

Frequently Asked Questions on NDDA Fertilizer Rule-Making

1. **Why is the ND Department of Agriculture going through rule-making?**

As with many regulatory programs, most of the specific requirements are found in the administrative rules, not the law. The fertilizer law provides general requirements for fertilizer registration and business licensing. However, the law leaves it to the Agriculture Commissioner to adopt rules related to tolerances, fertilizer labeling, storage, and other issues.

The primary reason for rule-making is to establish standards for fertilizer minimum thresholds and micronutrient guaranteed analysis to protect persons who buy and use fertilizers. Without these standards, there is no regulatory means to ensure that a fertilizer's composition matches label claims.

Rules are also being proposed to help prevent liquid fertilizer spills/releases that could impact ground and surface water quality, as well as in response to frequent requests from the industry for liquid fertilizer containment standards to improve predictability.

2. **What is being proposed in Chapter 7-15-01?**

The proposed language in Chapter 7-15-01 establishes standards for how much a fertilizer's chemical composition can vary from a guaranteed analysis for that product to be deemed deficient. The proposed rules are based on national standards established by the Association of American Plant Food Control Officials (AAPFCO).

3. **What is being proposed in Chapter 7-15-02?**

The proposed language in Chapter 7-15-02 sets a minimum concentration before micronutrient claims can be made for a fertilizer product. Similar to the language in Chapter 7-15-01, it is meant to protect fertilizer consumers and is based on national standards established by AAPFCO.

4. **What is being proposed in Chapter 7-15-03?**

The proposed language in Chapter 7-15-03 establishes requirements for primary (tanks and vessels) and secondary containment of liquid fertilizer products. The proposed rules are intended to help prevent liquid fertilizer spills/releases and to ensure that they do not contaminate ground or surface water.

The proposed requirements for primary containment would cover liquid fertilizer held in undivided quantities greater than 55 gallons. The proposed requirements for secondary containment would only affect fertilizer distributors and would apply when liquid

fertilizer is held at a distributor in undivided quantities greater than 2,500 gallons for a period longer than 30 days.

5. What is the difference between primary and secondary containment?

Primary containment refers to a liquid fertilizer tank and all of the associated hoses, valves, and other appurtenances attached to a storage container. Secondary containment refers a structure, such as a dike, that is used to contain spills or releases from a storage container.

6. What are the proposed requirements for primary containment of liquid fertilizer?

The proposed rules would essentially require that tanks and appurtenances be compatible with the liquid fertilizer that is being stored. The rules are intended to prevent corrosion or weakening of tanks to the point that tanks will rupture or leak. The requirements would apply to tanks holding fertilizer in undivided quantities greater than 55 gallons.

7. The secondary containment requirements for liquid fertilizer only cover fertilizer distributors. What is a distributor?

A fertilizer distributor is defined in the fertilizer law as any person who imports, consigns, manufactures, produces, compounds, mixes, sells, or offers for sale fertilizer products. These businesses hold a fertilizer distributor's license in North Dakota. The definition would not cover farmers unless they are in the business of manufacturing or selling fertilizer products.

8. What options would the proposed rules allow for secondary fertilizer containment at distributors?

The proposed rules would give distributors three options for secondary containment: A) a dike with earthen, steel, concrete, or solid masonry walls, B) an elephant ring, or C) use of double-walled tanks.

9. Do other states have requirements for liquid fertilizer containment?

Yes, states have primary containment requirements. Secondary containment for liquid fertilizer is required in Iowa, Minnesota, South Dakota, Nebraska, Wisconsin, Kansas, and several other states. Some states even require secondary containment on the farm.

10. Have there been liquid fertilizer spills/releases in North Dakota?

Yes, over 30 liquid fertilizer spills/releases have been reported to the ND Department of Health in recent years. The intent of the proposed rules is to prevent spills/releases in the future and to help ensure that any fertilizer releases at distributors are captured in secondary containment.

11. How soon would the new rules take effect?

The first step is to complete the rule-making process. This involves soliciting and reviewing public comments on the proposed rules and incorporating the recommendations into the final draft. The language in Chapters 7-15-01 and 7-15-02 would go into effect as soon as the final draft of the rules is published. The primary containment requirements in Chapter 7-15-03 would go into effect one year after the rules are published, and requirements for secondary containment would not go into effect for two years. However, those timelines could be adjusted based on public input. We want to make sure that people have ample time to come into compliance with the final rule.

12. How will the rules benefit agriculture or the general public?

We believe that everybody will benefit from the proposed rules. Fertilizer consumers and dealers will benefit from being assured that they will get the nutrients that they paid for. The fertilizer industry will benefit from having a set of reasonable industry standards for allowable product composition variances, micronutrient label claims, and handling liquid fertilizer products. In addition, there is an increased focus on nutrients and water quality, including public concern with agriculture's potential role in water quality impairment. Implementing the proposed requirements for liquid fertilizer containment helps in assuring the public that agriculture and the fertilizer industry are mitigating risk and are committed to product stewardship.

13. Can the public offer input on the proposed rules?

We welcome public input. A copy of the proposed rules is available on the ND Department of Agriculture homepage (www.nd.gov/ndda) or by contacting the Department. People can submit comments by telephone at 701-328-1508 or by email at delzer@nd.gov. Comments can also be mailed to:

North Dakota Department of Agriculture
Attn: Agriculture Commissioner Goehring
600 E Boulevard Ave Dept 602
Bismarck ND 58505-0200

The deadline for submitting comments is February 13, 2014.

A public hearing on the proposed rules has been scheduled for 1:00 pm on February 3, 2014, in the Brynhild Haugland Room of the State Capitol in Bismarck.