCP**

### **INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL**

- Appointments ... **Appt**
- Clearinghouse Rules ... **CRule**
- Hearing Records ... bills and resolutions
  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)
  - (**sb** = Senate Bill)                              (**sr** = Senate Resolution)
  - (**ajr** = Assembly Joint Resolution)
  - (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

**PROPOSED ORDER OF THE WISCONSIN DEPARTMENT OF  
AGRICULTURE, TRADE AND CONSUMER PROTECTION  
REPEALING AND RECREATING RULES**

The Wisconsin department of agriculture, trade and consumer protection proposes the following order to repeal and recreate ch. ATCP 40, relating to the manufacture and distribution of fertilizer and soil or plant additives.

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**Analysis Prepared by the Department of Agriculture,  
Trade and Consumer Protection**

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) regulates the manufacture and sale of *fertilizer* and *soil or plant additives*, as required by ss. 94.64 and 94.65, Stats. DATCP regulates to protect farmers, consumers and honest competitors against unfair and deceptive sales practices. Regulation is designed to prevent fraudulent sales of worthless products, deceptive ingredient and performance claims, and latent safety hazards.

Under current law, companies must be licensed to manufacture or distribute fertilizer and soil or plant additives in this state. License holders file annual tonnage reports and pay tonnage fees. Product-specific permits are required for low-nutrient mixed fertilizers, and for soil or plant additives. Permit applicants must submit product labels, and must be able to justify label claims.

This rule repeals and recreates DATCP’s current rules related to the manufacture and distribution of fertilizer and soil or plant additives. This rule clarifies standards and procedures related to all of the following:

- Licensing manufacturers and distributors.
- License and tonnage fees (this rule does not increase fees).
- Product labeling and ingredient guarantees.
- Permits for low-nutrient mixed fertilizers and soil or plant additives.
- Substantiation of performance claims.
- Product sampling and analysis.
- Toxic contaminants.
- Enforcement and appeals.

This rule does not regulate the *application* of fertilizer or soil or plant additives. This rule exempts, from regulation, a farmer who sells manure produced on his or her farm. This rule also exempts federally qualified “organic” products from permit requirements (and from certain labeling and substantiation requirements) under this rule.

DATCP developed this rule in consultation with an advisory committee including agricultural producers, product manufacturers and distributors, “organic” industry representatives, and University of Wisconsin experts.

### ***Statutory Authority***

Statutory authority: ss. 93.07(1), 94.64(1)(p), (3m)(a)1. and (9), 94.65(1)(a)2. and (f), (5)(g) and (9), and 100.37(2) and 100.42(2), Stats.

Statutes interpreted: ss. 93.06(7) and (8), 94.64, 94.65, 100.37 and 100.42, Stats.

DATCP regulates the manufacture and sale of *fertilizer* under s. 94.64, Stats. A *fertilizer* is a substance that contains one or more recognized plant nutrients, is used for its plant nutrient content, and is designed for use or claimed to have value in promoting plant growth. The fertilizer law does not apply to “unmanipulated” manure (as defined in this rule), liming materials or other exempt products. Under the fertilizer law:

- DATCP licenses fertilizer manufacturers and distributors, regulates fertilizer labeling and sales practices, issues permits for low-nutrient mixed fertilizers, regulates deceptive labeling claims, and tests products for compliance with ingredient guarantees.
- DATCP collects license, permit and tonnage fees, and allocates fee revenues (according to a statutory formula) for program administration, environmental cleanup and research.
- DATCP may deny, suspend or revoke licenses or permits, impose license or permit conditions, issue holding orders to prevent the sale of adulterated or misbranded fertilizer, and pursue court action against law violators.
- DATCP may adopt rules, under ss. 94.64(1)(p), (3m)(a)1. and (9), Stats., related to this regulatory program. DATCP also has general rulemaking authority under s. 93.07(1), Stats.

DATCP regulates the manufacture and sale of *soil or plant additives* under s. 94.65, Stats. A *soil or plant additive* is a substance (other than a fertilizer) which is intended for application to seeds, soil or plants, and which is designed for use or claimed to have value in promoting or sustaining plant growth, improving crop yield or quality, promoting or sustaining the fertility of soil, or favorably modifying the structure, physical or biological properties of the soil for agronomic or horticultural purposes.

The soil or plant additive law does not apply to “unmanipulated” manure (as defined in this rule), fertilizer, registered pesticides, liming materials or other exempt products. Under the soil or plant additive law:

- DATCP licenses product manufacturers and distributors, regulates product labeling and sales practices, issues permits for individual products, regulates deceptive labeling claims, and tests products for compliance with ingredient guarantees.
- DATCP collects license, permit and tonnage fees, and allocates fees (according to a statutory formula) for program administration, environmental cleanup and research.
- DATCP may deny, suspend or revoke licenses or permits, impose license or permit conditions, issue holding orders to prevent the sale of adulterated or misbranded products, and pursue court action against law violators.
- DATCP may adopt rules, under ss. 94.65(1)(a)2. and (f), (5)(g) and (9), Stats., to implement this regulatory program. DATCP also has general rulemaking authority under s. 93.07(1), Stats.

DATCP also regulates hazardous substances and consumer product safety under ss. 100.37 and 100.42, Stats. Under these statutes, DATCP may regulate products (including fertilizers or soil or plant additives) that may pose latent safety hazards under foreseeable use conditions.

### ***Rule Contents***

#### **License to Manufacture or Distribute**

Under current law, a person must have an annual license to manufacture or distribute fertilizers, and a separate license to manufacture or distribute soil or plant additives. This rule clarifies current licensing requirements and procedures.

This rule exempts certain persons from licensing. For example, this rule exempts a farmer who sells or distributes manure for application to land covered by a nutrient management plan, regardless of whether the manure is “manipulated.” This rule also exempts persons who merely sell ingredients to licensed manufacturers, or distribute the packaged and labeled products of license holders.

A person must apply for a license on a form provided by DATCP. The person must include the required license information and fees, and must identify any low-nutrient mixed fertilizers or soil or plant additives for which product-specific permits are required (see below).

DATCP must normally grant or deny a license application within 45 working days after DATCP receives a complete license application. If DATCP denies a license application, or issues a conditional license, it must give its reasons.

License holders are currently required to pay annual license fees (based on number of business locations). License holders must also file confidential annual tonnage reports with DATCP, and pay tonnage fees based on product tonnage distributed in this state. Fee revenues are allocated according to a statutory formula for program administration, environmental cleanup and research. *This rule does not change current license or tonnage fees, or the allocation of fee revenues.*

### **Product-Specific Permits**

Under current law, a license holder must have a product-specific permit to distribute a low-nutrient mixed fertilizer (in which the sum of the guarantees for primary plant nutrients is less than 24%) or a soil or plant additive. This rule exempts, from these permit requirements, an “organic” product that complies with federal rules and is properly labeled for organic crop production only (see below).

An application for a product-specific permit must include all of the following:

- Proposed product labeling. The product label must include recommended uses and use directions to ensure effectiveness.
- A fee of \$25 for a fertilizer and \$100 for a soil or plant additive (*this rule does not change current fees*).

The applicant must certify all of the following in the application:

- The product is effective and useful for labeled purposes when applied under Wisconsin conditions according to label directions.
- The applicant has reliable information to substantiate product labeling, including content guarantees. The applicant must specify a laboratory method for testing the amount of each active ingredient guaranteed on the product label.
- The applicant has relevant scientific evidence to substantiate product performance claims.

The applicant is not required to submit substantiating information unless DATCP requests that information. DATCP may review a permit application to the extent that it deems appropriate. DATCP may review:

- Product labeling.

- Product efficacy, under Wisconsin conditions, when the product is used according to label directions.
- Product content and performance claims. DATCP may determine whether claims are truthful and properly substantiated. DATCP may also review laboratory methods used to determine product contents.
- Possible health, safety and environmental hazards (and hazard labeling).

DATCP has 30 working days to determine whether an application is complete. If an application is incomplete, DATCP must tell the applicant what is needed to complete the application. If the applicant fails to complete the application within 30 days, DATCP may deny the application.

DATCP must grant or deny an application within 60 working days after the applicant submits a complete application, unless DATCP reasonably finds that a supplementary review is necessary (for example, DATCP might request substantiation of performance claims that appear to be false or exaggerated). DATCP must identify the scope of any supplementary review, the reasons for the supplementary review, and any additional information requested of the applicant. DATCP must complete the supplementary review as soon as reasonably possible, but not more than 120 days after DATCP receives the requested information.

When the supplementary review is complete, DATCP must grant or deny the permit. DATCP may impose conditions on a permit as necessary (for example, DATCP may require the applicant to change false label claims).

DATCP currently processes 350 to 400 permits each year. In some cases, where there are serious concerns related to product efficacy or label claims, DATCP consults with university experts and evaluates available scientific evidence.

### **Fertilizer Labeling**

This rule clarifies current fertilizer labeling requirements. Under this rule, all packaged fertilizer must be clearly and conspicuously labeled with the following information:

- The name and address of the licensed manufacturer or distributor.
- The fertilizer product name.
- The fertilizer “grade.” This is a shorthand statement of primary plant nutrient contents. Primary plant nutrients are nitrogen (N), available phosphate (P<sub>2</sub>O<sub>5</sub>) and soluble potash (K<sub>2</sub>O), commonly designated as N-P-K.

- A “guaranteed analysis” of primary nutrients, secondary nutrients, micro-nutrients and enhancing elements, if any. The guaranteed analysis must be presented in a standard format. Guarantees must be expressed as minimum percentages by weight of the fertilizer. Supplementary information is required in some cases.
- The net weight of the fertilizer contained in the package.
- Any statements or disclaimers required by this rule.

A manufacturer or distributor of bulk (unpackaged) fertilizer must provide similar information related to each bulk fertilizer delivery, on a written label statement that accompanies the delivery. The label statement must also indicate the delivery date, the name and address of the recipient, and the weight of the delivery.

A manufacturer who “custom-mixes” bulk fertilizer according to the purchaser’s specifications may provide the purchaser with a written statement listing the weight and grade of each *ingredient*, rather than the grade and guarantee of the finished product, unless the purchaser contracts for a specified grade of finished product.

Under current rules, a person who sells bulk agricultural fertilizer to a landowner must record (and keep for 2 years) the name and address of the nutrient management planner who prepared the landowner’s nutrient management plan (if any). This rule does not change that requirement.

### **Soil or Plant Additive Labeling**

This rule clarifies current labeling requirements for soil or plant additives. Soil or plant additives must be clearly and conspicuously labeled with the following information:

- The name and address of the licensed manufacturer or distributor.
- The product name.
- The net weight or liquid measure of the package or bulk delivery.
- The purposes for which the soil or plant additive is recommended.
- Complete use directions to ensure that the product is effective and useful under Wisconsin conditions. The use directions must include the recommended application sites, methods, rates and frequencies. If effectiveness depends on use with other products or practices, that must be disclosed.
- A “guaranteed analysis.”
- Supplementary disclosures, if applicable.

The “guaranteed analysis” must list all active and inert ingredients in a standard format. The amount of each active ingredient must be guaranteed as a percentage by weight of the soil or plant additive, unless the active ingredient is a microorganism. If microorganisms are claimed as active ingredients, the label must identify the type of microorganism and must guarantee the number of viable microorganisms (or colony forming units) per milliliter of liquid product or per gram of non-liquid product.

An “organic” product need *not* be labeled with recommended uses or use directions, provided the product complies with federal rules and is designed and labeled solely for organic crop production (see below). Product labeling must comply with other requirements under this rule. A manufacturer or distributor may not make any untrue, deceptive or misleading claims for the product.

### **Implied Warranty**

A person who distributes a low-nutrient mixed fertilizer or soil or plant additive implicitly warrants that the product is effective for all of the purposes recommended in the product labeling, when applied under Wisconsin conditions according to label directions. This warranty does not apply to federally qualified “organic” products that are designed and labeled solely for organic crop production (see below).

### **Combination Products; Labeling**

Combination products (fertilizers or soil or plant additives combined with each other, or with pesticides, seed or liming materials) must be labeled according to this rule and other applicable regulations. For example, fertilizer-pesticide combinations (such as “weed and feed” products) must be labeled according to this rule and applicable pesticide rules.

### **Substantiating Label Claims**

Manufacturers and distributors of fertilizers or soil or plant additives must have:

- Relevant and reliable information to substantiate product labeling, including product content claims.
- Relevant scientific evidence to substantiate performance claims made for low-nutrient mixed fertilizers or soil or plant additives. The evidence must substantiate the performance claims under Wisconsin conditions, when the product is applied according to label directions.

Manufacturers and distributors must have substantiation for label claims *before* they make those claims. DATCP *may* require a manufacturer or labeler to submit substantiating information. This rule spells out standards for scientific substantiation of performance claims (for example, mere “testimonials” do not qualify).

## **“Organic” Products**

This rule exempts federally qualified “organic” products from permit requirements and certain labeling requirements under this rule (see above) if all of the following apply:

- The product complies with federal rules related to products used for organic crop production (and the product label so states).
- The product label states that “This product is intended for use according to an approved organic system plan.”
- The manufacturer or distributor makes no performance claims for the product.

Although federally qualified “organic” products are exempt from some requirements under this rule, they must comply with other requirements. Sellers must be licensed by DATCP, and must label product contents according to this rule. A seller may not make false, deceptive or misleading claims.

## **Product Sampling and Testing**

DATCP may collect and test product samples to determine compliance with content guarantees. For these “official tests,” DATCP will use sampling and test methods prescribed in this rule.

## **Content Deficiencies**

A fertilizer is mislabeled if an “official test” shows any of the following:

- The fertilizer contains less than 90% of the label guarantee for any primary nutrient.
- The actual percentage amount of any primary nutrient falls at least 2 percentage points short of the percentage amount stated on the label.
- The economic value of primary nutrients actually present is less than 98% of the “economic value” of the amounts guaranteed (“economic value” is calculated according to this rule).
- The amount of any secondary nutrient, micronutrient or enhancing element falls short of the label guarantee by an amount specified in this rule.

A soil or plant additive is mislabeled if an “official test” shows that it contains less than 98% of the amount of any active ingredient guaranteed on the label.

## **Toxic Substances**

No product may contain any of the following:

- Toxic concentrations of metals (toxic concentrations are specified in this rule).
- A substance that is toxic or injurious to plants, animals or humans when the fertilizer or soil or plant additive is handled or applied under reasonably foreseeable use conditions, unless the substance and its hazards are identified on the product label.

## **Special Provisions**

This rule includes specific regulations or disclosure requirements related to:

- Fertilizer labeled for foliar application.
- Phosphite.

## **Prohibitions**

Under this rule:

- No person may misrepresent or falsify any license or permit application, or any other information filed with DATCP under this rule.
- No person may do any of the following in connection with the labeling, promotion or distribution of any fertilizer or soil or plant additive:
  - Make any statement that is false, deceptive or misleading.
  - Make any statement that is inconsistent with the product label.
  - Represent that a product contains a plant nutrient or other substance, unless the “guaranteed analysis” includes a guarantee for that substance.
  - Make any statement or warranty that is not substantiated, to the extent required under this chapter, at the time the statement or warranty is made.
  - State or imply that DATCP endorses or warrants the product.
  - Make any performance claim, for a product distributed under permit, that is contrary to the product label contained in the approved permit application.

## **Enforcement**

DATCP may take the following actions against rule violators, as appropriate (per current law):

- Deny, suspend, revoke, or impose conditions on a license or permit (the affected manufacturer or distributor may demand a formal administrative hearing).

- Issue holding orders to prevent the sale or movement of illegal products.
- Seek prosecution in court (seizure actions, injunctions, restitution, civil forfeitures or criminal penalties).

### ***Standards Incorporated by Reference***

Pursuant to s. 227.21, Stats., DATCP has requested permission from the attorney general and the revisor of statutes to incorporate the following standards by reference in this rule:

- Fertilizer terms defined in the Official Publication of the Association of American Plant Food Control Officials, No. 57 (2004).
- Fertilizer sample collection methods specified in the Inspectors Manual of the Association of American Plant Food Control Officials, 6<sup>th</sup> edition (1999).
- Fertilizer test methods specified in the "Official Methods of Analysis of AOAC International," volume I, 17<sup>th</sup> edition as updated by the 2<sup>nd</sup> revision (2003).
- Statement of uniform interpretation and policy 25, related to heavy metal concentrations in fertilizer, contained in the Official Publication of the Association of American Plant Food Control Officials, No 57 (2004).
- Standard chemical names listed in the Merck Index, 12<sup>th</sup> edition (1996).

Copies of the standards will be kept on file with DATCP, the secretary of state and the revisor of statutes. Copies may be obtained from the publishing organizations.

### ***Fiscal Impact***

This rule will have no fiscal impact on DATCP or local units of government. This rule will clarify current regulations, and improve program administration. DATCP does not anticipate any additional costs or staffing needs. A complete fiscal estimate is attached.

### ***Business Impact***

This rule will protect farmers, consumers and honest competitors against unfair and deceptive sales practices. This rule is designed to prevent fraudulent sales of worthless or hazardous products. It is also designed to prevent deceptive labeling claims that may mislead purchasers or give sellers an unfair competitive advantage.

There are approximately 540 persons licensed to manufacture or distribute fertilizers or soil or plant additives in Wisconsin. Up to 30% of these license holders may be small businesses. Affected businesses include farm centers and cooperatives, lawn care businesses, and manufacturers of nonagricultural and specialty fertilizers.

This rule will have few, if any, adverse impacts on business. This rule will not increase fees and, for most honest businesses, will not increase costs. For the most part, this rule merely clarifies current requirements and procedures. However, this rule may require some businesses to modify their labels, or be more diligent in substantiating label claims.

The fertilizer industry serves about 30,000 Wisconsin farmers, many of whom are small businesses. This rule will benefit farmers, by preventing unfair and deceptive sales practices. This rule will facilitate farmer-to-farmer sales of manure, by expanding the current exemption for “unmanipulated” manure and creating an exemption for “manipulated” manure sold for application under a nutrient management plan.

This rule makes special allowance for sellers of federally qualified “organic” fertilizers and soil or plant additives. Federally qualified “organic” products are exempt from permit requirements, and from certain labeling requirements, if they are designed and labeled solely for use in organic crop production (basic licensing and labeling requirements will still apply). Sellers may not make false, deceptive or misleading claims for “organic” products.

Because this rule will not have a significant adverse impact on small business, it is not subject to the delayed small business effective date provision in s. 227.22(2)(e), Stats. A small business analysis (“final regulatory flexibility analysis”) is attached.

Under 2003 Wis. Act 145, DATCP and other agencies must adopt rules spelling out their rule enforcement policy for small businesses. DATCP has not incorporated a small business enforcement policy in this rule, but will propose a separate rule on that subject. DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule.

### ***Environmental Impact***

This rule will have no adverse environmental impact. This rule will clarify the licensing, permitting and labeling requirements for fertilizer and soil or plant additive products. This rule will help prevent environmental and safety hazards associated with some products. A complete environmental assessment is attached.

### ***Federal Regulation***

There is no significant federal regulation of fertilizers or soil or plant additives, although there is a long history of regulation by states (see below).

The United States department of agriculture (USDA) has established rules for “organic” crop production. USDA rules set standards for fertilizers and soil or plant additives used in “organic” crop production. USDA also accredits private organizations that may approve “organic” products. This rule exempts federally qualified “organic” products from permit requirements and certain labeling requirements under this rule (see above).

## *Surrounding State Regulation*

### **General**

States have historically regulated fertilizer and soil or plant additives to prevent fraudulent sales of worthless products, and to protect farmers, consumers and honest competitors against unfair and deceptive practices.

State fertilizer regulators have organized a national Association of American Plant Food Control Officials (AAPFCO). AAPFCO promotes uniform state laws related to fertilizers, soil or plant additives (also known as soil amendments), and liming materials used to correct soil acidity. Most states, including Wisconsin and surrounding states, follow AAPFCO principles and have similar basic laws. However, there is some variation in laws from state to state.

Fertilizer laws tend to be more standardized than soil or plant additive laws. Wisconsin's soil or plant additive law is similar to laws in Minnesota and Iowa. Illinois has little regulation of soil or plant additives. Michigan's law is similar to those in Wisconsin, Minnesota and Iowa, but is narrower in scope (it exempts various biological and hormone products).

### **Basic Fertilizer Regulation**

Wisconsin and adjoining states have similar basic fertilizer laws, based on AAPFCO models. Wisconsin and adjoining states require similar labeling, and use similar terms and definitions (typically drawn from AAPFCO). There are minor variations between states.

### **Manure Sales**

Fertilizer laws vary in their treatment of manure. All states exempt "unmanipulated" manure from the definition of *fertilizer*, but there is uncertainty related to the definition of "unmanipulated" manure and the treatment of bulk manure sales (including, for example, sales of farm-dried or farm-composted manure). Iowa licenses distributors of "bulk dry animal nutrient products" and has mechanisms to make purchasers aware of nutrient contents. Minnesota licenses commercial animal waste technicians and, effective in 2005, will certify private manure applicators. Illinois and Michigan do not address the issue.

This rule clarifies that manure is "unmanipulated" (and thus exempt from rule coverage) if it is modified solely for purposes of on-farm storage, handling, animal husbandry or odor control, rather than commercial sales. This rule *also* exempts "manipulated" manure sold or distributed for use on land covered by a nutrient management plan (this exemption is not available in other states).

## **Nutrient Content**

Wisconsin and all adjoining states, except Minnesota, require minimum percentage guarantees for primary plant nutrients (N-P-K) in mixed fertilizers sold for general agricultural use. The minimum percentage is 24% in Wisconsin, 20% in Illinois and Michigan, and 21% in Iowa (most mixed fertilizers actually have much higher guarantees).

Wisconsin allows sales of low-nutrient mixed fertilizers (below 24%) for specialized agricultural use or nonagricultural use, but only with a permit. Illinois, Michigan and Iowa allow sales only for nonagricultural use (Iowa also allows foliar fertilizers and composts for organic crop production).

The adjoining states require *annual* permits for nonagricultural fertilizer products (Iowa requires a one-time permit). Wisconsin requires one-time (not annual) permits, and only for low-nutrient products. This rule exempts federally listed “organic” products from the Wisconsin permit requirement. Wisconsin and Iowa spell out procedures for granting and suspending permits (other states are less clear).

## **Tonnage Reports and Fees**

Wisconsin and adjoining states require fertilizer tonnage reports and tonnage fees. Wisconsin requires once-per-year reporting, whereas adjoining states require monthly (IL) or semi-annual (MN, IA, MI) reporting. Wisconsin tonnage fees are higher than surrounding states. Wisconsin is somewhat unique in using tonnage fees to fund environmental cleanup and research, as well as program administration. This rule does not change current tonnage fees.

## **Use Directions**

This rule requires use directions on low-nutrient mixed fertilizers (not other fertilizers) and on soil or plant additives. The AAPFCO model requires use directions for *all* packaged fertilizers, and Minnesota requires use directions on all nonagricultural fertilizers. Other states do not require use directions, but prohibit agricultural sales of low-nutrient mixed fertilizers (with limited exceptions in Iowa). Minnesota, Iowa and Michigan, like Wisconsin, regulate soil or plant additives to ensure efficacy, and some states require use directions.

## **Nutrient Guarantees**

Wisconsin’s label format for fertilizer guarantees is consistent with surrounding states. All states use the AAPFCO model format, and identify the elements or compounds that qualify as recognized plant nutrients.



1           **(3)** To prevent certain hazards to persons, property and the environment.

2           **NOTE:** See s. 94.64, Stats. (fertilizer), s. 94.65, Stats. (soil or plant additives),  
3                       s. 100.18, Stats. (fraudulent representations), s. 100.37, Stats. (hazardous  
4                       substances), s. 100.42, Stats. (product safety) and ch. ATCP 139  
5                       (consumer product safety).  
6

7           **ATCP 40.02 Definitions.** In this chapter:

8           **(1)** “Active ingredient” means an element, chemical compound or other substance  
9           that affects the efficacy, usefulness or performance of a fertilizer or soil or plant additive.

10          “Active ingredient” includes all of the following:

11           (a) A plant nutrient.

12           (b) A living microorganism.

13           (c) Any other component declared, or required to be declared under this chapter,  
14           as an active ingredient on the product label.

15           **(2)** “Bulk fertilizer” or “bulk soil or plant additive” means a fertilizer or soil or  
16           plant additive that is distributed in unpackaged form, or in a container that holds more  
17           than 55 gallons of liquid or 100 lbs. of dry material.

18           **(3)** “Combination product” means any of the following:

19           (a) A fertilizer-additive combination.

20           (b) A fertilizer-pesticide combination.

21           (c) A pesticide-additive combination.

22           (d) A fertilizer or soil or plant additive combined with seed.

23           (e) A fertilizer or soil or plant additive combined with liming material.

24           **(4)** “Custom mixed fertilizer” means a fertilizer that a manufacturer mixes for a  
25           retail customer according to individual specifications provided by the retail customer.

1           (5) “Department” means Wisconsin department of agriculture, trade and  
2 consumer protection.

3           (6) “Distribute” means to import, consign, sell, offer for sale, solicit orders for  
4 sale, or supply for sale or use in this state. “Distribute” does not include the sale or  
5 delivery of manure represented only as manure, by the person who owns or operates the  
6 farm that produces the manure, for application on any of the following:

7           (a) Land owned or controlled by that person.

8           (b) Land covered by a nutrient management plan under s. ATCP 50.04(3).

9           (7) “Enhancing element” means aluminum, cobalt, selenium, silicon or sodium.

10          (8) “Fertilizer” means any substance that contains one or more plant nutrients, is  
11 used for its plant nutrient content, and is designed for use or claimed to have value in  
12 promoting plant growth. “Fertilizer” includes agricultural and nonagricultural fertilizers,  
13 fertilizer materials, mixed fertilizers, custom mixed fertilizers, and combination products  
14 containing fertilizer. “Fertilizer” does not include unmanipulated animal or vegetable  
15 manure, marl, liming material, wood ashes, or sewage sludge other than finished sewage  
16 sludge products.

17          (9) “Fertilizer-additive combination” means a fertilizer combined with a soil or  
18 plant additive, or a fertilizer that is represented as having plant growth benefits beyond  
19 those attributable to the fertilizer’s plant nutrient contents. “Fertilizer-additive  
20 combination” includes a fertilizer that is represented to contain enhancing elements other  
21 than cobalt or sodium.

22          (10) “Fertilizer material” means a substance that meets all of the following

1 criteria:

2 (a) It is an element, a chemical compound, or a substance manufactured by  
3 chemical reaction.

4 (b) It contains one or more plant nutrients.

5 (c) It is a fertilizer component or is used to compound fertilizer.

6 (11) "Fertilizer-pesticide combination" means a fertilizer combined with a  
7 pesticide.

8 **NOTE:** For example, "weed and feed" products are fertilizer-pesticide  
9 combinations.

10 (12) "Finished sewage sludge product" means a product, consisting partly or  
11 entirely of sewage sludge, that has been disinfected or treated to facilitate sale or  
12 distribution. "Finished sewage sludge product" does not include sewage sludge  
13 distributed under a pollutant discharge elimination permit issued by the department of  
14 natural resources under s. 283.31 or 283.35, Stats.

15 (13) "Foliar fertilizer" means a fertilizer designed or labeled for direct application  
16 to plant foliage and intended for absorption through the plant's foliage.

17 (14) "Grade" means the percentage guarantees of total nitrogen (N), available  
18 phosphate (P<sub>2</sub>O<sub>5</sub>) and soluble potash (K<sub>2</sub>O), stated in the same terms, order and  
19 percentages as in the guaranteed analysis.

20 (15) "Guaranteed analysis" means the guaranteed percentage content by weight of  
21 each plant nutrient, active ingredient and inert ingredient, stated according to s. ATCP  
22 40.10 or 40.26. For microbiological ingredients in a soil or plant additive, "guaranteed  
23 analysis" means the number of viable microorganisms or colony forming units per unit of  
24

1 dry weight or per unit of liquid volume.

2 (16) “Inert ingredient” means a component that does not affect product efficacy  
3 or performance.

4 (17) “Label” means a written, printed, graphic or pictorial statement that is one of  
5 the following:

6 (a) Part of, or attached to, a package containing fertilizer or a soil or plant  
7 additive.

8 (b) Used to identify, for distribution or storage, a bulk fertilizer or a bulk soil or  
9 plant additive.

10 (18) “Labeling” means labels and other written, graphic or pictorial statements  
11 that accompany a fertilizer or a soil or plant additive, or that promote the sale or  
12 distribution of fertilizer or soil or plant additives. “Labeling” includes advertising and  
13 website materials that promote the sale or distribution of a fertilizer or soil or plant  
14 additive.

15 (19) “Landowner” has the meaning given in s. ATCP 50.01(15).

16 (20) “Manipulated manure” means manure that is ground, pelletized,  
17 mechanically dried, packaged, supplemented with plant nutrients or other substances, or  
18 otherwise treated in a manner designed to facilitate sale or distribution as a fertilizer or  
19 soil or plant additive. “Manipulated manure” does not include unpackaged manure that is  
20 modified solely as an incidental result of normal on-farm practices such as the following:

21 (a) Addition of bedding, sand or water for purposes of animal husbandry or barn  
22 cleaning.

1 (b) Shredding, grinding or agitating for purposes of manure handling or removal  
2 from a manure storage system.

3 (c) Drying incidental to mechanical ventilation of animal confinement areas.

4 **(21)** “Manufacture” means any of the following:

5 (a) To process, granulate, compound, formulate, produce, mix, blend, or alter the  
6 composition of a fertilizer, fertilizer material, or soil or plant additive for distribution.

7 (b) To package or label, for distribution, a fertilizer, fertilizer material, or soil or  
8 plant additive.

9 **(22)** “Micronutrient” means boron, chlorine, copper, iron, manganese,  
10 molybdenum, nickel, or zinc.

11 **(23)** “Mixed fertilizer” means a fertilizer containing any combination or mixture  
12 of fertilizer materials, or a fertilizer material and any other substance. A fertilizer  
13 material containing impurities inherent in the manufacture of that fertilizer material does  
14 not constitute a “mixed fertilizer” unless the distributor claims that the impurities are  
15 plant nutrients, fertilizer materials or soil or plant additives.

16 **(24)** “Nonagricultural fertilizer” means a fertilizer designed, labeled and  
17 distributed for non-farm use, including use for home gardens, lawns, shrubbery, flowers,  
18 golf courses, parks, cemeteries, greenhouses, nurseries, or scientific research or  
19 experimentation.

20 **(25)** “Nutrient management plan” means a plan that complies with s. ATCP  
21 50.04(3).

22 **(26)** “Packaged fertilizer” means a fertilizer that is sold in a closed package or

1 container. “Packaged fertilizer” includes packaged custom mixed fertilizer.

2 (27) “Packaged soil or plant additive” means a soil or plant additive that is sold in  
3 a closed package or container.

4 (28) “Percent” or “percentage” means percentage by weight.

5 (29) “Pesticide” has the meaning given in s. 94.67, Stats. “Pesticide” includes a  
6 fertilizer-pesticide combination and a pesticide-additive combination.

7 (30) “Pesticide-additive combination” means a pesticide combined with a soil or  
8 plant additive.

9 (31) “Plant nutrient” or “nutrient” means any of the following:

10 (a) A primary plant nutrient.

11 (b) A secondary plant nutrient.

12 (c) A micronutrient.

13 (32) “Primary plant nutrient” means nitrogen (N), available phosphate ( $P_2O_5$ ) or  
14 soluble potash ( $K_2O$ ).

15 (33) “Product” means a fertilizer or a soil or plant additive.

16 (34) “Product name” means a name, designation or trademark that identifies a  
17 product.

18 (35) “Ready-to-use liquid fertilizer” means a liquid fertilizer that is designed and  
19 labeled to be applied without prior mixing or dilution by the user.

20 (36) “Represent” means to state or imply by any means, including any oral,  
21 written, graphic or broadcast means.

22 (37) “Scientific evidence” means evidence that is logically derived from

1 controlled experiments designed, conducted and reported according to the scientific  
2 method, using relevant experimental and statistical analytical procedures that are  
3 generally recognized and defensible as valid and appropriate among peers in the relevant  
4 scientific community. Testimonials are not “scientific evidence.”

5 (38) “Secondary plant nutrient” means calcium, magnesium or sulfur.

6 (39) “Sewage” has the meaning given in s. 281.01(13), Stats.

7 (40) “Sewage sludge” means the solid, semi-solid or liquid residue generated  
8 during the treatment of sewage in a treatment works. Sewage sludge includes scum or  
9 solids recovered in primary, secondary or advanced wastewater treatment processes, and  
10 also includes material derived from sewage sludge. Sewage sludge does not include ash  
11 generated during the firing of a sewage sludge incinerator, or grit or screenings generated  
12 during preliminary treatment of domestic sewage in a treatment works.

13 (41) “Soil or plant additive” or “additive” means a substance, intended for  
14 application to seeds, soil or plants, that is designed for use or claimed to have value in  
15 promoting or sustaining plant growth, improving crop yield or quality, promoting or  
16 sustaining the fertility of soil, or favorably modifying the structural, physical or biological  
17 properties of the soil for agronomic or horticultural purposes. “Soil or plant additive”  
18 includes a combination product containing a soil or plant additive, and also includes any  
19 product represented to contain humate, humin, humic acid, fulvic acid or other humic  
20 substances. “Soil or plant additive” does not include any of the following:

21 (a) Fertilizer, other than a fertilizer-additive combination. A fertilizer is not  
22 considered a fertilizer-additive combination merely because its guaranteed analysis

1 includes guarantees under s. ATCP 40.10 for cobalt or sodium.

2 (b) Liming material that is distributed solely for the purposes stated in s.

3 94.66(1)(am), Stats., and is not part of a combination product.

4 (c) Wood ashes, unmanipulated animal manure or unmanipulated vegetable

5 manure. This exemption does not apply to wood ashes or manure distributed under

6 another name or description.

7 (d) A pesticide registered under 7 USC 136 or by the department, other than a

8 pesticide-additive combination.

9 (e) Mulches distributed only as soil covers or weed barriers.

10 (f) Perlite labeled as perlite, or vermiculite labeled as vermiculite, that is not

11 mixed with any other substance.

12 (g) Potting soil or similar mixtures of readily identifiable organic substances,

13 unless labeled with performance claims associated with its use as a soil amendment.

14 (h) Compost, peat moss, tree bark, wood shavings, and other readily identifiable

15 organic substances that are commonly applied to soil, provided that all the following

16 apply:

17 1. The substance is distributed under its common name. Composts must identify

18 the material composted, such as animal manure, yard waste or urban refuse.

19 2. The product labeling does not make performance claims related to plant

20 growth, plant health, crop yield or soil fertility.

21 (i) Seed, labeled according to ch. ATCP 20, that has been treated or coated with a

22 soil or plant additive. This exemption does not apply to any of the following:

- 1           1. Substances sold for later application to seed.
- 2           2. Substances, containing seeds or seed parts, that are sold as soil or plant
- 3 additives.

4           (j) An adjuvant sold only to improve the mixing, handling or application of

5 fertilizers or pesticides. This exemption does not apply if a distributor makes any other

6 benefit claims for the adjuvant, other than a precautionary written statement on the

7 product label that says the adjuvant may increase the contact effects of products applied

8 with it.

9           (k) Sewage sludge other than a finished sewage sludge product.

10          **(42)** “Special agricultural-use fertilizer” means a fertilizer that is any of the

11 following:

12          (a) Designed and labeled to remedy only plant nutrient deficiencies unique to

13 certain agricultural crops or local Wisconsin agricultural areas.

14          (b) Designed and labeled solely for organic crop production.

15          **(43)** “Substantiate” means to demonstrate clearly and convincingly, with

16 satisfactory and sufficient evidence.

17          **(44)** “Unmanipulated animal or vegetable manure” means animal or vegetable

18 manure that is not manipulated.

19          **(45)** “Wisconsin conditions” means plant growing conditions, including

20 conditions related to soil, climate, growing season, plant species, plant varieties and plant

21 growing practices, that are similar or identical to those commonly found in Wisconsin.

22          **(46)** “Working days” means the days designated in s. 230.35(4), Stats.



1           2. The bulk fertilizer bears the label information provided by the licensed  
2 supplier, including the supplier's name, product name, fertilizer grade and guaranteed  
3 analysis.

4           **(3) LICENSE APPLICATION.** A person shall apply for an annual fertilizer license on  
5 a form provided by the department. A license application shall include all of the  
6 following:

7           (a) The applicant's correct legal name, and any trade name under which the  
8 applicant does business.

9           (b) The applicant's social security number if the applicant is an individual. If the  
10 applicant is a partnership, the application shall include the social security number of each  
11 individual partner.

12           **NOTE:** A social security number is required under s. 93.135(1)(cm), Stats.

13           (c) Each address from which the applicant proposes to do business in this state.

14           (d) Each address and mobile unit at which the applicant proposes to manufacture  
15 fertilizer in this state. Before adding a manufacturing location or mobile manufacturing  
16 unit during a license year, a license holder shall obtain an additional license for that  
17 location or unit.

18           (e) The fees and surcharges required under sub. (4).

19           (f) A current list of fertilizer products which the applicant proposes to  
20 manufacture or distribute, and for which the applicant is required to have permits under s.  
21 ATCP 40.12. The application shall include a current label for each of those products.

22           **NOTE:** A license under sub. (1) does not authorize the license holder to  
23 manufacture or distribute a fertilizer product for which a permit is required  
24 under s. ATCP 40.12 unless the license holder also holds that permit.

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(g) Other relevant information required by the department.

(4) LICENSE FEES. A person applying for an annual fertilizer license shall pay the following fees and surcharges:

(a) A \$30 license fee for each business location and each mobile unit at which the applicant proposes to manufacture fertilizer in this state. If the applicant distributes but does not manufacture fertilizer in this state, the applicant shall pay a single license fee of \$30.

(b) A \$20 agricultural chemical cleanup surcharge for each business location and each mobile unit at which the applicant proposes to manufacture fertilizer in this state, other than a business location or mobile unit licensed under s. 94.685 or 94.703, Stats. If the applicant distributes but does not manufacture fertilizer in this state, the applicant shall pay a single agricultural chemical cleanup surcharge of \$20.

(c) A late renewal fee equal to 20% of the combined license fees and surcharges required under pars. (a) and (b), whichever is greater, if the applicant fails to apply for a renewal license before the prior year's license expires.

**NOTE:** The late fee under par. (c) is required by s. 93.21, Stats.

(5) ACTION ON LICENSE APPLICATION. (a) Except as provided in par. (d), the department shall grant or deny a license application under sub. (3) within 45 working days after the department receives a complete application.

(b) The department may place conditions on a license. If the department denies a license or issues a license with conditions, the department shall give the applicant written notice of its reasons.

1 (c) A license holder may not distribute a fertilizer for which a permit is also  
2 required under s. ATCP 40.12, unless the license holder also holds that permit.

3 (d) If a license applicant does not manufacture fertilizer in Wisconsin, but seeks a  
4 license only to distribute a fertilizer for which a permit is required under s. ATCP 40.12,  
5 the department may grant or deny the license application when it grants or denies the  
6 permit application.

7 **ATCP 40.06 Fertilizer; tonnage reports and fees. (1) ANNUAL TONNAGE**  
8 **REPORT AND FEE PAYMENT.** By August 14 of each year, a person required to hold a  
9 fertilizer license under s. ATCP 40.04 shall do all of the following:

10 (a) Report to the department the number of tons of each grade of fertilizer that the  
11 person distributed in this state in the 12 months ending June 30 of that year. The person  
12 shall file the report in writing, on a form prescribed by the department.

13 (b) Pay fees and surcharges under sub. (2). The person shall include the payment  
14 with the tonnage report under par. (a).

15 (2) **FEE AMOUNTS.** Except as provided in sub. (3), a person shall pay the  
16 following fees and surcharges on tonnage reported under sub. (1)(a):

17 (a) A basic fee of 30 cents per ton, or \$25, whichever is greater.

18 (b) A research fee of 10 cents per ton, or \$1, whichever is greater.

19 (c) An additional research fee of 10 cents per ton, or \$1, whichever is greater.

20 (d) A groundwater fee of 10 cents per ton, or \$1, whichever is greater.

21 (e) A weights and measures inspection fee of 2 cents per ton, or \$1, whichever is  
22 greater.

1 (f) An agricultural chemical cleanup surcharge of 86 cents per ton.

2 (3) FEE EXEMPTIONS. The fees under sub. (2) do not apply to fertilizer sold, for  
3 resale or further manufacturing, to a person licensed under s. ATCP 40.04.

4 (4) COMBINATIONS AND FILLERS. A person shall include all of the following in  
5 the tonnage reported under sub. (1)(a):

6 (a) Combination products, if any.

7 (b) All fillers, carriers and fluids included with a fertilizer at the time of  
8 distribution.

9 (5) PENALTIES FOR LATE FILING. A person who fails to comply with sub. (1) by  
10 August 14 shall pay an additional fee of 10 percent of the tonnage fees due, but not less  
11 than \$10.

12 **NOTE:** The department may also suspend a license or permit for nonpayment of  
13 fees.

14  
15 (6) TONNAGE INFORMATION CONFIDENTIAL. The department may not release  
16 information showing the grades or amounts of fertilizer that an individual license holder  
17 has sold, or the fees or surcharges that an individual license holder has paid under this  
18 section. The department may publish aggregate summaries that do not reveal individual  
19 license holder information.

20 **ATCP 40.08 Fertilizer labeling. (1) PACKAGED FERTILIZER.** Packaged  
21 fertilizer shall be clearly and conspicuously labeled with all of the following:

22 (a) The name and address of the licensed manufacturer or distributor.

23 (b) The fertilizer product name.

24 (c) The fertilizer grade if the fertilizer is represented as containing any primary

1 nutrients. The fertilizer grade shall conform to the guaranteed analysis for total nitrogen  
2 (N), available phosphate ( $P_2O_5$ ) and soluble potash ( $K_2O$ ). The grade shall be stated in  
3 whole numbers except that a grade value may be stated in decimal units with a preceding  
4 zero when the guarantee is less than one percent.

5 (d) A guaranteed analysis that complies with s. ATCP 40.10.

6 (e) The net weight of the fertilizer contained in the package.

7 (f) Any statements or disclaimers required under subs. (4) to (6).

8 (g) Any other information required under this chapter.

9 **(2) BULK FERTILIZER.** (a) A person distributing bulk fertilizer to another person  
10 shall give the recipient a written label statement with each delivery. The written label  
11 statement shall clearly and conspicuously disclose all of the following:

12 1. The name and address of the licensed manufacturer or distributor.

13 2. The name and address of the recipient.

14 3. The date of delivery.

15 4. The product name, if any.

16 5. The fertilizer grade, except as provided in par. (b). The fertilizer grade shall be  
17 stated in whole numbers and shall conform to the guaranteed analysis for total nitrogen  
18 (N), available phosphate ( $P_2O_5$ ) and soluble potash ( $K_2O$ ).

19 6. A guaranteed analysis, except as provided in par. (b). The guaranteed analysis  
20 shall comply with s. ATCP 40.10.

21 7. The net weight of each lot or load included in the delivery.

22 8. Other information required under this chapter.

1 (b) A manufacturer who custom mixes bulk fertilizer for a purchaser may provide  
2 the purchaser with a written statement listing the weight and grade of each ingredient  
3 included in the custom mixed fertilizer. A manufacturer of bulk custom mixed fertilizer  
4 may provide this written ingredient statement in place of a written grade statement and  
5 guaranteed analysis unless the purchaser contracts for a specified grade of custom mixed  
6 fertilizer.

7 (c) A person who sells bulk agricultural fertilizer to a landowner shall record the  
8 name and address of the nutrient management planner who prepared the landowner's  
9 nutrient management plan, if the landowner has a nutrient management plan under s.  
10 ATCP 50.04(3). The seller may record this information on the label statement required  
11 under par. (a) if the seller retains a copy of that statement. The seller shall keep the  
12 required information for at least 24 months after the seller files the fertilizer tonnage  
13 report required under s. ATCP 40.06(1).

14 (d) A manufacturer or distributor who stores bulk fertilizer shall attach, to each  
15 storage bin or container, a label that clearly and conspicuously identifies the name or  
16 grade of the fertilizer stored in that bin or container. The grade, if stated, shall be stated  
17 in whole numbers.

18 **NOTE:** See ch. COMM 43 and ch. ATCP 32 related to anhydrous ammonia  
19 systems and bulk storage of fertilizer.  
20

21 (3) COMBINATION PRODUCTS. (a) Fertilizer-additive combinations shall be  
22 labeled according to this section and s. ATCP 40.24. The label format shall be as shown  
23 in *Appendix A*.

24 (b) Fertilizer-pesticide combinations that are not custom mixed shall be labeled

1 according to this section and s. ATCP 29.06.

2 (c) Fertilizer-pesticide combinations that are custom mixed shall be labeled  
3 according to this section. A person who sells or distributes a custom mixed fertilizer-  
4 pesticide combination shall provide all of the following to the person who receives that  
5 product from the seller or distributor:

6 1. The label of each pesticide used to make the product.

7 2. The product's written formula. The formula shall identify all of the pesticides  
8 and other ingredients contained in the product, together with the amount by weight of  
9 each ingredient.

10 (d) Fertilizer-seed combinations shall be labeled according to this section and ch.  
11 ATCP 20.

12 (e) Fertilizer-liming material combinations shall be labeled according to this  
13 section and ch. ATCP 41.

14 (f) Combination products shall be labeled with all the following:

15 1. The purposes for which the product is effective.

16 2. Complete use directions to ensure efficacy, usefulness and safety, under  
17 Wisconsin conditions, for each purpose identified under subd. 1. Use directions shall  
18 include recommended application sites, rates, frequency, timing and methods.

19 (g) A combination product label shall accurately state the contents of the  
20 combination product, not just the components of the combination product.

21 (4) HAZARD CAUTION STATEMENT. (a) A fertilizer label shall include a caution  
22 statement if the fertilizer may be toxic to plants or animals when the fertilizer is handled

1 or applied under reasonably foreseeable use conditions. The label shall warn the user of  
2 the potential hazard, and shall explain how to prevent or minimize the hazard.

3 (b) Labels for fertilizer products, other than fertilizer-pesticide combination  
4 products, shall comply with ch. ATCP 139 and ss. 100.37 and 100.42, Stats., as  
5 applicable.

6 **NOTE:** For example, boron, molybdenum and nickel may be toxic to crops and  
7 crop-consuming animals when applied at excessive rates or at  
8 inappropriate sites. Fertilizers containing these substances may need  
9 caution statements to prevent or minimize toxicity hazards. Chapter  
10 ATCP 139 and ss. 100.37 and 100.42, Stats., regulate consumer product  
11 safety and hazardous substances (pesticides are separately regulated under  
12 ss. 94.67-71, Stats.). See also sub. (5) and s. ATCP 40.18.

13  
14 (5) FOLIAR FERTILIZERS. (a) Except as provided in par. (b), a foliar fertilizer  
15 label shall disclose all of the following:

16 1. The purposes for which the labeler claims that foliar application is effective  
17 and useful.

18 2. Complete use directions to ensure that foliar application will be effective and  
19 useful for each recommended purpose, under Wisconsin conditions. Use directions shall  
20 identify recommended application sites, rates, frequency, timing and methods.

21 (b) Paragraph (a) does not apply if the foliar fertilizer label includes all of the  
22 following that apply:

23 1. The following clear and conspicuous written statement if the fertilizer label  
24 guarantees primary plant nutrients:

25 **“Foliar fertilization with primary nutrients will not provide the quantities of**  
26 **nutrients required for normal plant growth. This product may cause foliar**  
27 **burn if applied in higher than recommended rates or concentrations. Use**  
28 **only as a supplement to a regular fertilization program.”**  
29

1           2. The following clear and conspicuous written statement if the fertilizer label  
2 guarantees secondary nutrients or micronutrients:

3           **“Foliar fertilization can be an effective remedy for diagnosed plant**  
4 **deficiencies of secondary nutrients and micronutrients, but may cause plant**  
5 **damage if applied at more than recommended rates or concentrations. Use**  
6 **of this product is recommended only as a supplement to a regular**  
7 **fertilization program and only on plants with confirmed secondary nutrient**  
8 **or micronutrient deficiencies.”**

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10           **(6) USE DIRECTIONS.** (a) The label of a fertilizer product for which a permit is  
11 required under s. ATCP 40.12(1) shall clearly disclose all of the following:

- 12           1. The purposes for which the fertilizer product is recommended.  
13           2. Use directions to ensure effectiveness, under Wisconsin conditions, for each  
14 recommended purpose. Use directions for non-agricultural fertilizers shall identify  
15 recommended application sites, rates, frequency, timing and methods.

16           (b) The department may require supplementary label disclosures if the  
17 department finds that, in the absence of those disclosures, the label statements under par.  
18 (a) may be deceptive or misleading. A failure to require supplementary disclosures does  
19 not constitute a finding, by the department, that the product is properly labeled.

20           **NOTE:** For example, if a label implies that a product is effective for an entire  
21 season, but the product does not provide enough nutrients for season-long  
22 effectiveness when applied according to label directions, the department  
23 might require supplementary disclosures to remedy the deceptive or  
24 misleading implication. Disclosures might include, for example, a  
25 limitation of efficacy claims or a disclosure of nutrient amounts compared  
26 to annual plant nutrient needs.

27  
28           **(7) SUBSTANTIATING FERTILIZER CLAIMS.** (a) A person who is required to hold a  
29 license under s. ATCP 40.04 shall have all of the following:

- 30           1. Relevant and reliable information to substantiate all fertilizer labeling,

1 including any claim or guarantee related to fertilizer contents. The person shall have  
2 substantiation for each labeling statement before making that statement. Testimonials are  
3 not reliable information under this subdivision.

4       2. Relevant scientific evidence to substantiate every performance claim made for  
5 a fertilizer product for which a permit is required under s. ATCP 40.12(1). Performance  
6 claims include implied warranties, if any, under s. ATCP 40.12(6). The scientific  
7 evidence shall substantiate each performance claim under Wisconsin conditions,  
8 assuming that the product is applied for recommended purposes according to label  
9 directions. The person shall have that scientific evidence before making the performance  
10 claim. Testimonials are not scientific evidence under this subdivision.

11       (b) The department may require a person to submit substantiating information  
12 under par. (a). The department may require the person to submit the information before  
13 or after the department issues a license under s. ATCP 40.04 or a permit under s. ATCP  
14 40.12. The issuance of a license or permit does not create any finding or presumption  
15 that the license or permit holder has complied with par. (a).

16       **(8) TERMS AND DEFINITIONS.** Terms used in fertilizer labeling shall be consistent  
17 with the fertilizer terms and definitions contained in the Official Publication of the  
18 Association of American Plant Food Control Officials, No. 57 (2004).

19       **NOTE:** The Official Publication of the Association of American Plant Food  
20 Control Officials, No. 57 (2004) is on file with the department, the  
21 secretary of state and the revisor of statutes. Copies may be obtained from  
22 the treasurer of the Association of American Plant Food Control Officials,  
23 Inc., North Carolina Department of Agriculture, P.O. Box 33508, Raleigh,  
24 NC 33636-3508, or online at <http://www.aapfco.org>.

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