

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 3.1-22.5 and 9-6.14:4.1 of the Code of Virginia, and to amend the Code of Virginia by adding in Title 3.1 a chapter numbered 10.1 consisting of sections numbered 3.1-106.1 through 3.1-106.22, and to repeal Chapter 10 (§§ 3.1-74 through 3.1-106) of Title 3.1 of the Code of Virginia, relating to the Virginia Fertilizer Act; penalty.

[S 283]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.1-22.5 and 9-6.14:4.1 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Title 3.1 a chapter numbered 10.1, consisting of sections numbered 3.1-106.1 through 3.1-106.22, as follows:

§ 3.1-22.5. Virginia Agricultural Foundation Fund.

There is hereby established in the state treasury a special fund to be designated as the "Virginia Agricultural Foundation Fund" which shall consist of transfers made to it under §§ ~~3.1-81.1~~ 3.1-106.22, 3.1-126.5, 3.1-814, 58.1-2111 and 58.1-2146 of the Code of Virginia, of other moneys appropriated thereto, gifts and grants, and interest accruing thereon. The fund shall be expended in accordance with the directions of the Virginia Agricultural ~~Foundation Council~~ and drawn from the state treasury in the manner provided by law. No part of such fund shall revert to the general fund of the state treasury.

CHAPTER 10.1.**VIRGINIA FERTILIZER ACT.**

§ 3.1-106.1. Title.

This chapter shall be known as the "Virginia Fertilizer Act."

§ 3.1-106.2. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board of Agriculture" or "Board" means the Board of Agriculture and Consumer Services.

"Brand" means a term, design, trademark or product name under which a regulated product is distributed.

"Bulk" means in nonpackaged form.

"Bulk fertilizer" means a fertilizer distributed in a nonpackaged form.

"Commercial fertilizer" means a fertilizer distributed for farm use, or for any other use, other than any specialty fertilizer use.

"Commissioner" means the Commissioner of Agriculture and Consumer Services.

"Compost" means a biologically stable material derived from the composting process.

"Composting" means the biological decomposition of organic matter. It may be accomplished by mixing and piling so as to promote aerobic decay, anaerobic decay, or both aerobic and anaerobic decay.

"Contractor-applicator" means any person who distributes or applies any regulated product, for compensation, either full-time or part-time, except as a licensee or as an agent of a licensee.

"Custom medium" means a horticultural growing medium which is prepared to the exact specifications of the person who will be planting in the medium and delivered to that person without intermediate or further distribution.

"Deficiency" means the amount of nutrient found by analysis to be less than that guaranteed, which may result from a lack of nutrient ingredients, or from lack of uniformity.

"Department" means the Department of Agriculture and Consumer Services.

"Distribute" means to import, consign, manufacture, produce, compound, mix, blend, or in any way alter, the chemical or physical characteristics of a regulated product, or to offer for sale, sell, barter, warehouse or otherwise supply regulated product in the Commonwealth.

"Distributor" means any person who distributes.

"Fertilizer" means any substance 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. Fertilizer does not include unmanipulated animal and vegetable manures, marl, lime, limestone, and other products exempted by regulation.

"Fertilizer material" means a fertilizer which:

a. Contains important quantities of no more than one of the primary plant nutrients: nitrogen (N), available phosphate (P2O5) and potash (K2O);

b. Has eighty-five percent or more of its plant nutrient content present in the form of a single chemical compound; or

58 c. Is derived from a plant or animal residue, or by-product, or natural material deposit, which has
 59 been processed or conditioned in such a way that its content of plant nutrients has not been materially
 60 changed, except by purification and concentration.

61 "Grade" means the percentage of total nitrogen (N), available phosphate (P205) and soluble potash
 62 (K20), stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis,
 63 except that fertilizer materials, specialty fertilizers, bone meal, manures and similar raw materials may
 64 be guaranteed in fractional units.

65 "Guaranteed analysis" means that information required by this chapter to be displayed on the label
 66 of a regulated product.

67 "Guarantor" means the person whose name appears on the label of a regulated product.

68 "Horticultural growing medium" means any substance or mixture of substances which is promoted as
 69 or is intended to function as an artificial soil for the managed growth of horticultural crops.

70 "Industrial co-product" means a product derived from an industrial process that meets the definition
 71 of fertilizer, soil amendment, soil conditioner or horticultural growing medium.

72 "Investigational allowance" means an allowance for variations, inherent in the taking, preparation,
 73 and analysis of an official sample.

74 "Label" means the display of all written, printed, or graphic matter, upon the immediate container,
 75 or a statement accompanying a regulated product, including an invoice.

76 "Labeling" means all written, printed, or graphic matter, upon or accompanying any regulated
 77 product, including invoices, advertisements, brochures, posters, and television and radio announcements,
 78 used in promoting the sale of such regulated product.

79 "Licensee" means the person who receives a license to distribute any regulated product under the
 80 provisions of this chapter.

81 "Manufacturer" means any person who manufactures, produces, compounds, mixes, blends, or in any
 82 way alters the chemical or physical characteristics of any regulated product.

83 "Mixed fertilizer" means a fertilizer containing any combination or mixture of fertilizer materials.

84 "Official analysis" means the analysis of an official sample, made by the Commissioner or his agent.

85 "Official sample" means the sample of regulated product taken by the Commissioner or his agent,
 86 and designated as "official" by the Board.

87 "Percent" or "percentage" means the percentage by weight.

88 "Primary nutrient" includes nitrogen (N), available phosphate (P205), and soluble potash (K20).

89 "Quantity statement" means the net weight (mass), net volume (liquid or dry), count or other form of
 90 measurement of a commodity.

91 "Registrant" means the person who registers regulated products, under the provisions of this chapter.

92 "Regulated product" means any product governed by this chapter, including any fertilizer, specialty
 93 fertilizer, soil amendment, soil conditioner, and horticultural growing medium.

94 "Soil amendment" means any substance or mixture of substances, imported, manufactured, prepared
 95 or sold for manurial, soil enriching, or soil corrective purposes, or intended to be used for promoting or
 96 stimulating the growth of plants, increasing the productivity of plants, improving the quality of crops, or
 97 producing any chemical or physical change in the soil. The following are exempt from the definition of
 98 "soil amendment": fertilizer, unmanipulated or composted animal and vegetable manures, soil
 99 conditioners, horticultural growing media, agricultural liming materials, unmixed mulch and unmixed
 100 peat.

101 "Soil conditioner" means any substance or mixture of substances imported, manufactured, prepared
 102 or sold for soil corrective purposes, including but not limited to polyelectrolytes such as complex vinyl
 103 and acrylic compounds and certain cellulose and lignin derivatives.

104 "Specialty fertilizer" means a fertilizer distributed for nonfarm use, including, by way of example, but
 105 not by way of limitation, home gardens, lawns, shrubbery, flowers, golf courses, municipal parks,
 106 cemeteries, greenhouses and nurseries.

107 "Stop sale, use, removal, or seizure order" means an order which prohibits the distributor from
 108 selling, relocating, using, or disposing of a lot of regulated product, or portion thereof, in any manner,
 109 until the Commissioner or his agent or the Court gives written permission to sell, relocate, use or
 110 dispose of the lot of regulated product or portion thereof.

111 "Ton" means a net weight of two thousand pounds avoirdupois.

112 "Unmanipulated manure" means substances composed of the excreta of domestic animals, or
 113 domestic fowls, which has not been processed or conditioned in any manner, including but not limited to
 114 processing or conditioning by drying, grinding, pelleting, shredding, addition of plant food, mixing
 115 artificially with any material or materials (other than those which have been used for bedding, sanitary
 116 or feeding purposes for such animals or fowls), or by any other means.

117 § 3.1-106.3. Authority of the Commissioner.

118 The Commissioner shall administer and enforce this chapter. The Commissioner may appoint agents

to assist in carrying out the provisions of this chapter and the regulations adopted and established pursuant thereto.

§ 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.

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 subsections 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 (P2O5)%
Soluble Potash (K2O)%

(ii) For unacidulated mineral phosphate materials and basic slag, bone, tankage, and other organic phosphate materials, the available phosphate (P2O5), or the degree of fineness, or both, may also be guaranteed.

(iii) Guarantees for plant nutrients other than nitrogen (N), available phosphate (P2O5), and potash (K2O) 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 the label. Degree of acidity or alkalinity (ph), beneficial substances, or compounds determinable by laboratory methods also may be guaranteed by permission of the Commissioner and with the advice of the Director of the Virginia Experiment Station. When any degree of acidity or alkalinity (ph), beneficial substances, or compounds are guaranteed, they shall be subject to inspection and analysis in accord with the methods and regulations prescribed by the Board;

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

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

(i) Name of active ingredient%
(name and list all)	

(ii) Total other ingredients%;
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(d) for horticultural growing media, conform to a list of ingredients, a statement of added fertilizers and other guarantees as required by regulation;

(e) when compost is used as an ingredient, identify the source of the compost; and

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

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

§ 3.1-106.6. Licensing, permitting and registration.

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

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

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

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

1. The name and address of the applicant;

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

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

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

2. On all storage facilities for any regulated product distributed by the licensee in the Commonwealth.

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

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

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

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

§ 3.1-106.8. Reporting year; inspection fees.

A. The reporting year for regulated products shall be July 1 through June 30 of the following year. Reporting shall be required as follows:

1. Except as provided in subdivision 2 of this subsection, any person who distributes any regulated product to a non-licensed person shall file the tonnage statement with the Commissioner and pay to the Commissioner the inspection fee by August 1.

2. The person specified in subdivision 1 of this subsection who distributes any regulated product shall not be required to file the tonnage statement or pay the inspection fee, if another person agrees in a written statement, filed with the Commissioner, to file the tonnage statement and to pay to the Commissioner the inspection fee by August 1.

3. Any person who, pursuant to the exception specified in subdivision 2 of this subsection, does not file the tonnage statement or pay the inspection fee, shall file with the Commissioner by August 1 on a form furnished or approved by the Commissioner a purchasing report stating the number of tons of

regulated product purchased by the person during the reporting year and from whom the regulated product was purchased.

4. The person as provided in subdivision 1 of this subsection shall pay to the Commissioner a late fee, amounting to ten percent of the inspection fee due, or fifty dollars, whichever is greater, in addition to the amount of the inspection fee due, if the tonnage statement is not filed, or if said tonnage is misstated, or if the payment of inspection fees is not made within fifteen working days of the specified filing date.

B. Any person who distributes fertilizer in Virginia to a nonlicensee except as exempted in subdivision 2 of subsection A of this section shall pay to the Commissioner an inspection fee of twenty-five cents per ton of fertilizer, including specialty fertilizer, per tonnage reporting year.

C. Any person who distributes in Virginia any soil amendments, soil conditioners, or horticultural growing media to a nonlicensee except as exempted in subdivision 2 of subsection A of this section shall pay to the Commissioner an inspection fee of twenty-five cents per ton of soil amendment, soil conditioner or horticultural growing medium, per tonnage reporting year.

D. Any person who distributes regulated product in the Commonwealth shall pay to the Commissioner an annual minimum inspection fee of thirty-five dollars by August 1.

E. The Commissioner may cancel the license, permit or registration of any person who willfully fails to comply with this chapter by:

1. Failing to file the tonnage report;
2. Falsifying information;
3. Making an inaccurate statement of tonnage distributed in the Commonwealth during any reporting year;
4. Making an inaccurate listing of regulated products for registration;
5. Failing to pay the license, permit, registration or inspection fee;
6. Failing to accurately report any of the information required to be submitted under this chapter;
7. Failing to keep records for a period of three years; or
8. Failing to allow inspection of records by the Commissioner or his agent.

§ 3.1-106.9. Statistical reports.

A. For commercial fertilizer:

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

- a. The county of the nonlicensee consignee;
- b. The amounts (expressed in tons, or decimal portions thereof) of each grade of fertilizer; and
- c. The form in which the person distributed the fertilizer, e.g., in bags, bulk, or in liquid form.

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

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

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

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

B. For all other regulated products:

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

- a. The county of the nonlicensee consignee; and
- b. The amounts (expressed in tons, or decimal portions thereof) of each grade under a given brand of product.

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

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

§ 3.1-106.10. Misbranding.

A. No person may distribute misbranded regulated product. Regulated product shall be deemed to be misbranded if:

1. It has a label which is false or misleading in any particular;
2. It is distributed under the name of another product;
3. It is not labeled as specified in § 3.1-106.5 of this chapter, 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, as prescribed by regulation of the Board.

B. The person whose name is on the label of any regulated product found to be misbranded shall pay to the consumer an assessment equal to ten percent of the retail value of the regulated product found to be in violation of subsection A of this section. The assessment for misbranding shall apply only to the retail sale of any regulated product made from a lot or a portion thereof after the Commissioner or his agent has sampled the lot or a portion thereof.

§ 3.1-106.11. Adulteration.

A. No person may distribute an adulterated regulated product. Regulated product shall be deemed to be adulterated if:

1. It contains any deleterious or harmful ingredient, in sufficient amount to render it injurious to beneficial plant life, when applied in accordance with directions for use on the label;

2. It does not contain an adequate warning statement, or directions for use, on the label sufficient to protect plant life;

3. It has a composition which falls below or differs from that which it is purported to possess by its labeling; or

4. It contains unwanted crop seed, or viable prohibited or restricted noxious weed seeds in amounts exceeding the limits specified in the regulations of the Board.

B. The person whose name is on the label of any regulated product found to be adulterated shall pay to the consumer an assessment equal to ten percent of the retail value of the regulated product found to be in violation of subsection A of this section not to exceed five thousand dollars per occurrence. The assessment for adulteration shall apply only to the retail sale of any regulated product made from a lot or a portion thereof after the Commissioner or his agent has sampled the lot or a portion thereof.

§ 3.1-106.12. Commercial value.

For the purpose of determining the commercial value to be applied in making assessments for variance from guarantee, the Commissioner or his agent shall determine the values per unit of nitrogen (N), available phosphate (P2O5), soluble potash (K2O), and micronutrients in fertilizers in the Commonwealth.

§ 3.1-106.13. Plant food deficiency.

A. The Commissioner or his agent shall calculate assessments for a deficiency of (i) nitrogen (N), (ii) available phosphate (P2O5), or (iii) soluble potash (K2O). If the analysis shows that the fertilizer is deficient (i) in one or more of the guaranteed primary plant nutrients, beyond the investigational allowances and compensations, as established by regulation, or (ii) in that the overall index value of the fertilizer is below the level established by regulation, then an assessment for variance from guarantee of two times the value of such deficiency or deficiencies, not to exceed five thousand dollars per occurrence, shall be paid to the consumer by the guarantor. When the fertilizer is subject to an assessment under both clauses (i) and (ii) of this subsection, the Commissioner or his agent shall calculate assessments under both such subdivisions and the guarantor shall pay to the consumer the larger of the two assessments.

B. If, upon evidence satisfactory to the Commissioner or his agent, a person is found to have (i) altered the content of any fertilizer shipped to him by a registrant or licensee, as the case may be, or (ii) mixed, or commingled, fertilizer from two or more suppliers, such that the result of either alteration changes the analysis of the fertilizer as originally guaranteed, then the person who has altered, mixed or commingled shall become responsible for obtaining a registration or a license, as the case may be; shall be held liable for all assessments; and shall be subject to other provisions of this chapter, including, by way of example, but not by way of limitation, seizure, condemnation, and stop sale.

C. A deficiency in an official sample of mixed fertilizer, resulting from nonuniformity, is not distinguishable from a deficiency due to actual plant nutrient shortage, and any deficiency due to nonuniformity shall be subject to the provisions of this chapter.

§ 3.1-106.14. Assessments for variance from label guarantees.

A. The guarantor shall pay to the consumer all assessments for misbranding, adulteration or plant food deficiency on the lot of regulated product represented by the sample analyzed. The guarantor shall make payment to the consumer within sixty days after the date of notice from the Commissioner to the guarantor. The guarantor shall obtain a receipt documenting the payment of such assessment, which shall be forwarded to the Commissioner within the sixty-day period during which payment to the consumer must be made.

B. If the guarantor cannot locate the consumer within sixty days, the amount of the assessment shall be paid to the Commissioner, who shall deposit the same in the state treasury, and report to the State Comptroller, who shall credit the same to a special fund for the Sale of Substandard Fertilizer. The Commissioner shall pay to the consumer of a lot of regulated product on which the assessment was

made an amount equal to the assessment from the Sale of Substandard Fertilizer Fund if the consumer can be located in ninety days. The State Comptroller shall transfer any balance remaining in said fund for a period of ninety days to a dedicated special fund to the credit of the Department specified by § 3.1-106.22. Any person required to pay an assessment who fails to pay the assessment within the time specified shall pay to the Commissioner a late fee of ten percent of the assessment, or fifty dollars, whichever is greater, in addition to the assessment. The Commissioner may cancel the license of such person who fails to pay the assessment.

§ 3.1-106.15. Stop sale, use, removal, or seizure orders.

The Commissioner or his agent may issue and enforce a written or printed stop sale, use, removal, or seizure order to the owner or custodian of any lot of regulated product distributed in violation of this chapter. The Commissioner or his agent shall release for distribution the regulated product held under a stop sale, use, removal, or seizure order when the requirements of this chapter have been met. If the Commissioner or his agent determines that the regulated product cannot be brought into compliance with the chapter, the Commissioner or his agent shall release the regulated product to be remanufactured, returned to the manufacturer, or destroyed.

§ 3.1-106.16. Seizure and condemnation.

In addition to the provisions of § 3.1-106.17, the Commissioner or his agent may seize any lot of regulated product not in compliance with this chapter. The Commissioner or his agent may make application for seizure to a court of competent jurisdiction in the city or county in which such regulated product is located. In the event that the court finds such regulated product to be in violation of this chapter, and orders the condemnation of such regulated product, the owner of the regulated product shall dispose of the seized regulated product in any manner which, in the opinion of the Commissioner, is consistent with the quality of the regulated product, and which complies with the laws of the Commonwealth. In no instance shall the court order the disposition of such regulated product without first giving the claimant an opportunity to apply to the court for release of such regulated product, or for permission to process or relabel such regulated product, to bring it into compliance with this chapter.

§ 3.1-106.17. Violations.

A. The Commissioner or his agent shall determine from the examination of any regulated product if this chapter, or the regulations issued hereunder, has been violated. The Commissioner or his agent shall give notice of the violation to the registrant or the licensee responsible for the regulated product, as the case may be, and may give notice to the distributor from whom the Commissioner or his agent sampled the regulated product.

B. Any person convicted of violating any of the provisions of this chapter or the regulations issued hereunder shall be guilty of a Class 3 misdemeanor.

C. Nothing in this chapter shall be construed as requiring the Commissioner or his agent to report for prosecution, or for the institution of seizure proceedings, where the Commissioner considers the violations of the chapter to be minor. In such cases, the Commissioner may serve a suitable notice of warning in writing, when he believes that the public interest will be best served by so doing.

D. The Commissioner is hereby authorized to apply for, and the court to grant, a temporary or permanent injunction restraining any person from violating, or continuing to violate, this chapter or any regulation promulgated under this chapter, notwithstanding the existence of other remedies at law.

§ 3.1-106.18. Cancellation of registration or license.

The Commissioner is authorized and empowered to cancel the registration, license or contractor-applicator permit of any person; to cancel the registration of any brand of regulated product; or to refuse to register any brand of regulated product, or issue any license, as herein provided. The Commissioner shall cancel or refuse a license or registration upon satisfactory evidence that the registrant or licensee, as the case may be, has used fraudulent or deceptive practices in the evasion, or attempted evasion, of this chapter or any regulations promulgated thereunder.

§ 3.1-106.19. Publications.

The Commissioner may publish in such forms and with such frequency as he may deem proper: (i) information concerning the distribution of fertilizers and (ii) results of analysis based on official samples of fertilizer distributed within the Commonwealth, as compared with analysis guaranteed under §§ 3.1-106.2 and 3.1-106.5; and commercial value of nutrients as determined under § 3.1-106.12.

§ 3.1-106.20. Exchanges between manufacturers.

Nothing in this chapter shall be construed to restrict or avoid sales or exchanges of regulated product between importers, manufacturers, or manipulators who mix fertilizer materials for sale, or to prevent the free and unrestricted shipments of regulated product to manufacturers or manipulators who have registered their brands, and are licensed, as required by provisions of this chapter.

§ 3.1-106.21. Cooperation with other entities.

The Commissioner may cooperate with, and enter into agreement with, other governmental agencies

of the Commonwealth, other states, and any agency of the federal government, in order to carry out the purpose and provisions of this chapter.

§ 3.1-106.22. Disposition of fees, assessments, and penalties.

All fees, assessments and penalties, including funds transferred from the Fund for the Sale of Substandard Fertilizer pursuant to § 3.1-106.14, received by the Commissioner under this chapter shall be paid into a dedicated special fund in the treasury of the Commonwealth, to the credit of the Department, to be used in carrying out the purpose and provisions of this chapter, to include inspection, sampling and other expenses; except that the Commissioner shall deposit, to the credit of the Virginia Agricultural Foundation Fund established pursuant to § 3.1-22.5, five cents of the inspection fee per ton of regulated product.

§ 9-6.14:4.1. Exemptions and exclusions.

A. Although required to comply with § 9-6.18 of the Virginia Register Act (§ 9-6.15 et seq.), the following agencies are exempted from the provisions of this chapter, except to the extent that they are specifically made subject to §§ 9-6.14:14.1, 9-6.14:21 and 9-6.14:22:

1. The General Assembly.

2. Courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.

3. The Department of Game and Inland Fisheries in promulgating regulations regarding the management of wildlife.

4. The Virginia Housing Development Authority.

5. Municipal corporations, counties, and all local, regional or multijurisdictional authorities created under this Code, including those with federal authorities, except for those created under Chapter 27 (§ 15.1-1228 et seq.) of Title 15.1.

6. Educational institutions operated by the Commonwealth provided that, with respect to § 9-6.14:22, such educational institutions shall be exempt from the publication requirements only with respect to regulations which pertain to (i) their academic affairs; (ii) the selection, tenure, promotion and disciplining of faculty and employees; (iii) the selection of students; and (iv) rules of conduct and disciplining of students.

7. The Milk Commission in promulgating regulations regarding (i) producers' license and base, (ii) classification and allocation of milk, computation of sales and shrinkage, and (iii) class prices for producers' milk, time and method of payment, butterfat testing and differential.

8. The Virginia Resources Authority.

9. Agencies expressly exempted by any other provision of this Code.

10. The Virginia Voluntary Formulary Board in formulating recommendations regarding amendments to the Formulary pursuant to § 32.1-81.

11. The Council on Information Management.

12. The Department of General Services in promulgating standards for the inspection of buildings for asbestos pursuant to § 2.1-526.14.

13. [Repealed.]

14. [Repealed.]

15. The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines pursuant to § 23-9.6:2.

16. The Commissioner of the Department of Agriculture and Consumer Services in adopting regulations pursuant to subsection B of § 3.1-726.

17. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to subsection A of § 3.1-884.21:1 and subsections B and C of § 3.1-106.4.

18. The Board of Medicine when specifying therapeutic pharmaceutical agents for the treatment of certain conditions of the human eye and its adnexa by certified optometrists pursuant to § 54.1-2957.2.

19. The Board of Medicine, in consultation with the Board of Pharmacy, when promulgating amendments to the Physician's Assistant Formulary established pursuant to § 54.1-2952.1.

20. The Boards of Medicine and Nursing in promulgating amendments to the Nurse Practitioner Formulary established pursuant to § 54.1-2957.01.

21. The Virginia War Memorial Foundation.

22. The Virginia Medicaid Prior Authorization Advisory Committee in making recommendations to the Board of Medical Assistance Services regarding prior authorization for prescription drug coverage pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

B. Agency action relating to the following subjects is exempted from the provisions of this chapter:

1. Money or damage claims against the Commonwealth or agencies thereof.

2. The award or denial of state contracts, as well as decisions regarding compliance therewith.

3. The location, design, specifications or construction of public buildings or other facilities.

- 546 4. Grants of state or federal funds or property.
 547 5. The chartering of corporations.
 548 6. Customary military, naval or police functions.
 549 7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of
 550 the Commonwealth.
 551 8. The conduct of elections or eligibility to vote.
 552 9. Inmates of prisons or other such facilities or parolees therefrom.
 553 10. The custody of persons in, or sought to be placed in, mental, penal or other state institutions as
 554 well as the treatment, supervision, or discharge of such persons.
 555 11. Traffic signs, markers or control devices.
 556 12. Instructions for application or renewal of a license, certificate, or registration required by law.
 557 13. Content of, or rules for the conduct of, any examination required by law.
 558 14. The administration of a pool or pools authorized by Article 7.1 (§ 2.1-234.9:1 et seq.) of Chapter
 559 14 of Title 2.1.
 560 15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent
 561 with duly adopted regulations of the State Lottery Board, and provided that such regulations are
 562 published and posted.
 563 16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish,
 564 finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8, Title 28.2.
 565 C. The following agency actions otherwise subject to this chapter and § 9-6.18 of the Virginia
 566 Register Act are excluded from the operation of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter:
 567 1. Agency orders or regulations fixing rates or prices.
 568 2. Regulations which establish or prescribe agency organization, internal practice or procedures,
 569 including delegations of authority.
 570 3. Regulations which consist only of changes in style or form or corrections of technical errors. Each
 571 promulgating agency shall review all references to sections of the Code of Virginia within their
 572 regulations each time a new supplement or replacement volume to the Code of Virginia is published to
 573 ensure the accuracy of each section or section subdivision identification listed.
 574 4. Regulations which:
 575 (a) Are necessary to conform to changes in Virginia statutory law or the appropriation act where no
 576 agency discretion is involved;
 577 (b) Are required by order of any state or federal court of competent jurisdiction where no agency
 578 discretion is involved; or
 579 (c) Are necessary to meet the requirements of federal law or regulations, provided such regulations
 580 do not differ materially from those required by federal law or regulation, and the Registrar has so
 581 determined in writing; notice of the proposed adoption of these regulations and the Registrar's above
 582 determination shall be published in the Virginia Register not less than thirty days prior to the effective
 583 date thereof.
 584 5. Regulations which an agency finds are necessitated by an emergency situation. For the purposes of
 585 this subdivision, "emergency situation" means (i) a situation involving an imminent threat to public
 586 health or safety or (ii) a situation in which Virginia statutory law or the appropriation act or federal law
 587 requires that a regulation shall be effective in 280 days or less from enactment of the law or the
 588 appropriation act, and the regulation is not exempt under the provisions of subdivision C 4 of this
 589 section. In such cases, the agency shall state in writing the nature of the emergency and of the necessity
 590 for such action and may adopt such regulations with the prior approval of the Governor. Such
 591 regulations shall be limited to no more than twelve months in duration. During the twelve-month period,
 592 an agency may issue additional emergency regulations as needed addressing the subject matter of the
 593 initial emergency regulation, but any such additional emergency regulations shall not be effective beyond
 594 the twelve-month period from the effective date of the initial emergency regulation. If the agency wishes
 595 to continue regulating the subject matter governed by the emergency regulation beyond the
 596 twelve-month limitation, a regulation to replace the emergency regulation shall be promulgated in
 597 accordance with Article 2 (§ 9-6.14:7.1 et seq.) of this chapter. The Notice of Intended Regulatory
 598 Action to promulgate a replacement regulation shall be published within sixty days of the effective date
 599 of the emergency regulation, and the proposed replacement regulation shall be published within 180
 600 days after the effective date of the emergency regulation.
 601 6. [Repealed.]
 602 7. Preliminary program permit fees of the Department of Air Pollution Control assessed pursuant to
 603 subsection C of § 10.1-1322.2.
 604 Whenever regulations are adopted under this subsection C, the agency shall state as part thereof that
 605 it will receive, consider and respond to petitions by any interested person at any time with respect to
 606 reconsideration or revision. The effective date of regulations adopted under this subsection shall be in

accordance with the provisions of § 9-6.14:9.3, except in the case of emergency regulations, which shall become effective as provided in § 9-6.14:9 A.

D. The following agency actions otherwise subject to this chapter are excluded from the operation of Article 3 (§ 9-6.14:11 et seq.) of this chapter:

1. The assessment of taxes or penalties under the tax laws.
2. The award or denial of claims for workers' compensation.
3. The grant or denial of public assistance.
4. Temporary injunctive or summary orders authorized by law.
5. The determination of claims for unemployment compensation or special unemployment.
6. The award or denial of individual student loans by the Virginia Education Loan Authority.
7. The determination of applications for guaranty of individual student loans or the determination of default claims by the State Education Assistance Authority.

E. The Marine Resources Commission, otherwise subject to this chapter and § 9-6.18 of the Virginia Register Act, is excluded from the operation of subsection C of this section and of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter; however, the authorization for any general permit or guidelines for activity undertaken pursuant to Title 62.1 by the Marine Resources Commission shall be in accordance with the provisions of this chapter.

F. A regulation for which an exemption is claimed under this section and which is placed before a board or commission for consideration shall be provided at least two days in advance of the board or commission meeting to members of the public that request a copy of that regulation. A copy of that regulation shall be made available to the public attending such meeting.

G. The Joint Legislative Audit and Review Commission shall conduct a review periodically of exemptions and exclusions authorized by this section. The purpose of this review shall be to assess whether there are any exemptions or exclusions which should be discontinued or modified.

H. Minor changes to regulations being published in the Virginia Administrative Code under the Virginia Register Act, Chapter 1.2 (§ 9-6.15 et seq.) of this title, made by the Virginia Code Commission pursuant to § 9-77.10:1 shall be exempt from the provisions of this chapter.

2. That regulations of the Board of Agriculture and Consumer Services in effect on the effective date of this act promulgated pursuant to Chapter 10 (§§ 3.1-74 through 3.1-106) of Title 3.1 of the Code of Virginia, known as Regulations of the Virginia Fertilizer Law shall continue in effect to the extent they are not in conflict with this act, and shall be deemed to be regulations promulgated by the Board under this act.

3. That Chapter 10 (§§ 3.1-74 through 3.1-106) of Title 3.1 of the Code of Virginia is repealed.