

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 792 Session of 2017

INTRODUCED BY ALLOWAY, BLAKE AND RAFFERTY, JUNE 22, 2017

REFERRED TO AGRICULTURE AND RURAL AFFAIRS, JUNE 22, 2017

AN ACT

1 Amending Title 3 (Agriculture) of the Pennsylvania Consolidated
2 Statutes, repealing provisions relating to fertilizer;
3 providing for fertilizer; in soil and plant amendment,
4 further providing for disposition of funds; and, in seed,
5 further providing for disposition of funds.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. The heading of Chapter 67 of Title 3 of the
9 Pennsylvania Consolidated Statutes is repealed:

10 [CHAPTER 67
11 FERTILIZER]

12 Section 2. Chapter 67 of Title 3 is repealed:

13 [§ 6701. Short title of chapter.

14 This chapter shall be known and may be cited as the
15 Fertilizer Act.

16 § 6702. Definitions.

17 The following words and phrases when used in this chapter
18 shall have the meanings given to them in this section unless the
19 context clearly indicates otherwise:

20 "Brand." A term, design or trademark used in connection with

1 one or several grades of fertilizer.

2 "Bulk fertilizer." A fertilizer distributed in a nonpackaged
3 form.

4 "By-product." Municipal waste or residual waste as defined
5 in the act of July 7, 1980 (P.L.380, No.97), known as the Solid
6 Waste Management Act, that contains a plant nutrient and meets
7 all the applicable regulations of the Department of
8 Environmental Protection.

9 "Consumer." A person who purchases fertilizer for the end
10 use of the product.

11 "Deficiency." The amount of nutrient found by analysis to be
12 less than that guaranteed.

13 "Department." The Department of Agriculture of the
14 Commonwealth.

15 "Distribute." To import, consign, offer for sale, sell,
16 barter or otherwise supply fertilizer in this Commonwealth.

17 "Facility." Each separate mill or plant that manufactures
18 fertilizer.

19 "Fertilizer." Any substance, including fertilizer material,
20 mixed fertilizer, specialty fertilizer and bulk fertilizer,
21 containing one or more recognized plant nutrients which is used
22 for its plant nutrient content and which is designed for use or
23 claimed to have value in promoting plant growth, except
24 unmanipulated animal and vegetable manure, agricultural liming
25 materials, wood ashes and other materials exempted by regulation
26 by the Department of Agriculture.

27 "Fertilizer material." A fertilizer which:

28 (1) contains only one of the following primary plant
29 nutrients: nitrogen, phosphate or potash;

30 (2) has 85% or more of its plant nutrient content

1 present in the form of a single chemical compound; or
2 (3) is derived from a plant or animal residue, by-
3 product, coproduct as defined in regulation or natural
4 material deposit which has been processed in such a way that
5 its content of plant nutrients has not been materially
6 changed except by purification and concentration.

7 "Grade." The percentage of total nitrogen, available
8 phosphate and soluble potash stated in whole numbers in the same
9 terms, order and percentages as in the guaranteed analysis
10 except that, with respect to specialty fertilizers, fertilizer
11 materials, bone meal, manures and similar materials, the
12 guaranteed analysis may be stated in fractional units.

13 "Guaranteed analysis." The minimum percentage of plant
14 nutrients claimed in the following order and form:

15	Total nitrogen (N)	%
16	Available phosphate (P2O5)	%
17	Soluble potash (K2O)	%

18 For other organic phosphatic materials, the total phosphate or
19 degree of fineness may also be guaranteed. Guarantees for plant
20 nutrients other than nitrogen, phosphorus and potassium may be
21 established by regulation.

22 "Guarantor." The person whose name and address appears on
23 the label of a fertilizer.

24 "Label." The display of all written, printed or graphic
25 matter upon the immediate container or a statement accompanying
26 a fertilizer.

27 "Labeling." All written, printed or graphic matter upon or
28 accompanying any fertilizer or advertisements, brochures,
29 posters or electronic media used in promoting the distribution
30 of fertilizer.

1 "Manufacture." To produce, mix, blend, repackage or further
2 process fertilizer or fertilizer material for distribution.

3 "Micronutrient." Any of the following: boron, chlorine,
4 cobalt, copper, iron, manganese, molybdenum, sodium and zinc.

5 "Official sample." A sample of fertilizer taken by the
6 Department of Agriculture or its agent to effect the provisions
7 of this chapter and designated as official.

8 "Overall index value." The value obtained from the
9 calculation: (commercial value found) x 100/(commercial value
10 guaranteed).

11 "Percent" or "percentage." A percentage by weight.

12 "Person." An individual, partnership, association, firm,
13 corporation or any other legal entity.

14 "Plant nutrient." Any of the following: primary nutrient,
15 secondary nutrient and micronutrient.

16 "Primary nutrient." Any of the following: total nitrogen,
17 available phosphate and soluble potash.

18 "Secondary nutrient." Any of the following: calcium,
19 magnesium and sulfur.

20 "Secretary." The Secretary of Agriculture of the
21 Commonwealth or the secretary's designee.

22 "Specialty fertilizer." A fertilizer distributed for nonfarm
23 use and fertilizer material primarily intended to supply plant
24 nutrients other than nitrogen, phosphate or potash.

25 "Tolerance." A permitted variation from the guarantee of an
26 official sample of fertilizer.

27 § 6703. Licensing.

28 (a) General rule.--Every person engaged in the manufacture
29 of fertilizer to be distributed in this Commonwealth and every
30 guarantor of fertilizer shall, on or before July 1 of each year

1 or prior to manufacture or distribution, apply for and obtain an
2 annual license for each guarantor and each facility located in
3 this Commonwealth. The application for licensure must be on the
4 form prescribed by the department and shall be accompanied by a
5 \$25 application fee. All licenses shall expire on June 30 of
6 each year.

7 (b) Labeling and typical analysis.--The department may
8 require an applicant for a license or a current licensee to
9 submit the labeling that the person is using or intends to use
10 for the fertilizer. The department may also require an applicant
11 or licensee to provide a typical analysis of selected components
12 that may be in the fertilizer.

13 § 6704. Registration of specialty fertilizers.

14 (a) Application.--Each brand and grade of specialty
15 fertilizer shall be registered by the guarantor with the
16 department before being offered for sale, sold or distributed in
17 this Commonwealth. An application for each brand and grade of
18 specialty fertilizer shall be made on a form prescribed by the
19 department and shall be accompanied by a fee of \$25 per each
20 grade of each brand. Labels for each brand and grade shall
21 accompany the application. Upon the approval of an application
22 by the department, a copy of the registration shall be furnished
23 to the applicant. All registrations shall expire on June 30 of
24 each year.

25 (b) Contents of application.--An application for
26 registration shall include:

- 27 (1) The brand and grade.
- 28 (2) The guaranteed analysis.
- 29 (3) The name and address of the guarantor.
- 30 (4) The net weight.

1 (c) Exemption.--A distributor shall not be required to
2 register a specialty fertilizer which is already registered
3 under this chapter by another person, providing the label does
4 not differ in any material respect.

5 (d) Late fee.--If the application for renewal of the
6 specialty fertilizer registration required in this section is
7 not filed prior to June 30 of each year, a penalty of \$25 or 10%
8 of the registration fee, whichever is greater, may be assessed
9 and added to the original fee and shall be paid by the applicant
10 before the renewal specialty fertilizer registration is issued.
11 The penalty shall not apply if the applicant furnished an
12 affidavit that the applicant has not distributed the specialty
13 fertilizer subsequent to the expiration of the applicant's prior
14 registration.

15 § 6705. Labels and labeling.

16 (a) General rule.--Any fertilizer distributed in a container
17 in this Commonwealth shall have placed on or affixed to the
18 container a label setting forth in legible and conspicuous form:

19 (1) The brand and grade of the fertilizer, provided that
20 the grade shall not be required when no primary nutrients are
21 claimed.

22 (2) The guaranteed analysis.

23 (3) The name and address of the guarantor.

24 (4) The net weight.

25 (b) Bulk fertilizer.--In the case of bulk fertilizer
26 shipments, the information required by subsection (a) shall
27 accompany delivery and shall be provided in writing to the
28 purchaser at time of delivery.

29 (c) Other guarantees.--Guarantees for other nutrients shall
30 be expressed in the form of the element. The department may

1 require by regulation that the source of such other nutrients be
2 stated on the application for registration and may be required
3 on the label. The department may require by regulation that
4 other beneficial substances or compounds be guaranteed. When any
5 plant nutrients or other substances or compounds are guaranteed,
6 they shall be subject to inspection and analysis in accordance
7 with the methods and regulations prescribed by the department.

8 (d) Proof of labeling claims.--The department may require
9 proof of any labeling claims made for fertilizer. Any research
10 in support of such claims shall be performed by an institution
11 approved by the department utilizing acceptable scientific
12 methodology.

13 (e) Consumer-specified fertilizer formulations.--A
14 fertilizer formulated according to specifications which are
15 furnished by a consumer prior to mixing shall be labeled to
16 show:

17 (1) The net weight.

18 (2) The guaranteed analysis.

19 (3) The name and address of the guarantor.

20 (f) Bulk storage.--Fertilizer in bulk storage that is
21 intended for distribution shall be identified with a label
22 attached to the storage bin or container giving the name and
23 grade of the product

24 § 6706. Inspection fees.

25 (a) Amounts.--

26 (1) The guarantor whose name appears on the label of a
27 fertilizer distributed in this Commonwealth shall pay
28 semiannually and not later than January 31 and July 31 of
29 each year an inspection fee at the rate of 15¢ per ton. In no
30 case shall the inspection fee paid semiannually amount to

1 less than \$25.

2 (2) On packages of 15 pounds or less, there shall be
3 paid in lieu of the inspection fee of 15¢ per ton provided
4 for in paragraph (1), annually and not later than January 31
5 of each year, an inspection fee of \$25 for each brand and
6 grade of fertilizer distributed.

7 (3) If the guarantor whose name appears on the label
8 distributes fertilizers in this Commonwealth in both packages
9 of less and more than 15 pounds, the \$25 inspection fee shall
10 be paid for its brands and grades sold in packages of 15
11 pounds or less, and the 15¢ per ton fee shall be paid for its
12 packages of more than 15 pounds.

13 (b) Adjustment to fees by secretary.--

14 (1) Notwithstanding the provisions of subsection (a), if
15 the secretary determines following notice to the registrants
16 and licensees that moneys derived from the registration and
17 inspection fees are either greater or less than that required
18 to administer this chapter, the secretary may reduce or
19 increase the inspection fee so as to maintain revenues
20 sufficient to administer this chapter.

21 (2) An inspection fee established under this subsection
22 may not be changed by more than 2¢ in one year and may not
23 exceed 25¢ per ton.

24 (3) The secretary shall announce the adjustment of fees
25 by publishing a notice in the Pennsylvania Bulletin. The
26 adjusted fees shall take effect 60 days after publication of
27 such notice in the Pennsylvania Bulletin.

28 § 6707. Tonnage reports.

29 (a) General rule.--The guarantor whose name appears on the
30 label shall submit, along with the requisite inspection fee, a

1 report in a manner prescribed by the department listing by
2 county the net tons of each brand and grade of fertilizer
3 distributed in this Commonwealth for the period covered by the
4 inspection fee.

5 (b) Multiple guarantors.--When more than one guarantor is
6 involved in the distribution of fertilizer, the guarantor who
7 distributed the fertilizer last shall report the tonnage and pay
8 the inspection fee unless the report and payment have been made
9 by a prior distributor.

10 (c) Late fee.--A penalty of \$25 or 10% of the inspection
11 fee, whichever is greater, shall be imposed for any fee or
12 report not submitted at the required time.

13 (d) Examination permitted.--The department or its authorized
14 representative may examine the records of the guarantor to
15 verify the information contained in the reports filed with the
16 department. Reports containing fraudulent or incorrect
17 information shall be considered a violation of this chapter for
18 which the department may assess any penalty as provided for in
19 this chapter.

20 (e) Confidentiality of information.--

21 (1) No proprietary information furnished to the
22 department under this section shall be disclosed in such a
23 way as to knowingly or intentionally divulge a trade secret
24 of any person subject to the provisions of this chapter.

25 (2) This subsection shall not apply to information
26 furnished to a court or administrative tribunal in accordance
27 with law.

28 § 6708. Inspection, sampling and analysis.

29 (a) General rule.--The department shall inspect, sample,
30 make analyses of and test fertilizers distributed within this

1 Commonwealth and shall inspect the storage of bulk fertilizer at
2 any time and place and to such an extent as the department may
3 deem necessary to determine whether such fertilizers are in
4 compliance with the provisions of this chapter. The department
5 or its agent may enter upon any public or private premises or
6 carriers during regular business hours in order to have access
7 to fertilizer subject to provisions of this chapter and the
8 records relating to this chapter.

9 (b) Laboratory methodology.--The department shall establish
10 by regulation the methods of fertilizer sampling and analysis.
11 In promulgating such regulations, the department shall consider
12 methods such as those adopted by the Association of Official
13 Analytical Chemists International. In cases not covered by such
14 methods or in cases where improved methods are available, the
15 department may issue a temporary order defining the method to be
16 utilized. The method defined in the temporary order shall be
17 effective upon publication in the Pennsylvania Bulletin. The
18 temporary order shall remain in effect for a period not to
19 exceed one year unless reissued or until such order is
20 promulgated as a regulation.

21 (c) Deficiency determination.--The department, in
22 determining whether any fertilizer is deficient, shall be guided
23 solely by the official sample obtained and analyzed as provided
24 for in subsections (a) and (b).

25 (d) Retention of official samples.--Official samples
26 maintained by the department and that require imposition of a
27 penalty for nutrient deficiency shall be retained for a minimum
28 of 90 days from issuance of a deficiency report. Upon request,
29 the department shall furnish to the guarantor a portion of any
30 sample that is subject to penalty or other legal action. Such

1 requests must be made within 30 days of notification of sample
2 violations.

3 § 6709. Plant food deficiency.

4 (a) Penalties.--The following penalties shall be assessed
5 for deficiencies from the guaranteed analysis:

6 (1) A penalty payment of five times the commercial value
7 of each deficiency shall be assessed when the analysis shows
8 that a fertilizer is deficient:

9 (i) in one or more of its guaranteed primary
10 nutrients beyond a tolerance of 10% (two unit maximum);
11 or

12 (ii) when the overall index value of the primary
13 nutrients in the fertilizer is below 97.

14 (2) When a fertilizer is subject to a penalty payment
15 under both paragraph (1) (i) and (ii), the larger penalty
16 payment shall apply. Any such penalties assessed may not
17 exceed the retail price of the lot of fertilizer represented
18 by the official sample.

19 (3) Deficiencies beyond the tolerance as established by
20 regulation in a component other than a primary nutrient shall
21 be evaluated by the department and shall be subject to any
22 penalty under this chapter.

23 (b) Payment of penalties.--All penalties assessed under this
24 section shall be paid by the guarantor to the consumer of the
25 lot of fertilizer represented by the sample analyzed within 90
26 days after the date of notice from the department to the
27 guarantor. Receipts of payment shall be promptly forwarded by
28 the guarantor to the department. If the consumer cannot be
29 found, the penalties shall be paid to the department.

30 (c) Deficiencies in mixed fertilizers.--A deficiency in an

1 official sample of mixed fertilizer resulting from nonuniformity
2 shall not be deemed distinguishable from a deficiency due to
3 actual plant nutrient shortage and shall be deemed a violation
4 of this chapter for which the department may assess any penalty
5 as provided for in this chapter.

6 § 6710. Commercial value.

7 For the purpose of determining the commercial value to be
8 applied under section 6709 (relating to plant food deficiency),
9 the department shall determine and publish annually the values
10 per pound of nitrogen, available phosphate and soluble potash in
11 fertilizers in this Commonwealth. The amounts determined and
12 published shall be used in determining and assessing penalty
13 payments.

14 § 6711. Misbranding.

15 No person shall distribute a misbranded fertilizer. A
16 fertilizer shall be deemed to be misbranded if:

17 (1) its labeling is false or misleading in any
18 particular;

19 (2) it is distributed under the name of another
20 fertilizer product;

21 (3) it is not labeled as required in section 6705
22 (relating to labels and labeling) and in accordance with
23 regulations prescribed under this chapter; or

24 (4) it purports to be or is represented as a fertilizer
25 or is represented as containing a plant nutrient or
26 fertilizer unless such plant nutrient or fertilizer conforms
27 to the definition of identity, if any, prescribed by
28 regulation.

29 § 6712. Adulteration.

30 (a) General rule.--No person shall distribute an adulterated

1 fertilizer product. A fertilizer shall be deemed to be
2 adulterated if:

3 (1) it contains any deleterious or harmful substance in
4 sufficient amount to render it injurious to beneficial plant
5 life, animals, humans, aquatic life, soil or water when
6 applied in accordance with its intended use or directions for
7 use on the label;

8 (2) adequate warning statements or directions for use
9 which may be necessary to protect plant life, animals,
10 humans, aquatic life, soil or water are not shown upon the
11 label;

12 (3) its composition falls below or differs from that
13 which it is purported to possess by its labeling; or

14 (4) it contains viable weed seed in amounts exceeding
15 the limits which the department establishes by regulation.

16 (b) Exception.--A fertilizer shall not be considered
17 adulterated under this section if the quantity of the substance
18 in the fertilizer does not ordinarily render it injurious.

19 § 6713. Publications.

20 The department shall publish at least annually and in such
21 form as it deems proper such information concerning the
22 distribution of fertilizers and results of analyses based on
23 official samples of fertilizer distributed within this
24 Commonwealth as compared with analyses guaranteed under sections
25 6704 (relating to registration of specialty fertilizers) and
26 6705 (relating to labels and labeling).

27 § 6714. Short weight.

28 If any fertilizer in the possession of a consumer is found by
29 the department to be short in weight, the guarantor of that
30 fertilizer shall, within 30 days after official notice from the

1 department, submit to the consumer a penalty payment of two
2 times the value of the actual shortage.

3 § 6715. Refusal, suspension or revocation of registration or
4 license.

5 The department may refuse, suspend or revoke the registration
6 of any fertilizer or refuse, suspend or revoke the license of
7 any person where the registrant or licensee has not complied
8 with the provisions of this chapter or of any person who has
9 used fraudulent or deceptive practices in the evasion of the
10 provisions of this chapter.

11 § 6716. Stop-sale orders.

12 (a) General rule.--The department may issue and enforce a
13 written or printed stop-sale, use or removal order to the owner
14 or custodian of any lot of fertilizer and to hold at a
15 designated place when the department finds the fertilizer is
16 being offered or exposed for sale in violation of any of the
17 provisions of this chapter. The order shall remain in effect
18 until the law has been complied with and the fertilizer is
19 released in writing by the department or the violation has been
20 otherwise legally disposed of by written authority.

21 (b) Release by department.--The department shall release
22 fertilizer held under a stop-sale order when the requirements of
23 the provisions of this chapter have been complied with and all
24 costs and expenses incurred in connection with the withdrawal
25 have been paid by the person responsible for the violation.

26 § 6717. Seizure and condemnation.

27 A lot of fertilizer not in compliance with the provisions of
28 this chapter shall be subject to seizure and condemnation by the
29 department, provided that in no instance shall the disposition
30 of the fertilizer be ordered by the department without first

1 giving the claimant an opportunity for a hearing as provided for
2 in section 6718 (relating to appeal process) or for opportunity
3 to apply for permission to process or relabel the fertilizer to
4 bring it into compliance with this chapter.

5 § 6718. Appeal process.

6 All appeals shall be taken and hearings conducted in
7 accordance with the provisions of 2 Pa.C.S. Chs. 5 Subch. A
8 (relating to practice and procedure of Commonwealth agencies)
9 and 7 Subch. A (relating to judicial review of Commonwealth
10 agency action).

11 § 6719. Cooperation with other entities.

12 The department may cooperate with and enter into agreement
13 with governmental agencies of the Federal Government, agencies
14 of this Commonwealth and any other state in order to carry out
15 the purpose and provisions of this chapter.

16 § 6720. Rules and regulations.

17 The department shall promulgate and enforce rules and
18 regulations necessary for administration and implementation of
19 this chapter.

20 § 6721. Unlawful conduct.

21 It shall be unlawful for any person to fail to comply with or
22 to cause or assist in the violation of any order or any of the
23 provisions of this chapter or the rules and regulations adopted
24 under this chapter.

25 § 6722. Interference with officer or employee of department.

26 A person who willfully or intentionally interferes with an
27 employee or officer of the department in the performance of that
28 employee's or officer's duties or activities authorized under
29 this chapter commits a misdemeanor of the third degree and
30 shall, upon conviction, be subject to a term of imprisonment of

1 not more than one year or a fine of not more than \$2,500, or
2 both.

3 § 6723. Enforcement and penalties.

4 (a) Criminal penalties.--Unless otherwise specified, any
5 person who violates any of the provisions of this chapter or a
6 rule or regulation adopted thereunder or any order issued
7 pursuant thereto:

8 (1) For the first offense, commits a summary offense and
9 may, upon conviction, be sentenced for each offense to pay a
10 fine of not less than \$50 nor more than \$100 and costs of
11 prosecution or to undergo imprisonment for a term which shall
12 be fixed at not more than 90 days, or both.

13 (2) For a subsequent offense committed within three
14 years of a prior conviction for any violation of this chapter
15 or any rule, regulation or order made under this chapter,
16 commits a misdemeanor of the second degree and shall, upon
17 conviction, be sentenced to pay a fine of not less than \$500
18 nor more than \$1,000 and costs of prosecution or to
19 imprisonment for not more than two years, or both.

20 (b) Trade secrets.--

21 (1) Any person who uses to that person's own advantage
22 or reveals to anyone other than the department,
23 administrative tribunal or the courts when relevant in any
24 judicial proceeding any information acquired under the
25 authority of this chapter concerning any method, records,
26 formulations or processes which as a trade secret is entitled
27 to protection under the law commits a misdemeanor of the
28 third degree and shall, upon conviction, be sentenced to pay
29 a fine of not less than \$500 or to imprisonment for not less
30 than one year, or both.

1 (2) This subsection shall not be construed to prohibit
2 the department from exchanging information of a regulatory
3 nature with governmental agencies of the Federal Government,
4 agencies of this Commonwealth or any other state to implement
5 the provisions of this chapter.

6 (c) Civil penalties.--

7 (1) In addition to any other remedy available at law or
8 in equity for a violation of this chapter, the department may
9 assess a civil penalty of not more than \$2,500 upon any
10 person for each violation of this chapter. The civil penalty
11 assessed shall be payable to the department and shall be
12 collectible in any manner provided by law for the collection
13 of debt.

14 (2) No civil penalty shall be assessed unless the person
15 assessed the penalty has been given notice and an opportunity
16 for a hearing on the assessment in accordance with the
17 provisions of 2 Pa.C.S. Chs. 5 Subch. A (relating to practice
18 and procedure of Commonwealth agencies) and 7 Subch. A
19 (relating to judicial review of Commonwealth agency action).

20 (d) Certified copy of official analysis.--In prosecution
21 under this chapter involving the composition of a lot of
22 fertilizer, a certified copy of the official analysis signed by
23 the secretary or the secretary's designee shall be accepted as
24 prima facie evidence of the composition.

25 (e) De minimis violations.--Nothing in this chapter shall be
26 construed as requiring the department to report a violation and
27 to institute seizure proceedings as a result of de minimis
28 violations of this chapter when the department concludes that
29 the public interest will be best served by a suitable notice of
30 warning in writing.

1 § 6724. Exchanges between manufacturers.

2 Nothing in this chapter shall be construed as restricting or
3 avoiding sales or exchanges of fertilizers to each other by
4 importers, manufacturers or manipulators who mix fertilizer
5 materials for sale or as preventing the free and unrestricted
6 shipments of fertilizer to manufacturers or manipulators who are
7 licensed as required by provisions of this chapter.

8 § 6725. Disposition of funds.

9 Moneys received from license fees, registration fees,
10 inspection fees, fines and penalties shall be paid into a
11 special restricted account in the General Fund to be known as
12 the Agronomic Regulatory Account. All moneys in the Agronomic
13 Regulatory Account are hereby appropriated to the department for
14 the purposes of this chapter and Chapters 69 (relating to soil
15 and plant amendment) and 71 (relating to seed).]

16 Section 3. Title 3 is amended by adding a chapter to read:

17 CHAPTER 67A

18 FERTILIZER

19 Subchapter

20 A. General Provisions

21 B. Fertilizer Manufacturers and Guarantors

22 C. Applicator Licensing and Certification

23 D. Recordkeeping for Applicators and Airports

24 E. Application Rates, Requirements and Prohibitions

25 F. Agricultural and Homeowner Education Program

26 G. Administrative and Penalty Provisions

27 SUBCHAPTER A

28 GENERAL PROVISIONS

29 Sec.

30 67A01. Short title.

1 67A02. Definitions.

2 § 67A01. Short title.

3 This chapter shall be known and may be cited as the
4 Fertilizer Act.

5 § 67A02. Definitions.

6 The following words and phrases when used in this chapter
7 shall have the meanings given to them in this section unless the
8 context clearly indicates otherwise:

9 "Agricultural production." The production for commercial
10 purposes of crops, livestock and livestock products, including
11 the processing or retail marketing of crops, livestock or
12 livestock products if more than 50% of the processed or
13 merchandised products are produced by the farm operator. The
14 term includes use of land that is devoted to and meets the
15 requirements of and qualifications for payments or other
16 compensation pursuant to a soil conservation program under an
17 agreement with an agency of the Federal Government.

18 "Application." The process of placement or usage of
19 fertilizer onto a targeted growing area.

20 "Brand." A term, design or trademark used in connection with
21 one or several grades of fertilizer.

22 "Bulk fertilizer." A fertilizer distributed in a nonpackaged
23 form.

24 "By-product." Municipal waste or residual waste as defined
25 in the act of July 7, 1980 (P.L.380, No.97), known as the Solid
26 Waste Management Act, or its successor statute, that contains a
27 plant nutrient and meets all applicable regulations of the
28 Department of Environmental Protection.

29 "Certified applicator." Any person who is certified under
30 section 67A23 (relating to certification of applicators) as

1 competent to use or supervise the use of fertilizer or train
2 fertilizer technicians on the proper application of fertilizer.

3 "Commercial applicator." Anyone who applies or supervises
4 the application of fertilizer to the property or premises of
5 another or anyone who applies or supervises application of
6 fertilizer to the property or premises of the following:

7 (1) A golf course.

8 (2) A public or private park.

9 (3) A public, nonpublic or licensed private elementary
10 or secondary school wherein a resident of this Commonwealth
11 may fulfill the compulsory school attendance requirements and
12 which meets the applicable requirements of Title IV of the
13 Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241),
14 or its successor statute. This term does not include the
15 residence of a home schooled student.

16 (4) a public or private college or university that
17 applies fertilizer to the campus grounds.

18 (5) a public playground or an athletic field.

19 "Consumer." A person who purchases fertilizer for the end
20 use of the product.

21 "Crops, livestock and livestock products." Shall include,
22 but not be limited to:

23 (1) Field crops, including corn, wheat, oats, rye,
24 barley, hay, potatoes and dry beans.

25 (2) Fruits, including apples, peaches, grapes, cherries
26 and berries.

27 (3) Vegetables, including tomatoes, snap beans, cabbage,
28 carrots, beets, onions and mushrooms.

29 (4) Horticultural specialties, including nursery stock
30 ornamental shrubs, ornamental trees and flowers.

1 (5) Livestock and livestock products, including cattle,
2 sheep, hogs, goats, horses, poultry, furbearing animals,
3 milk, eggs and furs.

4 (6) Timber, wood and other wood products derived from
5 trees.

6 (7) Aquatic plants and animals and their products.

7 "Deficiency." The amount of nutrient found by analysis to be
8 less than that guaranteed, which may result from a lack of
9 nutrient ingredients or uniformity.

10 "Department." The Department of Agriculture of the
11 Commonwealth.

12 "Distribute." To import, consign, offer for sale, sell,
13 barter or otherwise supply fertilizer in this Commonwealth.

14 "Distributor." A person who distributes fertilizer or
15 fertilizer material.

16 "Enhanced-efficiency fertilizer." A fertilizer product with
17 characteristics that allow increased plant uptake and reduced
18 potential of nutrient losses to the environment, such as gaseous
19 losses, leaching or runoff, when compared to an appropriate
20 reference product.

21 "Facility." Each separate mill or plant that manufactures
22 fertilizer.

23 "Fertilizer." A substance, including fertilizer material,
24 mixed fertilizer, specialty fertilizer and bulk fertilizer,
25 containing one or more recognized plant nutrients which is used
26 for its plant nutrient content and which is designed for use or
27 claimed to have value in promoting plant growth, except
28 unmanipulated animal and vegetable manure, agricultural liming
29 materials, wood ashes and other materials exempted by the
30 department's regulations.

1 "Fertilizer application business." A governmental or public
2 entity, commercial applicator or business for profit or not-for-
3 profit that applies fertilizer on the property or premises of
4 another or that applies fertilizer to the property or premises
5 of a golf course, park, school, college or university, public
6 playground or to an athletic field.

7 "Fertilizer application business license." A license
8 obtained under section 67A22 (relating to licensing of
9 fertilizer application businesses).

10 "Fertilizer license." A licensed obtained under section
11 67A11 (relating to licensing).

12 "Fertilizer material." A fertilizer which:

13 (1) contains only one of the following primary plant
14 nutrients:

15 (i) nitrogen;

16 (ii) phosphate; or

17 (iii) potash;

18 (2) has 85% or more of its plant nutrient content
19 present in the form of a single chemical compound; or

20 (3) is derived from a plant or animal residue, by-
21 product, coproduct as defined in 25 Pa. Code § 287.1
22 (relating to definitions) or natural material deposit which
23 has been processed in a way that its content of plant
24 nutrients has not been materially changed except by
25 purification and concentration.

26 "Fertilizer technician." A person working for a fertilizer
27 application business that is not certified under this chapter,
28 who works under the direction of a certified applicator.

29 "Fertilizer use category." The end use of the fertilizer,
30 such as agricultural, nonagricultural or unknown.

1 "Governmental or public entity." An executive or independent
2 agency or governmental unit of the Commonwealth or local agency,
3 including a county, city, borough, town, township, school
4 district, municipal authority or political subdivision of the
5 Commonwealth.

6 "Grade." The percentage of total nitrogen, available
7 phosphate and soluble potash stated in whole numbers in the same
8 terms order and percentages as in the guaranteed analysis,
9 provided that specialty fertilizers may be guaranteed in
10 fractional units of less than one percent of total nitrogen,
11 available phosphate and soluble potash, provided that fertilizer
12 materials, bone meal, manures and similar materials may be
13 guaranteed in fractional units.

14 "Guaranteed analysis." The minimum percentage of plant
15 nutrients claimed in the following order and form:

16	<u>Total nitrogen (N)</u>	<u>%</u>
17	<u>Available phosphate (P2O5)</u>	<u>%</u>
18	<u>Soluble potash (K2O)</u>	<u>%</u>

19 For other organic phosphatic materials, the total phosphate or
20 degree of fineness may also be guaranteed. Guarantees for plant
21 nutrients other than nitrogen, phosphorus and potassium may be
22 established by regulation.

23 "Guarantor." A person, including a manufacturer or
24 distributor, whose name and address appears on the label of
25 fertilizer.

26 "Impervious surface." A structure, surface or improvement,
27 including, but not limited to, a roadway, sidewalk, parking lot,
28 driveway or patio constructed out of plastic, concrete, asphalt
29 or other material that reduces or prevents infiltration of water
30 into the soil.

1 "Intermittent stream." A body of water flowing in a channel
2 or bed composed primarily of substrates associated with flowing
3 water which, during periods of the year, is below the water
4 table and obtains its flow from both surface runoff and
5 groundwater discharges.

6 "Label." The display of all written, printed or graphic
7 matter upon the immediate container or a statement accompanying
8 a fertilizer.

9 "Labeling." All written, printed or graphic matter upon or
10 accompanying any fertilizer or advertisements, brochures,
11 posters or electronic media used in promoting the distribution
12 of the fertilizer.

13 "Manipulation." Processed or treated in any manner,
14 including drying to a moisture content of less than 30%.

15 "Manufacture." To produce, mix, blend, repackage or further
16 process fertilizer or fertilizer material for distribution.

17 "Micronutrient." Any of the following:

- 18 (1) boron;
- 19 (2) chlorine;
- 20 (3) cobalt;
- 21 (4) copper;
- 22 (5) iron;
- 23 (6) nickel;
- 24 (7) manganese;
- 25 (8) molybdenum;
- 26 (9) sodium; or
- 27 (10) zinc.

28 "Mixed fertilizer." A fertilizer containing any combination
29 or mixture of fertilizer materials.

30 "Natural organic fertilizer." A fertilizer derived from

1 either plant or animal products containing one or more elements,
2 other than carbon, hydrogen and oxygen, which are essential for
3 plant growth. These materials may be subjected to biological
4 degradation processes under normal conditions of aging,
5 rainfall, sun curing, air drying, composting, rotting, enzymatic
6 or anaerobic or aerobic bacterial action or a combination of
7 these processes. These materials may not be mixed with synthetic
8 materials or changed in any physical or chemical manner from
9 their initial state except by physical manipulation such as
10 drying, cooking, chopping, grinding, shredding or pelleting.

11 "Net weight." The total weight of fertilizer as offered for
12 sale, excluding the weight of the container.

13 "Official sample." A sample of fertilizer collected or
14 obtained by the department to effectuate the provisions of this
15 chapter and designated as official.

16 "Organic-base fertilizer." A mixed fertilizer where:

17 (1) More than half of the fertilizer materials are
18 organic.

19 (2) More than half of the sum of the guaranteed primary
20 nutrient percentages are derived from organic materials.

21 "Overall index value." The value obtained from the
22 calculation: (commercial value found) x 100 / (commercial value
23 guaranteed).

24 "Park." Privately or publicly owned outdoor real estate
25 which includes a public recreational area, including an area
26 with restricted access.

27 "Percent or percentage." A percentage by weight.

28 "Perennial stream." A body of water flowing in a channel or
29 bed composed primarily of substrates associated with flowing
30 waters and capable, in the absence of pollution or other manmade

1 stream disturbances, of supporting bottom-dwelling aquatic
2 animals.

3 "Person." An individual, partnership, association, firm,
4 corporation or any other legal entity.

5 "Plant nutrient." Any of the following:

- 6 (1) primary nutrient;
- 7 (2) secondary nutrient; or
- 8 (3) micro nutrient.

9 "Primary nutrient." Any of the following:

- 10 (1) nitrogen;
- 11 (2) phosphorus; or
- 12 (3) potassium.

13 "Public applicator." A person employed by a governmental or
14 public entity who applies or supervises the application of
15 fertilizer as part of the applicator's employment duties.

16 "Readily available nitrogen." Water soluble nitrogen in
17 either ammoniacal, urea or nitrate form that does not have
18 enhanced efficiency properties.

19 "Registrant." A person who registers fertilizer under this
20 chapter.

21 "Repackage." The placement of fertilizer into a container or
22 bulk bin other than what is supplied by the guarantor.

23 "Secondary nutrient." Any of the following:

- 24 (1) calcium;
- 25 (2) magnesium; or
- 26 (3) sulfur.

27 "Soil test." A chemical, physical or biological procedure
28 that estimates the suitability of the soil to support plant
29 growth.

30 "Specialty fertilizer." A fertilizer distributed for nonfarm

1 use or a fertilizer primarily intended to supply plant nutrients
2 other than nitrogen, phosphate or potash.

3 "Stream buffer zone." A permanent strip of dense perennial
4 vegetation established parallel and immediately adjacent to the
5 bank of a pond, wetland or flowing body of water that is used to
6 slow water runoff, enhancing water infiltration and minimizing
7 the risk of any potential nutrients reaching the waters.

8 "Tolerance." A permitted variation from the guarantee of an
9 official sample of fertilizer.

10 "Ton." A net weight of 2,000 pounds.

11 "Turf." Land, including, but not limited to, residential
12 property, golf courses and privately or publicly owned land,
13 that is planted in closely mowed, managed grass, except for land
14 used for agricultural production.

15 SUBCHAPTER B

16 FERTILIZER MANUFACTURERS AND GUARANTORS

17 Sec.

18 67A11. Licensing.

19 67A12. Registration of specialty fertilizers.

20 67A13. Labels and labeling.

21 67A14. Fertilizer sold to consumers.

22 67A15. Inspection fees.

23 67A16. Tonnage reports.

24 67A17. Inspection, sampling and analysis.

25 67A18. Plant food deficiency.

26 67A19. Commercial value.

27 67A20. Misbranding.

28 67A21. Adulteration.

29 § 67A11. Licensing.

30 (a) General rule.--Every person engaged in the manufacture

1 of fertilizer to be distributed in this Commonwealth and each
2 guarantor of the fertilizer shall, on or before July 1 of each
3 year or prior to manufacture or distribution of the fertilizer,
4 obtain a fertilizer license for each manufacturing facility
5 located in this Commonwealth and for each guarantor by
6 completing a form furnished by the department and paying a \$50
7 application fee, or the fee as is later established in the
8 manner set forth under section 67A75 (relating to fees, fines,
9 and civil penalties). All licenses shall expire on June 30 of
10 each year.

11 (b) Labeling and typical analysis.--The department may
12 require an applicant for a fertilizer license or a current
13 fertilizer licensee to submit the labeling that the person is
14 using or intends to use for the fertilizer. The department may
15 also require an applicant or fertilizer licensee to provide a
16 typical analysis of selected components that may be in the
17 fertilizer.

18 (c) Exemption.--A person repackaging fertilizer may not be
19 deemed a manufacturer if the person who repackages fertilizer
20 has a letter of responsibility, recognized by the department,
21 stating the original guarantor remains as the original guarantor
22 and the person does not alter the fertilizer in any way. The
23 letter of responsibility shall be provided to the department
24 upon request. Noncompliance with any provision of this exemption
25 shall require the person to obtain a fertilizer license and meet
26 the labeling and typical analysis standards as set forth under
27 subsections (a) and (b). In addition, the department may impose
28 any penalty established under this chapter.

29 § 67A12. Registration of specialty fertilizers.

30 (a) Application.--Each brand and grade of specialty

1 fertilizer shall be registered by the guarantor with the
2 department before being offered for sale, sold or distributed in
3 this Commonwealth. An application for each brand and grade of
4 specialty fertilizer shall be made on a form furnished by the
5 department and shall be accompanied by a fee of \$100 or the fee
6 later established in the manner set forth under section 67A75
7 (relating to fees, fines and civil penalties), per each grade of
8 each brand. Labels for each brand and grade shall accompany the
9 application. All registrations shall expire on June 30 of each
10 year.

11 (b) Contents of application.--An application for
12 registration shall include:

- 13 (1) The brand and grade.
14 (2) The guaranteed analysis.
15 (3) Name and address of the guarantor.
16 (4) Net weight.

17 (c) Exemption.--A distributor shall not be required to
18 register:

19 (1) A specialty fertilizer which is already registered
20 under this chapter by another person, provided the label does
21 not differ in any material respect.

22 (2) A fertilizer formulated according to the
23 specifications which are furnished by the end user and are
24 not further distributed or offered for sale to the general
25 public.

26 (d) Late fee.--If the application for renewal of the
27 specialty fertilizer registration required under this section is
28 not filed prior to June 30 of each year, a penalty of \$25 or 10%
29 of the total registration fee for all products sought to be
30 registered, whichever is greater, or any fee as is later

1 established in the manner set forth under section 67A75, may be
2 assessed and added to the original fee and shall be paid by the
3 applicant before the renewal of the specialty fertilizer
4 registration. The penalty shall not apply if the applicant
5 furnished an affidavit that the applicant has not distributed
6 the specialty fertilizer subsequent to the expiration of the
7 applicant's prior registration.

8 § 67A13. Labels and labeling.

9 (a) General rule.--The guarantor of any fertilizer
10 distributed in a container in this Commonwealth shall have
11 placed on or affixed to the container a label setting forth in a
12 legible and conspicuous form the following:

13 (1) The brand and grade of the fertilizer, provided that
14 the grade shall not be required when no primary nutrients are
15 claimed.

16 (2) The guaranteed analysis.

17 (3) A derived from statement.

18 (4) Directions for use for fertilizer distributed to the
19 end user.

20 (5) The name and address of the guarantor.

21 (6) The net weight.

22 (b) Bulk fertilizer.--In the case of bulk fertilizer
23 distribution, the information required by subsection (a) shall
24 accompany delivery and shall be provided in writing to the
25 purchaser at time of delivery.

26 (c) Other guarantees.--Guarantees for nutrients other than
27 primary nutrients shall be expressed in the form of the element.
28 The department may require by regulation that other beneficial
29 substances or compounds be guaranteed. When any plant nutrients
30 or other substances or compounds are guaranteed, they shall be

1 subject to inspection and analysis in accordance with the
2 methods and regulation prescribed by the department.

3 (d) Proof of labeling claims.--The department may require
4 proof of any labeling claims made for fertilizer. Any research
5 in support of a claim shall be performed by an institution
6 approved by the department utilizing acceptable scientific
7 methodology.

8 (e) Consumer-specified fertilizer formulations.--In lieu of
9 the requirements of subsection (a), a fertilizer formulated
10 according to specifications which are furnished by the end user
11 prior to mixing shall be labeled in a clearly legible and
12 conspicuous form to show the net weight, the guaranteed analysis
13 and the name and address of the guarantor.

14 (f) Bulk storage.--Fertilizer in bulk storage that is
15 intended for distribution shall be identified with a label
16 attached to the storage bin or container giving the name and
17 grade of the product.

18 (g) Mandatory label.--The following shall apply:

19 (1) Fertilizer intended for use on turf, in bulk or
20 packages greater than one pound that is distributed to end
21 users in this Commonwealth shall include a statement in
22 legible and conspicuous form that at a minimum sets forth the
23 following requirements:

24 (i) This product shall not be applied near water,
25 storm drains or drainage ditches.

26 (ii) This product shall not be applied if heavy rain
27 is expected.

28 (iii) The application of this product shall only be
29 to the intended application site.

30 (iv) Any material that lands on an impervious

1 surface shall be swept back onto the lawn. This statement
2 shall not be required if the product is intended to be
3 applied in a liquid form.

4 (2) Fertilizer that is not labeled for turf, stream
5 banks, an aquatic setting, potted plants or indoor use, in
6 bulk or packages greater than one pound, that is distributed
7 to end users in this Commonwealth shall include a statement
8 in legible and conspicuous form that at a minimum sets forth
9 the following requirements:

10 (i) This product shall not be applied near water,
11 storm drains or drainage ditches or to any impervious
12 surface.

13 (ii) This product shall not be applied if heavy rain
14 is expected.

15 (iii) This product shall only be applied to the
16 intended application site.

17 (3) Statements required under this section shall be not
18 be smaller than the height of the minimum font required by
19 the Fair Packaging and Labeling Act (Public Law 89-755, 15
20 U.S.C. § 1451 et seq.) for the quantity statement as shown by
21 the following:

22 (i) Panel size is less than five square inches,
23 minimum statement type size one-sixteenth inch.

24 (ii) Panel size is between five and 25 square
25 inches, minimum statement type size one-eighth inch.

26 (iii) Panel size is between 25 and 100 square
27 inches, minimum statement type size three-sixteenths
28 inch.

29 (iv) Panel size is between 100 and 400 square
30 inches, minimum statement type size one-quarter inch.

1 (v) Panel size is greater than 400 square inches,
2 minimum statement type size one-half inch.

3 (h) Prohibition.--The label for fertilizer, fertilizer
4 material or any nitrogen-based material shall not be labeled for
5 the purposes of melting snow or ice, unless the product is
6 distributed to an airport to be used on aircraft or areas an
7 aircraft accesses.

8 (i) Other label information.--The department may, by
9 regulation, require that additional information be present on
10 the label or labeling of fertilizers.

11 § 67A14. Fertilizer sold to consumers.

12 (a) Contents.--Fertilizer sold at retail and intended for
13 use on turf shall:

14 (1) contain no more than 0.7 pounds of readily available
15 nitrogen and no more than 0.9 pounds of total nitrogen per
16 1,000 square feet when applied pursuant to the instructions
17 on the container;

18 (2) consist of at least 20% enhanced efficiency nitrogen
19 of the total nitrogen; and

20 (3) contain no phosphorus, except when specifically
21 labeled for the following purpose:

22 (i) providing nutrients to specific soils and target
23 vegetation as determined to be necessary pursuant to a
24 soil test performed no more than three years prior to
25 application;

26 (ii) establishing vegetation for the first time;

27 (iii) reestablishing or repairing a turf area; or

28 (iv) as an enhanced-efficiency phosphorus
29 fertilizer, natural organic fertilizer, organic-base
30 fertilizer or fertilizer derived from a by-product, as

1 long as the application rate does not exceed 0.25 pounds
2 of phosphorus per 1,000 square feet per application, with
3 a maximum total annual application of 0.5 pounds of
4 phosphorus per 1,000 square feet, when applied pursuant
5 to the instructions on the container.

6 (b) Turf.--Notwithstanding the limits of subsection (a) (1),
7 fertilizer sold at retail and intended for use on turf may
8 contain up to 2.5 pounds of enhanced efficiency nitrogen
9 fertilizer per 1,000 square feet when applied pursuant to the
10 instructions on the container, provided the monthly release rate
11 does not exceed 0.7 pounds of nitrogen per 1,000 square feet.

12 § 67A15. Inspection fees.

13 (a) Amounts.--The following shall apply:

14 (1) The guarantor whose name appears on the label of a
15 fertilizer distributed in this Commonwealth shall pay
16 semiannually and not later than January 31 and July 31 of
17 each year an inspection fee at the rate of 17¢ per ton of
18 fertilizer distributed in this Commonwealth or a fee later
19 established in the manner set forth by section 67A75
20 (relating to fees, fines and civil penalties). In no case
21 shall the inspection fee paid semiannually amount to less
22 than \$25 or a fee as is later established in the manner set
23 forth by section 67A75.

24 (2) On packages of 15 pounds or less, there shall be
25 paid in lieu of the inspection fee provided for under
26 paragraph (1), annually and not later than January 31 of each
27 year, an inspection fee of \$25 for each brand and grade of
28 fertilizer distributed or the fee later established in the
29 manner set forth under section 67A75.

30 (3) Where a guarantor's name appears on the label of

1 fertilizers distributed in this Commonwealth in both packages
2 of less and more than 15 pounds, the inspection fee
3 established under paragraph (2) shall be paid for its brands
4 and grades sold in packages of 15 pounds or less and the
5 inspection fee provided for under paragraph (1) shall be paid
6 for its packages of more than 15 pounds.

7 (b) Adjustment of fees by the department.

8 (1) Notwithstanding the provisions of subsection (a), if
9 the department determines following notice to the registrants
10 and licensees that the money derived from the registration
11 and inspection fees is either greater or less than that
12 required to administer this chapter, the department may
13 reduce or increase the registration or inspection fee, or
14 both, so as to maintain revenues sufficient to administer
15 this chapter.

16 (2) An inspection fee established under this subsection
17 may not be changed by more than five cents in one year.

18 (3) The department shall announce the adjustment of fees
19 by publishing a notice in the Pennsylvania Bulletin. The
20 adjusted fees shall take effect 60 days after publication of
21 the notice in the Pennsylvania Bulletin.

22 § 67A16. Tonnage reports.

23 (a) General rule.--The guarantor whose name appears on the
24 label shall submit, along with the requisite inspection fee, a
25 report in a manner prescribed by the department listing by
26 county and fertilizer use category the net tons of each brand
27 and grade of fertilizer distributed in this Commonwealth for the
28 period covered by the inspection fee. The department may
29 promulgate regulations to establish additional tonnage reporting
30 requirements.

1 (b) Multiple guarantors.--When more than one guarantor is
2 involved in the distribution of fertilizer, the guarantor who
3 distributed the fertilizer last shall report the tonnage and pay
4 the inspection fee, unless the report and payment have been made
5 by a prior distributor.

6 (c) Late fee.--A penalty of \$25 or 10% of the total
7 inspection fee, whichever is greater, or the fee later
8 established in the manner set forth under section 67A75
9 (relating to fees, fines and civil penalties) shall be imposed
10 for any fee or report not submitted at the required time.

11 (d) Examination permitted.--The department or its authorized
12 representative may examine the records of the guarantor to
13 verify the information contained in the reports filed with the
14 department. Reports containing fraudulent or incorrect
15 information shall be considered a violation of this chapter for
16 which the department may assess any penalty as provided for in
17 this chapter.

18 (e) Confidentiality of information.

19 (1) Notwithstanding the act of February 14, 2008 (P.L.6,
20 No.3), known as the Right-to-Know Law, or its successor
21 statute, no proprietary information furnished to the
22 department under this section shall be disclosed in a way as
23 to knowingly or intentionally divulge a trade secret of any
24 person subject to the provisions of this chapter.

25 (2) This subsection shall not apply to information
26 furnished to a court or administrative tribunal in accordance
27 with law.

28 § 67A17. Inspection, sampling and analysis.

29 (a) General rule.--The department shall inspect, sample,
30 make analyses of and test fertilizers distributed within this

1 Commonwealth and shall inspect the storage of bulk fertilizer at
2 any time and place and to an extent the department may deem
3 necessary to determine whether the fertilizers are in compliance
4 with the provisions of this chapter. The department or its agent
5 may enter upon any public or private premises or carriers during
6 regular business hours in order to have access to fertilizer
7 subject to and the records relating to the provisions of this
8 chapter or the regulations promulgated thereunder.

9 (b) Methodology.--The methods of fertilizer sampling and
10 analysis by the department shall be methods such as those
11 adopted by the Association of Official Analytical Chemists
12 International. In cases not covered by the methods or in cases
13 where improved methods are available, the department may issue a
14 temporary order defining the method to be utilized. The method
15 defined in the temporary order shall be effective upon
16 publication in the Pennsylvania Bulletin. The temporary order
17 shall remain in effect for a period not to exceed one year,
18 unless reissued or until the notice is promulgated as a
19 regulation.

20 (c) Deficiency determination.--The department, in
21 determining whether any fertilizer is deficient in nutrients,
22 shall be guided solely by the official sample obtained and
23 analyzed as provided for under subsections (a) and (b).

24 (d) Maintenance of official samples.--Official samples
25 maintained by the department shall be retained for a minimum of
26 90 days from issuance of a fertilizer deficiency report or an
27 official report of analysis. Upon request, the department shall
28 furnish to the guarantor a portion of the official sample.
29 Requests must be made within 30 days of receipt of a fertilizer
30 deficiency report or an official report of analysis.

1 § 67A18. Plant food deficiency.

2 (a) Penalties.--The following penalties shall be assessed
3 for deficiencies from the guaranteed analysis:

4 (1) A penalty payment of five times the commercial value
5 of each deficiency shall be assessed when the analysis shows
6 that a fertilizer is deficient:

7 (i) in one or more of its guaranteed primary plant
8 nutrients beyond a tolerance of 10% (two unit maximum);
9 or

10 (ii) when the overall index value of the primary
11 nutrients in the fertilizer is below 97.

12 (2) When a fertilizer is subject to a penalty payment
13 under both paragraph (1)(i) and (1)(ii), the larger penalty
14 payment shall apply. Any penalties assessed shall not exceed
15 the retail price of the lot of fertilizer represented by the
16 official sample.

17 (3) Deficiencies beyond the tolerance as established by
18 regulation in a component other than a primary nutrient shall
19 be evaluated by the department and shall be subject to any
20 penalty under this chapter.

21 (b) Payment of penalties.--All penalties assessed under this
22 section shall be paid by the guarantor to the consumer of the
23 lot of fertilizer represented by the sample analyzed within 90
24 days after the date of notice from the department to the
25 guarantor. Receipts of payment shall be promptly forwarded by
26 the guarantor to the department. If the consumer cannot be
27 found, the penalties shall be paid to the department.

28 (c) Deficiencies in fertilizers.--A deficiency in an
29 official sample of mixed fertilizer resulting from nonuniformity
30 shall not be deemed distinguishable from a deficiency due to

1 actual plant nutrient shortage and shall be deemed a violation
2 of this chapter for which the department may assess any penalty
3 as provided for under this chapter.

4 § 67A19. Commercial value.

5 For the purpose of determining the commercial value to be
6 applied under section 67A18 (relating to plant food deficiency),
7 the department shall determine and publish in the Pennsylvania
8 Bulletin annually the values per pound of total nitrogen,
9 available phosphate and soluble potash in fertilizer in this
10 Commonwealth. The values so determined and published in the
11 Pennsylvania Bulletin shall go into effect July 1 of each year
12 and be used in determining and assessing penalty payments.

13 § 67A20. Misbranding.

14 No person shall distribute a misbranded fertilizer. A
15 fertilizer shall be deemed to be misbranded if any of the
16 following apply:

17 (1) Its labeling is false or misleading in any
18 particular.

19 (2) It is distributed under the name of another
20 fertilizer product.

21 (3) It is not labeled as required under section 67A13
22 (relating to labels and labeling) and in accordance with
23 regulations prescribed under this chapter.

24 (4) It purports to be or is represented as a fertilizer
25 or is represented as containing a plant nutrient or
26 fertilizer unless the plant nutrient or fertilizer conforms
27 to the definition of identity, if any, prescribed by
28 regulation.

29 § 67A21. Adulteration.

30 No person shall distribute an adulterated fertilizer product.

1 A fertilizer shall be deemed to be adulterated if any of the
2 following apply:

3 (1) It contains any deleterious or harmful substance in
4 sufficient amount to render it injurious to beneficial plant
5 life, animals, humans, aquatic life, soil or water when
6 applied in accordance with its intended use or directions for
7 use on the label.

8 (2) Adequate warning statements or directions for use
9 which may be necessary to protect plant life, animals,
10 humans, aquatic life, soil or water are not shown upon the
11 label.

12 (3) Its composition falls below or differs from that
13 which it is purported to possess by its labeling.

14 (4) It contains viable weed seed or unwanted crop seed
15 in amounts exceeding the limit which the department
16 establishes by regulation.

17 SUBCHAPTER C

18 APPLICATOR LICENSING AND CERTIFICATION

19 Sec.

20 67A22. Licensing of fertilizer application businesses.

21 67A23. Certification of applicators.

22 67A24. Recertification of applicators.

23 67A25. Reciprocal agreement.

24 67A26. Training of fertilizer technicians.

25 § 67A22. Licensing of fertilizer application businesses.

26 (a) Requirements.--A fertilizer application business must be
27 licensed prior to applying any fertilizer and shall comply with
28 the provisions of this chapter and any regulation or order of
29 the department. A fertilizer application business with more than
30 one place of business or that is operating under more than one

1 name in this Commonwealth shall license each location, place of
2 business and business entity. For a governmental or public
3 entity, each district or region will be considered a separate
4 business and shall require a separate license.

5 (b) Operation, application and expiration.--A fertilizer
6 application business shall not be operated without first
7 obtaining a fertilizer application business license. The
8 application for licensure shall be on a form furnished by the
9 department and shall be accompanied by a \$100 application fee or
10 the fee later established in the manner set forth under section
11 67A75 (relating to fees, fines and civil penalties). All
12 business licenses shall expire on December 31 each year, except
13 that the department may issue a license for the following year
14 when an initial license application is filed during the last two
15 months of a licensing year.

16 (c) Employer requirement.--A fertilizer application business
17 shall employ at all times and at each licensed business at least
18 one person who holds a current valid commercial or public
19 applicator certification. This person shall be responsible for
20 training fertilizer technicians on the proper handling and
21 application of fertilizer.

22 (d) Fertilizer technicians.--A fertilizer application
23 business shall ensure that fertilizer technicians do not apply
24 fertilizer unless the persons have gone through a training
25 program as described by section 67A26 (relating to training of
26 fertilizer technicians).

27 (e) Record.--A fertilizer application business shall
28 maintain a record and provide to the department, upon request,
29 the following:

30 (1) a list of all certified applicators employed by the

1 business; and

2 (2) a list of all fertilizer technicians employed by the
3 business and an attestation that each has completed a
4 training program meeting the requirements of section 67A26.

5 The attestation shall be subject to the penalties for a
6 violation of 18 Pa.C.S. § 4904 (relating to unsworn
7 falsification to authorities) or its successor statute.

8 (f) Notification.--A licensed fertilizer application
9 business shall notify the department in writing within 15 days
10 of a change in its license information, including the employment
11 status of its certified applicators and fertilizer technicians.

12 (g) License number display.--A fertilizer application
13 business shall prominently display on every vehicle involved in
14 the fertilizer application phase of its business the license
15 number assigned by the department. The number shall be in
16 figures at least three inches high and be located on both sides
17 of the vehicle at a readily visible location in a contrasting
18 color.

19 (h) Aerial application.--If a fertilizer application
20 business, or an applicator of fertilizer engages in aerial
21 applications, the applicant shall, upon request by the
22 department, provide proof of compliance with the Federal
23 Aviation Administration regulations as described in 14 CFR Pt.
24 137 (relating to agricultural aircraft operations) or its
25 successor regulations.

26 § 67A23. Certification of applicators.

27 (a) Condition.--A commercial applicator or public applicator
28 for a fertilizer application business must be certified under
29 the requirements established under this chapter and the
30 department's regulations prior to:

1 (1) applying fertilizer or conducting training of
2 fertilizer technicians; and

3 (2) the fertilizer application business applying
4 fertilizer.

5 (b) Training.--Only a fully certified applicator may train
6 fertilizer technicians.

7 (c) Certification examination.--The following shall apply:

8 (1) A person wishing to obtain full certification under
9 this chapter shall take and pass a written examination
10 prepared or approved by the department and shall demonstrate
11 minimum standard proficiency on the basis of a written
12 examination conducted at an approved test site under the
13 direction of the department or its designated agents. All
14 fees associated with the certification examination shall be
15 paid in full prior to certification by the department.

16 (2) Each applicant for certification shall demonstrate
17 knowledge and competence as to:

18 (i) Safety and health.

19 (ii) Labeling and label comprehension.

20 (iii) Environmental protection.

21 (iv) Equipment use, calibration and dosage
22 calculations.

23 (v) Personal protective equipment.

24 (vi) Cleaning and maintaining equipment.

25 (vii) Transportation, storage, security and
26 disposal.

27 (viii) Applicable Federal and State laws.

28 (ix) Any subject matter deemed appropriate by the
29 department's regulations.

30 (3) The department shall require a minimum examination

1 fee of \$10 or the fee as is later established in the manner
2 set forth under section 67A75 (relating to fees, fines and
3 civil penalties).

4 (d) Commercial and public applicators.

5 (1) A commercial or public applicator's certification
6 shall not be valid until the applicator is associated with a
7 fertilizer application business that is licensed according to
8 the requirements of section 67A22 (relating to licensing of
9 fertilizer application businesses).

10 (2) If a commercial or public applicator separates
11 employment from a fertilizer application business, the
12 eligibility for certification shall remain with the
13 applicator and may be transferred to another fertilizer
14 application business.

15 (e) Issuance of certification.--Certification shall be
16 issued to a person upon successful completion of all classroom,
17 examination, testing and certification requirements established
18 under this chapter, an order of the department and regulations
19 of the department and the payment of all fees, unless revoked or
20 suspended by the department.

21 (f) Activation.--Upon receiving notice of passing all
22 certification requirements, the applicant shall, within 12
23 months of becoming eligible to be certified as a commercial or
24 public applicator, file with the department a request to
25 activate certification. A person who fails to request activation
26 within the 12-month period shall lose certification eligibility
27 and shall again establish eligibility in accordance with this
28 section.

29 (g) Expiration.--Certification shall expire as follows:

30 (1) Commercial applicator certification shall expire on

1 September 30 of each year following the date of
2 certification.

3 (2) Public applicator certification shall expire on
4 September 30 every three years following the date of
5 certification.

6 (3) With regard to an initial application for
7 certification, the department may issue a certificate for an
8 additional year when a person becomes fully certified within
9 the last two months of the certification year.

10 (h) Grandfathering.--A person holding a valid pesticide
11 applicator certification in categories 1, 2, 3, 5, 6, 7, 18, 22,
12 23 and 25 under the act of March 1, 1974 (P.L.90, No.24), known
13 as the Pennsylvania Pesticide Control Act of 1973, at the time
14 this chapter is enacted shall be granted certification as a
15 certified fertilizer applicator under this chapter but shall
16 still comply with all other requirements of this chapter. The
17 certification shall be valid until each person's pesticide core
18 recertification is due, at which time that person shall be
19 required to meet all the recertification requirements as
20 required under section 67A24 (relating to recertification of
21 applicators).

22 § 67A24. Recertification of applicators.

23 (a) Continuing education.--At intervals of three years, a
24 certified applicator shall provide evidence of having received
25 continuing education credits in technology relating to
26 fertilizer applications. Recertification training shall be in
27 the following content areas:

28 (1) Safety and health.

29 (2) Labeling and label comprehension.

30 (3) Environmental protection.

- 1 (4) Equipment use, calibration and dosage calculations.
- 2 (5) Personal protective equipment.
- 3 (6) Cleaning and maintaining equipment.
- 4 (7) Transportation, storage, security and disposal.
- 5 (8) Applicable Federal and State laws.
- 6 (9) Any subject matter deemed appropriate by the
7 department's regulations.

8 (b) Credits.--Continuing education credits will be given on
9 the basis of attendance at courses or other appropriate training
10 approved by the department. Training will be evaluated by the
11 department and assigned credits. At a minimum, certified
12 applicators shall obtain two credits or the total amount of
13 credits later established by publication in the Pennsylvania
14 Bulletin.

15 (c) Training.--Training shall be approved based on the
16 following:

17 (1) Training shall be conducted or sponsored by the
18 department or a department-approved institution, association,
19 business entity or a governmental agency. The department-
20 approved trainer shall submit course materials for approval
21 by the department and shall establish that courses will be
22 conducted by a person or persons that are certified
23 applicators in good standing under this chapter and with at
24 least three years' experience as a certified fertilizer
25 applicator or by an approved entity with other documented
26 qualifications to serve as a trainer, such as an appropriate
27 educational background.

28 (2) Training shall be approved for continuing education
29 credits at the rate of one credit per 60 minutes, or as later
30 established by regulation, of applicable instruction,

1 exclusive of coffee breaks, lunches, visits to exhibits and
2 other similar activities.

3 (3) An approved entity wishing to conduct or sponsor
4 continuing education training shall submit a written request
5 for course and trainer approval to the department's regional
6 office for the region in which the meeting will be held. A
7 request to approve out-of-State training must be submitted to
8 the department's headquarters. The request shall include
9 evidence of compliance with the standards established by
10 paragraph (1).

11 (d) Information request.--A request for training approval
12 shall include the following information:

13 (1) The name, address and telephone number of the
14 contact person who is coordinating the training.

15 (2) The specific location where the training course will
16 be offered.

17 (3) The date and time of the training course.

18 (4) A listing of the trainers, trainer qualifications,
19 subject matter and time allotted to each subject.

20 (5) A statement of whether the training is open to the
21 public and, where applicable, the charge to attend.

22 (6) A detailed course syllabus setting forth the subject
23 matter to be covered and a description of the content, the
24 time period allotted for each subject matter and trainer name
25 and certification.

26 (e) Oath or affirmation.--A statement made in a request to
27 approve training shall be supported by oath or affirmation and
28 is subject to the penalties for a violation of 18 Pa.C.S. § 4904
29 (relating to unsworn falsification to authorities) or its
30 successor statute.

1 (f) Assignment of credits.--Credits shall be assigned to
2 each training course based upon the subjects covered and the
3 amount of time expended on each subject.

4 (g) Monitoring of training.--All training shall be monitored
5 by an employee of the department. If an employee of the
6 department is unable to monitor the training, the training
7 course coordinator shall be responsible for authenticating
8 attendance and shall compile an approved list of Pennsylvania
9 certified applicators in attendance. This list shall be returned
10 to the department within 10 working days following the meeting
11 date and shall include the name of each individual attending and
12 applicator certification number.

13 (h) Modification of credits.--Credits assigned may be
14 modified if the content, approved trainer or time of the actual
15 training course differs from the original training course
16 approved by the department.

17 (i) Violation.--Falsification by a department-approved
18 course trainer or sponsor of information required under this
19 section shall be considered a violation of this chapter for
20 which the department may assess a penalty as provided for in
21 this chapter and withdraw approval of the course as set forth
22 under this section.

23 (j) Attendance falsification.--A person may not falsify
24 attendance or that of another person's attendance at a
25 continuing education meeting. Falsification of attendance at a
26 continuing education course by a person shall be considered a
27 violation of this chapter for which the department may assess a
28 penalty as provided for under this chapter and revoke the
29 applicator's certification and require full renewal of
30 certification as required under section 67A23 (relating to

1 certification of applicators).

2 (k) Failure to obtain required credits.--If a person does
3 not obtain the required number of recertification credits in the
4 triennial year in which continuing education credits are due,
5 the person's certification shall be invalid and that person
6 shall cease and desist from all fertilizer application and
7 recertification shall require completion of delinquent
8 continuing education credits as established in this section
9 prior to certification being renewed.

10 (l) Failure to complete delinquent credits.--If a person
11 fails to complete delinquent continuing education credits within
12 one year from the triennial expiration date or fails to renew
13 the certification for any reason during that time period, the
14 person shall cease and desist from all fertilizer application
15 and shall be required to reestablish eligibility by meeting the
16 requirements in section 67A23.

17 § 67A25. Reciprocal agreement.

18 The department may issue a license or certification on a
19 reciprocal basis with other states without examination to a
20 nonresident who is licensed, or certified, in another state that
21 administers a fertilizer licensing or certification course
22 substantially in accordance with the provision of this chapter.

23 § 67A26. Training of fertilizer technicians.

24 (a) Prohibition.--Fertilizer technicians working for a
25 fertilizer application business may not apply fertilizer without
26 first going through a training program, as required by the
27 provisions of this chapter, an order of the department or the
28 department's regulations.

29 (b) Requirements.--Fertilizer technicians shall be an
30 employee of the business and trained by a certified applicator

1 who is an employee of the same business.

2 (c) Transferability.--Training of fertilizer technicians
3 shall not be transferrable between businesses.

4 (d) Program administration.--The training program for
5 fertilizer technicians shall be administered by a certified
6 applicator, employed by the fertilizer application business
7 employing the fertilizer technician, in subject matter involving
8 the assigned tasks of the fertilizer technician. The training
9 program shall include, but not be limited to:

10 (1) Proper use of fertilizers and use of application
11 equipment, including calibration and maintenance equipment
12 used on the job.

13 (2) Protective clothing required during the application
14 and handling of fertilizers.

15 (3) Transportation and disposal of fertilizers used in
16 and around the workplace.

17 (4) Applicable Federal and State regulations as they
18 affect the work assignments.

19 (5) Competence in reading and following label and
20 application requirements.

21 (e) Noncertified employees.--When there are noncertified
22 employees engaged in the application of fertilizer, they shall
23 be trained according to subsection (d) or work under the
24 supervision of a certified applicator who is physically present
25 on the job site.

26 (f) Training and supervision prohibition.--A fertilizer
27 technician may not train applicators or supervise the use or
28 application of fertilizers by other fertilizer technicians or
29 noncertified employees.

30 (g) Record.--At the completion of training, the certified

1 applicator conducting the training shall complete a record of
2 training. Training records shall be maintained by the firm for
3 one year following separation of the fertilizer technician's
4 employment and at a minimum shall include:

5 (1) Name and certification number of the trainer.

6 (2) Name of fertilizer technician trained.

7 (3) Date of training.

8 (4) Areas of training.

9 (5) Business name and address of the fertilizer
10 application business employing the fertilizer technician.

11 (6) Any other requirements as established by the
12 department through order or regulations.

13 SUBCHAPTER D

14 RECORDKEEPING FOR APPLICATORS AND AIRPORTS

15 Sec.

16 67A31. Records.

17 § 67A31. Records.

18 (a) Required information.--Applicators required to be
19 certified under section 67A23 (relating to certification of
20 applicators) and fertilizer technicians trained under section
21 67A26 (relating to training of fertilizer technicians) shall
22 keep for every application of fertilizer a record containing the
23 following information:

24 (1) The name and address of the customer and the address
25 and location of the application site, if different from the
26 address of the customer.

27 (2) A record of the date of each fertilizer application.
28 For continuous applications, such as hydroponics or drip
29 lines, the record shall include start and finish dates and
30 the total amount of fertilizer products used during that time

1 period. For each addition of a fertilizer to the system, an
2 entry to the record is required.

3 (3) The weather conditions, including approximate
4 temperature.

5 (4) The brand name and grade of the fertilizer used.

6 (5) The dosage or rate of application of every
7 fertilizer used.

8 (6) The total amount of fertilizer used in pounds,
9 ounces, gallons or liters applied to a treated area.

10 (7) The identification of the application site,
11 including the specific field or land area and the crop and
12 size of the area treated with fertilizer.

13 (8) The name and certification number of each person
14 involved with the application and the name of each fertilizer
15 technician and noncertified employee involved in the
16 application.

17 (9) Additional information as the department may require
18 through order or regulation.

19 (b) Fertilizer application record.--A fertilizer application
20 record shall be completed in written or printable form no later
21 than 24 hours after the application date and made immediately
22 available to the department upon request. The department may
23 require the submission of annual reports.

24 (c) Airports.--Airports using nitrogen-based materials for
25 melting snow or ice shall:

26 (1) Develop and submit to the department, every five
27 years, or upon revision, a plan for collecting runoff that
28 will reduce the amount of material that would enter a lake,
29 pond, wetland or flowing body of water.

30 (2) Report to the department, prior to January 31 of

1 each year, the total tonnage of nitrogen-based material
2 utilized in the previous calendar year. Reports shall be on a
3 form prescribed by the department. The department shall not
4 require a fee for the report. At a minimum, airport tonnage
5 reports shall include:

6 (i) The airport name and address.

7 (ii) The brand name of the product used.

8 (iii) List of ingredients and the percentage of
9 each.

10 (iv) Total amount of material applied during the
11 calendar year.

12 (v) Any other information required by the department
13 through regulation.

14 (d) Maintenance requirements.--A record required under this
15 section shall be maintained for at least three years.

16 (e) Additional requirements.--In addition to the
17 requirements established under this section, the department may
18 promulgate regulations to require additional record keeping and
19 application reporting requirements.

20 SUBCHAPTER E

21 APPLICATION RATES, REQUIREMENTS AND PROHIBITIONS

22 Sec.

23 67A41. Application of fertilizer.

24 67A42. Prohibited acts.

25 § 67A41. Application of fertilizer.

26 (a) Restrictions.--No person may:

27 (1) Apply fertilizer to an impervious surface. Any
28 fertilizer inadvertently applied to an impervious surface
29 shall be removed from the impervious surface immediately
30 following the application.

1 (2) Apply fertilizer containing nitrogen or phosphorus
2 to turf at any time when the ground is frozen to a depth of
3 at least two inches or snow covered.

4 (3) Apply nonaquatic fertilizer within 15 feet of the
5 top of a bank of a lake, pond, wetlands or flowing body of
6 water, except that fertilizer may be applied to the top of
7 the bank of the waterways if applied using a drop spreader,
8 rotary spreader with deflector, targeted spray liquid or
9 other available targeted application technology when
10 establishing a stream buffer zone. The establishment of
11 setbacks for fertilizer application under this paragraph
12 shall not preclude the establishment or applicability of or
13 required compliance with any other environmental standard
14 established under any other Federal or State law, rule or
15 regulation.

16 (4) Apply fertilizer containing phosphorus or nitrogen
17 to turf before March 1 or after December 15 in any calendar
18 year, except fertilizer containing no more than 0.5 pounds of
19 total nitrogen per 1,000 square feet may be applied by a
20 certified applicator or fertilizer technician to turf after
21 December 15 but before March 1 in a calendar year.

22 (b) Fertilizer use and application rates for turf.--Except
23 as provided under subsections (c), (d), (e) and (f), at least
24 20% of the total nitrogen applied to turf per 1,000 square feet
25 shall be enhanced efficiency nitrogen and application rates for
26 turf shall:

27 (1) not exceed 0.7 pounds of readily available nitrogen
28 per 1,000 square feet per application;

29 (2) not exceed 0.9 pounds of total nitrogen per 1,000
30 square feet per application; and

1 (3) contain zero phosphorus, except when specifically
2 labeled for the following purposes:

3 (i) establishing vegetation for the first time;

4 (ii) reestablishing or repairing a turf area; or

5 (iii) as an enhanced efficiency phosphorus
6 fertilizer, natural organic fertilizer, organic-base
7 fertilizer or fertilizer derived from a by-product
8 applied at a rate not to exceed 0.25 pounds of phosphorus
9 per 1,000 square feet, with a maximum total annual
10 application of 0.5 pounds of phosphorus per 1,000 square
11 feet per year.

12 (c) Application based on soil test and site-specific plan.--
13 An applicator shall not be required to follow the application
14 rates under subsection (b) if a site-specific plan is used based
15 on the following:

16 (1) a soil test that was conducted within the previous
17 three years. Soil testing procedures shall be those
18 recommended by The Pennsylvania State University or published
19 in Recommended Soil Testing Procedures for the Northeastern
20 United States, Bulletin #493, published by the University of
21 Delaware, or its successor publication;

22 (2) current soil, plant species, climate, use,
23 topography and other appropriate management factors including
24 the promotion of water infiltration and the reduction of
25 erosion; and

26 (3) rates recommended by The Pennsylvania State
27 University or other Pennsylvania university or college
28 recognized by the department.

29 (d) Golf courses.--The use of enhanced efficiency fertilizer
30 shall not be required on the tees, fairways or greens of a golf

1 course.

2 (e) Additional restrictions.--Where science indicates, the
3 department may establish additional restrictions.

4 (f) Exemption.--The requirements of this section shall not
5 apply to fertilizer applied by a public or private college or
6 university for research purposes.

7 § 67A42. Prohibited acts.

8 (a) Prohibited acts by business, certified applicator or
9 fertilizer technician.--A fertilizer application business,
10 certified applicator or fertilizer technician may not:

11 (1) Apply fertilizer without a license, certification or
12 the training as required by this chapter.

13 (2) Apply any fertilizer that is misbranded or
14 adulterated.

15 (3) Make false or fraudulent records, invoices or
16 reports concerning the application, storage or disposal of
17 fertilizer.

18 (4) Make a false statement or misrepresentation of
19 material fact on an application for issuance or renewal of a
20 license or certification required pursuant to the provisions
21 of this chapter, an order or the regulations promulgated
22 under this chapter.

23 (5) Refuse or neglect to comply with any conditions or
24 limitations imposed upon a license or certification issued
25 pursuant to this chapter, a regulation promulgated under this
26 chapter or an order issued under the authority of this
27 chapter.

28 (6) Refuse to present evidence of proper licensure or
29 certification to an agent of the department upon request.

30 (7) Refuse to display their license or certification

1 number in a manner as required by this chapter or the
2 regulations of the department.

3 (8) Fail to comply with any provision of this chapter, a
4 regulation promulgated under this chapter or any order issued
5 under the authority of this chapter.

6 (b) Prohibited acts by person.--A person may not:

7 (1) Apply, use or cause to be used any fertilizer in a
8 manner that differs from or is inconsistent with its
9 labeling.

10 (2) Apply fertilizer with a device that is not intended
11 for the application of fertilizer or that has not been
12 properly calibrated.

13 (3) Operate fertilizer application equipment or devices
14 in a faulty, careless or negligent manner.

15 (4) Apply, dispose of, discard or store any fertilizer
16 product in a manner that is inconsistent with its label,
17 would cause over application of fertilizer, would result in
18 direct discharge to a storm drain or waters of the
19 Commonwealth or in a manner inconsistent with regulations
20 promulgated by the department or any order issued by the
21 department.

22 (5) Refuse or neglect to keep and maintain the records
23 required by this chapter and order of the department or the
24 regulations promulgated under this chapter or to refuse or
25 neglect to make reports when and as required by regulation or
26 order of the department.

27 (6) Aid or abet another to evade the provisions of this
28 chapter, a regulation promulgated hereunder or an order
29 issued under the authority of this chapter, conspire with
30 another for that purpose or allow a certification to be used

1 by another.

2 (7) Hinder, mislead, make false statements to or refuse
3 to cooperate with an employee or agent of the department in
4 any investigation or inspection undertaken pursuant to the
5 authority delegated to the department under the provisions of
6 this chapter.

7 (8) Apply fertilizer, fertilizer material or any
8 nitrogen-based material for the purposes of melting snow or
9 ice, unless the material is applied to aircraft or areas an
10 aircraft accesses at an airport. Airports using nitrogen-
11 based materials for melting snow or ice shall establish a
12 method for collecting runoff to reduce the amount of material
13 that would enter a lake, wetlands or flowing body of water.

14 (9) Fail to comply with any provision of this chapter,
15 the regulations promulgated under this chapter or any order
16 issued under the authority of this chapter.

17 SUBCHAPTER F

18 AGRICULTURAL AND HOMEOWNER EDUCATION PROGRAM

19 Sec.

20 67A51. Agricultural and homeowner education.

21 § 67A51. Agricultural and homeowner education.

22 The department, through guidelines established in
23 consultation with The Pennsylvania State University and
24 representatives of the agricultural and turf grass industries,
25 shall undertake a program of public outreach to educate the
26 public on proper use, application, handling and storage of
27 fertilizers.

28 SUBCHAPTER G

29 ADMINISTRATIVE AND PENALTY PROVISIONS

30 Sec.

- 1 67A61. Publications.
- 2 67A62. Rules and regulations.
- 3 67A63. Short weight.
- 4 67A64. Refusal, suspension or revocation of registration,
- 5 license or certification.
- 6 67A65. Stop-sale orders.
- 7 67A66. Seizure and condemnation.
- 8 67A67. Unlawful conduct.
- 9 67A68. Interference with officer or employee of department.
- 10 67A69. Enforcement and penalties.
- 11 67A70. Appeal process.
- 12 67A71. Civil remedy.
- 13 67A72. Cooperation with other entities.
- 14 67A73. Exchanges between manufacturers.
- 15 67A74. Confidentiality.
- 16 67A75. Fees, fines and civil penalties.
- 17 67A76. Disposition of funds.
- 18 67A77. Delegation of duties and exclusion of local laws and
- 19 regulations.

20 § 67A61. Publications.

21 The department may publish on an annual basis, and in a form
22 the department deems proper, information concerning the
23 distribution of fertilizers by county and fertilizer use
24 category and results of analyses based on official samples of
25 fertilizer distributed within this Commonwealth as compared with
26 analyses guaranteed under sections 67A12 (relating to
27 registration of specialty fertilizers) and 67A13 (relating to
28 labels and labeling).

29 § 67A62. Rules and regulations.

30 The department may, where necessary, promulgate and enforce

1 rules and regulations necessary for administration and
2 implementation of this chapter.

3 § 67A63. Short weight.

4 If any fertilizer in possession of a consumer is found by the
5 department to be short in weight, the guarantor of that
6 fertilizer shall, within 30 days after official notice from the
7 department, submit to the consumer a penalty payment of two
8 times the value of the actual shortage.

9 § 67A64. Refusal, suspension or revocation of registration,
10 license or certification.

11 (a) Authority of department.--The department may refuse,
12 suspend or revoke the registration of any fertilizer or refuse,
13 suspend or revoke the license or certification of a person where
14 the registrant, licensee or certificate holder has not complied
15 with the provisions of this chapter or a regulation or order of
16 the department or of a person who has used fraudulent or
17 deceptive practices in the evasion or attempted evasion of the
18 provisions of this chapter.

19 (b) Hearing.--The department shall provide an opportunity
20 for a hearing, as set forth under section 67A70 (relating to
21 appeal process), to a person appealing an action of the
22 department under this section.

23 § 67A65. Stop-sale orders.

24 (a) General rule.--The department may issue and enforce a
25 written or printed stop-sale, use or removal order to the owner
26 or custodian of any lot of fertilizer being offered or exposed
27 for sale in violation of any of the provisions of this chapter
28 or a regulation or order issued hereunder. Fertilizer placed
29 under the order shall be held at a designated place approved by
30 the department and not moved in any way without written approval

1 by the department. The order shall remain in effect until the
2 law has been complied with and the fertilizer is released in
3 writing by the department or the fertilizer in violation has
4 been disposed of in a manner authorized by the department. The
5 authorization shall be set forth in writing.

6 (b) Release by department.--The department shall release the
7 fertilizer held under a stop-sale order when the requirements of
8 the provisions of this chapter or a regulation or order issued
9 hereunder, have been complied with and all costs and expenses
10 incurred in connection with the order have been paid by the
11 person responsible for the violation.

12 § 67A66. Seizure and condemnation.

13 Fertilizer not in compliance with the provisions of this
14 chapter, or a regulation or order issued hereunder, shall be
15 subject to seizure and condemnation by the department, provided
16 that in no instance shall the disposition of the fertilizer be
17 ordered by the department without first giving the claimant an
18 opportunity for a hearing as provided for under section 67A70
19 (relating to appeal process) or for opportunity to apply for
20 permission to process or relabel the fertilizer to bring it into
21 compliance with this chapter.

22 § 67A67. Unlawful conduct.

23 It shall be unlawful for any person to fail to comply with or
24 to cause to assist in the violation of any order or any of the
25 provisions of this chapter or the rules and regulations adopted
26 under this chapter.

27 § 67A68. Interface with officer or employee of department.

28 A person who willfully or intentionally interferes with an
29 employee or officer of the department in the performance of that
30 employee's or officer's duties or activities authorized under

1 this chapter commits a misdemeanor of the third degree and
2 shall, upon conviction, be subject to a term of imprisonment for
3 not more than one year or a fine of not more than \$2,500, or
4 both.

5 § 67A69. Enforcement and penalties.

6 (a) Criminal penalties.--Unless otherwise specified, a
7 person who violates any of the provisions of this chapter or a
8 rule or regulation adopted thereunder or any order issued
9 pursuant thereto:

10 (1) For the first offense, commits a summary offense and
11 may, upon conviction, be sentenced for each offense to pay a
12 fine of not less than \$50 nor more than \$100 and costs of
13 prosecution or to undergo imprisonment for a term which shall
14 be fixed at not more than 90 days, or both.

15 (2) For a subsequent offense committed within three
16 years of a prior conviction for any violation of this chapter
17 or any rule, regulation or order made under this chapter,
18 commits a misdemeanor of the second degree and shall, upon
19 conviction, be sentenced to pay a fine of not less than \$500
20 nor more than \$1,000 and costs of prosecution or to
21 imprisonment for not more than two years, or both.

22 (b) Civil penalties.--The following shall apply:

23 (1) In addition to any other remedy available at law or
24 in equity for a violation of this chapter, the department may
25 assess a civil penalty of not more than \$2,500 upon any
26 person for each violation of this chapter. The civil penalty
27 assessed shall be payable to the department and shall be
28 collectible in any manner provided by law for the collection
29 of debt.

30 (2) No civil penalty shall be assessed unless the person

1 assessed the penalty has been given notice and an opportunity
2 for a hearing on the assessment in accordance with the
3 provisions of 2 Pa.C.S. Chs. 5 Subch. A (relating to practice
4 and procedure of Commonwealth agencies) and 7 Subch. A
5 (relating to judicial review of Commonwealth agency action).

6 (c) Trade secrets.--The following shall apply:

7 (1) A person who uses to their own advantage or reveals
8 to anyone other than the department, administrative tribunal
9 or the courts when relevant in any judicial proceeding any
10 information acquired under the authority of this chapter
11 concerning any method, records, formulations or processes
12 which as a trade secret is entitled to protection under the
13 law commits a misdemeanor of the third degree and shall, upon
14 conviction, be sentenced to pay a fine of not less than \$500.

15 (2) This subsection shall not be construed to prohibit
16 the department from exchanging information of a regulatory
17 nature with governmental agencies of the Federal Government,
18 agencies of this Commonwealth or any other state.

19 (d) Certified copy of official analysis.--In prosecution
20 under this chapter involving the composition of a lot of
21 fertilizer, a certified copy of the official analysis signed by
22 the department shall be accepted as prima facie evidence of the
23 composition.

24 (e) De minimis violations.--Nothing in this chapter shall be
25 construed as requiring the department to report a violation and
26 to institute seizure proceedings as a result of de minimis
27 violations of this chapter when the department concludes that
28 the public interest will be best served by a suitable notice of
29 warning in writing.

30 (f) District attorney.--It is the duty of each district

1 attorney to whom any criminal violation of this chapter is
2 reported to cause appropriate proceedings to be instituted and
3 prosecuted in a court of competent jurisdiction without delay.
4 § 67A70. Appeal process.

5 All appeals shall be taken and hearings conducted in
6 accordance with the provisions of 2 Pa.C.S. Chs. 5 Subch. A
7 (relating to practice and procedure of Commonwealth agencies)
8 and Ch. 7 Subch. A (relating to judicial review of Commonwealth
9 agency action). A person shall have 15 days to appeal an
10 enforcement action of the department.

11 § 67A71. Civil remedy.

12 (a) Office of Attorney General.--In addition to any other
13 remedies provided for under this chapter, the Office of Attorney
14 General, at the request of the department, may initiate in the
15 Commonwealth Court or the court of common pleas of the county in
16 which the defendant resides or has a place of business an action
17 in equity for an injunction to restrain any violations of this
18 chapter or the rules and regulations promulgated under this
19 chapter or any order issued pursuant to this chapter from which
20 no timely appeal has been taken or which has been sustained on
21 appeal.

22 (b) Preliminary injunctions.--In a proceeding under
23 subsection (a), the court shall, upon motion of the
24 Commonwealth, issue a preliminary injunction if the court finds
25 that the defendant is engaging in conduct that causes immediate
26 or irreparable harm to the public or has engaged in other
27 conduct which the court has developed through case law.

28 (c) Bonds not required.--The Commonwealth may not be
29 required to furnish bond or other security in connection with
30 proceedings under this section.

1 (d) Civil penalties.--In addition to an injunction, the
2 court may levy civil penalties as provided under this chapter.
3 § 67A72. Cooperation with other entities.

4 The department may cooperate with and enter into agreement
5 with governmental agencies of the Federal Government, agencies
6 of this Commonwealth and any other state in order to carry out
7 the purpose and provisions of this chapter.

8 § 67A73. Exchanges between manufacturers.

9 Nothing in this chapter shall be construed as restricting or
10 avoiding sales or exchanges of fertilizers to each other by
11 importers, manufactures or manipulators who mix fertilizer
12 materials for sale or as preventing the free and unrestricted
13 shipments of fertilizer to manufacturers or manipulators who are
14 in compliance with the provisions of this chapter.

15 § 67A74. Confidentiality.

16 All proprietary business information contained in records,
17 data, formulations and other information filed with or collected
18 by the department relating to inspections, tonnage reports and
19 trade secrets, such as product formulation, customer lists or
20 production methods, shall be exempt from the act of February 14,
21 2008 (P.L.6, No.3), known as the Right-to-Know Law, or its
22 successor statute and subject to inspection only upon the order
23 of a court of competent jurisdiction.

24 § 67A75. Fees, fines and civil penalties.

25 (a) Insufficient revenues.--If the revenues raised by fees,
26 fines and civil penalties imposed under this chapter are not
27 sufficient to meet expenditures for the administration and
28 enforcement of this chapter over a two-year period, the
29 department may increase those fees so that the project revenues
30 will meet or exceed projected expenditures.

1 (b) Notice and effective date.--The department shall
2 announce the adjustment of fees, fines and penalties by
3 publishing a notice in the Pennsylvania Bulletin. The adjusted
4 fees shall take effect 60 days after publication of the notice
5 in the Pennsylvania Bulletin.

6 § 67A76. Disposition of funds.

7 Money received from license fees, registration fees,
8 applicator certification, inspection fees, fines and penalties
9 shall be paid into a special restricted account in the General
10 Fund known as the Agronomic Regulatory Account. All money in the
11 Agronomic Regulatory Account is hereby appropriated to the
12 department for the purposes of this chapter and chapters 69
13 (relating to soil and plant amendment) and 71 (relating to
14 seed).

15 § 67A77. Delegation of duties and exclusion of local laws and
16 regulations.

17 (a) General rule.--This act and its provisions are of
18 Statewide concern and occupy the whole field of regulation
19 regarding the registration, packaging, labeling, sale,
20 transportation, distribution, use and application of fertilizers
21 and certification of fertilizer applicators to the exclusion of
22 all local regulations.

23 (b) Enforcement.--No ordinance or regulation of any local
24 agency, political subdivision or home rule municipality may
25 prohibit or in any way attempt to regulate any matter relating
26 to the registration, packaging, labeling, sale, transportation,
27 distribution, use or application of fertilizer, if any of these
28 ordinances, laws or regulations are in conflict with this
29 chapter.

30 (c) Stricter requirements.--Nothing in this chapter shall

1 prevent a political subdivision or home rule municipality from
2 adopting and enforcing ordinances or regulations which are
3 consistent with and no more stringent than the requirements of
4 this chapter and the regulations or guidelines promulgated under
5 this chapter. No penalty shall be assessed under any local
6 ordinance or regulation under this subsection for any violation
7 for which a penalty has been assessed under this chapter.

8 Section 4. Sections 6921 and 7122 of Title 3 are amended to
9 read:

10 § 6921. Disposition of funds.

11 Moneys received from license fees, registration fees,
12 inspection fees, fines and penalties shall be paid into the
13 Agronomic Regulatory Account established in section [6725] 67A76
14 (relating to disposition of funds). All moneys in the Agronomic
15 Regulatory Account are hereby appropriated to the department for
16 the purposes of this chapter and Chapter [67] 67A (relating to
17 fertilizer).

18 § 7122. Disposition of funds.

19 Moneys received from license fees, seed testing fees,
20 certification fees, fines and penalties shall be paid into the
21 Agronomic Regulatory Account established in section [6725] 67A76
22 (relating to disposition of funds). All moneys in the Agronomic
23 Regulatory Account are hereby appropriated to the department for
24 the purposes of Chapters [67] 67A (relating to fertilizer) and
25 69 (relating to soil and plant amendment) and this chapter.

26 Section 5. Specific appropriation.--The sum of \$100,000 is
27 hereby appropriated to the department to be deposited in the
28 Agronomic Regulatory Account, for use by the Department of
29 Agriculture to develop the certification and recertification
30 courses required under 3 Pa.C.S. §§ 67A22 (relating to licensing

1 of fertilizer application businesses) and 67A23 (relating to
2 certification of applicators) and any computer programming or
3 software necessary for administration and enforcement of 3
4 Pa.C.S. Ch. 67A.

5 Section 6. This act shall take effect as follows:

6 (1) The addition of 3 Pa.C.S. §67A13 shall take effect
7 in eighteen (18) months.

8 (2) The addition of 3 Pa.C.S. §67A22 shall take effect
9 upon the development of the certification courses specified
10 under 3 Pa.C.S. §67A22(e).

11 (3) The addition of 3 Pa.C.S. §67A23 shall take effect
12 upon the development of the recertification courses specified
13 under 3 Pa.C.S. §67A23(a).

14 (4) The remainder of this act shall take effect
15 immediately.