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HOUSE BILL NO. 1446

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture)

(Patron Prior to Substitute—Delegate Watkins)

House Amendments in [] — February 5, 1995

A BILL to amend and reenact §§ 3.1-106.4 through 3.1-106.7 and § 3.1-106.9 of the Code of Virginia, relating to the Virginia Fertilizer Act.

Be it enacted by the General Assembly of Virginia:

That §§ 3.1-106.4 through 3.1-106.7 and § 3.1-106.9 of the Code of Virginia are amended and reenacted as follows:

§ 3.1-106.4. Authority of the Board and the Commissioner to adopt regulations.

A. The Board is authorized to promulgate such regulations as may be necessary to give effect to the full intent and meaning of this chapter. Such regulations may relate, by way of example, but not by way of limitation, to investigational allowances, definitions, records, and manufacturing practices, and to the distribution and storage of regulated product prior to final sale.

B. The Commissioner may adopt as a regulation the Official Fertilizer Terms and Definitions adopted by the Association of American Plant Food Control Officials. The Commissioner may adopt as a regulation the methods of sampling and analysis for regulated products adopted by the Association of Official Analytical Chemists. The Commissioner may adopt as a regulation any method of sampling and analysis for a regulated product developed by the Department or adopted by agencies of the federal government, agencies of other states, the Division of Consolidated Laboratories or other commercial laboratories accredited by the Food and Drug Administration, United States Department of Agriculture or Association of Official Analytical Chemists. Such regulations adopted by the Commissioner shall be effective upon filing with the Registrar of Regulations, who shall publish the regulation as a final regulation in the Virginia Register of Regulations. However, the regulation shall contain a preamble stating that the Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of such regulation. *The Commissioner shall provide notice by first-class mail of regulations adopted by him pursuant to this section after June 30, 1995, to all manufacturers of currently registered regulated product.*

C. The Board, after giving notice in the Virginia Register of Regulations, may reconsider and revise the regulation adopted by the Commissioner. Such revised regulation shall be effective upon filing with the Registrar of Regulations, who shall publish the regulation as a final regulation in the Virginia Register of Regulations. Neither the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) nor public participation guidelines adopted pursuant thereto shall apply to the adoption, reconsideration, or revision of any regulation adopted pursuant to subsection B or C of this section.

§ 3.1-106.5. Labeling.

A. The manufacturer or guarantor of any regulated product distributed in the Commonwealth shall affix a label to the container or provide an invoice at the time of delivery for bulk regulated product which sets forth in clear, legible and conspicuous form, in the English language, the following information:

1. The quantity statement;

2. The grade under a given brand; however, the grade shall not be required when no primary nutrients are claimed;

3. The guaranteed analysis, which shall:

(a) For fertilizers, conform to the following, with the percentage of each plant nutrient stated as follows:

(i) Total Nitrogen (N) %

Available Phosphate (P205) %

Soluble Potash (K20) %

(ii) For unacidulated mineral phosphate materials and basic slag, bone, tankage, and other organic phosphate materials, the available phosphate (P205), or the degree of fineness, or both, may also be guaranteed.

(iii) Guarantees for plant nutrients other than nitrogen (N), available phosphate (P205), and potash (K20) shall be expressed in the form of the element. A statement of the sources of nutrients, including, by way of example, but not by way of limitation, oxides, salt, and chelates, may be required on the application for registration of specialty fertilizers, and may be included as a parenthetical statement on

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59 the label. Degree of acidity or alkalinity (ph), beneficial substances, or compounds determinable by
 60 laboratory methods also may be guaranteed by permission of the Commissioner and with the advice of
 61 the Director of the Virginia Experiment Station. When any degree of acidity or alkalinity (ph), beneficial
 62 substances, or compounds are guaranteed, they shall be subject to inspection and analysis in accord with
 63 the methods and regulations prescribed by the Board;

64 (b) For soil amendments, ~~conform to consist of~~ a list of ingredients, ~~which and~~ may include a
 65 statement of naturally occurring nutrient levels;

66 (c) For soil conditioners, including but not limited to polyelectrolytes, contain the following
 67 information in the following form:

68 (i) Name of active ingredient %

69
 70 (name and list all)

71 (ii) Total other ingredients %;

72
 73 (d) For horticultural growing media, ~~conform to include~~ a list of ingredients, ~~a statement of added~~
 74 ~~fertilizers~~ and other guarantees as required by regulation;

75 (e) When compost *derived from sewage sludge, hazardous materials, unrendered animals or poultry*
 76 *or their parts, or other source material specified in regulations established by the Board* is used as an
 77 ingredient, identify the source material of the compost; and

78 (f) *Include a list of such other ingredients as may be required by the Board through regulation.*

79 4. The name and address of the registrant or licensee, as the case may be.

80 B. A commercial fertilizer which is formulated according to specifications provided by a consumer
 81 prior to mixing, or any fertilizer formulated for a consumer, shall be labeled to show (i) the quantity
 82 statement, (ii) the guaranteed analysis, and (iii) the name and address of the distributor or the licensee.

83 C. *For horticultural growing media, a statement of added fertilizers, if any, shall be listed on the*
 84 *registration document and customer sales invoice.*

85 § 3.1-106.6. Licensing, permitting and registration.

86 A. The license year for all distributors and manufacturers, permit year for all contractor-applicators,
 87 registration year for any regulated product, and tonnage reporting year are July 1 through June 30 of the
 88 following year. Each license, permit or registration shall be issued to expire on June 30 of the year for
 89 which it is issued, provided that any license, permit or registration shall be valid through July 31 of the
 90 next ensuing license, permit or registration year or until the issuance of the renewal license, permit or
 91 registration, whichever event first occurs, if the holder thereof shall have filed a renewal application with
 92 the Commissioner on or before June 30 of the year for which the current license, permit, or registration
 93 was issued. The manufacturer or guarantor shall file the tonnage report and pay the inspection fee to the
 94 Commissioner on August 1 of the year following the license year.

95 B. Any person whose name appears upon the label of any regulated product as manufacturer or
 96 distributor shall obtain a license to distribute in the Commonwealth from the Commissioner prior to
 97 distributing said regulated product. The person who distributes regulated product shall file an application
 98 with the Commissioner on a form furnished or approved by the Commissioner, and pay to the
 99 Commissioner a license fee of fifty dollars.

100 C. Any person who distributes regulated product shall obtain a license prior to distributing any
 101 regulated product for each manufacturing location that it operates and that distributes any regulated
 102 product within the Commonwealth. The person who distributes regulated product shall apply for a
 103 license on a form furnished or approved by the Commissioner, and pay to the Commissioner a license
 104 fee of fifty dollars for each manufacturing location that distributes in the Commonwealth.

105 D. Any person who distributes regulated product shall include on the application the following:

106 1. The name and address of the applicant; *and*

107 2. The name and address of each of the applicant's distribution points in the Commonwealth.

108 E. The licensee shall show the name and address shown on the license on:

109 1. The labels of any regulated product, and pertinent invoices thereof, distributed by the licensee in
 110 the Commonwealth; ; and

111 2. ~~On~~ All storage facilities for any regulated product distributed by the licensee in the
 112 Commonwealth.

113 F. The licensee shall inform the Commissioner in writing of additional distribution points established
 114 during the period of the license.

115 G. In addition to licensing requirements, any person whose name is on the label of and who
 116 distributes in the Commonwealth any specialty fertilizer packaged in containers of fifty pounds or less
 117 dry net weight, or five gallons or less liquid net volume, shall apply for registration for such specialty
 118 fertilizer with the Commissioner on forms furnished or approved by the Commissioner; shall pay to the
 119 Commissioner by July 1 of each registration year a registration fee of fifty dollars for each grade under

a given brand prior to distributing said fertilizer in the Commonwealth; and shall provide labels for each grade under a given brand with the application. The Commissioner or his agent shall furnish a copy of the registration to the applicant after approval of the registration.

H. In addition to the licensing requirements, any person who distributes in the Commonwealth a soil amendment, soil conditioner, or horticultural growing medium shall apply for registration for such soil amendment, soil conditioner, or horticultural growing medium with the Commissioner on forms furnished or approved by the Commissioner; pay to the Commissioner by July 1 of each registration year a registration fee of ~~one hundred dollars~~ \$100 for each product name or brand of soil amendment, soil conditioner or horticultural growing medium prior to distributing said product in the Commonwealth; and shall provide labels for each product name or brand with the application. The Commissioner or his agent shall furnish a copy of the registration to the applicant after approval of the registration.

I. Custom-media and horticultural growing media planted with live plant material are exempt from labeling and registration requirements and inspection fees.

J. Any person applying for registration of a specialty fertilizer, soil amendment, soil conditioner, or horticultural growing medium shall include with the application a label including the following information:

1. For specialty fertilizer, the grade under a given brand; for soil amendments, soil conditioners, or horticultural growing media, the product name or brand;

2. The guaranteed analysis;

3. The name and address of the registrant; and

4. The quantity statement.

K. The Commissioner or his agent may require ~~proof~~ verification of any labeling claims for usefulness and value for any regulated product.

L. If the Commissioner or his agent identifies any unregistered regulated product in commerce in the Commonwealth during the registration year, the Commissioner or his agent shall give the guarantor a grace period of fifteen working days from issuance of notification within which to register the regulated product. Any person required to register any regulated product who fails to register the regulated product within the grace period shall pay to the Commissioner a fifty dollar late fee in addition to the registration fee. The Commissioner or his agent may issue a stop sale, use, removal or seizure order upon any regulated product until the registration is issued.

M. Any person desiring to become a contractor-applicator of fertilizer shall, before engaging in business as a contractor-applicator, obtain a permit to do business in the Commonwealth. Any person who applies for a permit shall do so with the Commissioner on a form furnished or approved by the Commissioner and shall pay to the Commissioner a permit fee of fifty dollars. The applicant shall guarantee compliance with all provisions of this chapter to include an assurance of delivery of the quantity and grade of fertilizer; ~~or the quantity of any regulated product~~, as described on the consumer's invoice. The Commissioner or his agent shall furnish a copy of the permit to the applicant after approval of the application.

N. Any person who engages in business as a manufacturer or contractor-applicator for a period of at least thirty days or more, and who has failed to obtain a license or permit during that period, shall pay to the Commissioner a fifty dollar license or permit late fee, in addition to the application fee.

§ 3.1-106.7. Inspection, sampling and analysis.

A. It shall be the duty of the Commissioner or his agent to (i) sample, inspect, analyze, and test any regulated product distributed within the Commonwealth; (ii) inspect storage facilities where such regulated product is stored; (iii) monitor and, where the Commissioner deems it necessary, regulate the manufacturing procedures of such regulated products as affected by best management practices for manufacturing practices, containment, and considerations of environmental factors; and (iv) allocate adequate personnel to the major farm fertilizer consuming areas of the state to carry out his duties under this act as such duties relate to insuring the quality, analysis, and quantity of fertilizer sold and distributed in the state.

The Commissioner or his agent shall sample, inspect, analyze, and monitor, during operating hours of subject person and to the extent the Commissioner or his agent deems necessary, to determine whether such regulated product is in compliance with the provisions of this chapter. The Commissioner or his agent is authorized to enter upon the premises or carriers of any person subject to regulation under this act, during operating hours, in order to have access to (i) regulated product, storage facilities and manufacturing practices subject to this chapter and the regulations pertaining thereto, and (ii) records relating to the distribution and storage of regulated product.

B. Any person who shall hinder or obstruct in any way the Commissioner or his agent in the performance of his official duties shall be guilty of a Class 3 misdemeanor.

C. The Commissioner or his agent shall use the methods of sampling and analysis adopted by the

181 Commissioner or the Board.

182 D. The Commissioner or his agent, in determining for administrative purposes whether any fertilizer
183 is deficient in plant food, shall be guided solely by the official sample. The Commissioner or his agent
184 shall obtain and analyze samples as specified in subsection C of this section.

185 E. The Commissioner or his agent may distribute information regarding official analysis of fertilizers.
186 The Commissioner or his agent shall retain official samples establishing an assessment for variance from
187 guarantee for a minimum of ninety days from issuance of a deficiency report.

188 § 3.1-106.9. Statistical reports.

189 A. For commercial fertilizer:

190 1. Any person distributing or selling commercial fertilizer to a nonlicensee shall furnish the
191 Commissioner a monthly report showing:

192 a. The county [*or city*] of the nonlicensee consignee;

193 b. The amounts (expressed in tons, or decimal portions thereof) of each grade of fertilizer; and

194 c. The form in which the person distributed the fertilizer, e.g., in bags, bulk, or in liquid form.

195 2. Any person required to submit this information shall do so in the following form and shall specify
196 shipments made during the preceding month:

197 a. A summary report on a form prescribed by the Commissioner, on or before the twentieth day of
198 each month; or

199 b. A summary report by electronic transfer, utilizing the Uniform Fertilizer Tonnage Reporting
200 System (UFTRS). Prior to using the electronic transfer method, the person responsible for submitting the
201 monthly tonnage report shall make appropriate arrangements with the Commissioner for the
202 Commissioner's receipt of the report by such method.

203 3. The Commissioner or his agent shall assess a late fee of thirty-five dollars against the licensee
204 who is responsible for reporting if the monthly report is not filed by the due date.

205 B. For all other regulated products:

206 1. The person distributing or selling such products to a nonlicensee shall furnish the Commissioner
207 an annual report showing:

208 a. The county *or city* of the nonlicensee consignee; and

209 b. The amounts (expressed in tons, or decimal portions thereof) of each grade under a given brand of
210 product.

211 2. Any person listed in subdivision 1 of this subsection who fails to file this report by August 1 shall
212 pay a late fee of thirty-five dollars to the Commissioner.

213 C. The Commissioner shall hold confidential trade secrets and commercial or financial information
214 supplied by persons governed by this chapter.