

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 915 Session of 2019

INTRODUCED BY YAW, VOGEL, KILLION AND SCHWANK, DECEMBER 18, 2019

AS AMENDED ON THIRD CONSIDERATION, MAY 27, 2020

AN ACT

1 Amending Title 3 (Agriculture) of the Pennsylvania Consolidated
2 Statutes, repealing provisions relating to fertilizer;
3 providing for fertilizer; in soil and plant amendment,
4 further providing for disposition of funds; in seed, further
5 providing for disposition of funds; establishing the
6 Agronomic Regulatory Account within the General Fund;
7 imposing duties on the Department of Agriculture; and making
8 conforming amendments.

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

11 Section 1. Chapter 67 of Title 3 of the Pennsylvania
12 Consolidated Statutes is repealed:

13 [CHAPTER 67
14 FERTILIZER

15 § 6701. Short title of chapter.

16 This chapter shall be known and may be cited as the
17 Fertilizer Act.

18 § 6702. Definitions.

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

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

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

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

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

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

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

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

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

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

28 "Fertilizer material." A fertilizer which:

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

1 (2) has 85% or more of its plant nutrient content
2 present in the form of a single chemical compound; or
3 (3) is derived from a plant or animal residue, by-
4 product, coproduct as defined in regulation or natural
5 material deposit which has been processed in such a way that
6 its content of plant nutrients has not been materially
7 changed except by purification and concentration.

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

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

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

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

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

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

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

1 of fertilizer.

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

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

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

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

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

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

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

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

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

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

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

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

28 § 6703. Licensing.

29 (a) General rule.--Every person engaged in the manufacture
30 of fertilizer to be distributed in this Commonwealth and every

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

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

14 § 6704. Registration of specialty fertilizers.

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

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

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

1 (4) The net weight.

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

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

16 § 6705. Labels and labeling.

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

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

23 (2) The guaranteed analysis.

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

25 (4) The net weight.

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

30 (c) Other guarantees.--Guarantees for other nutrients shall

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

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

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

18 (1) The net weight.

19 (2) The guaranteed analysis.

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

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

25 § 6706. Inspection fees.

26 (a) Amounts.--

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

1 case shall the inspection fee paid semiannually amount to
2 less than \$25.

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

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

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

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

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

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

29 § 6707. Tonnage reports.

30 (a) General rule.--The guarantor whose name appears on the

1 label shall submit, along with the requisite inspection fee, a
2 report in a manner prescribed by the department listing by
3 county the net tons of each brand and grade of fertilizer
4 distributed in this Commonwealth for the period covered by the
5 inspection fee.

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

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

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

21 (e) Confidentiality of information.--

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

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

29 § 6708. Inspection, sampling and analysis.

30 (a) General rule.--The department shall inspect, sample,

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

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

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

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

1 sample that is subject to penalty or other legal action. Such
2 requests must be made within 30 days of notification of sample
3 violations.

4 § 6709. Plant food deficiency.

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

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

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

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

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

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

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

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

7 § 6710. Commercial value.

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

15 § 6711. Misbranding.

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

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

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

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

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

30 § 6712. Adulteration.

1 (a) General rule.--No person shall distribute an adulterated
2 fertilizer product. A fertilizer shall be deemed to be
3 adulterated if:

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

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

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

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

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

20 § 6713. Publications.

21 The department shall publish at least annually and in such
22 form as it deems proper such information concerning the
23 distribution of fertilizers and results of analyses based on
24 official samples of fertilizer distributed within this
25 Commonwealth as compared with analyses guaranteed under sections
26 6704 (relating to registration of specialty fertilizers) and
27 6705 (relating to labels and labeling).

28 § 6714. Short weight.

29 If any fertilizer in the possession of a consumer is found by
30 the department to be short in weight, the guarantor of that

1 fertilizer shall, within 30 days after official notice from the
2 department, submit to the consumer a penalty payment of two
3 times the value of the actual shortage.

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

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

12 § 6716. Stop-sale orders.

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

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

27 § 6717. Seizure and condemnation.

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

1 of the fertilizer be ordered by the department without first
2 giving the claimant an opportunity for a hearing as provided for
3 in section 6718 (relating to appeal process) or for opportunity
4 to apply for permission to process or relabel the fertilizer to
5 bring it into compliance with this chapter.

6 § 6718. Appeal process.

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

12 § 6719. Cooperation with other entities.

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

17 § 6720. Rules and regulations.

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

21 § 6721. Unlawful conduct.

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

26 § 6722. Interference with officer or employee of department.

27 A person who willfully or intentionally interferes with an
28 employee or officer of the department in the performance of that
29 employee's or officer's duties or activities authorized under
30 this chapter commits a misdemeanor of the third degree and

1 shall, upon conviction, be subject to a term of imprisonment of
2 not more than one year or a fine of not more than \$2,500, or
3 both.

4 § 6723. Enforcement and penalties.

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

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

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

21 (b) Trade secrets.--

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

1 than one year, or both.

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

7 (c) Civil penalties.--

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

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

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

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

1 warning in writing.

2 § 6724. Exchanges between manufacturers.

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

9 § 6725. Disposition of funds.

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

17 Section 2. Title 3 is amended by adding a chapter to read:

18 CHAPTER 68

19 FERTILIZER

20 Subchapter

21 A. General Provisions

22 B. Fertilizer Manufacturers and Guarantors

23 C. Applicator Licensing and Certification

24 D. Recordkeeping

25 E. Application Rates, Requirements and Prohibitions

26 F. Agricultural and Homeowner Education Program

27 G. Administration and Penalties

28 SUBCHAPTER A

29 GENERAL PROVISIONS

30 Sec.

1 6801. Short title of chapter.

2 6802. Legislative intent.

3 6803. Definitions.

4 § 6801. Short title of chapter.

5 This chapter shall be known and may be cited as the
6 Fertilizer Act.

7 § 6802. Legislative intent.

8 This chapter is intended to:

9 (1) Provide for the labeling, application,
10 recordkeeping, packaging, use, sale and distribution of
11 agricultural fertilizer as well as turf or other specialty
12 fertilizer.

13 (2) Provide consumer protection through licensing,
14 labeling and sampling.

15 (3) Establish professional fertilizer applicator
16 certification.

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

18 (5) Ensure that applicators follow best practices when
19 applying fertilizer.

20 § 6803. Definitions.

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

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

26 "Bulk fertilizer." A fertilizer distributed in a nonpackaged
27 form.

28 "By-product." Municipal waste or residual waste as defined
29 in the act of July 7, 1980 (P.L.380, No.97), known as the Solid
30 Waste Management Act, that contains a plant nutrient and meets

1 all applicable regulations of the Department of Environmental
2 Protection.

3 "Certified applicator." A person who is certified under
4 section 6832 (relating to certification of applicators) as
5 competent to use or supervise the use of fertilizer or train
6 fertilizer technicians on the proper application of fertilizer.

7 "Commercial applicator." A person who applies or supervises
8 the application of fertilizer to the property or premises of
9 another or who applies or supervises application of fertilizer
10 to any of the following:

11 (1) A golf course.

12 (2) The property or premises of a public or private
13 park.

14 (3) The property or premises of a public, nonpublic or
15 licensed private elementary or secondary school where a
16 resident of this Commonwealth may fulfill the compulsory
17 school attendance requirements and that meets the applicable
18 requirements of Title IV of the Civil Rights Act of 1964 (42
19 U.S.C. § 2000c) (Public Law 88-352, 78 Stat. 241). This term
20 does not include the residence of a home schooled student.

21 (4) A public or private college or university that
22 applies fertilizer to the campus grounds, excluding a person
23 who conducts research at a public or private college or
24 university or a State-related university that applies
25 fertilizer to test plots.

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

27 "Consumer." A person who purchases fertilizer for the end
28 use of a product.

29 "Deficiency." The amount of nutrient found by analysis to be
30 less than that guaranteed, that may result from a lack of

1 nutrient ingredients or uniformity.

2 "Department." The Department of Agriculture of the
3 Commonwealth.

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

6 "Distributor." A person that distributes fertilizer or
7 fertilizer material.

8 "Enhanced efficiency." Relating to a fertilizer product with
9 characteristics that allow increased plant nutrient uptake and
10 reduced potential of nutrient losses to the environment, such as
11 gaseous losses, leaching or runoff.

12 "Facility." Each separate mill or plant that manufactures
13 fertilizer.

14 "Fertilizer." A substance containing one or more recognized
15 plant nutrients that is used for its plant nutrient content and
16 is designed for use or claimed to have value in promoting plant
17 growth, except unmanipulated animal manure and plant remains,
18 agricultural liming materials, wood ashes and other materials
19 exempted by the department's regulations. The term shall not
20 apply to animal manure that is regulated under:

21 (1) Chapter 5 (relating to nutrient management and odor
22 management);

23 (2) the act of June 28, 2004 (P.L.454, No.49), known as
24 the Commercial Manure Hauler and Broker Certification Act; or

25 (3) 25 Pa. Code § 91.36(b) (relating to pollution
26 control and prevention at agricultural operations).

27 "Fertilizer application business." A governmental or public
28 entity, commercial applicator or business for profit or not for
29 profit that applies fertilizer to or on:

30 (1) the property or premises of another;

1 (2) the property or premises of a golf course, park,
2 school, college or university or public playground; or
3 (3) an athletic field.

4 "Fertilizer application business license." A license
5 obtained under section 6831 (relating to licensing of fertilizer
6 application businesses).

7 "Fertilizer license." A license obtained under section 6811
8 (relating to licensing).

9 "Fertilizer material." A fertilizer that:

10 (1) contains only one of the following primary plant
11 nutrients:

12 (i) nitrogen;

13 (ii) phosphate; or

14 (iii) potash;

15 (2) has at least 85% of its plant nutrient content
16 present in the form of a single chemical compound; or

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

23 "Fertilizer technician." A person who:

24 (1) Is not certified under this chapter.

25 (2) Works for a fertilizer application business.

26 (3) Works under the direction of a certified applicator.

27 "Governmental or public entity." An executive or independent
28 agency or governmental unit of the Federal Government,
29 Commonwealth or its instrumentalities, a local agency, municipal
30 authority or political subdivision.

1 "Grade." The percentage of total nitrogen, available
2 phosphate and soluble potash stated in whole numbers in the same
3 terms, order and percentages as in the guaranteed analysis,
4 which, in the case of specialty fertilizers, may be guaranteed
5 in fractional units of less than 1% of total nitrogen, available
6 phosphate and soluble potash, and provided that fertilizer
7 materials, bone meal, manures and similar materials may be
8 guaranteed in fractional units.

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

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

13	<u>Total Nitrogen (N)</u>	<u>%</u>
14	<u>Available Phosphate (P2O5)</u>	<u>%</u>
15	<u>Soluble Potash (K2O)</u>	<u>%</u>

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

20 "Guarantor." A person, including a manufacturer or
21 distributor, whose name and address appear on the label of
22 fertilizer.

23 "Impervious surface." A structure, surface or improvement
24 that reduces or prevents infiltration of water into soil,
25 including, but not limited to, concrete, asphalt, roadways,
26 sidewalks, parking lots, driveways and patios.

27 "Label." The display of all written, printed or graphic
28 matter on the immediate container or a statement accompanying a
29 fertilizer.

30 "Labeling." All written, printed or graphic matter, on or

1 accompanying fertilizer or advertisements, brochures, posters or
2 electronic media used in promoting the distribution of
3 fertilizer.

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

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

8 "Manure." Animal excrement, with or without the bedding,
9 litter, straw, washwater and other refuse materials, dirt and
10 waste ordinarily mixed or commingled with that excrement, that
11 is produced at an agricultural operation.

12 "Micronutrient." Any of the following:

13 (1) Boron.

14 (2) Chlorine.

15 (3) Cobalt.

16 (4) Copper.

17 (5) Iron.

18 (6) Manganese.

19 (7) Molybdenum.

20 (8) Nickel.

21 (9) Sodium.

22 (10) Zinc.

23 "Natural organic fertilizer." Materials that are:

24 (1) Derived from either plant or animal products
25 containing one or more elements, other than carbon, hydrogen
26 and oxygen.

27 (2) Essential for plant growth and subjected to
28 biological degradation processes under normal conditions of
29 aging, rainfall, sun curing, air drying, composting, rotting,
30 enzymatic or anaerobic or aerobic bacterial action or any

1 combination of these processes.

2 (3) Not mixed with synthetic materials or changed in any
3 physical or chemical manner from their initial state except
4 by manipulations such as drying, cooking, chopping, grinding,
5 shredding, hydrolysis or pelleting.

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

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

11 "Organic based fertilizer." A mixed fertilizer in which:

12 (1) More than half of the fertilizer materials are
13 organic.

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

16 "Overall index value." The value obtained from the
17 calculation: (commercial value found) x 100 / (commercial value
18 guaranteed).

19 "Park." Privately or publicly owned outdoor real estate,
20 including a public recreational area and an area with restricted
21 access.

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

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

25 "Plant nutrient." Any of the following:

26 (1) A primary nutrient.

27 (2) A secondary nutrient.

28 (3) A micronutrient.

29 "Primary nutrient." Any of the following:

30 (1) Nitrogen.

1 (2) Phosphorus.

2 (3) Potassium.

3 "Public applicator." A certified applicator who applies
4 fertilizer as an employee of the Federal or State government or
5 a public entity.

6 "Registrant." A person who registers fertilizer under this
7 chapter.

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

10 "Secondary nutrient." Any of the following:

11 (1) Calcium.

12 (2) Magnesium.

13 (3) Sulfur.

14 "Specialty fertilizer." A fertilizer distributed for nonfarm
15 use or a fertilizer primarily intended to supply plant nutrients
16 other than nitrogen, phosphate or potash.

17 "Stream buffer zone." A permanent strip of dense perennial
18 vegetation established parallel and immediately adjacent to the
19 bank of a pond, wetland or flowing body of water, such as a
20 stream, river or creek, that is used to slow water runoff,
21 enhance water infiltration and minimize the risk of potential
22 nutrients reaching the waters.

23 "Tolerance." A permitted variation from the guarantee of an
24 official sample of fertilizer.

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

26 "Turf." Land, including, but not limited to, residential
27 property, a golf course and privately or publicly owned land,
28 that is planted in closely mowed, managed grass, except for land
29 used for agricultural production.

30 SUBCHAPTER B

1 FERTILIZER MANUFACTURERS AND GUARANTORS

2 Sec.

3 6811. Licensing.

4 6812. Registration of specialty fertilizers.

5 6813. Turf fertilizer components.

6 6814. Labels and labeling.

7 6815. Inspection fees.

8 6816. Tonnage reports.

9 6817. Plant food deficiency.

10 6818. Commercial value.

11 6819. Misbranding.

12 6820. Adulteration.

13 § 6811. Licensing.

14 (a) Requirements.--Each person engaged in the manufacture of
15 fertilizer to be distributed in this Commonwealth and each
16 guarantor of the fertilizer shall, on or before July 1 of each
17 year or prior to manufacture or distribution of the fertilizer,
18 obtain a fertilizer license for each manufacturing facility
19 located in this Commonwealth and for each guarantor by
20 completing a form furnished by the department and paying a \$50
21 application fee or a fee established in the manner provided
22 under section 6886 (relating to fees, fines and civil
23 penalties). All licenses shall expire on June 30 of each year.

24 (b) Labeling and typical analysis.--The department may
25 require an applicant for a fertilizer license or a current
26 fertilizer licensee to submit the labeling that the person is
27 using or intends to use for the fertilizer. The department may
28 also require an applicant or fertilizer licensee to provide a
29 typical analysis of selected components that may be in the
30 fertilizer.

1 § 6812. Registration of specialty fertilizers.

2 (a) Application.--Each brand and grade of specialty
3 fertilizer shall be registered by the guarantor with the
4 department before being offered for sale, sold or distributed in
5 this Commonwealth. An application for each brand and grade of
6 specialty fertilizer shall be made on a form furnished by the
7 department and shall be accompanied by a fee of \$100 or a fee
8 established in the manner provided under section 6886 (relating
9 to fees, fines and civil penalties), per each grade of each
10 brand. Labels for each brand and grade shall accompany the
11 application. All registrations shall expire on June 30 of each
12 year.

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

- 15 (1) The brand and grade.
16 (2) The guaranteed analysis.
17 (3) The name and address of the guarantor.
18 (4) Net weight.

19 (c) Exemption.--

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

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

28 (d) Late fee.--

29 (1) If the application for renewal of the specialty
30 fertilizer registration required under this section is not

1 filed prior to June 30 of each year, a penalty of \$25 or 10%
2 of the total registration fee for all products sought to be
3 registered, whichever is greater, or a fee established in the
4 manner provided under section 6886 may be assessed and added
5 to the original fee and shall be paid by the applicant before
6 the renewal of the specialty fertilizer registration is
7 issued.

8 (2) The penalty shall not apply if the applicant
9 furnished an affidavit that the applicant has not distributed
10 the specialty fertilizer subsequent to the expiration of the
11 applicant's prior registration.

12 § 6813. Turf fertilizer components.

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

16 (1) Consist of at least 20% enhanced efficiency nitrogen
17 of the total nitrogen or as otherwise determined by the
18 department, which determination shall be transmitted to the
19 Legislative Reference Bureau for publication in the
20 Pennsylvania Bulletin.

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

23 (b) Exemptions.--

24 (1) Subsection (a) shall not apply when turf fertilizer
25 is labeled for repairing a turf area or establishing a turf
26 area for the first time.

27 (2) Subsection (a)(1) shall not apply to liquid turf
28 fertilizers or readily available nitrogen fertilizers labeled
29 for turf, if the directions for use are in accordance with
30 the requirements of section 6852 (relating to application of

1 fertilizer to turf).

2 (c) Additional requirements.--The department, through
3 regulation, may establish additional requirements for turf
4 fertilizer.

5 § 6814. Labels and labeling.

6 (a) Contents of label.--The guarantor of a fertilizer
7 distributed in a container in this Commonwealth shall place on
8 or affix to the container a label stating in legible and
9 conspicuous form the following:

10 (1) The brand and grade of the fertilizer. The grade
11 shall not be required if no primary nutrients are claimed.

12 (2) The guaranteed analysis.

13 (3) A derived from statement.

14 (4) Directions for use for fertilizer distributed to the
15 end user.

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

17 (6) The net weight.

18 (b) Bulk fertilizer.--In the case of bulk fertilizer
19 distribution, the information required under subsection (a)
20 shall accompany delivery and shall be provided in writing to the
21 purchaser at time of delivery.

22 (c) Other guarantees.--Guarantees for nutrients other than
23 primary nutrients, shall be expressed in the form of the
24 element. The department may require by regulation that other
25 beneficial substances or compounds be guaranteed. When plant
26 nutrients or other substances or compounds are guaranteed, they
27 shall be subject to inspection and analysis in accordance with
28 the methods and regulation prescribed by the department.

29 (d) Proof of labeling claims.--The department may require
30 proof of labeling claims made for fertilizer. Research in

1 support of the claims must be performed by an institution
2 approved by the department utilizing acceptable scientific
3 methodology.

4 (e) Consumer-specified fertilizer formulations.--In lieu of
5 the requirements under subsection (a), a fertilizer formulated
6 according to specifications that are furnished by the end user
7 prior to mixing shall be labeled in a clearly legible and
8 conspicuous form to show the grade, net weight, guaranteed
9 analysis and name and address of the guarantor.

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

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

19 (1) The product may not be applied near water, storm
20 drains or drainage ditches.

21 (2) The product may not be applied if heavy rain is
22 expected.

23 (3) The product may only be applied to the intended
24 application site.

25 (4) Material that lands on an impervious surface must be
26 swept back onto the turf. This requirement shall not apply if
27 the product is applied in a liquid form.

28 (h) Nonturf fertilizer.--Subject to subsections (i) and (k),
29 fertilizer that is not labeled for turf, in bulk or packages
30 that are 40 pounds or greater, that is distributed to end users

1 in this Commonwealth, shall include a statement in legible and
2 conspicuous form that at a minimum sets forth the following
3 requirements:

4 (1) The product may not be applied near water, storm
5 drains or drainage ditches or to any impervious surface.

6 (2) The product may not be applied if heavy rain is
7 expected.

8 (3) The product may only be applied to the intended
9 application site.

10 (i) Fertilizers containing pesticides.--In lieu of the
11 statements required under subsections (g) and (h), the label for
12 fertilizer products containing pesticides shall contain the
13 environmental hazard statement recommended by the Environmental
14 Protection Agency for that product.

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

19 (k) Exemption.--The requirements of subsections (g), (h) and
20 (j) shall not apply to fertilizer labeled for aquatic settings,
21 growing media, indoor use or potted plants.

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

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

29 § 6815. Inspection fees.

30 (a) Amounts.--The guarantor whose name appears on the label

1 of a fertilizer distributed in this Commonwealth shall pay
2 semiannually and not later than January 31 and July 31 of each
3 year an inspection fee at the rate of 17¢ per ton of fertilizer
4 distributed in this Commonwealth or a fee established in the
5 manner provided under section 6886 (relating to fees, fines and
6 civil penalties). In no case shall the inspection fee paid
7 semiannually amount to less than \$25 or a fee established in the
8 manner provided under section 6886.

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

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

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

19 (3) The department shall announce the adjustment of fees
20 by transmitting notice to the Legislative Reference Bureau
21 for publication in the Pennsylvania Bulletin. The adjusted
22 fees shall take effect 60 days after publication of the
23 notice in the Pennsylvania Bulletin.

24 § 6816. Tonnage reports.

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

1 regulations to establish additional tonnage reporting
2 requirements.

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

8 (c) Late fee.--A penalty of \$25 or 10% of the total
9 inspection fee, whichever is greater, or a fee established in
10 the manner provided under section 6886 (relating to fees, fines
11 and civil penalties), shall be imposed for a fee or report not
12 submitted at the required time.

13 (d) Examination permitted.--

14 (1) The department or its authorized representative may
15 examine the records of the guarantor to verify the
16 information contained in the reports filed with the
17 department.

18 (2) Reports containing fraudulent or incorrect
19 information shall be considered a violation of this chapter
20 for which the department may assess a penalty as provided for
21 in this chapter.

22 (e) Confidentiality of information.--

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

29 (2) This subsection shall not apply to information
30 furnished to a court or administrative tribunal in accordance

1 with law.

2 § 6817. Plant food deficiency.

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

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

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

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

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

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

22 (b) Payment of penalties.--Within 90 days following receipt
23 of the official report of analysis, the guarantor shall pay to
24 the consumer a deficiency penalty in the amount prescribed on
25 the report of analysis. Receipts of payment shall be promptly
26 forwarded by the guarantor to the department. If the consumer
27 cannot be found, the penalties shall be paid to the department.

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

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

4 § 6818. Commercial value.

5 For the purpose of determining the commercial value to be
6 applied under section 6817 (relating to plant food deficiency),
7 the department shall determine and publish annually a notice
8 transmitted to the Legislative Reference Bureau for publication
9 in the Pennsylvania Bulletin stating the values per pound of
10 total nitrogen, available phosphate and soluble potash in
11 fertilizers in this Commonwealth. The values published in the
12 Pennsylvania Bulletin shall take effect July 1 of each year and
13 be used in determining and assessing penalty payments.

14 § 6819. Misbranding.

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

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

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

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

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

30 (5) The label or labeling are in conflict with section

1 6852 (relating to application of fertilizer to turf).

2 § 6820. Adulteration.

3 No person may distribute an adulterated fertilizer product. A
4 fertilizer shall be deemed to be adulterated if any of the
5 following apply:

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

11 (2) Adequate warning statements or directions for use
12 that may be necessary to protect plant life, animals, humans,
13 aquatic life, soil or water are not shown on the label.

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

16 (4) It contains viable weed seed or unwanted crop seed
17 in amounts exceeding the limit that the department
18 establishes by regulation.

19 SUBCHAPTER C

20 APPLICATOR LICENSING AND CERTIFICATION

21 Sec.

22 6831. Licensing of fertilizer application businesses.

23 6832. Certification of applicators.

24 6833. Recertification of applicators.

25 6834. Reciprocal agreement.

26 6835. Training of fertilizer technicians.

27 § 6831. Licensing of fertilizer application businesses.

28 (a) Requirements.--

29 (1) A fertilizer application business must be licensed
30 prior to applying fertilizer and shall comply with the

1 provisions of this chapter and any regulation or order of the
2 department.

3 (2) A fertilizer application business with more than one
4 location or place of business or operating under more than
5 one name in this Commonwealth shall license each location,
6 place of business and business entity.

7 (3) For a governmental or public entity, each district
8 or region shall be considered a separate business and shall
9 require a separate license.

10 (b) Operation, application and expiration.--

11 (1) A fertilizer application business may not be
12 operated without first obtaining a fertilizer application
13 business license.

14 (2) The application for licensure shall be on a form
15 furnished by the department and shall be accompanied by a
16 \$100 application fee or a fee later established in the manner
17 under section 6886 (relating to fees, fines and civil
18 penalties).

19 (3) All business licenses shall expire on December 31
20 each year, except that the department may issue a license for
21 the following year when an initial license application is
22 filed during the last two months of a licensing year.

23 (c) Employer requirement.--A fertilizer application business
24 shall employ at all times and at each licensed business at least
25 one person who holds a current valid commercial or public
26 applicator certification. This person shall be responsible for
27 training fertilizer technicians on the proper handling and
28 application of fertilizer.

29 (d) Fertilizer technicians.--A fertilizer application
30 business shall ensure fertilizer technicians do not apply

1 fertilizer unless the persons have completed a training program
2 as described by section 6835 (relating to training of fertilizer
3 technicians).

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

7 (1) A list of all certified applicators employed by the
8 business.

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

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

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

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

1 137 (relating to agricultural aircraft operations) or its
2 successor regulations.

3 § 6832. Certification of applicators.

4 (a) Certification examination.--

5 (1) Any person required to be certified under this
6 chapter must take and pass a written examination developed or
7 approved by the department and administered by the department
8 or an agent of the department. The department may also
9 establish field testing requirements. All tests and
10 examinations shall be subject to examination fees established
11 by the department. Any person seeking certification shall
12 demonstrate minimum standard proficiency on the basis of a
13 written examination conducted at an approved test site under
14 direction of the department or its designated agent.

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

17 (i) Safety and health.

18 (ii) Labeling and label comprehension.

19 (iii) Environmental protection.

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

22 (v) Personal protective equipment.

23 (vi) Cleaning and maintaining equipment.

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

26 (viii) Applicable Federal and State laws.

27 (ix) Any subject matter deemed appropriate by the
28 department through regulation.

29 (3) The department shall require a minimum examination
30 fee of \$10 or a fee established in the manner specified under

1 section 6886 (relating to fees, fines and civil penalties).

2 (b) Commercial and public applicators.--

3 (1) A commercial or public applicator certification
4 shall not be valid until the applicator is associated with a
5 fertilizer application business that is licensed according to
6 the requirements of section 6831 (relating to licensing of
7 fertilizer application businesses).

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

13 (c) Issuance of certification.--Certification shall be
14 issued to a person upon:

15 (1) successful completion of all classroom, examination,
16 testing and any other certification requirements established
17 by this chapter; and

18 (2) payment of all fees.

19 (d) Activation.--

20 (1) Upon receiving notice of passing all certification
21 requirements, the applicant shall, within 12 months of
22 becoming eligible to be certified as a commercial or public
23 applicator, file with the department a request to activate
24 certification.

25 (2) A person who fails to request activation within this
26 12-month period shall lose certification eligibility and must
27 again establish eligibility in accordance with this section.

28 (e) Expiration.--Certification shall expire as follows:

29 (1) Commercial applicator certification shall expire on
30 September 30 of each year following the date of

1 certification.

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

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

9 (f) Existing applicator certifications.--

10 (1) A person who holds a valid pesticide applicator
11 certification in the following categories under 7 Pa. Code §
12 128.42 (relating to categories of commercial and public
13 applicators) on the effective date of this section shall be
14 granted certification as a certified fertilizer applicator
15 under this chapter and shall comply with all other
16 requirements of this chapter:

17 (i) Category 1, Agronomic crops.

18 (ii) Category 2, Fruits and nuts.

19 (iii) Category 3, Vegetable crops.

20 (iv) Category 5, Forest pest control.

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

22 (vi) Category 7, Lawn and turf.

23 (vii) Category 10, Right-of-way and weeds.

24 (viii) Category 18, Demonstration and research pest
25 control.

26 (ix) Category 22, Interior plantscape.

27 (x) Category 23, Park or school pest control.

28 (xi) Category 25, Aerial applicator.

29 (2) The certification under this subsection shall be
30 valid until each person's pesticide core recertification is

1 due, at which time the person shall be required to meet all
2 the recertification requirements as required by this chapter
3 or regulations promulgated under this chapter.

4 (g) Renewal.--A certified applicator, in good standing and
5 full compliance with the provisions of this chapter, regulations
6 promulgated under this chapter and any order issued under the
7 authority of this chapter, may renew certification by submitting
8 a renewal application on a form provided by the department. The
9 renewal shall be filed with the department by September 30 of
10 the year the certification expires.

11 (h) Failure to renew.--A person who fails to timely renew
12 the person's certification shall, after 12 months of expiration,
13 be required to establish certification in accordance with the
14 full certification provisions of this chapter.

15 § 6833. Recertification of applicators.

16 (a) Continuing education.--At intervals of three years, a
17 certified applicator shall provide evidence of having received
18 continuing education credits in practices relating to fertilizer
19 applications. Recertification training shall be in the same
20 field as required for initial certification under section
21 6832(a)(2) (relating to certification of applicators).

22 (b) Credits.--Continuing education credits shall be given on
23 the basis of attendance at courses or other appropriate training
24 approved by the department. At a minimum, certified applicators
25 shall obtain four credits every three years or the total amount
26 of credits established by notice published in the Pennsylvania
27 Bulletin.

28 (c) Training.--Training shall be approved based on the
29 following:

30 (1) Training shall be conducted or sponsored by the

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

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

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

24 (d) Information request.--A request for training approval
25 shall be submitted on an application form supplied by the
26 department. The department shall return an incomplete
27 application to the applicant without approval.

28 (e) Assignment of credits.--Credits shall be assigned to
29 each training course based upon the subjects covered and the
30 amount of time expended on each subject.

1 (f) Training course sponsors.--The training course sponsor
2 shall authenticate attendance and compile an approved list of
3 Pennsylvania certified applicators in attendance. The list shall
4 be returned to the department within 10 working days following
5 the meeting date and shall include the name of each individual
6 attending and the individual's applicator certification number.

7 (g) Monitoring of training.--The department may monitor
8 recertification training to verify the accuracy the accuracy of
9 the course approval and attendance of participants.

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

14 (i) Violation.--

15 (1) Falsification by a department-approved course
16 trainer or sponsor of information required under this section
17 shall be considered a violation of this chapter.

18 (2) A person may not falsify attendance or that of
19 another person's attendance at a continuing education
20 meeting.

21 (3) Falsification of attendance at a continuing
22 education course by a person shall be considered a violation
23 of this chapter.

24 (j) Failure to obtain required credits.--If a person does
25 not obtain the required number of recertification credits in the
26 triennial year in which continuing education credits are due,
27 the person's certification shall be invalid and the person shall
28 cease and desist from all fertilizer application and, in order
29 to renew recertification, the person must complete delinquent
30 continuing education credits as established under this section.

1 (k) Failure to complete delinquent credits.--If a person
2 fails to complete delinquent continuing education credits within
3 one year from the triennial expiration date or fails to renew
4 the certification for any reason during that time period, the
5 person shall cease and desist from all fertilizer application
6 and shall be required to reestablish eligibility by meeting the
7 requirements in section 6832.

8 § 6834. Reciprocal agreement.

9 The department may issue a license or certification on a
10 reciprocal basis with another state without examination to a
11 nonresident who is licensed or certified in the other state if
12 the other state administers a fertilizer licensing or
13 certification course substantially in accordance with the
14 provisions of this chapter.

15 § 6835. Training of fertilizer technicians.

16 (a) Prohibition.--Fertilizer technicians working for a
17 fertilizer application business may not apply fertilizer without
18 completing a training program, as required by the provisions of
19 this chapter, an order of the department or the department's
20 regulations.

21 (b) Requirements.--A fertilizer technician shall be an
22 employee of the business and trained by a certified applicator
23 who is an employee of the same business.

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

26 (d) Program administration.--The training program for a
27 fertilizer technician shall be administered by a certified
28 applicator, employed by the fertilizer application business
29 employing the fertilizer technician, in subject matter involving
30 the assigned tasks of the fertilizer technician. The training

1 program shall include, but not be limited to:

2 (1) Proper use of fertilizers and use of application
3 equipment, including calibration and maintenance equipment
4 used on the job.

5 (2) Protective clothing required during the application
6 and handling of fertilizers.

7 (3) Transportation and disposal of fertilizers used in
8 and around the workplace.

9 (4) Applicable Federal and State regulations as they
10 affect work assignments.

11 (5) Competence in reading and following label and
12 application requirements.

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

18 (f) Training and supervision prohibition.--A fertilizer
19 technician may not train applicators or supervise the use or
20 application of fertilizers by other fertilizer technicians or
21 noncertified employees.

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

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

28 (2) The name of fertilizer technician trained.

29 (3) The date of training.

30 (4) The areas of training.

1 (5) The business name and address of the fertilizer
2 application business employing the fertilizer technician.

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

5 SUBCHAPTER D

6 RECORDKEEPING

7 Sec.

8 6841. Records.

9 § 6841. Records.

10 (a) Condition.--A person required to be licensed, certified
11 or permitted and a person issued a license, certificate or
12 permit under the provisions of this chapter shall keep accurate
13 records of the information specified in this section and such
14 relevant information as the department may deem necessary
15 through order or by regulation. The person shall make the
16 records available to the department upon request.

17 (b) Fertilizer application.--Applicators required to be
18 certified under section 6832 (relating to certification of
19 applicators) and fertilizer technicians trained under section
20 6835 (relating to training of fertilizer technicians) shall keep
21 for every application of fertilizer a record containing the
22 following information:

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

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

1 entered in the record.

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

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

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

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

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

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

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

18 (c) Fertilizer application record.--A fertilizer application
19 record shall be completed in written or printable form no later
20 than 24 hours after the application date and made immediately
21 available to the department upon request.

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

24 SUBCHAPTER E

25 APPLICATION RATES, REQUIREMENTS AND PROHIBITIONS

26 Sec.

27 6851. Application of fertilizer.

28 6852. Application of fertilizer to turf.

29 6853. Prohibited acts.

30 § 6851. Application of fertilizer.

1 (a) Restrictions.--

2 (1) No person may apply nonaquatic fertilizer within 15
3 feet of the top of a bank of a lake, pond, wetlands or
4 flowing body of water, such as a stream, river or creek,
5 except that fertilizer may be applied to the top of the bank
6 of the waterways if applied using a drop spreader, rotary
7 spreader with deflector, targeted spray liquid or other
8 available targeted application technology when establishing
9 and maintaining a stream buffer zone.

10 (2) The establishment of setbacks for fertilizer
11 application under this subsection shall not be construed to
12 preclude the establishment or applicability of or required
13 compliance with any other environmental standard established
14 under other Federal or State law, rule or regulation.

15 (b) Regulation.--The department may establish additional
16 restrictions through regulation.

17 (C) CONSTRUCTION.--NOTHING IN THIS SECTION SHALL BE
18 CONSTRUED TO PROHIBIT THE LAWFUL USE OF FERTILIZER IN BLASTING
19 AS REGULATED BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION.
20 § 6852. Application of fertilizer to turf.

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21 (a) Application rates.--Except as provided in subsections
22 (c) and (d), fertilizer application rates to turf:

23 (1) Shall not exceed 0.7 pounds of readily available
24 nitrogen per 1,000 square feet per application.

25 (2) Shall not exceed 0.9 pounds of total nitrogen per
26 1,000 square feet per application except, when labeled as an
27 enhanced-efficiency nitrogen fertilizer, the amount of
28 nitrogen released at any given time shall not exceed 0.7
29 pounds of nitrogen per 1,000 square feet.

30 (3) Shall contain zero phosphorus, except when

1 specifically labeled for the following purposes:

2 (i) establishing vegetation for the first time;

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

4 (iii) as an enhanced-efficiency phosphorus

5 fertilizer, natural organic fertilizer or organic-based

6 fertilizer, if the application rate does not exceed 0.25

7 pounds of phosphorus per 1,000 square feet per

8 application, with a maximum total annual application of

9 0.5 pounds of phosphorus per 1,000 square feet.

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

11 (1) Apply turf fertilizer to an impervious surface. Turf

12 fertilizer that is inadvertently applied to an impervious

13 surface shall be removed from the impervious surface

14 immediately following the application.

15 (2) Apply fertilizer containing nitrogen or phosphorus

16 to turf at any time when the ground is frozen to a depth of

17 at least two inches or snow covered.

18 (3) Except as provided in paragraph (4), apply

19 fertilizer containing nitrogen or phosphorus to turf after

20 December 15 and before March 1 or dates as established in

21 regulations promulgated by the department.

22 (4) Fertilizer containing no more than 0.5 pounds of

23 total nitrogen per 1,000 square feet, or at a rate

24 established in regulations promulgated by the department, may

25 be applied by a certified applicator or fertilizer technician

26 to turf after December 15 and before March 1 or dates as

27 established in regulations promulgated by the department.

28 (c) Fertilizer use and application rates for turf.--

29 (1) The department may establish use and application

30 rates for fertilizer that is applied to turf.

1 (2) The current rates or source of established
2 fertilizer use and application rates shall be published at
3 least once every two years by the department transmitting a
4 notice to the Legislative Reference Bureau for publication in
5 the Pennsylvania Bulletin.

6 (3) New application rates or changes to established
7 fertilizer use and application rates shall:

8 (i) Be based on appropriately peer-reviewed
9 scientific research representing conditions of this
10 Commonwealth and recommended by The Pennsylvania State
11 University or other institution of higher education in
12 this Commonwealth.

13 (ii) Be as protective or more protective of water
14 quality as those rates specified in subsection (a).

15 (iii) Be published as a notice of public comment in
16 the Pennsylvania Bulletin and allow for a 30-day public
17 comment period. The department shall respond to all
18 comments received and make a copy of the comments
19 publicly available. The new rates or changes shall be
20 published as final rates in the Pennsylvania Bulletin and
21 take effect upon publication.

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

26 (1) A soil test was conducted within the previous three
27 years and in accordance with procedures recommended by the
28 Pennsylvania State University.

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

1 (3) Rates recommended by The Pennsylvania State
2 University or other institution of higher education in this
3 Commonwealth recognized by the department.

4 (e) Certified applicators or fertilizer technicians.--In
5 addition to the requirements of section 6841 (relating to
6 records), when a certified applicator or fertilizer technician
7 applies fertilizer in accordance with subsection (d), the
8 certified applicator or fertilizer technician shall retain a
9 copy of the soil test and recommendations received for the site-
10 specific plan as part of the recordkeeping requirements.

11 (f) Additional requirements.--The department may establish
12 additional requirements through regulation.

13 (g) Exemption.--This section shall not apply to fertilizer
14 applied for agricultural production or by a public or private
15 institution of higher education for research purposes.

16 § 6853. Prohibited acts.

17 (a) Prohibited acts by business, certified applicator or
18 fertilizer technician.--A fertilizer application business,
19 certified applicator or fertilizer technician may not:

20 (1) Apply fertilizer without a license, certification or
21 the training required by this chapter.

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

23 (3) Make false or fraudulent records, invoices or
24 reports concerning the application, storage or disposal of
25 fertilizer.

26 (4) Make a false statement or misrepresentation of
27 material fact on an application for issuance or renewal of a
28 license or certification required under this chapter, a
29 regulation promulgated under this chapter or an order issued
30 under the authority of this chapter.

1 (5) Refuse or neglect to comply with a condition or
2 limitation imposed upon a license or certification issued
3 under this chapter, a regulation promulgated under this
4 chapter or an order issued under the authority of this
5 chapter.

6 (6) Refuse to present evidence of proper licensure or
7 certification to an employee or agent of the department upon
8 request.

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

14 (8) Refuse or neglect to keep and maintain a record, or
15 make a report when and as required, by this chapter, a
16 regulation promulgated under this chapter or an order issued
17 under the authority of this chapter.

18 (9) Fail to comply with a provision of this chapter, a
19 regulation promulgated under this chapter or an order issued
20 under the authority of this chapter.

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

22 (1) Apply fertilizer with a device that is not intended
23 for the application of fertilizer or that has not been
24 properly calibrated.

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

27 (3) Dispose of, discard or store a fertilizer product in
28 a manner that would be inconsistent with its label, would
29 cause over-application of fertilizer, would result in direct
30 discharge to a storm drain or waters of this Commonwealth or

1 would be inconsistent with this chapter, a regulation
2 promulgated under this chapter or an order issued under the
3 authority of this chapter.

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

9 (5) Hinder, mislead, make false statements to or refuse
10 to cooperate with an employee or agent of the department in
11 an investigation or inspection undertaken by the authority
12 delegated to the department under the provisions of this
13 chapter.

14 (6) Apply fertilizer or a nitrogen-based material for
15 the purposes of melting snow or ice, unless the material is
16 applied to aircraft or areas an aircraft accesses at an
17 airport.

18 (7) Fail to comply with a provision of this chapter, a
19 regulation promulgated under this chapter or an order issued
20 under the authority of this chapter.

21 SUBCHAPTER F

22 AGRICULTURAL AND HOMEOWNER EDUCATION PROGRAM

23 Sec.

24 6861. Agricultural and homeowner education.

25 § 6861. Agricultural and homeowner education.

26 The department, through guidelines established in
27 consultation with The Pennsylvania State University and
28 representatives of the agricultural and turf grass industries,
29 shall establish and administer a program of public outreach to
30 educate the public on proper use, application, handling and

1 storage of fertilizers.

2 SUBCHAPTER G

3 ADMINISTRATION AND PENALTIES

4 Sec.

5 6871. Publications.

6 6872. Rules and regulations.

7 6873. Short weight.

8 6874. Refusal, suspension or revocation of registration,
9 license or certification.

10 6875. Stop-sale orders.

11 6876. Seizure and condemnation.

12 6877. Unlawful conduct.

13 6878. Inspection, sampling and analysis.

14 6879. Interference with officer or employee of department.

15 6880. Enforcement and penalties.

16 6881. Appeal process.

17 6882. Civil remedy.

18 6883. Cooperation with other entities.

19 6884. Exchanges between manufacturers.

20 6885. Confidentiality.

21 6886. Fees, fines and civil penalties.

22 6887. Disposition of funds.

23 6888. Exclusion of local laws and regulations.

24 § 6871. Publications.

25 The department may publish on an annual basis, and in a form
26 as it deems proper, information concerning the distribution of
27 fertilizers for both agricultural and nonagricultural uses and
28 results of analyses based on official samples of fertilizer
29 distributed within this Commonwealth as compared with analyses
30 guaranteed under sections 6812 (relating to registration of

1 specialty fertilizers) and 6814 (relating to labels and
2 labeling).

3 § 6872. Rules and regulations.

4 The department may promulgate and enforce rules and
5 regulations necessary for administration and implementation of
6 this chapter. Regulations currently in place shall remain in
7 effect, to the extent they are consistent with this chapter,
8 until such time as new regulations are promulgated by the
9 department.

10 § 6873. Short weight.

11 If the department finds that a fertilizer in the possession
12 of a consumer is short in weight, the guarantor of that
13 fertilizer shall, within 30 days after official notice from the
14 department, submit to the consumer a penalty payment of two
15 times the value of the actual shortage.

16 § 6874. Refusal, suspension or revocation of registration,
17 license or certification.

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

20 (1) the registration of a fertilizer;

21 (2) the license or certification of a person, if the
22 person is a registrant, licensee or certificate holder and
23 has not complied with the provisions of this chapter, a
24 regulation promulgated under this chapter or an order issued
25 under the authority of this chapter; or

26 (3) the license or certification of a person, if the
27 person has used fraudulent or deceptive practices in the
28 evasion or attempted evasion of the provisions of this
29 chapter.

30 (b) Hearing.--The department shall provide an opportunity

1 for a hearing, as specified in section 6881 (relating to appeal
2 process), to a person appealing an action of the department
3 under this section.

4 § 6875. Stop-sale orders.

5 (a) Authority of department.--

6 (1) The department may issue and enforce a written or
7 printed stop-sale, use or removal order to the owner or
8 custodian of a lot of fertilizer being offered or exposed for
9 sale in violation of a provision of this chapter, a
10 regulation promulgated under this chapter or an order issued
11 under the authority of this chapter.

12 (2) Fertilizer placed under the order shall be held at a
13 designated place approved by the department and may not be
14 moved without written approval by the department.

15 (3) The order shall remain in effect until the law has
16 been complied with and the fertilizer is released in writing
17 by the department or the fertilizer in violation has been
18 disposed of in a manner authorized by the department. The
19 authorization shall be specified in writing.

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

27 § 6876. Seizure and condemnation.

28 Fertilizer not in compliance with the provisions of this
29 chapter, a regulation promulgated under this chapter or an order
30 issued under the authority of this chapter shall be subject to

1 seizure and condemnation by the department, provided that in no
2 instance shall the disposition of the fertilizer be ordered by
3 the department without first giving the claimant an opportunity
4 for a hearing as provided for in section 6881 (relating to
5 appeal process) or for opportunity to apply for permission to
6 process or relabel the fertilizer to bring it into compliance
7 with this chapter.

8 § 6877. Unlawful conduct.

9 It shall be unlawful for a person to fail to comply with or
10 cause to assist in the violation of this chapter, a regulation
11 promulgated under this chapter or an order issued under the
12 authority of this chapter.

13 § 6878. Inspection, sampling and analysis.

14 (a) Authorization.--For purposes of enforcement of this
15 chapter, the department or its agent may enter upon any public
16 or private premises or carriers at reasonable times, including
17 any vehicle being used to transport or hold fertilizer, as may
18 be necessary to determine compliance with this chapter. The
19 department may also:

20 (1) Have access for the purpose of inspecting any
21 equipment subject to this chapter and the premises on which
22 the equipment is kept or stored.

23 (2) Inspect and sample lands, plants or waterways
24 actually or reported to be exposed to fertilizers.

25 (3) Inspect storage or disposal areas.

26 (4) Inspect or investigate complaints of injury to
27 humans, animals, plants or the environment.

28 (5) Sample fertilizers being manufactured, processed,
29 packed or held for distribution, being applied or to be
30 applied.

1 (6) Have access to records relating to the manufacture,
2 distribution, sale, storage and use of fertilizer.

3 (b) Inspection.--

4 (1) The department may conduct unannounced inspections,
5 but shall give written notice to the owner or person in
6 charge of the facility, warehouse, establishment, premises or
7 vehicle at the time of inspection and sampling.

8 (2) A separate notice shall be given for each
9 inspection, but a notice shall not be required for each entry
10 made during the period covered by the inspection.

11 (c) Samples.--If an employee conducting an inspection
12 obtains a sample in the course of the inspection, upon
13 completion of the inspection and prior to leaving the premises,
14 the employee may, when possible, give to the owner, operator or
15 agent in charge a receipt describing the samples obtained.

16 (d) Methodology.--

17 (1) The methods of fertilizer sampling and analysis by
18 the department shall include those methods adopted by the
19 Association of Official Analytical Chemists International.

20 (2) In cases not covered by those methods or in cases
21 where improved methods are available, the department may
22 issue a temporary order defining the method to be utilized.
23 The method defined in the temporary order shall be effective
24 upon publication in the Pennsylvania Bulletin. The temporary
25 order shall remain in effect for a period not to exceed one
26 year, unless reissued or until the notice is promulgated as a
27 regulation.

28 (e) Deficiency determination.--In determining whether a
29 fertilizer is deficient in nutrients, the department shall be
30 guided solely by the official sample obtained.

1 (f) Maintenance by official samples.--

2 (1) Official samples maintained by the department and
3 that require imposition of a penalty for nutrient deficiency
4 shall be retained for a minimum of 90 days from issuance of a
5 fertilizer deficiency report or an official report of
6 analysis.

7 (2) Upon request, the department shall furnish to the
8 guarantor a portion of the official sample.

9 (3) Requests must be made within 30 days of receipt of a
10 fertilizer deficiency report or an official report of
11 analysis.

12 § 6879. Interference with officer or employee of department.

13 (a) Interference.--A person who willfully or intentionally
14 interferes with an employee or officer of the department in the
15 performance of the employee's or officer's duties or activities
16 authorized under this chapter commits a misdemeanor of the third
17 degree and shall, upon conviction, be subject to a term of
18 imprisonment for not more than one year or a fine of not more
19 than \$2,500, or both.

20 (b) Refuse entry.--

21 (1) It shall be a violation of this chapter to refuse
22 entry to a department employee or agent acting under the
23 authority of this chapter.

24 (2) For purposes of this subsection, the term "refuse
25 entry" includes any of the following:

26 (i) Preventing entry to the establishment or any
27 other place or object set forth in section 6878(a)
28 (relating to inspection, sampling and analysis) of this
29 chapter.

30 (ii) Preventing the taking of a sample as authorized

1 under this chapter.

2 (iii) Preventing access to records required under
3 this chapter or any order or regulation issued under this
4 chapter.

5 (c) Search warrant.--

6 (1) The department may apply for a search warrant to any
7 court of competent jurisdiction authorized to issue a search
8 warrant for the purposes of conducting inspections,
9 collecting samples or examining records of any facility,
10 premises or vehicle in the enforcement of this chapter.

11 (2) The warrant shall be issued upon probable cause. It
12 shall be sufficient probable cause to show any of the
13 following:

14 (i) The department or its authorized agent has been
15 subject to interference or refused entry as defined under
16 subsections (a) and (b).

17 (ii) The department has reasonable grounds to
18 believe that a violation of this chapter, a regulation
19 promulgated under this chapter or an order issued under
20 the authority of this chapter has occurred.

21 § 6880. Enforcement and penalties.

22 (a) Criminal penalties.--Unless otherwise specified, a
23 person who violates a provision of this chapter, a regulation
24 promulgated under this chapter or an order issued under the
25 authority of this chapter:

26 (1) For the first offense, commits a summary offense and
27 may, upon conviction, be sentenced for each offense to pay a
28 fine of not less than \$100 nor more than \$500 and costs of
29 prosecution or to imprisonment for a term which shall be
30 fixed at not more than 90 days, or both.

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

9 (b) Civil penalties.--

10 (1) In addition to another remedy available at law or in
11 equity for a violation of this chapter, the department may
12 assess a civil penalty of not less than \$500 nor more than
13 \$5,000 upon a person for each violation of this chapter. The
14 civil penalty assessed shall be payable to the department and
15 shall be collectible in any manner provided by law for the
16 collection of debt.

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

23 (c) Trade secrets.--

24 (1) A person who to the person's own advantage uses or
25 reveals to anyone other than the department, administrative
26 tribunal or a court when relevant in a judicial proceeding
27 information acquired under the authority of this chapter
28 concerning a method, record, formulation or process that as a
29 trade secret is entitled to protection under the law commits
30 a misdemeanor of the third degree and shall, upon conviction,

1 be sentenced to pay a fine of not less than \$500.

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

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

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

17 (f) District attorney.--A district attorney to whom a
18 criminal violation of this chapter is reported shall cause
19 appropriate proceedings to be instituted and prosecuted in a
20 court of competent jurisdiction without delay.

21 § 6881. Appeal process.

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

28 § 6882. Civil remedy.

29 (a) Office of Attorney General.--In addition to other
30 remedies provided for in this chapter, the Office of Attorney

1 General, at the request of the department, may initiate in
2 Commonwealth Court or the court of common pleas of the county in
3 which the defendant resides or has a place of business an action
4 in equity for an injunction to restrain a violation of this
5 chapter, a regulation promulgated under this chapter or an order
6 issued under the authority of this chapter from which no timely
7 appeal has been taken or which has been sustained on appeal.

8 (b) Preliminary injunctions.--In a proceeding under
9 subsection (a), the court shall, upon motion of the
10 Commonwealth, issue a preliminary injunction if the court finds
11 that the defendant is engaging in conduct that causes immediate
12 or irreparable harm to the public or has engaged in other
13 conduct which the court has developed through case law.

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

17 (d) Civil penalties.--In addition to an injunction, the
18 court may levy civil penalties as provided by this chapter.
19 § 6883. Cooperation with other entities.

20 The department may cooperate with and enter into agreement
21 with governmental agencies of the Federal Government, agencies
22 of this Commonwealth or another state to carry out the purpose
23 and provisions of this chapter.

24 § 6884. Exchanges between manufacturers.

25 Nothing in this chapter shall be construed to restrict or
26 avoid sales or exchanges of fertilizers to each other by
27 importers, manufacturers or manipulators who mix fertilizer
28 materials for sale or as preventing the free and unrestricted
29 shipments of fertilizer to manufacturers or manipulators who are
30 in compliance with the provisions of this chapter.

1 § 6885. Confidentiality.

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

10 § 6886. Fees, fines and civil penalties.

11 (a) Insufficient revenues.--If the revenues raised by fees,
12 fines and civil penalties imposed under this chapter are
13 insufficient to meet expenditures for the administration and
14 enforcement of this chapter over a two-year period, the
15 department may increase those fees so that the project revenues
16 will meet or exceed projected expenditures.

17 (b) Notice and effective date.--

18 (1) The department shall announce the adjustment of
19 fees, fines and penalties by transmitting a notice to the
20 Legislative Reference Bureau for publication in the
21 Pennsylvania Bulletin.

22 (2) Prior to the adjusted fees, fines and penalties
23 becoming effective, the department shall hold a public
24 meeting to receive input from the regulated community.

25 (3) Subsequent to the public meeting, the department
26 shall transmit a notice to the Legislative Reference Bureau
27 for republishing the adjusted fees, fines and penalties in
28 the Pennsylvania Bulletin. The adjusted fees shall take
29 effect 60 days after publication of the subsequent notice in
30 the Pennsylvania Bulletin.

1 § 6887. Disposition of funds.

2 Money received from license fees, registration fees,
3 applicator certification, inspection fees, fines and penalties
4 shall be paid into a special restricted account in the General
5 Fund known as the Agronomic Regulatory Account. All money in the
6 Agronomic Regulatory Account is appropriated on a continuing
7 basis to the department for the purposes of this chapter and
8 Chapters 69 (relating to soil and plant amendment) and 71
9 (relating to seed).

10 § 6888. Exclusion of local laws and regulations.

11 (a) Effect of chapter.--The provisions of this chapter are
12 of Statewide concern and occupy the whole field of regulation
13 regarding the registration, packaging, labeling, sale,
14 transportation, distribution, use and application of fertilizers
15 and certification of fertilizer applicators to the exclusion of
16 all local regulations.

17 (b) Enforcement.--No ordinance or regulation of a local
18 agency, political subdivision or home rule municipality may
19 prohibit or attempt to regulate a matter relating to the
20 registration, packaging, labeling, sale, transportation,
21 distribution, use or application of fertilizers, if the
22 ordinance or regulation conflicts with this chapter.

23 (c) Stricter requirements.--Nothing in this chapter shall be
24 construed to prevent a political subdivision or home rule
25 municipality from adopting and enforcing an ordinance or a
26 regulation that is consistent with and no more stringent than
27 the requirements of this chapter and the regulations or
28 guidelines promulgated under this chapter. No penalty shall be
29 assessed under the local ordinance or regulation under this
30 subsection for a violation for which a penalty has been assessed

1 under this chapter.

2 Section 3. Sections 6921 and 7122 of Title 3 are amended to
3 read:

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] 6887
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] 68 (relating to
11 fertilizer) and Chapter 71 (relating to seed).

12 § 7122. Disposition of funds.

13 Moneys received from license fees, seed testing fees,
14 certification fees, fines and penalties shall be paid into the
15 Agronomic Regulatory Account established in section [6725] 6887
16 (relating to disposition of funds). All moneys in the Agronomic
17 Regulatory Account are hereby appropriated to the department for
18 the purposes of Chapters [67] 68 (relating to fertilizer) and 69
19 (relating to soil and plant amendment) and this chapter.

20 Section 4. The State Treasurer shall transfer the sum of
21 \$100,000 from the General Fund to the Agronomic Regulatory
22 Account for use by the Department of Agriculture to develop the
23 certification and recertification courses required under 3
24 Pa.C.S. §§ 6832 and 6833 and any computer programming or
25 software necessary for administration and enforcement of 3
26 Pa.C.S. Ch. 68.

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

28 (1) The addition of 3 Pa.C.S. § 6814(a)(3) and (4), (g),
29 (h), (i), (j), (k) and (l) shall take effect in 18 months.

30 (2) The addition of 3 Pa.C.S. §§ 6831, 6832, 6833 and

1 6834 shall take effect upon the development of the
2 certification examination specified under 3 Pa.C.S. §
3 6832(a).

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