



NOTICE OF PUBLIC RULEMAKING HEARING

FOR AMENDMENTS TO

Rules concerning “Fertilizers and Soil Conditioners” 8 CCR 1202-4, Parts 2, 5, 6, and 9.9

Notice is hereby given pursuant to § 24-4-103 C.R.S. that the Department of Agriculture will hold a public rulemaking hearing:

DATE: May 31, 2022
TIME: 1:30 pm
LOCATION: This hearing will be held via [Zoom](#)
CALL INFORMATION: 1-253-215-8782
MEETING ID: 869 8403 2382
PASSCODE: 582213

In order to maintain a proper hearing record you are encouraged to pre-register by completing this [Google form](#). If you do not have access to Google you may send your name and telephone number to Jenifer.Gurr@state.co.us. Pre-registration is not required to participate in the hearing.

The purposes of these proposed rule revisions is to update the references to the current publication of the Association of American Plant Food Control Officials (AAPFCO), amend definitions to clarify and become consistent with the 2022 Official Publication, and to correct minor spelling errors.

The statutory authority for these rules is § 35-12-114 C.R.S.

Any interested party may file written comment with the Commissioner’s office prior to the hearing, or present at the aforementioned hearing written data, views or arguments. Emailed comments should be sent to the hearing officer at Jenifer.Gurr@state.co.us. A copy of the proposed rule is available on the Department of Agriculture’s website at www.colorado.gov/ag or may be obtained by calling 303-869-9002. The proposed rule shall be available for public inspection at the Colorado Department of Agriculture at 305 Interlocken Parkway, Broomfield, Colorado during regular business hours.



Editing comments: Changes to this rule are indicated in ~~strike~~through for removal and underline for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

DEPARTMENT OF AGRICULTURE

Inspection and Consumer Services Division

FERTILIZERS AND SOIL CONDITIONERS

8 CCR 1202-4

Part 1. LEGAL AUTHORITY

1.1 Title 35, Article 12, Colorado Revised Statutes.

Part 2. DEFINITIONS

- 2.1 The Official Publication of the Association of American Plant Food Control Officials, Inc. shall mean the ~~2022~~2017 Official Publication of the Association of American Plant Food Control Officials, Inc. (“AAPFCO”), effective January 1, ~~2022~~2017. This Rule incorporates by reference the AAPFCO standards and guidelines. The Rule does not adopt any later amendments to, or editions of, the AAPFCO standards and guidelines. A copy of the Official Publication of the Association of American Plant Food Control Officials, Inc. shall be kept In the Department of Agriculture, located at 305 Interlocken Parkway, Broomfield Colorado 80021, and shall be open to public inspection, and available for copying, during normal business hours. A copy of the official publication shall also be available online at: <http://www.aapfco.org/>. This, and any other material that is incorporated by reference, may be examined at any state publications depository library.
- 2.2 These Rules incorporate the official terms and official fertilizer definitions as published in the ~~2022~~2017 Official Publication of the Association of American Plant Food Control Officials, Inc. (AAPFCO), , except as the Commissioner of Agriculture (“Commissioner”) designates otherwise in specific cases.
- ~~2.3 “Index value” means the comparison of the sum of the actual values found for total nitrogen, available phosphate and soluble potash over the sum of the guaranteed values for the same, expressed as a percentage.~~
- ~~2.34~~ “Soil conditioner” means a substance or a mixture of substances intended to improve the chemical, ~~or~~ physical, biochemical, or biological characteristics of the soil for the purpose of growing plants. “Soil conditioner” is synonymous with “soil amendment.” It does not include commercial fertilizers, plant amendments, untreated manures, compost and treated manures that are distributed without soil conditioner labeling claims.
- ~~2.45~~ “Potting Soil” and “Planting Mix” means a material suitable for holding and growing plants in containers. It may include small amounts of fertilizer or pesticide.
- ~~2.56~~ “Beneficial Substances or Compounds” means any substance or compound, other than primary, secondary and ~~micromiree~~ plant nutrients, that can be demonstrated by peer reviewed scientific research to be beneficial to one or more species or plants, when applied exogenously.
- ~~2.67~~ “Ingredient Statement” means a collective and contiguous listing of the ingredients of which a soil conditioner or plant amendment is composed listed in descending order by their predominance by volume or weight as appropriate in non-quantitative terms.

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Part 3. REGISTRATION

- 3.1 Each commercial fertilizer, soil conditioner, or plant amendment product must be registered by the person whose name appears on the label before being distributed in this state. All registrations will expire annually on January 31. Applications for renewal of registrations must be submitted each year on or before that date.
- 3.2 Each manufacturing facility that produces commercial fertilizer custom mixes in this state must be registered as required in Section 35-12-104 (7), C.R.S. All registrations will expire annually on January 31. Applications for renewal of registrations must be submitted each year on or before such date.
- 3.3 Each manufacturing facility that produces compost in this state must be registered as required in Section 35-12-104(8) (a), C.R.S. All registrations will expire annually on January 31. Applications for renewal of registrations must be submitted each year on or before such date.
- 3.4 Each manufacturing facility in this state that produces compost must register with the Commissioner except that:
 - 3.4.1 Producers of less than ten (10) tons of compost per calendar year will not be required to register;
 - 3.4.2 Any facilities regulated under Section 14 of Part 1 of the Colorado Department of Public Health and Environment Regulations Pertaining to Solid Waste Sites and Facilities, 6 CCR 1007-2, will not be required to register.
- 3.5 Products whose primary purpose is as potting soil or a planting mix, that may also guarantee fertilizer, are exempt from registration when the sum of all fertilizer guarantees is below 3%.

Part 4. DISTRIBUTION FEES - REPORTS

- 4.1 Each registrant must file an affidavit annually with the Commissioner within forty-five (45) days after January 1 each year that discloses the pounds or tonnage of commercial fertilizer, soil conditioner, or plant amendment sold or distributed in the state during the preceding twelve (12) month period.
 - 4.1.1 In addition, each registrant must report the composition of fertilizer and the county in which fertilizer was distributed by the registrant.
- 4.2 Such affidavit will be accurately reported and submitted on the form (electronic or otherwise) that is furnished by the Commissioner.

Part 5. LABEL REQUIREMENTS

- 5.1 Fertilizer labels

The following information must be displayed on the product label in a readable and conspicuous form:

- 5.1.1 Product name
- 5.1.2 Grade

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5.1.3 Guaranteed Analysis in the following format and order:

Guaranteed Analysis

Total Nitrogen (N) _____%

_____ % Ammoniacal Nitrogen**

_____ % Nitrate Nitrogen**

_____ % Water Insoluble Nitrogen*

_____ % Urea Nitrogen**

_____ % (other recognized and determinable forms of Nitrogen)**

5.1.4 Available Phosphate (P₂O₅) _____%

5.1.5 Soluble Potash (K₂O) _____%

5.1.6 (Other nutrients, elemental basis) _____%***

5.1.7 Directions for use sufficient to ensure the safe and effective use of the product that, at a minimum, specify:

5.1.7.1 The recommended application method(s) and rate(s)

5.1.7.2 Any warning or caution statements necessary to avoid harm to the target plant(s), or other plants or animals

5.1.8 Net weight or mass, net volume of liquid or dry material, or count.

5.1.9 The date of manufacture, processing, packaging or repackaging or a code that permits the determination of the date; or if bulk, the shipment or delivery date.

5.1.10 The name and address of the registrant.

*If claimed or the statement "organic" or "slow acting nitrogen" or similar terms are used on the label

**If claimed.

***As prescribed by Rule 5.2

5.2 Plant Nutrients in addition to Nitrogen, Phosphorous, and Potassium

5.2.1 Other plant nutrients, when mentioned in any form or manner, must be guaranteed only on an available elemental basis. Sources of the elements guaranteed and proof of availability must be provided to the Commissioner upon request. Except guarantees for those water soluble nutrients labeled for ready to use foliar fertilizers, ready to use specialty liquid fertilizers, hydroponic or continuous liquid feed programs and guarantees for potting soils, the minimum percentages that will be accepted for registration are as follows:

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<u>Element</u>	<u>Minimum %</u>
Calcium (Ca)	1.00
Magnesium (Mg)	0.50
Sulfur (S)	1.00
Boron (B)	0.02
Chlorine (Cl)	0.10
Cobalt (Co)	0.0005
Copper (Cu)	0.05
Iron (Fe)	0.10
Manganese (Mn)	0.05
Molybdenum (Mo)	0.0005
Nickel (Ni)	0.0010
Sodium (Na)	0.10
Zinc (Zn)	0.05

Any of the above-listed elements which are guaranteed must appear in the order listed, immediately following guarantees for the primary nutrients, nitrogen, phosphorous and potassium.

5.2.2 Guarantees or claims for the above-listed plant nutrients are the only ones which will be accepted except that fertilizer guarantees may include other nutrients, recognized by AAPFCO. Proposed labels and directions for use of the fertilizer must be furnished with the application for registration upon request.

5.3 Slowly Released Plant Nutrients

5.3.1 No fertilizer label shall bear a statement that connotes or implies that certain plant nutrients contained in a fertilizer are released slowly over a period of time, unless the slow release components are identified and guaranteed at a level of at least 15% of the total guarantee for that nutrient(s).

5.3.2 Types of products recognized by the Commissioner to have slow release properties include, but are not limited to, (1) water insoluble products, such as natural organics, urea form materials, urea-formaldehyde products, isobutylidene diurea, and oxamide; (2) coated slow release products, such as sulfur coated urea and other encapsulated soluble fertilizers; (3) occluded slow release products in which fertilizers or fertilizer materials are mixed with waxes, resins, or other inert materials and formed into particles; and (4) products containing water soluble nitrogen such as ureaform materials, urea-formaldehyde products, methylenediurea (MDU), dimethylenetriurea (DMTU), and dicyanodiamide (DCD).

5.3.3 The term, "water insoluble", "coated slow release", "slow release", "controlled release", "slowly available water soluble" and "occluded slow release" are accepted as descriptive of these products, provided the manufacturer can demonstrate a testing program to substantiate the claim that is acceptable to the Commissioner.

5.3.4 A laboratory procedure, acceptable to the Commissioner for evaluating the release characteristics of the product(s) must be provided by the manufacturer if requested by the Commissioner.

5.4 Soil Conditioner and Plant Amendment Labels

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The following information must be displayed on the product label in a readable and conspicuous form:

- 5.4.1 Net Weight or mass, net volume of liquid or dry material, or count.
 - 5.4.2 Product Name.
 - 5.4.3 Ingredient Statement including the name of each ingredient identified by the name published in the ~~2022~~2017 Official Publication of the Association of American Plant Food Control Officials, Inc., incorporated herein by reference as above in Rule 2.1 (later amendments not included). If no AAPFCO name exists, the common or usual name shall be used.
 - 5.4.4 Purpose of product.
 - 5.4.5 Directions for use sufficient to ensure the safe and effective use of the product that, at a minimum, specify:
 - 5.4.5.1 The recommended application method(s) and rate(s).
 - 5.4.5.2 Any warning or caution statements necessary to avoid harm to the target plants (if applicable), or other plants or animals.
 - 5.4.6 Name and address of the registrant.
 - 5.4.7 The date of manufacture, processing, packaging or repackaging or a code that permits the determination of the date; or if bulk, the shipment or delivery date.
- 5.5 Compost Labels
- 5.5.1 The following information shall be displayed on the product label in a readable and conspicuous form:
 - 5.5.1.1 Product name.
 - 5.5.1.2 Directions for use sufficient to ensure the safe and effective use of the product that at minimum specify:
 - 5.5.1.2.1 The recommended application method(s) and rate(s); and
 - 5.5.1.2.2 Any warning or caution statements necessary to avoid harm to the target plants (if applicable), or other plants or animals.
 - 5.5.1.3 Name and address of the manufacturer or distributor.
 - 5.5.1.4 Net weight or volume.
 - 5.5.2 Compost distributed in bulk must be accompanied by a printed or written statement showing the ph level & soluble salt level in addition to the information required above.
 - 5.5.3 Any product labeled as compost must meet the following minimum standards:

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5.5.3.1 The product must contain carbon and nitrogen in a ratio of less than or equal to 18, as determined by the method specified in Rule 6.2.5.5.3.2 The product must have a SOLVITA Ammonia Test result of greater than or equal to 4, as determined by the method specified in Rule 6.2.

5.5.3.3 The product must have a SOLVITA Carbon Dioxide test result of greater than or equal to 5, as determined by the method specified in Rule 6.2.

5.6 Beneficial Substances or compounds

5.6.1 When claimed or advertised, beneficial substances or compounds must be guaranteed on the product label under the heading 'Contains Beneficial Substances' or 'Contains Beneficial Compounds', or 'Contains non-plant food ingredients'.

5.6.2 The amount of the beneficial substance or compound shall be guaranteed by the weight of the substance or compound as a percentage of the net weight of the product.

5.7 Microbes

5.7.1. When claimed or advertised, a product which contains the presence of microbes must guarantee the microbes as a minimum number of each claimed viable organism at the genus and species level in colony forming units (CFU), spores, or propagules per gram or milliliter, and must have an expiration date and must have storage and handling instructions.

5.8 Any products coming under the fertilizer law must not carry labels to emphasize that dilutions will make so many gallons of fertilizer. Specific claims, such as "contents of this package will make ___ gallons of fertilizer" are prohibited.

Part 6 Analytical and Sampling Methods

6.1 The methods of sampling for fertilizers, soil conditioners and plant amendments shall be those set forth in the 20th Edition of the Official Methods of Analysis of the Association of Analytical Communities (AOAC) International, or such other methods adopted by the Commissioner from authoritative sources that the Commissioner deems reliable including but not limited to Colorado State University. This Rule incorporates by reference the AOAC methods of analysis, 20th edition. This Rule does not adopt any later amendments to, or editions of, the AOAC methods of analysis. A copy of the 20th edition of the AOAC shall be kept on file at the Department of Agriculture, located at 305 Interlocken Parkway, Broomfield Colorado 80021, and shall be open to public inspection, and available for copying, during normal business hours. A copy of the official publication shall also be kept at AOAC International, located at 2275 Research Blvd., suite 300, Rockville Maryland 20850 and is available online at: AOAC.org. This, and any other material that is incorporated by reference, may be examined at any state publications depository library.

6.2 The methods for sampling and analysis of compost shall be those specified in Test Methods for the Examination of Composting and Compost, U. S. Composting Council Research and Education Foundation (CCREF), and United States Department of Agriculture (USDA) (TMECC, 2002) or such other methods adopted by the Commissioner from authoritative sources that the Commissioner deems reliable, including but not limited to Colorado State University. ~~The Test Methods for the Examination of Composting and Compost, U.S. Composting Council Research and Education Foundation (CCREF), and United States Department of Agriculture (USDA) (TMECC, 2002) is herein incorporated by reference. It does not include later amendments or~~

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editions of the publication. A copy of the 2002 edition of the TMECC shall be kept on file at the Department of Agriculture, located at 305 Interlocken Parkway, Broomfield Colorado 80021, and shall be open to public inspection, and available for copying, during normal business hours. A copy of the official publication shall also be kept with the U.S. Composting Council, located at 1053 East Whitaker Mill Road, ~~S~~Suite 115, Raleigh North Carolina 27604, and is available online at: compostingcouncil.org. This, and any other material that is incorporated by reference, may be examined at any state publications depository library.

6.3 Investigational Allowances

6.3.1 A commercial fertilizer shall be deemed deficient if the analysis of any nutrient is below the guarantee percent by an amount exceeding the applicable value specified in the following schedule, or if the index value of the fertilizer is below 98%:

<u>Guarantee percent</u>	<u>Nitrogen percent</u>	<u>Available Phosphate percent</u>	<u>Soluble Potash percent</u>
4 or less	0.49	0.67	0.41
5	0.51	0.67	0.43
6	0.52	0.67	0.47
7	0.54	0.68	0.53
8	0.55	0.68	0.60
9	0.57	0.68	0.65
10	0.58	0.69	0.70
12	0.61	0.69	0.79
14	0.63	0.70	0.87
16	0.67	0.70	0.94
18	0.70	0.71	1.01
20	0.73	0.72	1.08
22	0.75	0.72	1.15
24	0.78	0.73	1.21
26	0.81	0.73	1.27
28	0.83	0.74	1.33
30	0.86	0.75	1.39
32 or more	0.88	0.76	1.44

For guarantees not listed, calculate the appropriate value by Interpolation.

6.3.2 Other elements shall be deemed deficient if any element is below the guarantee by an amount exceeding the applicable value specified in the following schedule:

<u>ELEMENT</u>	<u>GUARANTEE</u>	<u>ALLOWABLE DEFICIENCY</u>
Calcium and Sulfur	1% and up	0.2 units + 5% of guarantee
Magnesium	0.5% and up	0.2 units + 5% of guarantee

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Boron	.02% to 5%	.003 units + 15% of guarantee
	5.0% and up	Potash Schedule 6.3 (a)
Cobalt and Molybdenum	.0005% to 1.0%	.0001 units + 30% of guarantee
	1.0% to 4.0%	.2 units + 10% of guarantee
	4.1% and up	Potash Schedule 6.3 (a)
Chlorine, Iron & Sodium	0.1% to 4.0%	.005 units + 10% of guarantee
	4.1% and up	Potash Schedule 6.3 (a)
Copper, Manganese, & Zinc	.05% to 4.0%	.005 units + 10% of guarantee <u>guarantee</u>
	4.1% and up	Potash Schedule 6.3 (a)

6.3.3 The above tolerances listed in 6.3.1. and 6.3.2 are for single samples run in duplicate.

Part 7.0 ADULTERATION

7.1 Fertilizer

7.1.1 Any product distributed as a fertilizer that contains guaranteed amounts of phosphates and/or micronutrients shall be deemed adulterated if it contains one or more metals in amounts greater than the levels of metals established by the following table:

Metals	ppm per 1% P ₂ O ₅	ppm per 1% Micronutrients ¹
1. Arsenic	13	112
2. Cadmium	10	83
3. Cobalt	136 ²	2228 ²
4. Lead	61	463
5. Mercury	1	6
6. Molybdenum	42	300 ²
7. Nickel	250	1,900
8. Selenium	26	180
9. Zinc	420	2,900 ²

¹ Micro-nutrients include secondary and micro plant nutrients. Secondary plant nutrients are calcium, magnesium, and sulfur. Micro plant nutrients are boron, chlorine, cobalt, copper, iron, manganese, molybdenum, nickel, sodium, and zinc.

² Only applies when not guaranteed.

7.1.2 To use the above table:

7.1.2.1 First:

7.1.2.1.1 For fertilizers with a phosphate guarantee but no micro-nutrient guarantee, multiply the percent guaranteed P₂O₅ in the product by the values in the table to obtain the maximum allowable concentration of each metal. The minimum value for P₂O₅ utilized as a multiplier shall be 6.0.

7.1.2.1.2 For fertilizers with one or more micro-nutrient guarantees but no phosphate guarantee, multiply the sum of the guaranteed percentages of

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all micro-nutrients in the product by the value in the appropriate column in the Table to obtain the maximum allowable concentration (ppm) of each metal. The minimum value for micro-nutrients utilized as a multiplier shall be 1.

7.1.2.1.3 For fertilizers with both a phosphate and a micro-nutrient guarantee, multiply the guaranteed percent P2O5 by the value in the appropriate column. The minimum value for P2O5 utilized as a multiplier shall be 6.0.

7.1.2.2 Then multiply the sum of the guaranteed percentages of the micro-nutrients by the value in the appropriate column. The minimum value for micro-nutrients utilized as a multiplier shall be 1.

7.1.2.3 Utilize the higher of the two resulting values as the maximum allowable concentration (ppm) of each metal.

7.2 Compost

7.2.1 Any product labeled and distributed as compost will be deemed adulterated if it contains one or more metals in amounts greater than the levels of metals established by the following table:

<u>Metals</u>	<u>Maximum level mg/kg dry weight basis</u>
Arsenic	41
Cadmium	39
Copper	1500
Lead	300
Mercury	17
Nickel	420
Selenium	100
Zinc	2800

7.2.2 Any product labeled and distributed as compost will be deemed adulterated if it contains a pathogen concentration greater than either of the following levels:

7.2.2.1 Fecal coliform in an amount greater than 1000 most probable number per gram of total solids (dry weight basis); or

7.2.2.2 Salmonella sp. bacteria in an amount greater than three (3) most probable number per four (4) grams of total solids (dry weight basis).

Part 8. Reserved

Part 9. STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE

The Statements of Basis, Specific Statutory Authority and Purpose for rulemaking activity from 1971 to 1984 are no longer in the Department's files.

9.1 October 9, 2008 – Effective November 30, 2008

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STATUTORY AUTHORITY:

The Commissioner of Agriculture, Colorado Department of Agriculture, adopts these permanent rules pursuant to the provisions and requirements of the Colorado Commercial Fertilizer, Soil Conditioner and Plant Amendment Act, Section 35-12-114, C. R. S.

PURPOSE:

The purpose of these Rules is to comply with the requirements of the Colorado Commercial Fertilizer, Soil Conditioner and Plant Amendment Act to provide specific guidelines for the manufacture, labeling, and distribution of commercial fertilizers, soil conditioners, plant amendments, and compost.

These rules:

- Adopt the most current version of the official terms as published in the 2008 Official Publication of the Association of American Plant Food Control Officials (AAPFCO).
- Establish registration dates for commercial fertilizer, soil conditioner, and plant amendment products.
- Establish registration dates for fertilizer and compost manufacturers.
- Establish the due date for distribution (tonnage) reports.
- Establish minimum standards and labeling requirements for compost.
- Establish directions for use requirements for fertilizer products.
- Remove all references to agricultural liming materials. These references were originally incorporated into these Rules because they are included in the AAPFCO Model Rules and Regulations. Due to the alkaline nature of Colorado soils, lime is not used; therefore, regulations that pertain to these materials are not needed.
- Establish the level of concentration of certain metals that would deem fertilizer to be adulterated.
- Establish the level of concentration of certain metals and pathogens that would deem compost to be adulterated.
- Update sampling and laboratory analysis methods for fertilizers and soil conditioners.
- Establish the laboratory analysis method for iron sucrate.
- Establish sampling and laboratory analysis methods for compost.
- Update rules and remove outdated language.

FACTUAL AND POLICY ISSUES:

The factual and policy issues encountered in the proposal of these permanent Rules are as follows:

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1. On August 6, 2008, The Colorado Commercial Fertilizer, Soil Conditioner, and Plant Amendment Act was amended by House Bill 08-1231.
 - a. HB 08-1231 requires the Department to set minimum standards for compost produced by those facilities that are not regulated by Colorado Department of Public Health and Environment (CDPHE).
 - b. The Department worked with compost industry stakeholders, CDPHE, and Colorado State University to develop compost minimum standards.
2. These new, revised rules are based upon national standard (model) regulations developed by AAPFCO, an organization comprised of state fertilizer regulatory officials. These rules promote standardization of fertilizer industry regulation amongst the states.
3. The Department met with fertilizer industry groups throughout the rule drafting process. The industry groups have indicated support for these Rules.

9.2 January 13, 2009 – Effective March 2, 2009

STATUTORY AUTHORITY:

The Commissioner of Agriculture, Colorado Department of Agriculture, adopts these permanent rules pursuant to the provisions and requirements of the Colorado Commercial Fertilizer, Soil Conditioner and Plant Amendment Act, 35-12-114, C.R.S.

PURPOSE:

The purpose of these rules is to add additional labeling requirements to fertilizer and soil conditioning labeling guidelines.

FACTUAL AND POLICY ISSUES:

The factual and policy issues encountered in the proposal of these permanent rules are as follows:

1. Upon review of the recent amendments to these rules, filed with the Secretary of State on October 16, 2008, the Office of Legislative Legal Services (OLLS) requested additions to Rule 5.1 to conform labeling requirements for fertilizer products with those in section 35-12-105(1), C.R.S.
2. In addition to the changes requested by OLLS, the Department will add similar language to Rule 5.4 to conform labeling requirements for soil conditioners and plant amendments to those in section 35-12-105(3), C.R.S.

9.3 November 13, 2012 – Effective December 30, 2012

STATUTORY AUTHORITY:

The Commissioner of Agriculture is authorized to adopt these permanent rules pursuant to section 35-12-114, C.R.S., of the Colorado Commercial Fertilizer, Soil Conditioner and Plant Amendment Act.

PURPOSE:

The specific purposes of these rule changes are as follows:

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1. Amend rule 2.1 to adopt the most current version of the official terms as published in the Official Publication of the Association of American Plant Food Control Officials (AAPFCO) and update the rule language to reflect the most current version of the statutory requirements for incorporating such information by reference.
2. Add a new rule 2.2 to define “index value.”
3. Add a new rule 2.3 to define “soil conditioner.”
4. Amend rule 3.5 to remove restrictions on the use of iron sucrate as a source.
5. Amend rule 5.2 (a) to change the requirements for minimum nutrient guarantees for specialty fertilizers.
6. Amend rule 5.2 (b) to remove restrictions on testing requirements for minor nutrients and allow the use of iron oxide and similar sources.
7. Amend rule 6.1 to separate sampling and analytical methods for clarity and update the rule language to reflect the most current version of the statutory requirements for incorporating such information by reference.
8. Add a new rule 6.2 to:
 - a. Provide more flexibility on fertilizer test methods and nutrient sources, and
 - b. Require internet posting of all official test methods.
9. Amend existing rule 6.2 to:
 - A. Provide more flexibility on compost test methods, and
 - B. Require internet posting of all official test methods.
10. Delete existing rule 6.3(c) to remove the reference to section 35-14-110 C.R.S., which no longer exists.
11. Amend rules 5.4(c), 6.3(a) and 6.3(b) for accuracy.

FACTUAL AND POLICY ISSUES:

The Department has been in contact with industry groups and interested parties throughout the rule drafting process. All have indicated support for the proposed changes.

The factual and policy issues encountered in the proposal of these permanent rules are as follows:

1. Rule 2.1 of the prior revision incorporated terms listed in the 2008 Official Publication of AAPFCO, which is updated annually. This revision updates the terms to the current 2012 publication. AAPFCO is an organization comprised of state fertilizer regulatory officials that develops national models to promote standardization of fertilizer industry regulation amongst the states.

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2. "Index value" is used in existing rule 6.3(a) to determine whether a fertilizer is deficient. It was not previously defined, except indirectly in 6.3 (c), which is being deleted.
3. A definition of "soil conditioner" is required by section 35-12-103(29), C.R.S., of the Commercial Fertilizer, Soil Conditioner, and Plant Amendment Act. "Soil amendment" is a generally used, but less descriptive term synonymous with "soil conditioner."
4. A simplified regulatory approach towards fertilizer nutrient sources and analytical testing is adopted with these revisions. The use of iron sucrate is no longer restricted to specialty fertilizers.
5. Removing the requirements for minimum nutrient guarantees for specialty fertilizers changes the rule to reflect the national models developed by AAPFCO.
6. This revision simplifies the regulatory approach for minor nutrients. Regulation will now reflect AAPFCO national models.
7. Amended rule 6.1 clarifies the regulatory approach for sampling.
8. New rule 6.2 simplifies the regulatory approach towards fertilizer analytical testing and nutrient sources.
 - a. Rule 6.1 of the prior revision required specific test methods for minor nutrients and nutrient sources such as iron oxide and resulted in restrictions on the use of such sources. This revision removes the restrictions and updates test and nutrient source requirements.
 - b. Transparency in government is promoted with the requirement to post all current test methods on the internet.
9. Amended rule 6.3 simplifies the regulatory approach towards compost sampling and analytical testing.
 - a. This change allows the Department to respond more quickly to technological changes in analytical test methods.
 - b. Transparency in government is promoted with the new requirement to post all test methods on the internet.
10. Deleting previous revision rule 6.3(c):
 - a. Removes a reference to section 35-12-110, C.R.S., which no longer exists.
 - b. Allows for a clear definition of "Index value" which is used in rule 6.3(a) to determine whether a fertilizer is deficient. Index value was not previously defined, except indirectly in 6.3 (c), which is being deleted.
11. Minor textual errors were identified which are addressed in this rule revision.

9.4 April 9, 2013 – Effective January 1, 2014

STATUTORY AUTHORITY:

Editing comments: Changes to this rule are indicated in ~~strike~~ for removal and underline for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

The Commissioner's authority for the adoption of these permanent rule amendments is set forth in § 35-12-104(1), § 35-12-104(7) and § 35-1-107(5)(a), C.R.S.

PURPOSE:

The purpose of these permanent rule amendments is to amend Part 3.1 to change the expiration date for a fertilizer registration and amend Part 3.2 to change the expiration date for a fertilizer manufacturing facility registration from June 30 to December 31.

FACTUAL AND POLICY BASIS:

The factual and policy issues pertaining to the adoption of these permanent rule amendments are as follows:

1. This change is necessary to allow the Department to consolidate licensing functions to one time per year for all licenses issued by the ICS Division.
2. The Department of Agriculture is moving its licensing functions from a paper based system to an online system. To accommodate licensee's who hold multiple licenses with the Department of Agriculture, we are establishing a common licensing date so a licensee can obtain all their licenses in one transaction.

9.5 Adopted November 9, 2016- Effective December 30, 2016

STATUTORY AUTHORITY:

The Commissioner's authority for the adoption of these permanent rule amendments is set forth in § 35-12-104(1), § 35-12-104(7) and § 35-12-106(4), C.R.S.

PURPOSE:

The purpose of these permanent rule amendments is to:

1. Amend Part 4 to clarify the reporting requirements.
2. Change the date in Parts 3.1, 3.2, and 3.3 to align the registration renewals with the tonnage reporting deadline.
3. Update formatting to be consistent with other Rules within the Department.

FACTUAL AND POLICY BASIS:

The factual and policy issues pertaining to the adoption of these permanent rule amendments are as follows:

1. The previous version of Part 4 was not specific to the types of data required to be reported on fertilizer distribution.
2. Currently, fertilizer registrants have to log into the Department's licensing system at separate times of the year to complete the registration and reporting process. This can be burdensome to registrants and be prone to mistakes.

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3. After consulting with industry stakeholders, the Department has proposed to synchronize all deadlines associated with the larger registration process to make the process more efficient for registrants.

9.6 February 8, 2017 – Effective March 30, 2017

Statutory Authority:

The Commissioner's authority for the adoption of these permanent rule amendments is set forth in § 35-12-104(1), § 35-12-104(7) and § 35-12-106(4), C.R.S.

Purpose:

The purpose of this rule-making is to incorporate the changes that were effective December 30, 2012 which were inadvertently omitted when the rule was further amended through rules adopted November 9, 2016 to be effective December 30, 2016. See Part 9.3 for the specific changes.

9.7 Adopted November 8, 2017 – Effective December 30, 2017

Statutory Authority

The Commissioner's authority for the adoption of these permanent Rule amendments is set forth in section 35-12-114, C.R.S. of the Colorado Commercial Fertilizer, Soil Conditioner, and Plant Amendment Act.

Purpose

The purpose of this rulemaking is to update terms, definitions and references to match the current version of the AAPFCO; update registration requirements; expand and update label language; and update references to the AOAC.

Factual and Policy Issues

The Department has been in contact with industry groups and interested parties throughout the rule drafting process. The factual and policy issues related to the adoption of these permanent Rule amendments are as follows:

1. Rule 2.1 and 2.2 of the prior revision incorporated by reference the 2012 version of the Official Publication of the Association of the American Plant Food Control Officials (AAPFCO) and did not include the rule language required by the most current version of the statutory requirements for incorporating such information by reference.
2. "Potting Soil"; "Planting Mix"; "Beneficial Substances or Compounds"; and "Ingredient Statement" are official terms in the 2017 Official Publication of AAPFCO.
3. Rule 3.5 exempts certain products from registration and allows products to be used in a timely manner. This Rule accounts for the constantly evolving advances in the fertilizer industry and AAPFCO's inability to publish recognition of ingredients fast enough to keep up with the advances. This Rule change is in agreement with stakeholder comments.
4. Rule 5.1.7.1 removes the requirement that a label specify the type of plant for which a product is intended; this information is not a requirement in the AAPFCO model bill or regulations. The

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amended Rule 5.1.7.1 allows for either a recommended application method and rate or a statement referring the user to a qualified individual or a nutrient management plan.

5. Rule 5.3.3 adds the terms “Coated Slow Release,” “Slow Release,” “Controlled Release,” and “Slowly Available Water Soluble,” which are terms consistent with the 2017 Official Publication of AAPFCO.
6. Rule 5.4.3 removes the requirement that percentages be included on a label. This information is proprietary and disclosure is not required on labels. This change is in agreement with stakeholder comments.
7. Rules 5.4.6.1 and 5.5.1.2.1 are being deleted because they are no longer necessary. Including the intended types of plants or soils on a label is not a requirement in the AAPFCO model bill or regulations.
8. Rule 5.5.1.5 is not necessary. Typical analysis of compost has been an optional label item and has not been considered a guarantee. The removal of this Rule is in agreement with stakeholder comments.
9. The Rule 5.6 label requirements for “Beneficial Substances or Compounds” are consistent with the 2017 Official Publication of AAPFCO.
10. The Rule 5.7 label requirements for “Microbes” are consistent with the 2017 Official Publication of AAPFCO.
11. Rule 5.8 limits label claims related to dilutions. Products that have directions for dilutions prior to use should not have a claim that the dilution will make a certain amount of finished product to avoid misleading advertising and claims. This is consistent with the 2017 Official Publication of AAPFCO.
12. Rule 6.1 adopts the most current version of the Official Methods of Analysis of The Association of Analytical Communities (AOAC), and updates the Rule language to reflect the most current version of the statutory requirements for incorporating such information by reference.
13. Rule 6.4.4 is no longer necessary because the soil conditioner and plant amendment label requirement of disclosing the percentage of all active ingredients has been changed with amendment of Rule 5.4.3 and the deletion of Rule 5.4.4.

9.8 Adopted October 14, 2020 – Effective December 15, 2020

Statutory Authority

The commissioner’s authority for the adoption of these permanent rule amendments is set forth in section 35-12-114, C.R.S. of the Colorado Commercial Fertilizer, Soil Conditioner, and Plant Amendment Act.

Purpose

The purpose of this rulemaking is to update the language required by §24-4-103(12.5), C.R.S., to properly incorporate the AAPFCO Official Publication, effective January 1, 2017, by reference.

Factual and Policy Issues

Editing comments: Changes to this rule are indicated in ~~strike~~through for removal and underline for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

Section 24-4-103 (12.5), C.R.S., requires specific language to properly incorporate a publication by reference. This rulemaking ensures the rules meet those statutory requirements, and updates the current address for the Inspection and Consumer Services Division within the Department of Agriculture, which changed in October 2018.

9.9 Adopted June 8, 2022 – Effective July 30, 2022

Statutory Authority

The Commissioner's authority for the adoption of this permanent Rule amendment is set forth in § 35-12-114 C.R.S. of the Colorado Commercial Fertilizer, Soil Conditioner, and Plant Amendment Act.

Purpose

The Purpose of this rulemaking is to update the references to the current publication of the Association of American Plant Food Control Officials (AAPFCO), amend definitions to clarify and become consistent with the 2022 Official Publication, and to correct minor spelling errors.

Factual and Policy Basis

1. Numerous changes to the AAPFCO Official publication have occurred since the printing of the 2017 version, which is referenced in the rules. The change to the 2022 version is reflected throughout the rule. Updating the rule to follow the 2022 AAPFCO Model regulations will make our rules more consistent with other states' fertilizer, soil conditioner, and plant amendment rules.
2. These amendments incorporate changes as a result of the department's regulatory efficiency review process.
3. Delete definition 2.3 "Index value" as obsolete as these values are not used to determine penalties and because Commercial Value regulations have been deleted by amendment in the Fertilizer and Soil Conditioners law 35-12-110.
4. Amend definition 2.4 "Soil Conditioner" to be consistent with that definition in the AAPFCO Official Publication.
5. Amend Rule 2.5 "Potting Soil" and "Planting Mix" to clarify these substances are intended for use in containers, and not in the landscape or gardens.