

AN ACT

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

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

CHAPTER 67 FERTILIZER

SECTION 1 – Title 3 of the Pennsylvania Consolidated Statutes is amended by adding chapters to read:

- 6701. Short Title.
- 6702. Definitions.
- 6703. Licensing.
- 6704. Registration of specialty fertilizers.
- 6705. Labels and labeling.
- 6706. Inspection fees.
- 6707. Tonnage reports.
- 6708. Inspection, sampling and analysis.
- 6709. Plant Food Deficiency.
- 6710. Commercial value.
- 6711. Misbranding.
- 6712. Adulteration.
- 6713. Publications.
- 6714. Short Weight.
- 6715. Refusal, suspension or revocation of registration or license.
- 6716. Stop-sale orders.
- 6717. Seizure and condemnation.
- 6718. Appeal process.
- 6719. Cooperation with other entities.
- 6720. Rules and regulations.
- 6721. Unlawful conduct.
- 6722. Interference with officer or employee of department.
- 6723. Enforcement and penalties.
- 6724. Exchanges between manufacturers.
- 6725. Disposition of funds.

§ 6701. Short Title. – This chapter shall be known and may be cited as the “Pennsylvania Fertilizer Act.”

§ 6702. Definitions. – The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

- (1) “*Brand.*” A term, design or trademark used in connection with one or several grades of fertilizer.
- (2) “*Bulk fertilizer.*” A fertilizer distributed in a non-packaged form.
- (3) “*By-product.*” Municipal waste or residual waste as defined in the act of July 7, 1980 (P.L. 380, No.97), known as the Solid Waste Management Act, that contains a plant nutrient and meets all the applicable regulations of the Department of Environmental Protection.
- (4) “*Consumer.*” A person who purchases fertilizer for the end use of the product.
- (5) “*Deficiency.*” The amount of nutrient found by analysis to be less than that guaranteed.
- (6) “*Department.*” The Department of Agriculture of the Commonwealth.
- (7) “*Distribute.*” To import, consign, offer for sale, sell, barter or otherwise supply fertilizer in this Commonwealth.
- (8) “*Facility.*” Each separate mill or plant that manufactures fertilizer.
- (9) “*Fertilizer.*” Any substance, including fertilizer material, mixed fertilizer, specialty fertilizer and bulk fertilizer, containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manure, agricultural liming materials, wood ashes and other materials exempted by regulation by the Department of Agriculture.
- (10) “*Fertilizer material.*” A fertilizer which:
- (1) contains only one of the following primary plant nutrients: nitrogen, phosphate or potash;
 - (2) has 85% or more of its plant nutrient content present in the form of a single chemical compound; or
 - (3) is derived from a plant or animal residue, by-product, co-product as defined in regulation or natural material deposit which has been processed in such a way that its content of plant nutrients has not been materially changed except by purification and concentration.
- (11) “*Grade.*” The percentage of total nitrogen, available phosphate and soluble potash stated in whole numbers in the same terms, order and percentages as in the guaranteed analysis, except that, with respect to specialty fertilizers, fertilizer materials, bone meal, manures and similar materials, the guaranteed analysis may be stated in fractional units.
- (12) “*Guaranteed analysis.*” The minimum percentage of plant nutrients claimed in the following order and form:

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

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

- (13) “*Guarantor.*” The person whose name and address appears on the label of a fertilizer.
- (14) “*Label.*” The display of all written, printed or graphic matter upon the immediate container or a statement accompanying a fertilizer.
- (15) “*Labeling.*” All written, printed or graphic matter, upon or accompanying any fertilizer or advertisements, brochures, posters or electronic media used in promoting the distribution of fertilizer.
- (16) “*Manufacture.*” To produce, mix, blend, repackage or further process fertilizer or fertilizer material for distribution.
- (17) “*Micronutrient.*” Any of the following: boron, chlorine, cobalt, copper, iron, manganese, molybdenum, sodium and zinc.
- (18) “*Official sample.*” A sample of fertilizer taken by the Department of Agriculture or its agent to effect the provisions of this chapter and designated as official.
- (19) “*Overall index value.*” The value obtained from the calculation: (commercial value found) x 100 / (commercial value guaranteed).
- (20) “*Percent*” or “*percentage.*” A percentage by weight.
- (21) “*Person.*” An individual, partnership, association, firm, corporation or any other legal entity.
- (22) “*Plant nutrient.*” Any of the following: primary nutrient, secondary nutrient and micronutrient.
- (23) “*Primary nutrient.*” Any of the following: total nitrogen, available phosphate and soluble potash.
- (24) “*Secondary nutrient.*” Any of the following: calcium, magnesium and sulfur.
- (25) “*Secretary.*” The Secretary of Agriculture of the Commonwealth or the secretary’s designee.
- (26) “*Specialty fertilizer.*” A fertilizer distributed for non-farm use and fertilizer material primarily intended to supply plant nutrients other than nitrogen, phosphate or potash.
- (27) “*Tolerance.*” A permitted variation from the guarantee of an official sample of fertilizer.

§ 6703. Licensing. –

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

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

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

§ 6704. Registration of specialty fertilizers. –

- (a) Application. –Each brand and grade of specialty fertilizer shall be registered by the guarantor with the department before being offered for sale, sold or distributed in this Commonwealth. An application for each brand and grade of specialty fertilizer shall be made on a form prescribed by the department and shall be accompanied by a fee of \$25 per each grade of each brand. Labels for each brand and grade shall accompany the application. Upon the approval of an application by the department, a copy of the registration shall be furnished to the applicant. All registrations shall expire on June 30 of each year.
- (b) Contents of application. –An application for registration shall include:
 - (1) The brand and grade.
 - (2) The guaranteed analysis.
 - (3) The name and address of the guarantor.
 - (4) The net weight.
- (c) Exemption. –A distributor shall not be required to register a specialty fertilizer which is already registered under this chapter by another person, providing the label does not differ in any material respect.
- (d) Late fee. –If the application for renewal of the specialty fertilizer registration required in this section is not filed prior to June 30 of each year, a penalty of \$25 or 10% of the registration fee, whichever is greater, may be assessed and added to the original fee and shall be paid by the applicant before the renewal specialty fertilizer registration is issued. The penalty shall not apply if the applicant furnished an affidavit that the applicant has not distributed the specialty fertilizer subsequent to the expiration of the applicant’s prior registration.

§ 6705. Labels and labeling. –

- (a) General rule. –Any fertilizer distributed in a container in this Commonwealth shall have placed on or affixed to the container a label setting forth in legible and conspicuous form:
 - (1) Brand and grade of the fertilizer, provided that the grade shall not be required when no primary nutrients are claimed.
 - (2) The guaranteed analysis.
 - (3) The name and address of the guarantor.
 - (4) The net weight.

- (b) Bulk fertilizer. –In the case of bulk fertilizer shipments, the information required by subsection (a) shall accompany delivery and shall be provide in writing to the purchaser at time of delivery.
- (c) Other guarantees. –Guarantees for other nutrients shall be expressed in the form of the element. The department may require by regulation that the source of such other nutrients be stated on the application for registration and may be required on the label. The department may require by regulation that other beneficial substances or compounds be guaranteed. When any plant nutrients or other substances or compounds are guaranteed, they shall be subject to inspection and analysis in accordance with the methods and regulation prescribed by the department.
- (d) Proof of labeling claims. –The department may require proof of any labeling claims made for fertilizer. Any research in support of such claims shall be performed by an institution approved by the department utilizing acceptable scientific methodology.
- (e) Consumer specified fertilizer formulations. –A fertilizer formulated according to specifications which are furnished by a consumer prior to mixing shall be labeled to show:
 - (1) The net weight.
 - (2) The guaranteed analysis.
 - (3) The name and address of the guarantor.
- (f) Bulk storage. –Fertilizer in bulk storage that is intended for distribution shall be identified with a label attached to the storage bin or container giving the name and grade of the product.

§ 6706. Inspection fees. –

- (a) Amounts. –

- (1) The guarantor whose name appears on the label of a fertilizer distributed in this Commonwealth shall pay semiannually and not later than January 31 and July 31 of each year an inspection fee at the rate of \$0.15 per ton. In no case shall the inspection fee paid semiannually amount to less than \$25.

- (2) On packages of 15 pounds or less, there shall be paid in lieu of the inspection fee of \$0.15 per ton provided for in paragraph (1), annually and not later than January 31 of each year, an inspection fee of \$25 for each brand and grade of fertilizer distributed.

- (3) The guarantor whose name appears on the label distributes fertilizers in this Commonwealth in both packages of less and more than 15 pounds, the \$25 inspection fee shall be paid for its brands and grades sold in packages of 15 pounds or less and the \$0.15 per ton fee shall be paid for its packages of more than 15 pounds.

- (b) Adjustment to fees by secretary. –

- (1) Notwithstanding the provisions of subsection (a), if the secretary determines following notice to the registrants and licensees that moneys derived from the registration and

inspection fees are either greater or less than that required to administer this chapter, the secretary may reduce or increase the inspection fee so as to maintain revenues sufficient to administer this chapter.

(2) An inspection fee established under this subsection may not be changed by more than \$0.02 in one year and may not exceed \$0.25 per ton.

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

§ 6707. Tonnage reports. –

- (a) General rule. –The guarantor whose name appears on the label shall submit, along with the requisite inspection fee, a report in a manner prescribed by the department listing by county the net tons of each brand and grade of fertilizer distributed in this Commonwealth for the period covered by the inspection fee.
- (b) Multiple guarantors. –When more than one guarantor is involved in the distribution of fertilizer, the guarantor who distributed the fertilizer, last shall report the tonnage and pay the inspection fee unless the report and payment have been made by a prior distributor.
- (c) Late fee. –A penalty of \$25 or 10% of the inspection fee, whichever is greater, shall be imposed for any fee or report not submitted at the required time.
- (d) Examination permitted. –The department or its authorized representative may examine the records of the guarantor to verify the information contained in the reports filed with the department. Reports containing fraudulent or incorrect information shall be considered a violation of this chapter for which the department may assess any penalty as provided for in this chapter.
- (e) Confidentiality of information. –
 - (1) No proprietary information furnished to the department under this section shall be disclosed in such a way as to knowingly or intentionally divulge a trade secret of any person subject to the provisions of this chapter.
 - (2) This subsection shall not apply to information furnished to a court or administrative tribunal in accordance with law.

§ 6708. Inspection, sampling and analysis. –

- (a) General rule.-The department shall inspect, sample, make analyses of and test fertilizers distributed within this Commonwealth and shall inspect the storage of bulk fertilizer at any time and place and to such an extent as the department may deem necessary to determine whether such fertilizers are in compliance with the provisions of this chapter. The department or its agent may enter upon any public or private premises or carriers during regular business

hours in order to have access to fertilizer subject to provisions of this chapter and the records relating to this chapter.

- (b) Laboratory methodology. –The department shall establish by regulation the methods of fertilizer sampling and analysis. In promulgating such regulation, the department shall consider methods such as those adopted by the Association of Official Analytical Chemists International. In cases not covered by such methods or in cases where improved methods are available, the department may issue a temporary order defining the method to be utilized. The method defined in the temporary order shall be effective upon publication in the Pennsylvania Bulletin. The temporary order shall remain in effect for a period not to exceed one year, unless reissued, or until such order is promulgated as a regulation.
- (c) Deficiency determination. –The department, in determining whether any fertilizer is deficient, shall be guided solely by the official sample obtained and analyzed as provided for in subsections (a) and (b).
- (d) Retention of official samples. –Official samples maintained by the department and that require imposition of a penalty for nutrient deficiency shall be retained for a minimum of 90 days from issuance of a deficiency report. Upon request, the department shall furnish to the guarantor a portion of any sample that is subject to penalty or other legal action. Such requests must be made within 30 days of notification of sample violations.

§ 6709. Plant Food Deficiency. –

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

- (1) A penalty payment of five times the commercial value of each deficiency shall be assessed when the analysis shows that a fertilizer is deficient:
 - (i) in one or more of its guaranteed primary nutrients beyond a tolerance of 10% (two unit maximum); or
 - (ii) when the overall index value of the primary nutrients in the fertilizer is below 97.
 - (2) When a fertilizer is subject to a penalty payment under both paragraph (1)(i) and (ii), the larger penalty payment shall apply. Any such penalties assessed may not exceed the retail price of the lot of fertilizer represented by the official sample.
 - (3) Deficiencies beyond the tolerance as established by regulation in a component other than a primary nutrient shall be evaluated by the department and shall be subject to any penalty under this chapter.
- (b) Payment of penalties. –All penalties assessed under this section shall be paid by the guarantor to the consumer of the lot of fertilizer represented by the sample analyzed within 90 days after the date of notice from the department to the guarantor. Receipts of payment shall be promptly forwarded by the guarantor to the department. If the consumer cannot be found, the penalties shall be paid to the department.

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

§ 6710. Commercial value. –For the purpose of determining the commercial value to be applied under section 6709 (relating to plant food deficiency), the department shall determine and publish annually the values per pound of nitrogen, available phosphate and soluble potash in fertilizers in this Commonwealth. The amounts determined and published shall be used in determining and assessing penalty payments.

§ 6711. Misbranding. –No person shall distribute a misbranded fertilizer. A fertilizer shall be deemed to be misbranded if:

- (1) its labeling is false or misleading in any particular;
- (2) it is distributed under the name of another fertilizer product;
- (3) it is not labeled as required in section 6705 (relating to labels and labeling) and in accordance with regulations prescribed under this chapter; or
- (4) it purports to be or is represented as a fertilizer or is represented as containing a plant nutrient or fertilizer unless such plant nutrient or fertilizer conforms to the definition of identity, if any, prescribed by regulation.

§ 6712. Adulteration. –

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

- (1) it contains any deleterious or harmful substance in sufficient amount to render it injurious to beneficial plant life, animals, humans, aquatic life, soil or water when applied in accordance with its intended use or directions for use on the label;
- (2) adequate warning statements or directions for use which may be necessary to protect plant life, animals, humans, aquatic life, soil or water are not shown upon the label;
- (3) its composition falls below or differs from that which it is purported to possess by its labeling; or
- (4) it contains viable weed seed in amounts exceeding the limits which the department establishes by regulation.

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

§ 6713. Publications. –The department shall publish at least annually, and in such form as it deems proper, such information concerning the distribution of fertilizers and results of analyses

based on official samples of fertilizer distributed within this Commonwealth as compared with analyses guaranteed under sections 6704 (relating to registration of specialty fertilizers) and 6705 (relating to labels and labeling).

§ 6714. Short Weight. –If any fertilizer in the possession of a consumer is found by the department to be short in weight, the guarantor of that fertilizer shall, within 30 days after official notice from the department, submit to the consumer a penalty payment of two times the value of the actual shortage.

§ 6715. Refusal, suspension or revocation of registration or license. –The department may refuse, suspend or revoke the registration of any fertilizer or refuse, suspend or revoke the license of any person where the registrant or licensee has not complied with the provisions of this chapter or of any person who has used fraudulent or deceptive practices in the evasion of the provisions of this chapter.

§ 6716. Stop-sale orders. –

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

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

§ 6717. Seizure and condemnation. –A lot of fertilizer not in compliance with the provisions of this chapter shall be subject to seizure and condemnation by the department, provided that in no instance shall the disposition of the fertilizer be ordered by the department without first giving the claimant an opportunity for a hearing as provided for in section 6718 (relating to appeal process) or for opportunity to apply for permission to process or re-label the fertilizer to bring it into compliance with this chapter.

§ 6718. Appeal process. –All appeals shall be taken and hearings conducted in accordance with the provisions of 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action).

§ 6719. Cooperation with other entities. –The department may cooperate with and enter into agreement with governmental agencies of the Federal Government, agencies of this Commonwealth and any other state in order to carry out the purpose and provisions of this chapter.

§ 6720. Rules and regulations. –The department shall promulgate and enforce rules and regulations necessary for administration and implementation of this chapter.

§ 6721. Unlawful conduct. –It shall be unlawful for any person to fail to comply with or to cause or assist in the violation of any order or any of the provisions of this chapter or the rules and regulations adopted under this chapter.

§ 6722. Interference with officer or employee of department. –A person who willfully or intentionally interferes with an employee or officer of the department in the performance of that employee’s or officer’s duties or activities authorized under this chapter commits a misdemeanor of the third degree and shall, upon conviction, be subject to a term of imprisonment of not more than one year or a fine of not more than \$2,500, or both.

§ 6723. Enforcement and penalties. –

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

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

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

(b) Trade secrets. –

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

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

(c) Civil penalties. –

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

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

(d) Certified copy of official analysis. –In prosecution under this chapter involving the composition of a lot of fertilizer, a certified copy of the official analysis signed by the secretary or the secretary’s designee shall be accepted as prima facie evidence of the composition.

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

§ 6724. Exchanges between manufacturers. –Nothing in this chapter shall be construed as restricting or avoiding sales or exchanges of fertilizers to each other by importers, manufacturers or manipulators who mix fertilizer materials for sale, or as preventing the free and unrestricted shipments of fertilizer to manufacturers or manipulators who are licensed as required by provisions of this chapter.

§ 6725. Disposition of funds. –Moneys received from license fees, registration fees, inspection fees, fines and penalties shall be paid into a special restricted account in the General Fund to be known as the Agronomic Regulatory Account. All moneys in the Agronomic Regulatory Account are hereby appropriated to the department for the purposes of this chapter and Chapter 69 (relating to soil and plant amendment).

SECTION 2. –

(A) A license granted or registration made under the act of May 29, 1956 (1955 P.L.1795, NO.598), known as the Pennsylvania Fertilizer, Soil Conditioner and Plant Growth Substance Law, in effect on the effective date of this act shall remain valid and in effect until its scheduled expiration date.

(B) Except to the extent that they are inconsistent with any provisions of this act, regulations promulgated under the act of May 29, 1956 (1955 P.L.1795, NO.598), known as the Pennsylvania Fertilizer, Soil Conditioner and Plant Growth Substance Law, in effect on the effective date of this act shall continue in effect unless subsequently modified by regulations promulgated by the department under this act.

(C) All funds made available to the department pursuant to the act of May 29, 1956 (1955 P.L.1795, NO.598), known as the Pennsylvania Fertilizer, Soil Conditioner and Plant Growth Substance Law, which remain unexpended, uncommitted and unencumbered as of the effective date of this act, shall be transferred to the Agronomic Regulatory Account.

SECTION 3. –The act of May 29, 1956 (1955 P.L.1795, NO.598), known as the Pennsylvania Fertilizer, Soil Conditioner and Plant Growth Substance Law, is repealed.

SECTION 4. –This act shall take effect in 60 days.