
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 437 Session of
2001

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FEBRUARY 5, 2001

REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,
FEBRUARY 5, 2001

AN ACT

1 Amending Title 3 (Agriculture) of the Pennsylvania Consolidated
2 Statutes, adding provisions relating to the labeling, sale
3 and distribution of fertilizer and of soil and plant
4 amendments; providing for the powers and duties of the
5 Department of Agriculture; establishing the Agronomic
6 Regulatory Account; prescribing penalties; and making a
7 repeal.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Title 3 of the Pennsylvania Consolidated Statutes
11 is amended by adding chapters to read:

12 CHAPTER 67

13 FERTILIZER

14 Sec.

15 6701. Short title of chapter.

16 6702. Definitions.

17 6703. Licensing.

18 6704. Registration of specialty fertilizers.

- 1 6705. Labels and labeling.
- 2 6706. Inspection fees.
- 3 6707. Tonnage reports.
- 4 6708. Inspection, sampling and analysis.
- 5 6709. Plant food deficiency.
- 6 6710. Commercial value.
- 7 6711. Misbranding.
- 8 6712. Adulteration.
- 9 6713. Publications.
- 10 6714. Short weight.
- 11 6715. Refusal, suspension or revocation of registration or
- 12 license.
- 13 6716. Stop-sale orders.
- 14 6717. Seizure and condemnation.
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- 16 6719. Cooperation with other entities.
- 17 6720. Rules and regulations.
- 18 6721. Unlawful conduct.
- 19 6722. Interference with officer or employee of department.
- 20 6723. Enforcement and penalties.
- 21 6724. Exchanges between manufacturers.
- 22 6725. Disposition of funds.

23 § 6701. Short title of chapter.

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

26 § 6702. Definitions.

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

30 "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
10 a 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 Chapter 69 (relating to soil
15 and plant amendment). All funds appropriated to the department
16 from The Feed and Fertilizer Fund established under the act of
17 May 29, 1956 (1955 P.L.1795, No.598), known as the Pennsylvania
18 Fertilizer, Soil Conditioner and Plant Growth Substance Law, and
19 obligations shall be transferred to the Agronomic Regulatory
20 Account.

21 CHAPTER 69

22 SOIL AND PLANT AMENDMENT

23 Sec.

24 6901. Short title of chapter.

25 6902. Definitions.

26 6903. Licensing.

27 6904. Registration.

28 6905. Labels and labeling.

29 6906. Inspection fees.

30 6907. Tonnage reports.

- 1 6908. Inspection, sampling and analysis.
- 2 6909. Misbranding.
- 3 6910. Adulteration.
- 4 6911. Short weight.
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- 7 6913. Stop-sale orders.
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- 9 6915. Appeal process.
- 10 6916. Cooperation with other entities.
- 11 6917. Rules and regulations.
- 12 6918. Unlawful conduct.
- 13 6919. Interference with officer or employee of department.
- 14 6920. Enforcement and penalties.
- 15 6921. Disposition of funds.
- 16 § 6901. Short title of chapter.

17 This chapter shall be known and may be cited as the Soil and
18 Plant Amendment Act.

19 § 6902. Definitions.

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

23 "Active ingredient." A soil amending or plant amending
24 ingredient that is not a plant nutrient.

25 "Brand." The term, designation, trademark, product name or
26 other specific designation under which individual soil
27 amendments or plant amendments are offered for sale.

28 "Consumer." A person who purchases a soil amendment or plant
29 amendment for the end use of the product.

30 "Department." The Department of Agriculture of the

1 Commonwealth.

2 "Distribute." To import, consign, offer for sale, sell,
3 barter or otherwise supply soil amendments and plant amendments
4 in this Commonwealth.

5 "Facility." Each separate mill or plant manufacturing a soil
6 amendment or plant amendment.

7 "Guarantor." The person whose name and address appears on
8 the label of a soil amendment or plant amendment.

9 "Label." The display of all written, printed or graphic
10 matter upon the immediate container or statement accompanying a
11 soil amendment or plant amendment.

12 "Labeling." All written, printed or graphic matter, upon or
13 accompanying any soil amendment or plant amendment or
14 advertisements, brochures, posters or electronic media used in
15 promoting the distribution of such soil amendment or plant
16 amendment.

17 "Manufacture." To produce, mix, blend, repackage or further
18 process a soil amendment, plant amendment, soil-amending
19 ingredient or plant-amending ingredient for distribution.

20 "Minimum percentage." That percent of soil-amending
21 ingredient or plant-amending ingredient that must be present in
22 a product before the product will be accepted for registration.

23 "Official sample." A sample of soil amendment or plant
24 amendment taken by the department or its agent to effect the
25 provisions of this chapter and designated as official.

26 "Other ingredients." Non-soil-amending or non-plant-amending
27 inert ingredients present in soil amendments or plant
28 amendments.

29 "Person." An individual, partnership, association, firm,
30 corporation or any other legal entity.

1 "Plant amendment." Any substance applied to plants or seeds
2 which is intended to improve germination, growth, yield, product
3 quality, reproduction, flavor or other desirable characteristics
4 of plants, except fertilizers, soil amendments, agricultural
5 liming materials, unmanipulated animal and vegetable manures,
6 pesticides and other materials which may be exempted by
7 regulation.

8 "Plant-amending ingredient." A substance that will improve
9 germination, growth, yield, product quality, reproduction,
10 flavor or other desirable characteristics of plant.

11 "Secretary." The Secretary of Agriculture of the
12 Commonwealth or the secretary's designee.

13 "Soil amendment." Any substance which is intended to change
14 the chemical or physical characteristics of soil. The term does
15 not include fertilizers, agriculture liming materials,
16 unmanipulated animal and vegetable manures, pesticides and other
17 materials exempted by regulation.

18 "Soil-amending ingredient." A substance which changes the
19 chemical or physical characteristics of soil.

20 "Tolerance." A permitted variation from the guarantee of an
21 official sample of soil amendment or plant amendment.

22 § 6903. Licensing.

23 (a) General rule.--Every person engaged in the manufacture
24 of a soil amendment, plant amendment, soil-amending ingredient
25 or plant-amending ingredient to be distributed in this
26 Commonwealth and every guarantor of such products shall, on or
27 before July 1 of each year or prior to manufacture or
28 distribution, apply for and obtain an annual license for each
29 guarantor and each facility, located in this Commonwealth. The
30 application for licensure must be on the form prescribed by the

1 department and shall be accompanied by a \$25 application fee.

2 All licenses shall expire on June 30 of each year.

3 (b) Labeling and typical analysis.--The department may also
4 require an applicant for a license or a current licensee to
5 submit the labeling that the person is using or intends to use
6 for their soil amendments or plant amendments. The department
7 may also require an applicant or licensee to provide a typical
8 analysis of selected components that may be in the soil
9 amendment or plant amendment.

10 § 6904. Registration.

11 (a) Application.--Each brand and separately identified soil
12 amendment and plant amendment product shall be registered by the
13 guarantor with the department before being offered for sale,
14 sold or distributed in this Commonwealth. An application for
15 registration shall be submitted to the department on a form
16 prescribed by the department and shall be accompanied by a fee
17 of \$25 per product. Labels and labeling shall accompany the
18 application. Upon approval of an application by the department,
19 a copy of the registration shall be furnished to the applicant.
20 All registrations shall expire on June 30 of each year.

21 (b) Contents of application.--An application for
22 registration shall include:

23 (1) The brand name.

24 (2) The active ingredients:

25 (i) Name and percentage of soil-amending
26 ingredients.

27 (ii) Name and percentage of plant-amending
28 ingredients.

29 (3) The total percentage of other ingredients.

30 (4) The purpose of the product.

1 (5) The directions for application.

2 (6) The name and address of the guarantor.

3 (7) The net weight.

4 (c) Exemption.--A distributor shall not be required to
5 register a brand of soil amendment or plant amendment which is
6 already registered under this chapter by another person,
7 providing the label does not differ in any material respect.

8 (d) Minimum percentage to be established.--The department
9 may by regulation establish the minimum percentage of soil-
10 amending ingredients or plant-amending ingredients that must be
11 present before a soil amendment or plant amendment may be
12 registered and distributed.

13 (e) Late fee.--If the application for renewal of the soil
14 amendment or plant amendment registration required in this
15 section is not filed prior to June 30 of each year, a penalty of
16 \$25 or 10% of the registration fee, whichever is greater, may be
17 assessed and added to the original fee and shall be paid by the
18 applicant before the renewal soil amendment or plant amendment
19 registration is issued. The penalty shall not apply if the
20 applicant furnished an affidavit that the applicant has not
21 distributed the soil amendment or plant amendment subsequent to
22 the expiration of the applicant's prior registration.

23 § 6905. Labels and labeling.

24 (a) General rule.--Any soil amendment or plant amendment
25 distributed in a container in this Commonwealth shall have
26 placed on or affixed to the container a label setting forth in
27 legible and conspicuous form:

28 (1) The brand name.

29 (2) The active ingredients:

30 (i) Name and percentage of soil-amending ingredient.

1 (ii) Name and percentage of plant-amending
2 ingredient.

3 (3) The total percentage of other ingredients.

4 (4) The purpose of the product.

5 (5) The directions for application.

6 (6) The name and address of the guarantor.

7 (7) The net weight.

8 (b) Bulk shipments.--In the case of bulk shipments of soil
9 or plant amendments, the information required by subsection (a)
10 shall accompany delivery and shall be provided in writing to the
11 purchaser at time of delivery.

12 (c) False or misleading information prohibited.--No
13 information or statement shall appear on any package, label,
14 delivery slip or advertising matter which is false or misleading
15 to the purchaser as to the use, value, quality, analysis, type
16 or composition of the soil amendment or plant amendment.

17 (d) Proof of labeling claims.--The department may require
18 proof of any labeling claims made for a soil amendment or plant
19 amendment. Any research in support of such claims shall be
20 performed by an institution approved by the department utilizing
21 acceptable scientific methodology.

22 (e) Ingredient identification.--When a soil-amending
23 ingredient or plant-amending ingredient is identified on a
24 label, it must be determinable by laboratory methods such as
25 those set forth in section 6908(b) (relating to inspection,
26 sampling and analysis).

27 (f) Volume labeling authorized.--The department may allow
28 labeling by volume rather than weight in subsection (a). The
29 department may allow payment of inspection fees on a calculated
30 equivalent of volume to tons.

1 (g) Bulk storage.--Soil amendments and plant amendments in
2 bulk storage intended for distribution shall be identified with
3 a label attached to the storage bin or container giving the
4 brand and name of the product.

5 § 6906. Inspection fees.

6 (a) Amounts.--

7 (1) The guarantor whose name appears on the label of a
8 soil amendment or plant amendment distributed in this
9 Commonwealth shall pay semiannually and not later than
10 January 31 and July 31 of each year an inspection fee at the
11 rate of 15¢ per ton. In no case shall the inspection fee paid
12 semiannually amount to less than \$25.

13 (2) On packages of 15 pounds or less, there shall be
14 paid, in lieu of the inspection fee of 15¢ per ton provided
15 for in paragraph (1), annually and not later than January 31
16 of each year, an inspection fee of \$25 for each brand and
17 grade of soil amendment or plant amendment distributed.

18 (3) If the guarantor whose name appears on the label
19 distributes soil amendments or plant amendments in this
20 Commonwealth in both packages of less and more than 15
21 pounds, the \$25 inspection fee shall be paid for its brands
22 sold in packages of 15 pounds or less, and the 15¢ per ton
23 fee shall be paid for its packages of more than 15 pounds.

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

25 (1) Notwithstanding the provisions of subsection (a), if
26 the secretary determines following notice to the registrants
27 and licensees that moneys derived from the registration and
28 inspection fees are either greater or less than that required
29 to administer this chapter, the secretary may reduce or
30 increase the inspection fee so as to maintain revenues

1 sufficient to administer this chapter.

2 (2) An inspection fee so established may not be changed
3 by more than 2¢ in one year and may not exceed 25¢ per ton.

4 (3) The secretary shall announce the adjustment of fees
5 by publishing a notice in the Pennsylvania Bulletin. The
6 adjusted fees shall take effect 60 days after publication of
7 such notice in the Pennsylvania Bulletin.

8 § 6907. Tonnage reports.

9 (a) General rule.--The guarantor whose name appears on the
10 label shall submit, along with an inspection fee, a report in a
11 manner prescribed by the department listing by county the net
12 tons of each brand of soil amendment or plant amendment
13 distributed in this Commonwealth for the period covered by the
14 inspection fee.

15 (b) Multiple guarantors.--When more than one guarantor is
16 involved in the distribution of a soil amendment or plant
17 amendment, the guarantor who distributed the soil amendment or
18 plant amendment last shall report the tonnage and pay the
19 inspection fee unless the report and payment have been made by a
20 prior distributor.

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

24 (d) Examination permitted.--The department or its authorized
25 representative may examine the records of the guarantor to
26 verify the information contained in the reports filed with the
27 department. Reports containing fraudulent or incorrect
28 information shall be considered a violation of this chapter for
29 which the department may assess a penalty.

30 (e) Confidentiality of information.--

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

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

8 § 6908. Inspection, sampling and analysis.

9 (a) General rule.--The department shall sample, inspect,
10 make analysis of and test soil amendments and plant amendments
11 distributed within this Commonwealth and shall inspect the
12 storage of soil amendments and plant amendments at any time and
13 place and to such an extent as the department may deem necessary
14 to determine whether such soil amendments and plant amendments
15 are in compliance with the provisions of this chapter. The
16 department or its agent may enter upon any public or private
17 premises or carriers during regular business hours in order to
18 have access to soil amendments and plant amendments subject to
19 provisions of this chapter and the records relating to this
20 chapter.

21 (b) Laboratory methodology.--The department shall establish
22 by regulation the methods of soil and plant amendment sampling
23 and analysis. In promulgating such regulations the department
24 shall consider methods such as those adopted by the Association
25 of Official Analytical Chemists International. In cases not
26 covered by such methods or in cases where improved methods are
27 available, the department may issue a temporary order defining
28 the method to be utilized. The method defined in the temporary
29 order shall be effective upon publication in the Pennsylvania
30 Bulletin. The temporary order shall remain in effect for a

1 period not to exceed one year, unless reissued, or until such
2 order is promulgated as a regulation.

3 (c) Deficiency determination.--The department, in
4 determining whether any soil amendment or plant amendment is
5 deficient, shall be guided solely by the official sample,
6 obtained and analyzed as provided for in subsections (a) and
7 (b).

8 (d) Retention of official samples.--Official samples
9 maintained by the department and that require imposition of a
10 penalty shall be retained for a minimum of 90 days from issuance
11 of the penalty report. Upon request, the department shall
12 furnish to the guarantor a portion of any sample found subject
13 to penalty or other legal action. Such requests must be made
14 within 30 days of notification of sample violations.

15 § 6909. Misbranding.

16 No person shall distribute a misbranded soil amendment or
17 plant amendment. A soil amendment or plant amendment shall be
18 deemed to be misbranded if:

19 (1) its labeling is false or misleading in any
20 particular manner;

21 (2) it is distributed under the name of another soil
22 amendment or plant amendment product;

23 (3) it is not labeled as required in section 6905
24 (relating to labels and labeling) and in accordance with
25 regulations prescribed under this chapter;

26 (4) it purports to be or is represented as a soil
27 amendment or plant amendment or is represented as containing
28 a soil amendment or plant amendment unless such soil
29 amendment or plant amendment conforms to the definition of
30 identity, if any, prescribed by regulation of the department;

1 or

2 (5) it does not conform to ingredient form, minimums,
3 labeling and tolerances prescribed by regulation.

4 § 6910. Adulteration.

5 (a) General rule.--No person shall distribute an adulterated
6 soil amendment or plant amendment product. A soil amendment or
7 plant amendment shall be deemed to be adulterated if:

8 (1) it contains any deleterious or harmful substance in
9 sufficient amount to render it injurious to beneficial plant
10 life, animals, humans, aquatic life, soil or water when
11 applied in accordance with its intended use or directions for
12 use on the label;

13 (2) adequate warning statements or directions for use
14 which may be necessary to protect plant life, animals,
15 humans, aquatic life, soil or water are not shown upon the
16 label;

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

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

21 (b) Exception.--A soil amendment or plant amendment shall
22 not be considered adulterated under this section if the quantity
23 of the substance in the soil amendment or plant amendment does
24 not ordinarily render it injurious.

25 § 6911. Short weight.

26 If any soil amendment or plant amendment in the possession of
27 a consumer is found by the department to be short in weight, the
28 guarantor of that soil amendment or plant amendment shall,
29 within 30 days after official notice from the department, submit
30 to the consumer a penalty payment of two times the value of the

1 actual shortage.

2 § 6912. Refusal, suspension or revocation of registration or
3 license.

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

10 § 6913. Stop-sale orders.

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

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

27 § 6914. Seizure and condemnation.

28 A lot of soil amendment or plant amendment not in compliance
29 with the provisions of this chapter shall be subject to seizure
30 and condemnation by the department, provided that in no instance

1 shall the disposition of the soil amendment or plant amendment
2 be ordered by the department without first giving the claimant
3 an opportunity for a hearing as provided for in section 6915
4 (relating to appeal process) or for opportunity to apply for
5 permission to process or relabel the soil amendment or plant
6 amendment to bring it into compliance with this chapter.

7 § 6915. Appeal process.

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

13 § 6916. Cooperation with other entities.

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

18 § 6917. Rules and regulations.

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

22 § 6918. Unlawful conduct.

23 It shall be unlawful for any person to fail to comply with or
24 to cause or 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 § 6919. Interference 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 of
3 not more than one year or a fine of not more than \$2,500, or
4 both.

5 § 6920. Enforcement and penalties.

6 (a) Criminal penalties.--Unless otherwise specified, any
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 shall, upon conviction, be sentenced for each offense, to pay
12 a fine of not less than \$50 nor more than \$100 and costs of
13 prosecution or to serve a term of imprisonment for not more
14 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 serve a
21 term of imprisonment for not more than two years, or both.

22 (b) Trade secrets.--

23 (1) Any person who uses to that person's own advantage
24 or reveals to anyone other than the department,
25 administrative tribunal or the courts when relevant in any
26 judicial proceeding any information acquired under the
27 authority of this chapter concerning any method, records,
28 formulations or processes which as a trade secret is entitled
29 to protection under the law commits a misdemeanor of the
30 third degree and shall, upon conviction, be sentenced to pay

1 a fine of not less than \$500 or to serve a term of
2 imprisonment for not less than one year, or both.

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

8 (c) Civil penalties.--

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

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

23 (d) Certified copy of official analysis.--In prosecutions
24 under this chapter involving the composition of a lot of soil
25 amendment or plant amendment, a certified copy of the official
26 analysis signed by the secretary or the secretary's designee
27 shall be accepted as prima facie evidence of the composition.

28 (e) De minimis violations.--Nothing in this chapter shall be
29 construed as requiring the department to report a violation and
30 to institute seizure proceedings as a result of a de minimis

1 violation of this chapter when the department concludes that the
2 public interest will be best served by a suitable notice of
3 warning in writing.

4 § 6921. Disposition of funds.

5 Moneys received from license fees, registration fees,
6 inspection fees, fines and penalties shall be paid into the
7 Agronomic Regulatory Account established in section 6725
8 (relating to disposition of funds). All moneys in the Agronomic
9 Regulatory Account are hereby appropriated to the department for
10 the purposes of this chapter and Chapter 67 (relating to
11 fertilizer).

12 Section 2. The act of May 29, 1956 (1955 P.L.1795, No.598),
13 known as the Pennsylvania Fertilizer, Soil Conditioner and Plant
14 Growth Substance Law, is repealed.

15 Section 3. This act shall take effect in 60 days.