

JAN 27 1995

Department : Agriculture

STATE OF MINNESOTA  
**Office Memorandum**

Date : January 26, 1995

To : Maryanne Hruby, Director  
LCRAR

From : Carol Milligan   
Agriculture Planning Division

Phone : 296-6906

Subject : **Submittal of Statement of Need and Reasonableness**

As required by Minnesota Statutes, sections 14.131 and 14.23, attached is the Statement of Need and Reasonableness for rules governing fertilizer labeling. The Notice of Intent to Adopt Rules and the rules will be published in the *State Register* on 2/13/95.

Please call me if you have any questions.

Attachment

STATE OF MINNESOTA  
DEPARTMENT OF AGRICULTURE

In the matter of the Proposed	)	
Amendments to the Rules of the	)	STATEMENT OF NEED
Department of Agriculture governing	)	AND
Fertilizer Labels and Labeling	)	REASONABLENESS
Requirements Minnesota Rules parts	)	
(1510.0410 - 1510.0422)	)	

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**INTRODUCTION**

The subject of this rule making is the proposed amendments to rules of the Minnesota Department of Agriculture (MDA) governing fertilizer labels and labeling requirements. The amendments to these rules are proposed for adoption pursuant to Minnesota Statutes, section 18C.121, subdivision 1, which authorizes the MDA to establish rules necessary to implement and enforce Minnesota Statutes Chapter 18C Fertilizers, Soil Amendments, Agricultural Liming Materials and Plant Amendments Law (MS Chapter 18C).

**BACKGROUND**

Currently, there is no federal law, and there are no federal regulations in the fertilizer industry. It is the policy of the State of Minnesota to achieve and maintain uniformity as much as possible with national standards and with other states in the regulation of fertilizer in this state. The Association of American Plant Food Control Officials (AAPFCO) has, since 1946, worked to develop model laws and regulations for adoption at the state level. Past rules have been consistent with the model regulation developed by AAPFCO. The AAPFCO model laws and regulations are amended annually in order to maintain consistency with advances in the fertilizer industry. Current Minnesota Fertilizer rules are based on outdated AAPFCO model laws and rules. In effect, most of the current Minnesota Fertilizer Label and Labeling rules are obsolete and impractical to enforce.

In recent years there has been an increased demand for "organic" and "natural" fertilizers particularly specialty fertilizers for home use. The current rules are inadequate and do not address the many changes in this market. New definitions and rules regarding "organic" and "natural" fertilizers are necessary to provide uniform label and labeling standards.

These proposed amendments to the rule are to provide uniform labeling requirements to protect consumers from inadequately or fraudulently labeled fertilizers sold in Minnesota and to achieve fair competition among sellers of the products. The amendments to the rule are as consistent with AAPFCO's current model regulations as possible and reflect changes in MS Chapter 18C.

### **IMPACT ON SMALL BUSINESS**

The proposed amendments to the rules for labels and labeling of fertilizers will pertain to all fertilizers sold or distributed in Minnesota.

Many registrants of specialty fertilizers, licensed agricultural fertilizer and lawn service firms complying with the proposed rule are small businesses. Representatives of these industries have been consulted in developing these proposed rules and their comments have been taken into consideration. The proposed rules were closely examined in order to minimize any negative impact on small businesses.

The MDA has examined methods for reducing the impact of this rule on small businesses as per Minnesota Statutes, section 14.115, subd. 2. (a) through (e) and can not do so because; (a) less stringent compliance; (b) less stringent schedules for compliance and; (c) consolidation of compliance requirements would jeopardize the purpose of the rule which is to provide consumer protection and promote fairness of trade among licensees and registrants through truth in labeling. (d) The establishment of performance standard is not applicable since design or operational standards are not a requirement of this rule. (e) Exemption of small business from this rule is not practical since statute requires the labeling of all fertilizers and the MDA goal is to standardize the requirements in order to aid the entire industry.

The fertilizer industry is familiar with the labeling requirements herein and has accepted recommendations made by AAPFCO since 1946. Because of this, these proposed amendments to the rules clarify practices already used within the fertilizer industry and would not result in a new economic burden on the industry. Enforcing the current rules would cause a greater economic burden than adoption and enforcement of these proposed amendments to the rules.

### **EXPENDITURE OF PUBLIC MONEY**

The proposed rule will not require the expenditure of public money by local public bodies.

### **NEED FOR REASONABLENESS OF THE PROPOSED AMENDMENTS TO THE RULE**

#### **Section 1510.0410 Authority and Purpose:**

This part of the rule is amended and is necessary and reasonable to clarify the current authority by which the Commissioner proposes the amendments to the rules.

#### **Section 1510.0411 Definitions:**

This part of the rule is amended and is necessary to clarify definitions of terms used in the rule for readers and users of the rule and to delete definitions no longer used. The inclusion of new definitions and deletion of old definitions is reasonable so that MDA may consistently apply the rule to those who must comply with it.

#### **Section 1510.0412 Label Information Requirements:**

Subpart 1. A., B. and C. This subpart of the rule contains amendments to the current rule. These amendments do not change the existing requirements but are necessary to clarify the requirements of those parts that currently are not precisely defined to persons labeling fertilizers in Minnesota and to assure that consumers will

be able to determine a products content prior to purchasing a fertilizer. Subpart 1. A. of the rule is reasonable since the net weight per units treated is a common practice in the lawn care industry and provides the same information as a total net weight statement. Subpart 1. B. (1) and (2) of the rule are reasonable since they are variations that are allowed in Minnesota Statutes, section 18C.215, subdivision 1. (a) (2). Subpart 1. B. (3) and (4) of the rule are reasonable so that consumers are not misled into believing that the product they are purchasing is something other than that listed on the label. Technical amendments have been made to Subpart 1. C. and are reasonable to clarify this part to users and reader of this rule and to provide for uniform guaranteed analysis statements so that consumers can make informed buying decisions. The amendments to these parts are also reasonable for industry because the content, form and order are consistent with AAPFCO standards and are acceptable in most states.

Subpart 1. D. This subpart of the rule is amended and is necessary because Minnesota Statutes, section 18C.215, subdivision 1. (a) (6) specifies that all labels must contain a derivative statement. It is reasonable for the industry because the content, format and order is acceptable in most states and is accepted by the industry.

Subpart 1. F. This subpart of the rule is all new and is necessary because Minnesota Statutes, section 18C.215, subdivision 1. (a) (5) specifies that all labels must contain a directions for use statement. It is reasonable to include all label requirements in order to help users and readers of this rule understand all label requirements.

Subpart 2., 3. A.-E., and 4. These subparts are a recodification of parts of the current rule being repealed with only slight amendments of language. It is necessary to set minimum standards for labeling additional plant food information so that consumers are able to determine a products content and compare the content of more than one fertilizer in a consistent manner. It is reasonable that consumers be assured that they have adequate information in order to make informed buying decisions. It was also reasonable to merge all label information requirements into one section in order to help users and readers of this rule understand all requirements.

Subpart 3. F. This subpart of the rule is all new material and is necessary to exempt certain products from the minimum guarantee requirements for secondary and micro plant nutrients. This exemption is reasonable to allow guarantees below the minimums for products that may otherwise be toxic to plants if used at rates equal to or greater than the minimums when they are used in hydroponic or continuous liquid feed programs. This exception is also reasonable because the standards are consistent with those prepared by AAPFCO.

Subpart 5. and 6. These subparts of the rule are new material and are necessary to provide uniform standards for users of the rule and consumers when more detailed or additional information is placed on a label. It is reasonable because it is consistent with AAPFCO, provides uniform standards that promote fairness of trade and will assist consumers to accurately determine and compare the content of fertilizer products.

Subpart 7 This subpart is necessary since Minnesota Statutes, section 18C.211, subdivision 1. (c) allows other approved substances to be listed and guaranteed on a label. It is reasonable to separate nutrient and non nutrient guarantees to prevent confusion and since the purpose of the guaranteed analysis statement is to provide uniform nutrient guaranteed analysis information.

#### **1510.0413 Exceptions to Label Information Requirements:**

Subpart 1. and 2. The technical amendments are necessary and reasonable to clarify these subparts further and to delete obsolete language.

Subpart 3. This subpart of the rule is all new material. It is necessary because Minnesota Statutes, section 18C.211 Subd. 2. allows this option for the labeling of bulk fertilizers. It is reasonable in order to help users and readers of this rule to understand other options allowed by statute.

#### **1510.0414 Location of Label Information:**

The material in this part of the rule is old material that has been amended. This is a technical amendment and is necessary since as currently written this part of the

rule can be interpreted that the label information may not appear on the back of a container. This requirement is contrary to that required by all other states. It is unreasonable to require the label information to be placed on the back of the label only since that is not the intent and because it is inconsistent with national standards.

**1510.0416 Controlled Release Plant Nutrients:**

Subpart 1. This part of the rule has been amended by the consolidation of subparts 1. and 5. of the current rule. Subpart 5 of the current rule is being repealed. This is necessary to clarify these parts of the rule. This is also necessary to set a minimum standard for products that are claimed to contain controlled release nutrients. It is reasonable since it does not change the current requirement, but clarifies the requirement to users and readers of the rule. It is also reasonable to establish minimum standards for fertilizers promoted to have controlled release properties which are sold at a premium price.

Subpart 2. and 3. These subparts of the rule contain technical amendments to the current rule but do not change the existing rule and is necessary to maintain consistency with advances in the fertilizer industry. It is reasonable to update the language of this section since these are current terms used and excepted by the industry. They are also reasonable because the requirements remain unchanged and are consistent with AAPFCO standards.

Subpart 6. Technical amendments have been made to update this subpart of the rule to reflect modifications made in the numbering of methods in the most recent edition of official analytical methods published by the Association of Official Analytical Chemists (AOAC) International. This is necessary to inform readers and users of the rule of the most recent edition available for use. It is unreasonable to maintain in its current form this part of the rule when a newer edition is available while the older edition may no longer be available.

Subpart 9. A., B. and C. and Subpart 10. A. and B. These subparts of the rule are necessary to provide consumers with more detailed information regarding the guarantee of slow release properties of fertilizers. It is necessary to provide consumers with this information so that they may compare products with slow release properties

that are sold at a premium price. The standards and labeling proposed for these products are reasonable because they are standards and labeling consistent with those prepared by AAPFCO for these fertilizers and will have little impact on the industry since these practices are already accepted and utilized by them. It is also reasonable because the standards provide consumers with minimum information necessary to evaluate slow release properties of fertilizers.

**1510.0417 Fish Emulsions:**

This amendment is necessary and reasonable because proposed amendments to subpart 1510.0413 of this rule make this paragraph obsolete. It is also reasonable since this standard is inconsistent with that of other states and continuing this requirement would place an undue hardship on the industry.

**1510.0419 Labeling and Labels:**

Subpart 2. This is all new material and is necessary to provide consumers who purchase foliar fertilizers with adequate reliable information concerning the benefits of these fertilizers. It is reasonable to prevent misleading expectations and for consumer protection purposes.

Subpart 3. This part of the rule is new material and is necessary to provide consumers with enough information concerning product content prior to making a purchase. It is reasonable that consumers are not misled to believe the product they purchase is different than that listed on the label. This standard is consistent with AAPFCO standards

Subpart 4. This is all new material and is necessary to establish uniform definitions for descriptive terms that are used extensively by industry but have not been officially defined. It is reasonable to assure consumers comparing fertilizers that use these descriptive terms that the terms have a common meaning. It is also reasonable since it is consistent with AAPFCO and accepted by industry.

Subpart 5. and 6. These parts are necessary to prevent misleading and unsubstantiated claims concerning the environmental and safety aspects of a fertilizer.

These parts are reasonable since claims of this type give consumers a false impression that reasonable handling and safety precautions are not necessary and to provide for fairness of trade among all products. It is further reasonable since there is no discrete definition for these terms.

Subpart 7. This is all new material and is necessary to provide uniform product information to consumers. It is reasonable that consumers should have adequate knowledge regarding the content and quality of a product and since it is consistent with AAPFCO. It is further reasonable to maintain uniform standards to maintain fairness of trade among industry.

Subpart 8. This is all new material and is necessary to clarify current labeling requirements and establish new labeling requirements for fertilizers claimed to be organic. It is also necessary to prevent the misconception by many consumers that a product labeled with the term "organic" also means that it is derived from natural sources. It is reasonable to establish standards for fertilizers that claim to contain organic nitrogen since Minnesota Statutes, section 18C.005, subd. 22. specifies the minimum water insoluble nitrogen content of 60% when the term organic is used. It is also reasonable to provide consumers with accurate information so that they are able to make informed decisions when purchasing fertilizers described as organic.

#### **1510.0420 Investigational Allowances:**

Subpart 1. and 2. This is all new material and is necessary to inform persons offering fertilizers for sale of the investigational allowance and index value calculations that are used to deem a fertilizer deficient. It is reasonable to inform persons labeling fertilizer of these requirements so they can prevent mislabeling of their products. It is further reasonable to use this system because it is consistent with AAPFCO standards and is the system used by a number of states for the same purpose.

Subpart 3. This is all new material and is necessary to inform persons offering fertilizer for sale subject to sample analysis by the MDA of the methods of sampling and analysis that will be conducted. It is reasonable because the procedures are those required by Minnesota Statutes, section 18D.201, subdivision 2. (b). and because they are the most accepted and current methods available.

**1510.0422 Enforcement:**

This amendment updates the authority under which enforcement of these rules is granted.

**REPEALER**

**1510.0415 Bulk Fertilizers:**

This part of the rule is being repealed in its entirety. This is necessary since Minnesota Statute, section 18C.211 subd. 2. has been amended and this part is no longer valid. It is not reasonable to retain old rules when new governing statutes exist.

**1510.0416 Controlled Release Plant Nutrients:**

Subpart 4., 5., 7. and 8. These subparts of the rule have been repealed in their entirety. This is necessary since amendments have been proposed to replace these labeling requirements. It is unreasonable to retain them when new rules have been proposed.

**1510.0418 Additional Plant Nutrients Permitted.**

This part of the rule is being repealed in its entirety. This is necessary since it is proposed that this part of the rule be merged with other parts of the rule. It is unreasonable to keep this part since it would cause confusion for readers and users of this rule.

  
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Elton Redalen, Commissioner of Agriculture

1-18-95  
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Date