



**NORTH DAKOTA
DEPARTMENT OF AGRICULTURE**

STATE CAPITOL
600 E. BOULEVARD AVE. – DEPT. 602
BISMARCK, ND 58505-0020

Fertilizer Registration and Licensing Guidelines

Background

The North Dakota Department of Agriculture is responsible for fertilizer and soil amendment products through the authority provided by Chapter 4.1-404.1-40 of the North Dakota Century Code (N.D.C.C.). The fertilizer law is primarily a consumer protection law, ensuring that labeling of fertilizer products accurately reflects product composition and the concentration of key ingredients. N.D.C.C. 4.1-404.1-40 is also a licensing law, requiring certain businesses to be licensed to distribute and sell fertilizer products, thereby providing a level playing field for businesses and uniform regulatory oversight. Therefore, the Department uses its statutory authority to regulate the registration, distribution, sale, and labeling of fertilizer products.

Registration

General Requirements

North Dakota Century Code (N.D.C.C.) 4.1-404.1-40 requires that all fertilizers, micronutrients, soil amendments, plant amendments, and specialty fertilizers be registered with the North Dakota Department of Agriculture prior to their distribution or offering for sale in the state. The law defines "fertilizer" to mean, *"...any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and other products excluded by the commissioner by rule."* The term "soil amendment" includes substances besides fertilizers, unmanipulated animal or vegetable manures, and pesticides that are intended to improve the characteristics of the soil. Each brand and grade of a product must be registered by the person whose name appears on the label.

Distributors are not required to register any product that is already registered by the guarantor or another person whose name appears on the label providing the label complies with N.D.C.C. Chapter 4.1-40 and its associated administrative rules found in N.D.A.C. Title 7-15. All products that are blends comprised of two or more already registered products to form a new product with a grade and analysis that differs from the parent products labeling will be required to be registered and shall conform to the proper labeling requirements found in N.D.C.C. 4.1-40. For example, if a company blends multiple already registered liquid fertilizers together to create a starter fertilizer product to be marketed or sold by that company, a registration would be required for that resulting product. Or if a company blends two or more already registered dry fertilizer materials and then bags that blended material for individual resale, a registration would be needed for the blended fertilizer.

The Department does not recognize "custom blends" as new products that require a registration. "Custom blends" shall be defined as *"...blends of two or more registered fertilizers that are blended together on site at a retail storage facility per specifications ordered at the request of the customer."*

Registrants are required to inform the Department of all container sizes offered for sale for a given product. Registrations cover a designated two-year period beginning July-first of every even-numbered year and ending June-thirtieth of the following even-numbered year.

Each registration application must include:

1. A completed Application for Registration of Fertilizer (SFN 2842)
2. A copy of the product labeling (PDF)
3. Fertilizer registration fee (\$50 per product)

Please note that the Department no longer accepts hard copy labels. The preferred format for submission of all fertilizer labels is portable document format (PDF) submitted online at <http://www.kellysolutions.com/nd>, via email at ndreg@nd.gov, or on a compact disc. The Department will review the fertilizer registration application for completeness and to ensure that the labeling meets minimum requirements. Once the application is approved, the Department will provide a certificate of registration to the applicant.

Registration renewal applications are due July 31 following the registration expiration date of June 30. Registrants who submit renewal applications after July 31 are subject to a late penalty fee of one hundred dollars per product. Any registration that is not renewed by October first will be immediately cancelled. Any cancelled registration re-applied for within six months of the cancellation will be assessed the one hundred dollar late fee per product.

The fertilizer registration application form can be found at:
<http://www.nd.gov/ndda/files/resource/2842RegofFert.pdf>

Proof of Effectiveness

The Department may require proof of claims made for the product covered by this chapter and may require proof of value to the user when used as directed or recommended. The Department must rely on data from scientifically designed and reported studies conducted under conditions similar to those in this state. The Department may accept or reject other sources or proof as additional evidence. Testimonials are not considered proof and are not accepted.

Guaranteed Analysis

N.D.C.C. 4.1-40-03.4 requires that all fertilizer and specialty fertilizers sold in North Dakota have a guaranteed analysis on the label. The guaranteed analysis must be in the following order and form:

1. Total Nitrogen (N) _____ %
2. Available Phosphate (P₂O₅) _____ %
3. Soluble Potash (K₂O) _____ %

The guarantees for any other nutrient must be expressed in the form of the element. The guaranteed analysis of a soil amendment or plant amendment must be an accurate statement of composition, including the percentages of each ingredient. The guarantee of any micronutrients must comply with the requirements found in N.D.A.C. Title 7-15-02.

Product and Company Name Changes

The Department is contacted frequently by registrants to update our registration records to reflect changes to a product name. This raises questions as to whether these changes require a new product registration. Minor changes to a product name can be handled through updates to the Department's registration records. The Department will use its discretion to determine when changes to the product name are significant enough to justify new registrations.

Companies frequently change ownership and the Department is often asked about the product inventory on hand or in the channels of trade that still has the name of the old company on the label. N.D.C.C. 4.1-40 requires any fertilizer product that is distributed in the state to be

registered in the name of the company or person whose name is on the label. A company may be required to hold a dual registration for both the new company name and the old company name until all the old inventory is out of the distribution channels of trade of North Dakota.

Licensing of Distributors

General Requirements

N.D.C.C. 4.1-40-03.1 prohibits any person from distributing a fertilizer, soil amendment, or plant amendment in North Dakota without first obtaining a fertilizer distributor's license from the Department. A "distributor" is defined in N.D.C.C. 1-20.1 to mean "... any person who imports, consigns, manufactures, produces, compounds, mixes, blends, sells, or offers for sale a fertilizer, soil amendment, or plant amendment product in state." A license must be obtained for each location or mobile mechanical unit used in North Dakota. A distributor's license is not required for those distributors selling only seed inoculants or only non-agricultural specialty fertilizers, such as lawn and garden products, directly to "end users". Wholesale distribution of specialty fertilizer is still subject to the licensing requirements.

Some companies in neighboring states sell to North Dakota customers. Such companies may not be required to have a license provided the sale takes place out of state and the product is also received out of state. If the sale takes place out of state but the distribution of that product takes place in North Dakota, a license would be required as that is active importation by that company.

A distributor's license covers a designated two -year period beginning July first of every even-numbered year and ending June thirtieth of the following even-numbered year. License renewals are due July thirty first. Any license holder that submits a renewal application after July thirty-first will be assessed a late fee of one hundred dollars. Any license holder that fails to renew by October first will have their license immediately cancelled. Canceled license holders that re-apply for a new license within six months of the cancellation of their license will be required to pay the late fee of one hundred dollars. Licenses are not transferable, and a license certificate must be conspicuously posted at each location and must accompany each mobile mechanical unit in the state. The fertilizer distributors' license application can be found at [http://www.nd.gov/ndda/files/resource/CommFertDistLicApp%20\(SFN%2017990\).pdf](http://www.nd.gov/ndda/files/resource/CommFertDistLicApp%20(SFN%2017990).pdf).

Each license application must include a completed Commercial Fertilizer Distributor's License Application (SFN 17990) and a fee of one hundred dollars.

Changes to Company Name or Ownership

The Department is contacted frequently by license holders to update our records to reflect changes to a company name or ownership. This raises questions as to whether these changes require a new distributor's license. Minor changes to the name of the company that are not based on changes in company ownership can be handled through updates to the Department's records. The Department will use its discretion to determine when changes to a company name are significant enough to justify a new license. N.D.C.C. 4.1-40-03.1 states that licenses are not transferable from one business to another. This includes instances when a business changes ownership. When there is a change to the ownership of a company, a new distributor's license is required.

Inspection Fees and Tonnage Reports

Each licensed distributor is required to submit an annual report to the Department listing the net tons of each fertilizer, soil amendment, or plant amendment sold or distributed in the state, for a given calendar year and pay an inspection fee based on those tonnages.

Retail: The inspection fee is twenty cents per ton, with a minimum fee of ten dollars. There is an exemption for fertilizer products sold exclusively in packages of 10 pounds or less. When products are sold in different package sizes, inspection fees must only be paid on those packages

over 10 pounds. Reports will be accepted using [SFN 60495](#) or can be submitted online using the [Kelly Registration System](#).

Inspection Fees for Specialty Fertilizers

All licensed distributors of specialty fertilizers are required to submit an annual tonnage report and pay inspection fees on those specialty fertilizers distributed in package sizes over 10 pounds. When more than one license holder is involved with the distribution of a registered specialty fertilizer, the last licensed entity to handle the product and distributes it to a non-licensed retailer is responsible for reporting the tonnage and paying the inspection fee.

Late Fees for Tonnage Reports and Inspection Fees

Tonnage reports and inspection fees are due January 31 of each year to reflect the amount of product distributed the previous calendar year. Each November, the department sends out tonnage notices and Annual Fertilizer Tonnage Reports (SFN 60495) to licensed distributors who are subject to inspection fees. Reports and fees received after January 31 are subject to a late fee of ten percent of the inspection fee, with a minimum of ten dollars. A separate Annual Fertilizer Tonnage Report is required for each licensed entity.

Inspection, Sampling, and Analysis

Any fertilizer product sold in the state may be subject to inspection, sampling and analysis. N.D.C.C. 4.1-40-08 gives the commissioner authority to *"enter upon real property and access any structure and personal property, during regular business hours, to sample, inspect, make analysis of, and test fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant amendments distributed in this state."*

If a fertilizer product is deemed deficient, we will take action against the guarantor of the product, except in cases where the sample has been taken from a bin that is co-mingled with product from two or more manufacturers. Any retailer that co-mingles fertilizer products from two or more manufacturers in a single bin shall assume all liability for any nutrient deficiencies in the sampled product.

Misbranding

N.D.C.C. 4.1-40-10 states that a fertilizer product may be deemed misbranded if any false or misleading statements concerning the product can be disseminated in any manner or by any means. In making these determinations, the Department will reference the most current version of the official publication of the Association of American Plant Food Control Officials or the soil science department of the North Dakota State University for guidance.

Importing Fertilizers from Canada or Other Countries

N.D.C.C. 4.1-40 requires that any fertilizer, soil amendment, or plant amendment distributed in the state be registered with the Department. The law also requires that distributors of such products, except for specialty fertilizers, hold a fertilizer distributor's license. The term "distributor" as defined in N.D.C.C. 4.1-40 includes persons importing fertilizers, soil amendments, or plant amendments. Therefore, all products being distributed or sold in North Dakota need to be registered, regardless of whether they are purchased at a local retailer, out of state, or in another country. Persons can contact the Department with questions on a product's registration status or search the Department's online registration database at <http://www.kellysolutions.com/nd>. Furthermore, any person importing a fertilizer, soil amendment, or plant amendment from Canada for subsequent re-sale is required to obtain a fertilizer distributor's license. Growers and other persons importing these products for their own use are not required to obtain a distributor's license.

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