

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 251 Session of 2021

INTRODUCED BY YAW, MARTIN, GORDNER, BAKER, TARTAGLIONE AND STEFANO, FEBRUARY 26, 2021

REFERRED TO AGRICULTURE AND RURAL AFFAIRS, FEBRUARY 26, 2021

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12 Consolidated Statutes is repealed: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
19 (Public Law 88-352, 78 Stat. 241). This term does not include
20 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 the fertilizer's content of
21 plant 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 except that, with respect to specialty fertilizers, fertilizer
5 materials, bone meal, manures and similar materials may be
6 stated in fractional units.

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

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

11	<u>Total Nitrogen (N)</u>	<u>‰</u>
12	<u>Available Phosphate (P2O5)</u>	<u>‰</u>
13	<u>Soluble Potash (K2O)</u>	<u>‰</u>

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

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

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

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

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

1 fertilizer.

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

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

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

10 "Micronutrient." Any of the following:

11 (1) Boron.

12 (2) Chlorine.

13 (3) Cobalt.

14 (4) Copper.

15 (5) Iron.

16 (6) Manganese.

17 (7) Molybdenum.

18 (8) Nickel.

19 (9) Sodium.

20 (10) Zinc.

21 "Natural organic fertilizer." Materials that are:

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

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

30 (3) Not mixed with synthetic materials or changed in any

1 physical or chemical manner from their initial state except
2 by manipulations such as drying, cooking, chopping, grinding,
3 shredding, hydrolysis or pelleting.

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

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

9 "Organic-based fertilizer." A mixed fertilizer in which:

10 (1) More than half of the fertilizer materials are
11 organic.

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

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

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

20 "Percentage." A percentage by weight.

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

23 "Plant nutrient." Any of the following:

24 (1) A primary nutrient.

25 (2) A secondary nutrient.

26 (3) A micronutrient.

27 "Primary nutrient." Any of the following:

28 (1) Nitrogen.

29 (2) Phosphorus.

30 (3) Potassium.

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

4 "Registrant." A person who registers fertilizer under this
5 chapter.

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

8 "Secondary nutrient." Any of the following:

9 (1) Calcium.

10 (2) Magnesium.

11 (3) Sulfur.

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

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

21 "Tolerance." A permitted variation from the guarantee of an
22 official sample of fertilizer.

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

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

28 SUBCHAPTER B

29 FERTILIZER MANUFACTURERS AND GUARANTORS

30 Sec.

- 1 6811. Licensing.
- 2 6812. Registration of specialty fertilizers.
- 3 6813. Turf fertilizer components.
- 4 6814. Labels and labeling.
- 5 6815. Inspection fees.
- 6 6816. Tonnage reports.
- 7 6817. Plant food deficiency.
- 8 6818. Commercial value.
- 9 6819. Misbranding.
- 10 6820. Adulteration.
- 11 § 6811. Licensing.

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

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

29 § 6812. Registration of specialty fertilizers.

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

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

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

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

17 (c) Exemption.--

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

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

26 (d) Late fee.--

27 (1) If the application for renewal of the specialty
28 fertilizer registration required under this section is not
29 filed prior to June 30 of each year, a penalty of \$25 or 10%
30 of the total registration fee for all products sought to be

1 registered, whichever is greater, or a fee established in the
2 manner provided under section 6886 may be assessed and added
3 to the original fee and shall be paid by the applicant before
4 the renewal of the specialty fertilizer registration is
5 issued.

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

10 § 6813. Turf fertilizer components.

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

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

19 (2) Contain no phosphorus, unless the fertilizer is a
20 natural organic or organic-based fertilizer.

21 (b) Exemptions.--

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

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

30 (c) Additional requirements.--The department, through

1 regulation, may establish additional requirements for turf
2 fertilizer.

3 § 6814. Labels and labeling.

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

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

10 (2) The guaranteed analysis.

11 (3) A statement of where the material was derived from.

12 (4) Directions for use for fertilizer distributed to the
13 end user.

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

15 (6) The net weight.

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

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

27 (d) Proof of labeling claims.--The department may require
28 proof of labeling claims made for fertilizer. Research in
29 support of the claims must be performed by an institution
30 approved by the department utilizing acceptable scientific

1 methodology.

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

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

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

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

19 (2) The product may not be applied if heavy rain is
20 expected.

21 (3) The product may only be applied to the intended
22 application site.

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

26 (h) Nonturf fertilizer.--Subject to subsections (i) and (k),
27 fertilizer that is not labeled for turf, in bulk or packages
28 that are 40 pounds or greater, that is distributed to end users
29 in this Commonwealth, shall include a statement in legible and
30 conspicuous form that at a minimum sets forth the following

1 requirements:

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

4 (2) The product may not be applied if heavy rain is
5 expected.

6 (3) The product may only be applied to the intended
7 application site.

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

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

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

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

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

27 § 6815. Inspection fees.

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

1 year an inspection fee at the rate of 17¢ per ton of fertilizer
2 distributed in this Commonwealth or a fee established in the
3 manner provided under section 6886 (relating to fees, fines and
4 civil penalties). In no case shall the inspection fee paid
5 semiannually amount to less than \$25 or a fee established in the
6 manner provided under section 6886.

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

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

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

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

22 § 6816. Tonnage reports.

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

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

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

11 (d) Examination permitted.--

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

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

20 (e) Confidentiality of information.--

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

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

30 § 6817. Plant food deficiency.

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

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

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

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

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

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

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

26 (c) Deficiencies in fertilizers.--A deficiency in an
27 official sample of fertilizer resulting from nonuniformity shall
28 not be deemed distinguishable from a deficiency due to actual
29 plant nutrient shortage and shall be deemed a violation of this
30 chapter for which the department may assess a penalty as

1 provided for in this chapter.

2 § 6818. Commercial value.

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

12 § 6819. Misbranding.

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

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

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

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

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

28 (5) The label or labeling are in conflict with section
29 6852 (relating to application of fertilizer to turf).

30 § 6820. Adulteration.

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

4 (1) It contains a 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 that may be necessary to protect plant life, animals, humans,
11 aquatic life, soil or water are not shown on the label.

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

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

17 SUBCHAPTER C

18 APPLICATOR LICENSING AND CERTIFICATION

19 Sec.

20 6831. Licensing of fertilizer application businesses.

21 6832. Certification of applicators.

22 6833. Recertification of applicators.

23 6834. Reciprocal agreement.

24 6835. Training of fertilizer technicians.

25 6836. Process.

26 § 6831. Licensing of fertilizer application businesses.

27 (a) Requirements.--

28 (1) A fertilizer application business must be licensed
29 prior to applying fertilizer and shall comply with the
30 provisions of this chapter and any regulation or order of the

1 department.

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

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

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

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

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

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

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

28 (d) Fertilizer technicians.--A fertilizer application
29 business shall ensure fertilizer technicians do not apply
30 fertilizer unless the persons have completed a training program

1 as described by section 6835 (relating to training of fertilizer
2 technicians).

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

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

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

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

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

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

1 successor regulations.

2 § 6832. Certification of applicators.

3 (a) Certification examination.--

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

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

16 (i) Safety and health.

17 (ii) Labeling and label comprehension.

18 (iii) Environmental protection.

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

21 (v) Personal protective equipment.

22 (vi) Cleaning and maintaining equipment.

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

25 (viii) Applicable Federal and State laws.

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

28 (3) The department shall require a minimum examination
29 fee of \$10 or a fee established in the manner specified under
30 section 6886 (relating to fees, fines and civil penalties).

1 (b) Commercial and public applicators.--

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

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

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

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

17 (2) payment of all fees.

18 (d) Activation.--

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

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

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

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

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

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

8 (f) Existing applicator certifications.--

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

16 (i) Category 1, Agronomic crops.

17 (ii) Category 2, Fruits and nuts.

18 (iii) Category 3, Vegetable crops.

19 (iv) Category 5, Forest pest control.

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

21 (vi) Category 7, Lawn and turf.

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

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

25 (ix) Category 22, Interior plantscape.

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

27 (xi) Category 25, Aerial applicator.

28 (2) The certification under this subsection shall be
29 valid until each person's pesticide core recertification is
30 due, at which time the person shall be required to meet all

1 the recertification requirements as required by this chapter
2 or regulations promulgated under this chapter.

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

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

14 § 6833. Recertification of applicators.

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

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

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

29 (1) Training shall be conducted or sponsored by the
30 department or a department-approved institution, association,

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

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

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

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

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

30 (f) Training course sponsors.--The training course sponsor

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

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

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

13 (i) Violation.--

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

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

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

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

30 (k) Failure to complete delinquent credits.--If a person

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

7 § 6834. Reciprocal agreement.

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

14 § 6835. Training of fertilizer technicians.

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

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

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

25 (d) Program administration.--The training program for a
26 fertilizer technician shall be administered by a certified
27 applicator, employed by the fertilizer application business
28 employing the fertilizer technician, in subject matter involving
29 the assigned tasks of the fertilizer technician. The training
30 program shall include, but not be limited to:

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

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

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

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

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

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

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

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

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

27 (2) The name of fertilizer technician trained.

28 (3) The date of training.

29 (4) The areas of training.

30 (5) The business name and address of the fertilizer

1 application business employing the fertilizer technician.

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

4 § 6836. Process.

5 The department shall, to the extent legally and fiscally
6 possible, attempt to streamline the testing and educational
7 aspects of fertilizer and pesticide applicator certification and
8 recertification process to ensure availability at the same time
9 and location.

10 SUBCHAPTER D

11 RECORDKEEPING

12 Sec.

13 6841. Records.

14 § 6841. Records.

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

22 (b) Fertilizer application.--Applicators required to be
23 certified under section 6832 (relating to certification of
24 applicators) and fertilizer technicians trained under section
25 6835 (relating to training of fertilizer technicians) shall keep
26 for every application of fertilizer a record containing the
27 following information:

28 (1) The name and address of the customer and the address
29 and location of the application site, if different from the
30 address of the customer.

1 (2) A record of the date of each fertilizer application.
2 For continuous applications, such as hydroponics or drip
3 lines, the record shall include start and finish dates and
4 the total amount of fertilizer products used during that time
5 period. Each addition of a fertilizer to the system shall be
6 entered in the record.

7 (3) The weather conditions, including approximate
8 temperature.

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

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

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

14 (7) Identification of the application site, including
15 the specific field or land area and the crop.

16 (8) The total area treated in acres, square feet or
17 other applicable units of measure.

18 (9) The name and certification number of each person
19 involved with the application and the name of each fertilizer
20 technician and noncertified employee involved in the
21 application.

22 (10) Additional information as the department may
23 require through order or regulation.

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

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

30 (e) Annual report.--All businesses required to be licensed

1 under section 6831 (relating to licensing of fertilizer
2 application businesses) shall submit an annual report in a
3 manner prescribed by the department listing, by county and use,
4 aggregated data compiled from the records required under
5 subsection (b). At a minimum, aggregated data shall contain:

6 (1) The total acreage to which fertilizer was applied.

7 (2) The total amount of nitrogen, available phosphate
8 and soluble potash applied.

9 (3) Any other aggregated data, within the scope of this
10 chapter, the department may determine is necessary.

11 SUBCHAPTER E

12 APPLICATION RATES, REQUIREMENTS AND PROHIBITIONS

13 Sec.

14 6851. Application of fertilizer.

15 6852. Application of fertilizer to turf.

16 6853. Prohibited acts.

17 § 6851. Application of fertilizer.

18 (a) Restrictions.--

19 (1) No person may apply nonaquatic fertilizer within 15
20 feet of the top of a bank of a lake, pond, wetlands or
21 flowing body of water, such as a stream, river or creek,
22 except that fertilizer may be applied to the top of the bank
23 of the waterways if applied using a drop spreader, rotary
24 spreader with deflector, targeted spray liquid or other
25 available targeted application technology when establishing
26 and maintaining a stream buffer zone.

27 (2) The establishment of setbacks for fertilizer
28 application under this subsection shall not be construed to
29 preclude the establishment or applicability of or required
30 compliance with any other environmental standard established

1 under other Federal or State law, rule or regulation.

2 (b) Regulation.--The department may establish additional
3 restrictions through regulation.

4 (c) Construction.--Nothing in this section shall be
5 construed to prohibit the lawful use of fertilizer in blasting
6 as regulated by the Department of Environmental Protection.
7 § 6852. Application of fertilizer to turf.

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

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

12 (2) Shall not exceed 0.9 pounds of total nitrogen per
13 1,000 square feet per application except, when labeled as an
14 enhanced-efficiency nitrogen fertilizer, the amount of
15 nitrogen released at any given time shall not exceed 0.7
16 pounds of nitrogen per 1,000 square feet.

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

19 (i) establishing vegetation for the first time;

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

21 (iii) as an enhanced-efficiency phosphorus

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

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

28 (1) Apply turf fertilizer to an impervious surface. Turf
29 fertilizer that is inadvertently applied to an impervious
30 surface shall be removed from the impervious surface

1 immediately following the application.

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

5 (3) Except as provided in paragraph (4), apply
6 fertilizer containing nitrogen or phosphorus to turf after
7 December 15 and before March 1 or dates as established in
8 regulations promulgated by the department.

9 (4) Fertilizer containing no more than 0.5 pounds of
10 total nitrogen per 1,000 square feet, or at a rate
11 established in regulations promulgated by the department, may
12 be applied by a certified applicator or fertilizer technician
13 to turf after December 15 and before March 1 or dates as
14 established in regulations promulgated by the department.

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

16 (1) The department may establish use and application
17 rates for fertilizer that is applied to turf.

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

23 (3) New application rates or changes to established
24 fertilizer use and application rates shall:

25 (i) Be based on appropriately peer-reviewed
26 scientific research representing conditions of this
27 Commonwealth and recommended by The Pennsylvania State
28 University or other institution of higher education in
29 this Commonwealth.

30 (ii) Be as protective or more protective of water

1 quality as those rates specified in subsection (a).

2 (iii) Be published as a notice of public comment in
3 the Pennsylvania Bulletin and allow for a 30-day public
4 comment period. The department shall respond to all
5 comments received and make a copy of the comments
6 publicly available. The new rates or changes shall be
7 published as final rates in the Pennsylvania Bulletin and
8 take effect upon publication.

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

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

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

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

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

28 (f) Additional requirements.--The department may establish
29 additional requirements through regulation.

30 (g) Exemption.--This section shall not apply to fertilizer

1 applied for agricultural production or by a public or private
2 institution of higher education for research purposes.

3 § 6853. Prohibited acts.

4 (a) Prohibited acts by business, certified applicator or
5 fertilizer technician.--A fertilizer application business,
6 certified applicator or fertilizer technician may not:

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

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

10 (3) Make false or fraudulent records, invoices or
11 reports concerning the application, storage or disposal of
12 fertilizer.

13 (4) Make a false statement or misrepresentation of
14 material fact on an application for issuance or renewal of a
15 license or certification required under this chapter, a
16 regulation promulgated under this chapter or an order issued
17 under the authority of this chapter.

18 (5) Refuse or neglect to comply with a condition or
19 limitation imposed upon a license or certification issued
20 under this chapter, a regulation promulgated under this
21 chapter or an order issued under the authority of this
22 chapter.

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

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

1 (8) Refuse or neglect to keep and maintain a record, or
2 make a report when and as required, by this chapter, a
3 regulation promulgated under this chapter or an order issued
4 under the authority of this chapter.

5 (9) Fail to comply with a provision of this chapter, a
6 regulation promulgated under this chapter or an order issued
7 under the authority of this chapter.

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

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

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

14 (3) Dispose of, discard or store a fertilizer product in
15 a manner that would be inconsistent with its label, would
16 cause over-application of fertilizer, would result in direct
17 discharge to a storm drain or waters of this Commonwealth or
18 would be inconsistent with this chapter, a regulation
19 promulgated under this chapter or an order issued under the
20 authority of this chapter.

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

26 (5) Hinder, mislead, make false statements to or refuse
27 to cooperate with an employee or agent of the department in
28 an investigation or inspection undertaken by the authority
29 delegated to the department under the provisions of this
30 chapter.

1 (6) Apply fertilizer or a nitrogen-based material for
2 the purposes of melting snow or ice, unless the material is
3 applied to aircraft or areas an aircraft accesses at an
4 airport.

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

8 SUBCHAPTER F

9 AGRICULTURAL AND HOMEOWNER EDUCATION PROGRAM

10 Sec.

11 6861. Agricultural and homeowner education.

12 § 6861. Agricultural and homeowner education.

13 The department, through guidelines established in
14 consultation with The Pennsylvania State University and
15 representatives of the agricultural and turf grass industries,
16 shall establish and administer a program of public outreach to
17 educate the public on proper use, application, handling and
18 storage of fertilizers.

19 SUBCHAPTER G

20 ADMINISTRATION AND PENALTIES

21 Sec.

22 6871. Publications.

23 6872. Rules and regulations.

24 6873. Short weight.

25 6874. Refusal, suspension or revocation of registration,
26 license or certification.

27 6875. Stop-sale orders.

28 6876. Seizure and condemnation.

29 6877. Unlawful conduct.

30 6878. Inspection, sampling and analysis.

1 6879. Interference with officer or employee of department.

2 6880. Enforcement and penalties.

3 6881. Appeal process.

4 6882. Civil remedy.

5 6883. Cooperation with other entities.

6 6884. Exchanges between manufacturers.

7 6885. Confidentiality.

8 6886. Fees, fines and civil penalties.

9 6887. Disposition of funds.

10 6888. Exclusion of local laws and regulations.

11 § 6871. Publications.

12 The department may publish on an annual basis, and in a form
13 as it deems proper, information concerning the distribution of
14 fertilizers for both agricultural and nonagricultural uses and
15 results of analyses based on official samples of fertilizer
16 distributed within this Commonwealth as compared with analyses
17 guaranteed under sections 6812 (relating to registration of
18 specialty fertilizers) and 6814 (relating to labels and
19 labeling).

20 § 6872. Rules and regulations.

21 The department may promulgate and enforce rules and
22 regulations necessary for administration and implementation of
23 this chapter. Regulations currently in place shall remain in
24 effect, to the extent they are consistent with this chapter,
25 until such time as new regulations are promulgated by the
26 department.

27 § 6873. Short weight.

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

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

3 § 6874. Refusal, suspension or revocation of registration,
4 license or certification.

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

7 (1) the registration of a fertilizer;

8 (2) the license or certification of a person, if the
9 person is a registrant, licensee or certificate holder and
10 has not complied with the provisions of this chapter, a
11 regulation promulgated under this chapter or an order issued
12 under the authority of this chapter; or

13 (3) the license or certification of a person, if the
14 person has used fraudulent or deceptive practices in the
15 evasion or attempted evasion of the provisions of this
16 chapter.

17 (b) Hearing.--The department shall provide an opportunity
18 for a hearing, as specified in section 6881 (relating to appeal
19 process), to a person appealing an action of the department
20 under this section.

21 § 6875. Stop-sale orders.

22 (a) Authority of department.--

23 (1) The department may issue and enforce a written or
24 printed stop-sale, use or removal order to the owner or
25 custodian of a lot of fertilizer being offered or exposed for
26 sale in violation of a provision of this chapter, a
27 regulation promulgated under this chapter or an order issued
28 under the authority of this chapter.

29 (2) Fertilizer placed under the order shall be held at a
30 designated place approved by the department and may not be

1 moved without written approval by the department.

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

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

14 § 6876. Seizure and condemnation.

15 Fertilizer not in compliance with the provisions of this
16 chapter, a regulation promulgated under this chapter or an order
17 issued under the authority of this chapter shall be subject to
18 seizure and condemnation by the department, provided that in no
19 instance shall the disposition of the fertilizer be ordered by
20 the department without first giving the claimant an opportunity
21 for a hearing as provided for in section 6881 (relating to
22 appeal process) or for opportunity to apply for permission to
23 process or relabel the fertilizer to bring it into compliance
24 with this chapter.

25 § 6877. Unlawful conduct.

26 It shall be unlawful for a person to fail to comply with or
27 cause to assist in the violation of this chapter, a regulation
28 promulgated under this chapter or an order issued under the
29 authority of this chapter.

30 § 6878. Inspection, sampling and analysis.

1 (a) Authorization.--For purposes of enforcement of this
2 chapter, the department or its agent may enter upon any public
3 or private premises or carriers at reasonable times, including
4 any vehicle being used to transport or hold fertilizer, as may
5 be necessary to determine compliance with this chapter. The
6 department may also:

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

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

12 (3) Inspect storage or disposal areas.

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

15 (5) Sample fertilizers being manufactured, processed,
16 packed or held for distribution, being applied or to be
17 applied.

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

20 (b) Inspection.--

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

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

28 (c) Samples.--If an employee conducting an inspection
29 obtains a sample in the course of the inspection, upon
30 completion of the inspection and prior to leaving the premises,

1 the employee may, when possible, give to the owner, operator or
2 agent in charge a receipt describing the samples obtained.

3 (d) Methodology.--

4 (1) The methods of fertilizer sampling and analysis by
5 the department shall include those methods adopted by the
6 Association of Official Analytical Chemists International.

7 (2) In cases not covered by those methods or in cases
8 where improved methods are available, the department may
9 issue a temporary order defining the method to be utilized.
10 The method defined in the temporary order shall be effective
11 upon publication in the Pennsylvania Bulletin. The temporary
12 order shall remain in effect for a period not to exceed one
13 year, unless reissued or until the notice is promulgated as a
14 regulation.

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

18 (f) Maintenance by official samples.--

19 (1) Official samples maintained by the department and
20 that require imposition of a penalty for nutrient deficiency
21 shall be retained for a minimum of 90 days from issuance of a
22 fertilizer deficiency report or an official report of
23 analysis.

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

26 (3) Requests must be made within 30 days of receipt of a
27 fertilizer deficiency report or an official report of
28 analysis.

29 § 6879. Interference with officer or employee of department.

30 (a) Interference.--A person who willfully or intentionally

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

7 (b) Refuse entry.--

8 (1) It shall be a violation of this chapter to refuse
9 entry to a department employee or agent acting under the
10 authority of this chapter.

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

13 (i) Preventing entry to the establishment or any
14 other place or object set forth in section 6878(a)
15 (relating to inspection, sampling and analysis) of this
16 chapter.

17 (ii) Preventing the taking of a sample as authorized
18 under this chapter.

19 (iii) Preventing access to records required under
20 this chapter or any order or regulation issued under this
21 chapter.

22 (c) Search warrant.--

23 (1) The department may apply for a search warrant to any
24 court of competent jurisdiction authorized to issue a search
25 warrant for the purposes of conducting inspections,
26 collecting samples or examining records of any facility,
27 premises or vehicle in the enforcement of this chapter.

28 (2) The warrant shall be issued upon probable cause. It
29 shall be sufficient probable cause to show any of the
30 following:

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

4 (ii) The department has reasonable grounds to
5 believe that a violation of this chapter, a regulation
6 promulgated under this chapter or an order issued under
7 the authority of this chapter has occurred.

8 § 6880. Enforcement and penalties.

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

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

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

26 (b) Civil penalties.--

27 (1) In addition to another remedy available at law or in
28 equity for a violation of this chapter, the department may
29 assess a civil penalty of not less than \$500 nor more than
30 \$5,000 upon a person for each violation of this chapter. The

1 civil penalty assessed shall be payable to the department and
2 shall be collectible in any manner provided by law for the
3 collection of debt.

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

10 (c) Trade secrets.--

11 (1) A person who to the person's own advantage uses or
12 reveals to anyone other than the department, administrative
13 tribunal or a court when relevant in a judicial proceeding
14 information acquired under the authority of this chapter
15 concerning a method, record, formulation or process that as a
16 trade secret is entitled to protection under the law commits
17 a misdemeanor of the third degree and shall, upon conviction,
18 be sentenced to pay a fine of not less than \$500.

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

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

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

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

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

8 § 6881. Appeal process.

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

15 § 6882. Civil remedy.

16 (a) Office of Attorney General.--In addition to other
17 remedies provided for in this chapter, the Office of Attorney
18 General, at the request of the department, may initiate in
19 Commonwealth Court or the court of common pleas of the county in
20 which the defendant resides or has a place of business an action
21 in equity for an injunction to restrain a violation of this
22 chapter, a regulation promulgated under this chapter or an order
23 issued under the authority of this chapter from which no timely
24 appeal has been taken or which has been sustained on appeal.

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

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

4 (d) Civil penalties.--In addition to an injunction, the
5 court may levy civil penalties as provided by this chapter.
6 § 6883. Cooperation with other entities.

7 The department may cooperate with and enter into agreement
8 with governmental agencies of the Federal Government, agencies
9 of this Commonwealth or another state to carry out the purpose
10 and provisions of this chapter.

11 § 6884. Exchanges between manufacturers.

12 Nothing in this chapter shall be construed to restrict or
13 avoid sales or exchanges of fertilizers to each other by
14 importers, manufacturers or manipulators who mix fertilizer
15 materials for sale or as preventing the free and unrestricted
16 shipments of fertilizer to manufacturers or manipulators who are
17 in compliance with the provisions of this chapter.

18 § 6885. Confidentiality.

19 All proprietary business information contained in records,
20 data, formulations and other information filed with or collected
21 by the department under section 6841 (relating to records) and
22 that relate to tonnage reports and trade secrets, such as
23 product formulation, customer information or production methods,
24 shall be exempt from the act of February 14, 2008 (P.L.6, No.3),
25 known as the Right-to-Know Law, and subject to inspection only
26 upon the order of a court of competent jurisdiction. Aggregate
27 data may be shared with other Federal, State or local agencies.

28 § 6886. Fees, fines and civil penalties.

29 (a) Insufficient revenues.--If the revenues raised by fees,
30 fines and civil penalties imposed under this chapter are

1 insufficient to meet expenditures for the administration and
2 enforcement of this chapter over a two-year period, the
3 department may increase those fees so that the project revenues
4 will meet or exceed projected expenditures.

5 (b) Notice and effective date.--

6 (1) The department shall announce the adjustment of
7 fees, fines and penalties by transmitting a notice to the
8 Legislative Reference Bureau for publication in the
9 Pennsylvania Bulletin.

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

13 (3) Subsequent to the public meeting, the department
14 shall transmit a notice to the Legislative Reference Bureau
15 for republishing the adjusted fees, fines and penalties in
16 the Pennsylvania Bulletin. The adjusted fees shall take
17 effect 60 days after publication of the subsequent notice in
18 the Pennsylvania Bulletin.

19 § 6887. Disposition of funds.

20 Money received from license fees, registration fees,
21 applicator certification, inspection fees, fines and penalties
22 shall be paid into a special restricted account in the General
23 Fund known as the Agronomic Regulatory Account. All money in the
24 Agronomic Regulatory Account is appropriated on a continuing
25 basis to the department for the purposes of this chapter and
26 Chapters 69 (relating to soil and plant amendment) and 71
27 (relating to seed).

28 § 6888. Exclusion of local laws and regulations.

29 (a) Effect of chapter.--The provisions of this chapter are
30 of Statewide concern and occupy the whole field of regulation

1 regarding the registration, packaging, labeling, sale,
2 transportation, distribution, use and application of fertilizers
3 and certification of fertilizer applicators to the exclusion of
4 all local regulations.

5 (b) Enforcement.--No ordinance or regulation of a local
6 agency, political subdivision or home rule municipality may
7 prohibit or attempt to regulate a matter relating to the
8 registration, packaging, labeling, sale, transportation,
9 distribution, use or application of fertilizers, if the
10 ordinance or regulation conflicts with this chapter.

11 (c) Stricter requirements.--Nothing in this chapter shall be
12 construed to prevent a political subdivision or home rule
13 municipality from adopting and enforcing an ordinance or a
14 regulation that is consistent with and no more stringent than
15 the requirements of this chapter and the regulations or
16 guidelines promulgated under this chapter. No penalty shall be
17 assessed under the local ordinance or regulation under this
18 subsection for a violation for which a penalty has been assessed
19 under this chapter.

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

22 § 6921. Disposition of funds.

23 Moneys received from license fees, registration fees,
24 inspection fees, fines and penalties shall be paid into the
25 Agronomic Regulatory Account established in section [6725] 6887
26 (relating to disposition of funds). All moneys in the Agronomic
27 Regulatory Account are hereby appropriated to the department for
28 the purposes of this chapter [and], Chapter [67] 68 (relating to
29 fertilizer) and Chapter 71 (relating to seed).

30 § 7122. Disposition of funds.

1 Moneys received from license fees, seed testing fees,
2 certification fees, fines and penalties shall be paid into the
3 Agronomic Regulatory Account established in section [6725] 6887
4 (relating to disposition of funds). All moneys in the Agronomic
5 Regulatory Account are hereby appropriated to the department for
6 the purposes of Chapters [67] 68 (relating to fertilizer) and 69
7 (relating to soil and plant amendment) and this chapter.

8 Section 4. The State Treasurer shall transfer the sum of
9 \$100,000 from the General Fund to the Agronomic Regulatory
10 Account for use by the Department of Agriculture to develop the
11 certification and recertification courses required under 3
12 Pa.C.S. §§ 6832 and 6833 and any computer programming or
13 software necessary for administration and enforcement of 3
14 Pa.C.S. Ch. 68.

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

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

18 (2) The addition of 3 Pa.C.S. §§ 6831, 6832, 6833 and
19 6834 shall take effect upon the development of the
20 certification examination specified under 3 Pa.C.S. § 6832(a)
21 and applicable software to implement these sections.

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