

AMENDMENTS TO SENATE BILL NO. 792

Sponsor: SENATOR ALLOWAY

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1 Amend Bill, page 1, line 4, by striking out "and,"

2 Amend Bill, page 1, line 5, by inserting after "funds"

3 ; and imposing duties on the Department of Agriculture

4 Amend Bill, page 18, lines 17 through 30; pages 19 through

5 67, lines 1 through 30; page 68, lines 1 through 15; by striking

6 out all of said lines on said pages and inserting

7 CHAPTER 68

8 FERTILIZER

9 Subchapter

10 A. General Provisions

11 B. Fertilizer Manufacturers and Guarantors

12 C. Applicator Licensing and Certification

13 D. Recordkeeping for Applicators

14 E. Application Rates, Requirements and Prohibitions

15 F. Agricultural and Homeowner Education Program

16 G. Administration and Penalties

17 SUBCHAPTER A

18 GENERAL PROVISIONS

19 Sec.

20 6801. Short title of chapter.

21 6802. Legislative intent.

22 6803. Definitions.

23 § 6801. Short title of chapter.

24 This chapter shall be known and may be cited as the
25 Fertilizer Act.

26 § 6802. Legislative intent.

27 This chapter is intended to:

28 (1) Provide for the labeling, application,
29 recordkeeping, packaging, use, sale and distribution of
30 agricultural fertilizer as well as turf or other specialty
31 fertilizer.

32 (2) Provide consumer protection through licensing,
33 labeling and sampling.

34 (3) Establish professional fertilizer applicator
35 certification.

1 (4) Provide a means of consumer education and outreach.

2 (5) Ensure that applicators follow best practices when
3 applying fertilizer.

4 § 6803. Definitions.

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

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

10 "Bulk fertilizer." A fertilizer distributed in a nonpackaged
11 form.

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

17 "Certified applicator." A person who is certified under
18 section 6832 (relating to certification of applicators) as
19 competent to use or supervise the use of fertilizer or train
20 fertilizer technicians on the proper application of fertilizer.

21 "Commercial applicator." A person who applies or supervises
22 the application of fertilizer to the property or premises of
23 another or who applies or supervises application of fertilizer
24 to any of the following:

25 (1) A golf course.

26 (2) The property or premises of a public or private
27 park.

28 (3) The property or premises of a public, nonpublic or
29 licensed private elementary or secondary school wherein a
30 resident of this Commonwealth may fulfill the compulsory
31 school attendance requirements and which meets the applicable
32 requirements of Title IV of the Civil Rights Act of 1964 (42
33 U.S.C.A. § 2000c) (Public Law 88-352, 78 Stat. 241), or its
34 successor statute. This term does not include the residence
35 of a home schooled student.

36 (4) A public or private college or university that
37 applies fertilizer to the campus grounds. A person conducting
38 research at a public or private college or university or a
39 State-related university that applies fertilizer to test
40 plots shall not be deemed a commercial applicator.

41 (5) A public playground or an athletic field.

42 "Consumer." A person who purchases fertilizer for the end
43 use of the product.

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

47 "Department." The Department of Agriculture of the
48 Commonwealth.

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

51 "Distributor." A person who distributes fertilizer or

1 fertilizer material.
2 "Enhanced efficiency." Relating to a fertilizer product with
3 characteristics that allow increased plant nutrient uptake and
4 reduced potential of nutrient losses to the environment, such as
5 gaseous losses, leaching or runoff, when compared to an
6 appropriate reference product as determined by the department by
7 publishing a notice in the Pennsylvania Bulletin.
8 "Facility." Each separate mill or plant that manufactures
9 fertilizer.
10 "Fertilizer." A substance containing one or more recognized
11 plant nutrients which is used for its plant nutrient content and
12 which is designed for use or claimed to have value in promoting
13 plant growth, except unmanipulated animal manure and plant
14 remains, agricultural liming materials, wood ashes and other
15 materials exempted by the department's regulations. The term
16 shall not apply to animal manure which is regulated under:
17 (1) 25 Pa. Code § 91.36(b) (relating to pollution
18 control and prevention at agricultural operations);
19 (2) Chapter 5 (relating to nutrient management and odor
20 management); or
21 (3) the act of June 28, 2004 (P.L.454, No.49), known as
22 the Commercial Manure Hauler and Broker Certification Act.
23 "Fertilizer application business." A governmental or public
24 entity, commercial applicator or business for profit or not for
25 profit that applies fertilizer:
26 (1) on the property or premises of another;
27 (2) to the property or premises of a golf course, park,
28 school, college or university or public playground; or
29 (3) to an athletic field.
30 "Fertilizer application business license." A license
31 obtained under section 6831 (relating to licensing of fertilizer
32 application businesses).
33 "Fertilizer license." A license obtained under section 6811
34 (relating to licensing).
35 "Fertilizer material." A fertilizer which:
36 (1) contains only one of the following primary plant
37 nutrients:
38 (i) nitrogen;
39 (ii) phosphate; or
40 (iii) potash;
41 (2) has 85% or more of its plant nutrient content
42 present in the form of a single chemical compound; or
43 (3) is derived from a plant or animal residue, by-
44 product, coproduct as defined in 25 Pa. Code § 287.1
45 (relating to definitions) or natural material deposit which
46 has been processed in a way that its content of plant
47 nutrients has not been materially changed except by
48 purification and concentration.
49 "Fertilizer technician." A person who:
50 (1) is not certified under this chapter;
51 (2) works for a fertilizer application business; and

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

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 Specialty fertilizers may be guaranteed in fractional units of
11 less than 1% of total nitrogen, available phosphate and soluble
12 potash, provided that fertilizer materials, bone meal, manures
13 and similar materials may be guaranteed in fractional units.

14 "Growing media." Material in which plants are grown, such as
15 garden soil, potting soil or commercial soil-less mixes.

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

18 <u>Total Nitrogen (N)</u>	<u>%</u>
19 <u>Available Phosphate (P2O5)</u>	<u>%</u>
20 <u>Soluble Potash (K2O)</u>	<u>%</u>

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

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

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

33 "Label." The display of all written, printed or graphic
34 matter upon the immediate container or a statement accompanying
35 a fertilizer.

36 "Labeling." All written, printed or graphic matter, upon or
37 accompanying any fertilizer or advertisements, brochures,
38 posters or electronic media used in promoting the distribution
39 of the fertilizer.

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

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

44 "Manure." Animal excrement, with or without the bedding,
45 litter, straw, washwater and other refuse materials, dirt and
46 waste ordinarily mixed or commingled with that excrement, which
47 is produced at an agricultural operation.

48 "Micronutrient." Any of the following:

- 49 (1) Boron.
- 50 (2) Chlorine.
- 51 (3) Cobalt.

- 1 (4) Copper.
- 2 (5) Iron.
- 3 (6) Manganese.
- 4 (7) Molybdenum.
- 5 (8) Nickel.
- 6 (9) Sodium.
- 7 (10) Zinc.

8 "Natural organic fertilizer." Materials derived from either
9 plant or animal products containing one or more elements, other
10 than carbon, hydrogen and oxygen, which are essential for plant
11 growth. These materials may be subjected to biological
12 degradation processes under normal conditions of aging,
13 rainfall, sun curing, air drying, composting, rotting, enzymatic
14 or anaerobic or aerobic bacterial action or any combination of
15 these processes. These materials shall not be mixed with
16 synthetic materials or changed in any physical or chemical
17 manner from their initial state except by manipulations such as
18 drying, cooking, chopping, grinding, shredding, hydrolysis or
19 pelleting.

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

22 "Official sample." A sample of fertilizer collected or
23 obtained by the department or its agent to effectuate the
24 provisions of this chapter and designated as official.

25 "Organic based fertilizer." A mixed fertilizer where:

26 (1) More than half of the fertilizer materials are
27 organic.

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

30 "Overall index value." The value obtained from the
31 calculation: (commercial value found) x 100 / (commercial value
32 guaranteed).

33 "Park." Privately or publicly owned outdoor real estate
34 which includes a public recreational area, including an area
35 with restricted access.

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

37 "Person." An individual, a partnership, an association, a
38 firm, a corporation or another legal entity.

39 "Plant nutrient." Any of the following:

40 (1) A primary nutrient.

41 (2) A secondary nutrient.

42 (3) A micronutrient.

43 "Primary nutrient." Any of the following:

44 (1) Nitrogen.

45 (2) Phosphorus.

46 (3) Potassium.

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

50 "Registrant." A person who registers fertilizer under this
51 chapter.

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

3 "Secondary nutrient." Any of the following:

4 (1) Calcium.

5 (2) Magnesium.

6 (3) Sulfur.

7 "Specialty fertilizer." A fertilizer distributed for nonfarm
8 use or a fertilizer primarily intended to supply plant nutrients
9 other than nitrogen, phosphate or potash.

10 "Stream buffer zone." A permanent strip of dense perennial
11 vegetation established parallel and immediately adjacent to the
12 bank of a pond, wetland or flowing body of water, such as a
13 stream, river or creek, that is used to slow water runoff,
14 enhancing water infiltration and minimizing the risk of
15 potential nutrients reaching the waters.

16 "Tolerance." A permitted variation from the guarantee of an
17 official sample of fertilizer.

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

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

23 SUBCHAPTER B

24 FERTILIZER MANUFACTURERS AND GUARANTORS

25 Sec.

26 6811. Licensing.

27 6812. Registration of specialty fertilizers.

28 6813. Turf fertilizer components.

29 6814. Labels and labeling.

30 6815. Inspection fees.

31 6816. Tonnage reports.

32 6817. Inspection, sampling and analysis.

33 6818. Plant food deficiency.

34 6819. Commercial value.

35 6820. Misbranding.

36 6821. Adulteration.

37 § 6811. Licensing.

38 (a) Requirements.--Each person engaged in the manufacture of
39 fertilizer to be distributed in this Commonwealth and each
40 guarantor of the fertilizer shall, on or before July 1 of each
41 year or prior to manufacture or distribution of the fertilizer,
42 obtain a fertilizer license for each manufacturing facility
43 located in this Commonwealth and for each guarantor by
44 completing a form furnished by the department and paying a \$50
45 application fee or a fee later established in the manner under
46 section 6885 (relating to fees, fines and civil penalties). All
47 licenses shall expire on June 30 of each year.

48 (b) Labeling and typical analysis.--The department may
49 require an applicant for a fertilizer license or a current
50 fertilizer licensee to submit the labeling that the person is
51 using or intends to use for the fertilizer. The department may

1 also require an applicant or fertilizer licensee to provide a
2 typical analysis of selected components that may be in the
3 fertilizer.

4 § 6812. Registration of specialty fertilizers.

5 (a) Application.--Each brand and grade of specialty
6 fertilizer shall be registered by the guarantor with the
7 department before being offered for sale, sold or distributed in
8 this Commonwealth. An application for each brand and grade of
9 specialty fertilizer shall be made on a form furnished by the
10 department and shall be accompanied by a fee of \$100 or a fee
11 later established in the manner under section 6885 (relating to
12 fees, fines and civil penalties), per each grade of each brand.
13 Labels for each brand and grade shall accompany the application.
14 All registrations shall expire on June 30 of each year.

15 (b) Contents of specialty fertilizer registration
16 application.--An application for registration shall include:

17 (1) The brand and grade.

18 (2) The guaranteed analysis.

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

20 (4) Net weight.

21 (c) Exemption.--

22 (1) A distributor shall not be required to register a
23 specialty fertilizer which is already registered under this
24 chapter by another person, if the label does not differ in a
25 material respect.

26 (2) Registration is not required when a fertilizer is
27 formulated according to the specifications which are
28 furnished by the end user and is not further distributed or
29 offered for sale to the general public.

30 (d) Late fee.--If the application for renewal of the
31 specialty fertilizer registration required under this section is
32 not filed prior to June 30 of each year, a penalty of \$25 or 10%
33 of the total registration fee for all products sought to be
34 registered, whichever is greater, or a fee later established in
35 the manner under section 6885, may be assessed and added to the
36 original fee and shall be paid by the applicant before the
37 renewal of the specialty fertilizer registration is issued. The
38 penalty shall not apply if the applicant furnished an affidavit
39 that the applicant has not distributed the specialty fertilizer
40 subsequent to the expiration of the applicant's prior
41 registration.

42 § 6813. Turf fertilizer components.

43 (a) General rule.--Except as provided in subsection (b),
44 fertilizer labeled for turf that is distributed to end users in
45 this Commonwealth shall:

46 (1) Contain no more than 0.9 pounds of total nitrogen
47 per 1,000 square feet when applied pursuant to the
48 instructions on the container.

49 (2) Consist of at least 20% enhanced efficiency nitrogen
50 of the total nitrogen or as determined by the department by
51 publishing a notice in the Pennsylvania Bulletin.

1 (3) Contain no phosphorus, unless the fertilizer is a
2 natural organic or organic based fertilizer.

3 (b) Exemptions.--

4 (1) Subsection (a) shall not apply when turf fertilizer
5 is labeled for repairing a turf area or establishing a turf
6 area for the first time.

7 (2) Subsection (a)(1) shall not apply to liquid turf
8 fertilizers or readily available nitrogen fertilizers labeled
9 for turf, if the directions for use are in accordance with
10 the requirements of section 6852 (relating to application of
11 fertilizer to turf).

12 (c) Additional requirements.--The department, through
13 regulation, may establish additional requirements for turf
14 fertilizer.

15 § 6814. Labels and labeling.

16 (a) Contents of label.--The guarantor of a fertilizer
17 distributed in a container in this Commonwealth shall have
18 placed on or affixed to the container a label setting forth in
19 legible and conspicuous form the following:

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

22 (2) The guaranteed analysis.

23 (3) A derived from statement.

24 (4) Directions for use for fertilizer distributed to the
25 end user.

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

27 (6) The net weight.

28 (b) Bulk fertilizer.--In the case of bulk fertilizer
29 distribution, the information required under subsection (a)
30 shall accompany delivery and shall be provided in writing to the
31 purchaser at time of delivery.

32 (c) Other guarantees.--Guarantees for nutrients other than
33 primary nutrients, shall be expressed in the form of the
34 element. The department may require by regulation that other
35 beneficial substances or compounds be guaranteed. When plant
36 nutrients or other substances or compounds are guaranteed, they
37 shall be subject to inspection and analysis in accordance with
38 the methods and regulation prescribed by the department.

39 (d) Proof of labeling claims.--The department may require
40 proof of labeling claims made for fertilizer. Research in
41 support of the claims shall be performed by an institution
42 approved by the department utilizing acceptable scientific
43 methodology.

44 (e) Consumer-specified fertilizer formulations.--In lieu of
45 the requirements under subsection (a), a fertilizer formulated
46 according to specifications which are furnished by the end user
47 prior to mixing shall be labeled in a clearly legible and
48 conspicuous form to show the grade, net weight, guaranteed
49 analysis and name and address of the guarantor.

50 (f) Bulk storage.--Fertilizer in bulk storage that is
51 intended for distribution shall be identified with a label

1 attached to the storage bin or container giving the name and
2 grade of the product.

3 (g) Turf fertilizer.--Subject to subsection (i), fertilizer
4 intended for use on turf that is distributed to end users in
5 this Commonwealth, in bulk or packages that are one pound or
6 greater, shall include a statement in legible and conspicuous
7 form that at a minimum sets forth the following requirements:

8 (1) This product shall not be applied near water, storm
9 drains or drainage ditches.

10 (2) This product shall not be applied if heavy rain is
11 expected.

12 (3) This product shall only be applied to the intended
13 application site.

14 (4) Material that lands on an impervious surface shall
15 be swept back onto the turf. This statement shall not be
16 required if the product is applied in a liquid form.

17 (h) Nonturf fertilizer.--Subject to subsections (i) and (k),
18 fertilizer that is not labeled for turf, in bulk or packages
19 that are 40 pounds or greater, that is distributed to end users
20 in this Commonwealth shall include a statement, in legible and
21 conspicuous form that at a minimum sets forth the following
22 requirements:

23 (1) This product shall not be applied near water, storm
24 drains or drainage ditches or to any impervious surface.

25 (2) This product shall not be applied if heavy rain is
26 expected.

27 (3) This product shall only be applied to the intended
28 application site.

29 (i) Fertilizers containing pesticides.--In lieu of the
30 statements required under subsections (g) and (h), the label for
31 fertilizer products containing pesticides shall contain the
32 environmental hazard statement recommended by the United States
33 Environmental Protection Agency for that product.

34 (j) Minimum font size.--Statements required under
35 subsections (g) and (h) shall be printed in a legible and
36 conspicuous manner and not be smaller than the height of the
37 font used for the directions for use on the product labeling.

38 (k) Exemption.--The requirements of subsection (h) and of
39 this section shall not apply to fertilizer labeled for aquatic
40 settings, growing media, indoor use or potted plants.

41 (l) Prohibition.--The label for fertilizer or nitrogen-based
42 material shall not be labeled for the purposes of melting snow
43 or ice, unless the product is distributed to an airport to be
44 used on aircraft or areas an aircraft accesses.

45 (m) Other label information.--The department may, by
46 regulation, require additional information to be present on the
47 label or labeling of fertilizers.

48 § 6815. Inspection fees.

49 (a) Amounts.--The guarantor whose name appears on the label
50 of a fertilizer distributed in this Commonwealth shall pay
51 semiannually and not later than January 31 and July 31 of each

1 year an inspection fee at the rate of 17¢ per ton of fertilizer
2 distributed in this Commonwealth or a fee later established in
3 the manner under section 6885 (relating to fees, fines and civil
4 penalties). In no case shall the inspection fee paid
5 semiannually amount to less than \$25 or a fee later established
6 in the manner under section 6885.

7 (b) Adjustment of fees by department.--

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

15 (2) An inspection fee established under this subsection
16 may not be changed by more than 5¢ in one year.

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

21 § 6816. Tonnage reports.

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

30 (b) Multiple guarantors.--When more than one guarantor is
31 involved in the distribution of fertilizer, the guarantor who
32 distributed the fertilizer last shall report the tonnage and pay
33 the inspection fee, unless the report and payment have been made
34 by a prior distributor.

35 (c) Late fee.--A penalty of \$25 or 10% of the total
36 inspection fee, whichever is greater, or a fee later established
37 in the manner under section 6885 (relating to fees, fines and
38 civil penalties), shall be imposed for a fee or report not
39 submitted at the required time.

40 (d) Examination permitted.--The department or its authorized
41 representative may examine the records of the guarantor to
42 verify the information contained in the reports filed with the
43 department. Reports containing fraudulent or incorrect
44 information shall be considered a violation of this chapter for
45 which the department may assess a penalty as provided for in
46 this chapter.

47 (e) Confidentiality of information.--

48 (1) Notwithstanding the act of February 14, 2008 (P.L.6,
49 No.3), known as the Right-to-Know Law, or its successor
50 statute, no proprietary information furnished to the
51 department under this section shall be disclosed in a way as

1 to knowingly or intentionally divulge a trade secret of any
2 person subject to the provisions of this chapter.

3 (2) This subsection shall not apply to information
4 furnished to a court or administrative tribunal in accordance
5 with law.

6 § 6817. Inspection, sampling and analysis.

7 (a) Authorization.--The department shall inspect, sample,
8 make analyses of and test fertilizers distributed within this
9 Commonwealth and shall inspect the storage of bulk fertilizer at
10 any time and place and to an extent that the department may deem
11 necessary to determine whether the fertilizers are in compliance
12 with the provisions of this chapter. The department or its agent
13 may enter upon public or private premises or carriers during
14 regular business hours to have access to fertilizer subject to
15 and the records relating to the provisions of this chapter or
16 the regulations promulgated under this chapter.

17 (b) Methodology.--The methods of fertilizer sampling and
18 analysis by the department shall include those methods adopted
19 by the Association of Official Analytical Chemists
20 International. In cases not covered by those methods or in cases
21 where improved methods are available, the department may issue a
22 temporary order defining the method to be utilized. The method
23 defined in the temporary order shall be effective upon
24 publication in the Pennsylvania Bulletin. The temporary order
25 shall remain in effect for a period not to exceed one year,
26 unless reissued, or until the notice is promulgated as a
27 regulation.

28 (c) Deficiency determination.--In determining whether a
29 fertilizer is deficient in nutrients, the department shall be
30 guided solely by the official sample obtained and analyzed as
31 provided for in subsections (a) and (b).

32 (d) Maintenance of official samples.--Official samples
33 maintained by the department and that require imposition of a
34 penalty for nutrient deficiency shall be retained for a minimum
35 of 90 days from issuance of a fertilizer deficiency report or an
36 official report of analysis. Upon request, the department shall
37 furnish to the guarantor a portion of the official sample.
38 Requests must be made within 30 days of receipt of a fertilizer
39 deficiency report or an official report of analysis.

40 § 6818. Plant food deficiency.

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

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

46 (i) in one or more of its guaranteed primary plant
47 nutrients beyond a tolerance of 10% (two unit maximum);
48 or

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

51 (2) When a fertilizer is subject to a penalty payment

1 under paragraph (1)(i) and (ii), the larger penalty payment
2 shall apply. Any penalties assessed shall not exceed the
3 retail price of the lot of fertilizer represented by the
4 official sample.

5 (3) Deficiencies beyond the tolerance as established by
6 regulation in a component other than a primary nutrient shall
7 be evaluated by the department and shall be subject to a
8 penalty under this chapter.

9 (b) Payment of penalties.--Within 90 days following receipt
10 of the official report of analysis, the guarantor shall pay to
11 the consumer a deficiency penalty in the amount prescribed on
12 the report of analysis. Receipts of payment shall be promptly
13 forwarded by the guarantor to the department. If the consumer
14 cannot be found, the penalties shall be paid to the department.

15 (c) Deficiencies in fertilizers.--A deficiency in an
16 official sample of fertilizer resulting from nonuniformity shall
17 not be deemed distinguishable from a deficiency due to actual
18 plant nutrient shortage and shall be deemed a violation of this
19 chapter for which the department may assess a penalty as
20 provided for in this chapter.

21 § 6819. Commercial value.

22 For the purpose of determining the commercial value to be
23 applied under section 6818 (relating to plant food deficiency),
24 the department shall determine and publish in the Pennsylvania
25 Bulletin annually the values per pound of total nitrogen,
26 available phosphate and soluble potash in fertilizers in this
27 Commonwealth. The values so determined and published in the
28 Pennsylvania Bulletin shall go into effect July 1 of each year
29 and be used in determining and assessing penalty payments.

30 § 6820. Misbranding.

31 No person shall distribute a misbranded fertilizer. A
32 fertilizer shall be deemed to be misbranded if any of the
33 following apply:

34 (1) Its labeling is false or misleading in any
35 particular.

36 (2) It is distributed under the name of another
37 fertilizer product.

38 (3) It is not labeled as required in section 6814
39 (relating to labels and labeling) and in accordance with
40 regulations prescribed under this chapter.

41 (4) It purports to be or is represented as a fertilizer
42 or is represented as containing a plant nutrient or
43 fertilizer unless such plant nutrient or fertilizer conforms
44 to the definition of identity, if any, prescribed by
45 regulation.

46 § 6821. Adulteration.

47 No person shall distribute an adulterated fertilizer product.
48 A fertilizer shall be deemed to be adulterated if any of the
49 following apply:

50 (1) It contains any deleterious or harmful substance in
51 sufficient amount to render it injurious to beneficial plant

1 life, animals, humans, aquatic life, soil or water when
2 applied in accordance with its intended use or directions for
3 use on the label.

4 (2) Adequate warning statements or directions for use
5 which may be necessary to protect plant life, animals,
6 humans, aquatic life, soil or water are not shown upon the
7 label.

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

10 (4) It contains viable weed seed or unwanted crop seed
11 in amounts exceeding the limit which the department
12 establishes by regulation.

13 SUBCHAPTER C

14 APPLICATOR LICENSING AND CERTIFICATION

15 Sec.

16 6831. Licensing of fertilizer application businesses.

17 6832. Certification of applicators.

18 6833. Recertification of applicators.

19 6834. Reciprocal agreement.

20 6835. Training of fertilizer technicians.

21 § 6831. Licensing of fertilizer application businesses.

22 (a) Requirements.--A fertilizer application business must be
23 licensed prior to applying fertilizer and shall comply with the
24 provisions of this chapter and any regulation or order of the
25 department. A fertilizer application business with more than one
26 location or place of business or operating under more than one
27 name in this Commonwealth shall license each location, place of
28 business and business entity. For a governmental or public
29 entity, each district or region shall be considered a separate
30 business and shall require a separate license.

31 (b) Operation, application and expiration.--A fertilizer
32 application business may not be operated without first obtaining
33 a fertilizer application business license. The application for
34 licensure shall be on a form furnished by the department and
35 shall be accompanied by a \$100 application fee or a fee later
36 established in the manner under section 6885 (relating to fees,
37 finances and civil penalties). All business licenses shall expire
38 on December 31 each year, except that the department may issue a
39 license for the following year when an initial license
40 application is filed during the last two months of a licensing
41 year.

42 (c) Employer requirement.--A fertilizer application business
43 shall employ at all times and at each licensed business at least
44 one person who holds a current valid commercial or public
45 applicator certification. This person shall be responsible for
46 training fertilizer technicians on the proper handling and
47 application of fertilizer.

48 (d) Fertilizer technicians.--A fertilizer application
49 business shall ensure fertilizer technicians do not apply
50 fertilizer unless the persons have gone through a training
51 program as described by section 6835 (relating to training of

1 fertilizer technicians).

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

5 (1) A list of all certified applicators employed by the
6 business.

7 (2) A list of all fertilizer technicians employed by the
8 business and an attestation that each has completed a
9 training program meeting the requirements of section 6835.
10 The attestation shall be subject to the penalties for a
11 violation of 18 Pa.C.S. § 4904 (relating to unsworn
12 falsification to authorities) or its successor statute.

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

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

24 (h) Aerial application.--If a fertilizer application
25 business or an applicator of fertilizer engages in aerial
26 applications, the applicant shall, upon request by the
27 department, provide proof of compliance with the Federal
28 Aviation Administration regulations as described in 14 CFR Pt.
29 137 (relating to agricultural aircraft operations) or its
30 successor regulations.

31 § 6832. Certification of applicators.

32 (a) Condition.--A commercial applicator or public applicator
33 for a fertilizer application business must be certified under
34 the requirements established in this chapter and the
35 department's regulations prior to:

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

38 (2) the fertilizer application business applying
39 fertilizer.

40 (b) Training.--Only a fully certified applicator may train
41 fertilizer technicians.

42 (c) Certification examination.--

43 (1) A person wishing to obtain full certification under
44 this chapter shall take and pass a written examination
45 prepared or approved by the department and shall demonstrate
46 minimum standard proficiency on the basis of a written
47 examination conducted at an approved test site under the
48 direction of the department or its designated agents. All
49 fees associated with the certification examination shall be
50 paid in full prior to the issuance of a certification
51 certificate by the department.

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

3 (i) Safety and health.

4 (ii) Labeling and label comprehension.

5 (iii) Environmental protection.

6 (iv) Equipment use, calibration and dosage
7 calculations.

8 (v) Personal protective equipment.

9 (vi) Cleaning and maintaining equipment.

10 (vii) Transportation, storage, security and
11 disposal.

12 (viii) Applicable Federal and State laws.

13 (ix) Any subject matter deemed appropriate by the
14 department's regulations.

15 (3) The department shall require a minimum examination
16 fee of \$10 or a fee later established in the manner under
17 section 6885 (relating to fees, fines and civil penalties).

18 (d) Commercial and public applicators.--

19 (1) A commercial or public applicator's certification
20 shall not be valid until the applicator is associated with a
21 fertilizer application business that is licensed according to
22 the requirements of section 6831 (relating to licensing of
23 fertilizer application businesses).

24 (2) If a commercial or public applicator separates
25 employment from a fertilizer application business, the
26 eligibility for certification shall remain with the
27 applicator and may be transferred to another fertilizer
28 application business.

29 (e) Issuance of certification.--Certification shall be
30 issued to a person upon successful completion of all classroom,
31 examination, testing and certification requirements established
32 by this chapter, an order of the department and regulations of
33 the department and the payment of all fees, unless revoked or
34 suspended by the department.

35 (f) Activation.--Upon receiving notice of passing all
36 certification requirements, the applicant shall, within 12
37 months of becoming eligible to be certified as a commercial or
38 public applicator, file with the department a request to
39 activate certification. A person who fails to request activation
40 within this 12-month period shall lose certification eligibility
41 and shall again establish eligibility in accordance with this
42 section.

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

44 (1) Commercial applicator certification shall expire on
45 September 30 of each year following the date of
46 certification.

47 (2) Public applicator certification shall expire on
48 September 30 every three years following the date of
49 certification.

50 (3) With regard to an initial application for
51 certification, the department may issue a certificate for an

1 additional year when a person becomes fully certified within
2 the last two months of the certification year.

3 (h) Grandfathering.--

4 (1) A person holding a valid pesticide applicator
5 certification in the following categories under 7 Pa. Code §
6 128.42 (relating to categories of commercial and public
7 applicators) upon the effective date of this subsection shall
8 be granted certification as a certified fertilizer applicator
9 under this chapter but shall still comply with all other
10 requirements of this chapter:

11 (i) Category 1, Agronomic crops.

12 (ii) Category 2, Fruits and nuts.

13 (iii) Category 3, Vegetable crops.

14 (iv) Category 5, Forest pest control.

15 (v) Category 6, Ornamental and shade trees.

16 (vi) Category 7, Lawn and turf.

17 (vii) Category 18, Demonstration and research pest
18 control.

19 (viii) Category 22, Interior plantscape.

20 (ix) Category 23, Park or school pest control.

21 (x) Category 25, Aerial applicator.

22 (2) The certification under this subsection shall be
23 valid until each person's pesticide core recertification is
24 due, at which time that person shall be required to meet all
25 the recertification requirements as required by section 6833
26 (relating to recertification of applicators).

27 § 6833. Recertification of applicators.

28 (a) Continuing education.--At intervals of three years, a
29 certified applicator shall provide evidence of having received
30 continuing education credits in practices relating to fertilizer
31 applications. Recertification training shall be in the following
32 content areas:

33 (1) Safety and health.

34 (2) Labeling and label comprehension.

35 (3) Environmental protection.

36 (4) Equipment use, calibration and dosage calculations.

37 (5) Personal protective equipment.

38 (6) Cleaning and maintaining equipment.

39 (7) Transportation, storage, security and disposal.

40 (8) Applicable Federal and State laws.

41 (9) Any subject matter deemed appropriate by the
42 department's regulations.

43 (b) Credits.--Continuing education credits shall be given on
44 the basis of attendance at courses or other appropriate training
45 approved by the department. Training shall be evaluated by the
46 department and assigned credits. At a minimum, certified
47 applicators shall obtain four credits every three years or the
48 total amount of credits later established by publication in the
49 Pennsylvania Bulletin.

50 (c) Training.--Training shall be approved based on the
51 following:

1 (1) Training shall be conducted or sponsored by the
2 department or a department-approved institution, association,
3 business entity or governmental agency. The department-
4 approved trainer shall submit course materials for approval
5 by the department and shall establish that courses will be
6 conducted by a person or persons that are certified
7 applicators in good standing under this chapter and with at
8 least three years' experience as a certified fertilizer
9 applicator or by an approved entity with other documented
10 qualifications to serve as a trainer, such as an appropriate
11 educational background.

12 (2) Training shall be approved for continuing education
13 credits at the rate of one credit per 30 minutes, or as later
14 established by regulation, of applicable instruction,
15 exclusive of coffee breaks, lunches, visits to exhibits and
16 other similar activities.

17 (3) An approved entity wishing to conduct or sponsor
18 continuing education training shall submit a written request
19 for course and trainer approval to the department's regional
20 office for the region in which the meeting will be held. A
21 request to approve out-of-State training must be submitted to
22 the department's headquarters. The request shall include
23 evidence of compliance with the standards established by
24 paragraph (1).

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

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

29 (2) The specific location where the training course will
30 be offered.

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

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

34 (5) A statement of whether the training is open to the
35 public and where applicable the charge to attend.

36 (6) A detailed course syllabus setting forth the subject
37 matter to be covered and a description of the content, the
38 time period allotted for each subject matter and trainer name
39 and certification.

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

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

48 (g) Monitoring of training.--All training shall be monitored
49 by an employee of the department. If an employee of the
50 department is unable to monitor the training, the training
51 course coordinator shall be responsible for authenticating

1 attendance and shall compile an approved list of Pennsylvania
2 certified applicators in attendance. This list shall be returned
3 to the department within 10 working days following the meeting
4 date and shall include the name of each individual attending and
5 the individual's applicator certification number.

6 (h) Modification of credits.--Credits assigned may be
7 modified if the content, approved trainer or time of the actual
8 training course differs from the original training course
9 approved by the department.

10 (i) Violation.--Falsification by a department-approved
11 course trainer or sponsor of information required under this
12 section shall be considered a violation of this chapter for
13 which the department may assess a penalty as provided for under
14 this chapter and withdraw approval of the course as specified
15 under this section.

16 (j) Attendance falsification.--A person may not falsify
17 attendance or that of another person's attendance at a
18 continuing education meeting. Falsification of attendance at a
19 continuing education course by a person shall be considered a
20 violation of this chapter for which the department may assess a
21 penalty as provided for under this chapter and revoke the
22 applicator's certification and require full renewal of
23 certification as required under section 6832 (relating to
24 certification of applicators).

25 (k) Failure to obtain required credits.--If a person does
26 not obtain the required number of recertification credits in the
27 triennial year in which continuing education credits are due,
28 the person's certification shall be invalid and that person
29 shall cease and desist from all fertilizer application, and
30 recertification shall require completion of delinquent
31 continuing education credits as established under this section
32 prior to certification being renewed.

33 (l) Failure to complete delinquent credits.--If a person
34 fails to complete delinquent continuing education credits within
35 one year from the triennial expiration date or fails to renew
36 the certification for any reason during that time period, the
37 person shall cease and desist from all fertilizer application
38 and shall be required to reestablish eligibility by meeting the
39 requirements in section 6832.

40 § 6834. Reciprocal agreement.

41 The department may issue a license or certification on a
42 reciprocal basis with other states without examination to a
43 nonresident who is licensed or certified in another state that
44 administers a fertilizer licensing or certification course
45 substantially in accordance with the provisions of this chapter.

46 § 6835. Training of fertilizer technicians.

47 (a) Prohibition.--Fertilizer technicians working for a
48 fertilizer application business may not apply fertilizer without
49 first going through a training program, as required by the
50 provisions of this chapter, an order of the department or the
51 department's regulations.

1 (b) Requirements.--Fertilizer technicians shall be an
2 employee of the business and trained by a certified applicator
3 who is an employee of the same business.

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

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

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

15 (2) Protective clothing required during the application
16 and handling of fertilizers.

17 (3) Transportation and disposal of fertilizers used in
18 and around the workplace.

19 (4) Applicable Federal and State regulations as they
20 affect the work assignments.

21 (5) Competence in reading and following label and
22 application requirements.

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

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

32 (g) Record.--At the completion of training, the certified
33 applicator conducting the training shall complete a record of
34 training. Training records shall be maintained by the firm for
35 one year following separation of the fertilizer technician's
36 employment and at a minimum, shall include:

37 (1) The name and certification number of the trainer.

38 (2) The name of fertilizer technician trained.

39 (3) The date of training.

40 (4) The areas of training.

41 (5) The business name and address of the fertilizer
42 application business employing the fertilizer technician.

43 (6) Any other requirements as established by the
44 department through order or regulation.

SUBCHAPTER D

RECORDKEEPING FOR APPLICATORS

47 Sec.

48 6841. Records.

49 § 6841. Records.

50 (a) Required information.--Applicators required to be
51 certified under section 6832 (relating to certification of

1 applicators) and fertilizer technicians trained under section
2 6835 (relating to training of fertilizer technicians) shall keep
3 for every application of fertilizer a record containing the
4 following information:

5 (1) The name and address of the customer and the address
6 and location of the application site, if different from the
7 address of the customer.

8 (2) A record of the date of each fertilizer application.
9 For continuous applications, such as hydroponics or drip
10 lines, the record shall include start and finish dates and
11 the total amount of fertilizer products used during that time
12 period. For each addition of a fertilizer to the system, an
13 entry to the record is required.

14 (3) The weather conditions, including approximate
15 temperature.

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

17 (5) The dosage or rate of application of every
18 fertilizer used.

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

21 (7) The identification of the application site,
22 including the specific field or land area and the crop and
23 size of the area treated with fertilizer.

24 (8) The name and certification number of each person
25 involved with the application and the name of each fertilizer
26 technician and noncertified employee involved in the
27 application.

28 (9) Additional information as the department may require
29 through order or regulation.

30 (b) Fertilizer application record.--A fertilizer application
31 record shall be completed in written or printable form no later
32 than 24 hours after the application date and made immediately
33 available to the department upon request.

34 (c) Maintenance requirements.--A record required under this
35 section shall be maintained for at least three years.

36 (d) Additional requirements.--In addition to the
37 requirements established under this section, the department may
38 promulgate regulations to require additional record keeping and
39 application reporting requirements.

40 SUBCHAPTER E

41 APPLICATION RATES, REQUIREMENTS AND PROHIBITIONS

42 Sec.

43 6851. Application of fertilizer.

44 6852. Application of fertilizer to turf.

45 6853. Prohibited acts.

46 § 6851. Application of fertilizer.

47 (a) Restrictions.--No person may apply nonaquatic fertilizer
48 within 15 feet of the top of a bank of a lake, pond, wetlands or
49 flowing body of water, such as a stream, river or creek, except
50 that fertilizer may be applied to the top of the bank of the
51 waterways if applied using a drop spreader, rotary spreader with

1 deflector, targeted spray liquid or other available targeted
2 application technology when establishing and maintaining a
3 stream buffer zone. The establishment of setbacks for fertilizer
4 application under this subsection shall not preclude the
5 establishment or applicability of or required compliance with
6 any other environmental standard established under other Federal
7 or State law, rule or regulation.

8 (b) Regulation.--The department may establish additional
9 restrictions through regulation.

10 § 6852. Application of fertilizer to turf.

11 (a) Application rates.--Except as provided in subsection
12 (d), fertilizer application rates to turf shall:

13 (1) Not exceed 0.7 pounds of readily available nitrogen
14 per 1,000 square feet per application.

15 (2) Not exceed 0.9 pounds of total nitrogen per 1,000
16 square feet per application.

17 (3) Contain zero phosphorus, except when specifically
18 labeled for the following purposes:

19 (i) establishing vegetation for the first time;

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

21 (iii) as an enhanced-efficiency phosphorus

22 fertilizer, natural organic fertilizer or organic-based
23 fertilizer, if the application rate does not exceed 0.25
24 pounds of phosphorus per 1,000 square feet per
25 application, with a maximum total annual application of
26 0.5 pounds of phosphorus per 1,000 square feet.

27 (b) Restrictions.--No person may:

28 (1) Apply turf fertilizer to an impervious surface. Turf
29 fertilizer which is inadvertently applied to an impervious
30 surface shall be removed from the impervious surface
31 immediately following the application.

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

35 (3) Apply fertilizer containing nitrogen or phosphorus
36 to turf before March 1 or after December 15 in a calendar
37 year or dates as are later established by the department's
38 regulation. Fertilizer containing no more than 0.5 pounds of
39 total nitrogen per 1,000 square feet or a rate as is later
40 established by the department's regulation may be applied by
41 a certified applicator or fertilizer technician to turf after
42 December 15 but before March 1 in a calendar year.

43 (c) Fertilizer use and application rates for turf.--The
44 department may establish use and application rates for
45 fertilizer that is applied to turf. Fertilizer use and
46 application rates established shall be based on scientific
47 research representing conditions of this Commonwealth and
48 recommended by the Pennsylvania State University or other
49 Pennsylvania institution of higher education. The rates or
50 source of established fertilizer use and application rates shall
51 be published at least once every two years by the department in

1 the Pennsylvania Bulletin. Use and application rates published
2 shall go into effect 90 days after publication in the
3 Pennsylvania Bulletin.

4 (d) Application based on soil test and site-specific plan.--
5 An applicator shall not be required to follow application rates
6 established under subsection (a) or (c) if a site-specific plan
7 is used based on all the following:

8 (1) A soil test that was conducted within the previous
9 three years. Soil testing procedures shall be those
10 recommended by the Pennsylvania State University or published
11 in Recommended Soil Testing Procedures for the Northeastern
12 United States, Bulletin #493 or its successor publication,
13 published by the University of Delaware.

14 (2) Current soil, plant species, climate, use,
15 topography or other appropriate management factors.

16 (3) Rates recommended by the Pennsylvania State
17 University or other Pennsylvania university or college
18 recognized by the department.

19 (e) Certified applicators or fertilizer technicians.--In
20 addition to the requirements of section 6841 (relating to
21 records), when a certified applicator or fertilizer technician
22 applies fertilizer in accordance with subsection (d), the
23 certified applicator or fertilizer technician shall retain a
24 copy of the soil test and recommendations received for the site-
25 specific plan as part of the record-keeping requirements.

26 (f) Additional requirements.--The department may establish
27 additional requirements through regulation.

28 (g) Exemption.--The requirements of this section shall not
29 apply to fertilizer applied for agricultural production or by a
30 public or private college or university for research purposes.
31 § 6853. Prohibited acts.

32 (a) Prohibited acts by business, certified applicator or
33 fertilizer technician.--A fertilizer application business,
34 certified applicator or fertilizer technician may not:

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

37 (2) Apply fertilizer that is misbranded or adulterated.

38 (3) Make false or fraudulent records, invoices or
39 reports concerning the application, storage or disposal of
40 fertilizer.

41 (4) Make a false statement or misrepresentation of
42 material fact on an application for issuance or renewal of a
43 license or certification required under this chapter, a
44 regulation promulgated under this chapter or an order issued
45 under the authority of this chapter.

46 (5) Refuse or neglect to comply with a condition or
47 limitation imposed upon a license or certification issued
48 under this chapter, a regulation promulgated under this
49 chapter or an order issued under the authority of this
50 chapter.

51 (6) Refuse to present evidence of proper licensure or

1 certification to an employee or agent of the department upon
2 request.

3 (7) Refuse to display the fertilizer application
4 business's, certified applicator's or fertilizer technician's
5 license or certification number in a manner required by this
6 chapter, a regulation promulgated under this chapter or an
7 order issued under the authority of this chapter.

8 (8) Refuse or neglect to keep and maintain the records,
9 or make reports when and as required, by this chapter, a
10 regulation promulgated under this chapter or an order issued
11 under the authority of this chapter.

12 (9) Fail to comply with a provision of this chapter, a
13 regulation promulgated under this chapter or an order issued
14 under the authority of this chapter.

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

16 (1) Apply fertilizer with a device that is not intended
17 for the application of fertilizer or that has not been
18 properly calibrated.

19 (2) Operate fertilizer application equipment or devices
20 in a faulty, careless or negligent manner.

21 (3) Dispose of, discard or store a fertilizer product in
22 a manner that would be inconsistent with its label, would
23 cause over-application of fertilizer, would result in direct
24 discharge to a storm drain or waters of this Commonwealth or
25 would be inconsistent with this chapter, a regulation
26 promulgated under this chapter or an order issued under the
27 authority of this chapter.

28 (4) Aid or abet another to evade the provisions of this
29 chapter, a regulation promulgated under this chapter or an
30 order issued under the authority of this chapter, conspire
31 with another person for that purpose or allow the person's
32 certification to be used by another person.

33 (5) Hinder, mislead, make false statements to or refuse
34 to cooperate with an employee or agent of the department in
35 any investigation or inspection undertaken by the authority
36 delegated to the department under the provisions of this
37 chapter.

38 (6) Apply fertilizer or a nitrogen-based material for
39 the purposes of melting snow or ice, unless the material is
40 applied to aircraft or areas an aircraft accesses at an
41 airport.

42 (7) Fail to comply with a provision of this chapter, a
43 regulation promulgated under this chapter or an order issued
44 under the authority of this chapter.

45 (c) Effect of section.--Nothing in this section shall
46 prohibit the lawful use of fertilizer in blasting, as regulated
47 by the Department of Environmental Protection.

48 SUBCHAPTER F

49 AGRICULTURAL AND HOMEOWNER EDUCATION PROGRAM

50 Sec.

51 6861. Agricultural and homeowner education.

1 § 6861. Agricultural and homeowner education.
2 The department, through guidelines established in
3 consultation with the Pennsylvania State University and
4 representatives of the agricultural and turf grass industries,
5 shall undertake a program of public outreach to educate the
6 public on proper use, application, handling and storage of
7 fertilizers.

8 SUBCHAPTER G
9 ADMINISTRATION AND PENALTIES

10 Sec.

11 6871. Publications.

12 6872. Rules and regulations.

13 6873. Short weight.

14 6874. Refusal, suspension or revocation of registration,
15 license or certification.

16 6875. Stop-sale orders.

17 6876. Seizure and condemnation.

18 6877. Unlawful conduct.

19 6878. Interference with officer or employee of department.

20 6879. Enforcement and penalties.

21 6880. Appeal process.

22 6881. Civil remedy.

23 6882. Cooperation with other entities.

24 6883. Exchanges between manufacturers.

25 6884. Confidentiality.

26 6885. Fees, fines and civil penalties.

27 6886. Disposition of funds.

28 6887. Exclusion of local laws and regulations.

29 § 6871. Publications.

30 The department may publish on an annual basis, and in a form
31 as it deems proper, information concerning the distribution of
32 fertilizers for both agricultural and nonagricultural uses and
33 results of analyses based on official samples of fertilizer
34 distributed within this Commonwealth as compared with analyses
35 guaranteed under sections 6812 (relating to registration of
36 specialty fertilizers) and 6814 (relating to labels and
37 labeling).

38 § 6872. Rules and regulations.

39 The department may, where necessary, promulgate and enforce
40 rules and regulations necessary for administration and
41 implementation of this chapter.

42 § 6873. Short weight.

43 If a fertilizer in the possession of a consumer is found by
44 the department to be short in weight, the guarantor of that
45 fertilizer shall, within 30 days after official notice from the
46 department, submit to the consumer a penalty payment of two
47 times the value of the actual shortage.

48 § 6874. Refusal, suspension or revocation of registration,
49 license or certification.

50 (a) Authority of department.--The department may refuse,
51 suspend or revoke:

1 (1) the registration of a fertilizer;
2 (2) the license or certification of a person if the
3 person is a registrant, licensee or certificate holder and
4 has not complied with the provisions of this chapter, a
5 regulation promulgated under this chapter or an order issued
6 under the authority of this chapter; or
7 (3) the license or certification of a person if the
8 person has used fraudulent or deceptive practices in the
9 evasion or attempted evasion of the provisions of this
10 chapter.

11 (b) Hearing.--The department shall provide an opportunity
12 for a hearing, as specified in section 6880 (relating to appeal
13 process), to a person appealing an action of the department
14 under this section.

15 § 6875. Stop-sale orders.

16 (a) General rule.--The department may issue and enforce a
17 written or printed stop-sale, use or removal order to the owner
18 or custodian of a lot of fertilizer being offered or exposed for
19 sale in violation of a provision of this chapter, a regulation
20 promulgated under this chapter or an order issued under the
21 authority of this chapter. Fertilizer placed under the order
22 shall be held at a designated place approved by the department
23 and not moved in any way without written approval by the
24 department. The order shall remain in effect until the law has
25 been complied with and the fertilizer is released in writing by
26 the department or the fertilizer in violation has been disposed
27 of in a manner authorized by the department. The authorization
28 shall be specified in writing.

29 (b) Release by department.--The department shall release the
30 fertilizer held under a stop-sale order when the requirements of
31 this chapter, a regulation promulgated under this chapter or an
32 order issued under the authority of this chapter have been
33 complied with and all costs and expenses incurred in connection
34 with the order have been paid by the person responsible for the
35 violation.

36 § 6876. Seizure and condemnation.

37 Fertilizer not in compliance with the provisions of this
38 chapter, a regulation promulgated under this chapter or an order
39 issued under the authority of this chapter shall be subject to
40 seizure and condemnation by the department, provided that in no
41 instance shall the disposition of the fertilizer be ordered by
42 the department without first giving the claimant an opportunity
43 for a hearing as provided for in section 6880 (relating to
44 appeal process) or for opportunity to apply for permission to
45 process or relabel the fertilizer to bring it into compliance
46 with this chapter.

47 § 6877. Unlawful conduct.

48 It shall be unlawful for any person to fail to comply with or
49 cause to assist in the violation of this chapter, a regulation
50 promulgated under this chapter or an order issued under the
51 authority of this chapter.

1 § 6878. Interference with officer or employee of department.

2 A person who willfully or intentionally interferes with an
3 employee or officer of the department in the performance of that
4 employee's or officer's duties or activities authorized under
5 this chapter commits a misdemeanor of the third degree and
6 shall, upon conviction, be subject to a term of imprisonment for
7 not more than one year or a fine of not more than \$2,500, or
8 both.

9 § 6879. Enforcement and penalties.

10 (a) Criminal penalties.--Unless otherwise specified, any
11 person who violates any of the provisions of this chapter, a
12 regulation promulgated under this chapter or an order issued
13 under the authority of this chapter:

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

19 (2) For a subsequent offense committed within three
20 years of a prior conviction for a violation of this chapter,
21 a regulation promulgated under this chapter or an order
22 issued under the authority of this chapter commits a
23 misdemeanor of the second degree and shall, upon conviction,
24 be sentenced to pay a fine of not less than \$500 nor more
25 than \$1,000 and costs of prosecution or to imprisonment for
26 not more than two years, or both.

27 (b) Civil penalties.--

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

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

41 (c) Trade secrets.--

42 (1) A person who uses to the person's own advantage or
43 reveals to anyone other than the department, administrative
44 tribunal or the courts when relevant in a judicial proceeding
45 information acquired under the authority of this chapter
46 concerning any method, records, formulations or processes
47 which as a trade secret is entitled to protection under the
48 law commits a misdemeanor of the third degree and shall, upon
49 conviction, be sentenced to pay a fine of not less than \$500.

50 (2) This subsection shall not be construed to prohibit
51 the department from exchanging information of a regulatory

1 nature with governmental agencies of the Federal Government,
2 agencies of this Commonwealth or any other state.

3 (d) Certified copy of official analysis.--In a prosecution
4 under this chapter involving the composition of a lot of
5 fertilizer, a certified copy of the official analysis signed by
6 the department shall be accepted as prima facie evidence of the
7 composition.

8 (e) De minimis violations.--Nothing in this chapter shall be
9 construed as requiring the department to report a violation and
10 to institute seizure proceedings as a result of de minimis
11 violations of this chapter when the department concludes that
12 the public interest will be best served by a suitable notice of
13 warning in writing.

14 (f) District attorney.--It is the duty of each district
15 attorney to whom a criminal violation of this chapter is
16 reported to cause appropriate proceedings to be instituted and
17 prosecuted in a court of competent jurisdiction without delay.
18 § 6880. Appeal process.

19 All appeals shall be taken and hearings conducted in
20 accordance with the provisions of 2 Pa.C.S. Chs. 5 Subch. A
21 (relating to practice and procedure of Commonwealth agencies)
22 and 7 Subch. A (relating to judicial review of Commonwealth
23 agency action). A person shall have 15 days to appeal an
24 enforcement action of the department.
25 § 6881. Civil remedy.

26 (a) Office of Attorney General.--In addition to other
27 remedies provided for in this chapter, the Office of Attorney
28 General, at the request of the department, may initiate in
29 Commonwealth Court or the court of common pleas of the county in
30 which the defendant resides or has a place of business an action
31 in equity for an injunction to restrain a violation of this
32 chapter, a regulation promulgated under this chapter or an order
33 issued under the authority of this chapter from which no timely
34 appeal has been taken or which has been sustained on appeal.

35 (b) Preliminary injunctions.--In a proceeding under
36 subsection (a), the court shall, upon motion of the
37 Commonwealth, issue a preliminary injunction if the court finds
38 that the defendant is engaging in conduct that causes immediate
39 or irreparable harm to the public or has engaged in other
40 conduct which the court has developed through case law.

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

44 (d) Civil penalties.--In addition to an injunction, the
45 court may levy civil penalties as provided by this chapter.
46 § 6882. Cooperation with other entities.

47 The department may cooperate with and enter into agreement
48 with governmental agencies of the Federal Government, agencies
49 of this Commonwealth or another state to carry out the purpose
50 and provisions of this chapter.
51 § 6883. Exchanges between manufacturers.

1 Nothing in this chapter shall be construed as restricting or
2 avoiding sales or exchanges of fertilizers to each other by
3 importers, manufacturers or manipulators who mix fertilizer
4 materials for sale or as preventing the free and unrestricted
5 shipments of fertilizer to manufacturers or manipulators who are
6 in compliance with the provisions of this chapter.
7 § 6884. Confidentiality.

8 All proprietary business information contained in records,
9 data, formulations and other information filed with or collected
10 by the department relating to inspections, tonnage reports and
11 trade secrets, such as product formulation, customer lists or
12 production methods, shall be exempt from act of February 14,
13 2008 (P.L.6, No.3), known as the Right-To-Know Law, or its
14 successor statute, and subject to inspection only upon the order
15 of a court of competent jurisdiction.

16 § 6885. Fees, fines and civil penalties.

17 (a) Insufficient revenues.--If the revenues raised by fees,
18 fines and civil penalties imposed under this chapter are not
19 sufficient to meet expenditures for the administration and
20 enforcement of this chapter over a two-year period, the
21 department may increase those fees so that the project revenues
22 will meet or exceed projected expenditures.

23 (b) Notice and effective date.--The department shall
24 announce the adjustment of fees, fines and penalties by
25 publishing a notice in the Pennsylvania Bulletin. Prior to the
26 adjusted fees, fines and penalties becoming effective, the
27 department shall hold a public meeting to receive input from the
28 regulated community. Subsequent to the public meeting, the
29 department shall republish the adjusted fees, fines and
30 penalties in the Pennsylvania Bulletin. The adjusted fees shall
31 take effect 60 days after publication of the subsequent notice
32 in the Pennsylvania Bulletin.

33 § 6886. Disposition of funds.

34 Money received from license fees, registration fees,
35 applicator certification, inspection fees, fines and penalties
36 shall be paid into a special restricted account in the General
37 Fund known as the Agronomic Regulatory Account. All money in the
38 Agronomic Regulatory Account is appropriated to the department
39 for the purposes of this chapter and Chapters 69 (relating to
40 soil and plant amendment) and 71 (relating to seed).

41 § 6887. Exclusion of local laws and regulations.

42 (a) Effect of chapter.--The provisions of this chapter are
43 of Statewide concern and occupy the whole field of regulation
44 regarding the registration, packaging, labeling, sale,
45 transportation, distribution, use and application of fertilizers
46 and certification of fertilizer applicators to the exclusion of
47 all local regulations.

48 (b) Enforcement.--No ordinance or regulation of a local
49 agency, political subdivision or home rule municipality may
50 prohibit or in any way attempt to regulate a matter relating to
51 the registration, packaging, labeling, sale, transportation,

1 distribution, use or application of fertilizers, if the
2 ordinance or regulation is in conflict with this chapter.

3 (c) Stricter requirements.--Nothing in this chapter shall
4 prevent a political subdivision or home rule municipality from
5 adopting and enforcing an ordinance or a regulation which is
6 consistent with and no more stringent than the requirements of
7 this chapter and the regulations or guidelines promulgated under
8 this chapter. No penalty shall be assessed under the local
9 ordinance or regulation under this subsection for a violation
10 for which a penalty has been assessed under this chapter.

11 Section 4. Sections 6921 and 7122 of Title 3 are amended to
12 read:

13 § 6921. Disposition of funds.

14 Moneys received from license fees, registration fees,
15 inspection fees, fines and penalties shall be paid into the
16 Agronomic Regulatory Account established in section [6725] 6886
17 (relating to disposition of funds). All moneys in the Agronomic
18 Regulatory Account are hereby appropriated to the department for
19 the purposes of this chapter and Chapter [67] 68 (relating to
20 fertilizer).

21 § 7122. Disposition of funds.

22 Moneys received from license fees, seed testing fees,
23 certification fees, fines and penalties shall be paid into the
24 Agronomic Regulatory Account established in section [6725] 6886
25 (relating to disposition of funds). All moneys in the Agronomic
26 Regulatory Account are hereby appropriated to the department for
27 the purposes of Chapters [67] 68 (relating to fertilizer) and 69
28 (relating to soil and plant amendment) and this chapter.

29 Section 5. The sum of \$100,000 is hereby appropriated to the
30 department to be deposited in the Agronomic Regulatory Account,
31 for use by the Department of Agriculture to develop the
32 certification and recertification courses required under 3
33 Pa.C.S. §§ 6832 and 6833 and any computer programming or
34 software necessary for administration and enforcement of 3
35 Pa.C.S. Ch. 68.

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

37 (1) The addition of 3 Pa.C.S. § 6814 shall take effect
38 in 18 months.

39 (2) The addition of 3 Pa.C.S. § 6832(a), (b), (d), (e),
40 (f), (g) and (h) shall take effect upon the development of
41 the certification courses specified under 3 Pa.C.S. §
42 6832(c).

43 (3) The addition of 3 Pa.C.S. § 6833(b), (c), (d), (e),
44 (f), (g), (h), (i), (j), (k) and (l) shall take effect upon
45 the development of the recertification courses specified
46 under 3 Pa.C.S. § 6833(a).

47 (4) This section and the remainder of this act shall
48 take effect immediately.