CHAPTER 25

Fertilizers

ARTICLE 1

General Provisions

**SECTION 46‑25‑10.** Short title.

 This chapter shall be known as the South Carolina Fertilizer Law of 1954.

HISTORY: 1962 Code Section 3‑501; 1954 (48) 1509.

**SECTION 46‑25‑20.** Definitions.

 When used in this chapter:

 (1) “Commission” means the State Crop Pest Commission or an officer or employee of the commission to whom it delegates its authority.

 (2) “Commercial fertilizer” means a substance containing one or more recognized plant nutrients used for plant nutrient content and designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and other products exempted by regulation of the commission.

 (a) “Fertilizer material” is a commercial fertilizer which either:

 1. contains important quantities of no more than one of the primary plant nutrients, nitrogen, phosphoric acid, and potash;

 2. has approximately eighty‑five percent of its plant nutrient content present in the form of a single chemical compound;

 3. is derived from a plant or animal residue or by‑product or a natural material deposit which has been processed in a way so that its content of primary plant nutrients has not been changed materially except by purification and concentration.

 (b) “Mixed fertilizer” is a commercial fertilizer containing a combination or mixture of fertilizer materials.

 (c) “Specialty fertilizer” is a commercial fertilizer distributed primarily for nonfarm use such as home gardens, lawns, shrubbery, flowers, foliage plants, golf courses, municipal parks, cemeteries, greenhouses, and nurseries.

 (d) “Bulk fertilizer” is a commercial fertilizer distributed in a nonpackaged form.

 (e) “Restricted fertilizer” means a commercial fertilizer having a potential explosive capacity that is determined by the commission to present an unreasonable threat to public safety.

 (3) “Brand” means a term, design, or trademark used in connection with one or several grades of commercial fertilizer.

 (4) “Guaranteed analysis” means the minimum percentage of plant nutrients claimed in accordance with Section 46‑25‑30.

 (5) “Grade” means the percentage of nitrogen, available phosphorus or phosphoric acid, and soluble potassium or soluble potash stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis. Fertilizer materials, bone meal, manures, and similar raw materials may be guaranteed in fractional units.

 (6) “Official sample” means a sample of commercial fertilizer taken by the board or its agent and designated “official” by the board.

 (7) “Ton” means a net weight of two thousand pounds avoirdupois.

 (8) “Percent” means the percentage by weight.

 (9) “Unit” of plant nutrient means twenty pounds or one percent of a ton.

 (10) “Person” includes individual, partnership, association, firm, and corporation.

 (11) “Distributor” means a person who imports, consigns, manufactures, produces compounds of, mixes, or blends commercial fertilizer or who offers for sale, sells, barters, or otherwise supplies commercial fertilizer in this State.

 (12) “Registrant” means the person who registers commercial fertilizer under this chapter.

 (13) “Label” means the display of all written, printed, or graphic matter upon the immediate container or statement accompanying a commercial fertilizer.

 (14) “Labeling” means all written, printed, or graphic matter upon or accompanying commercial fertilizer or advertisements, brochures, posters, television, and radio announcements used in promoting the sale of commercial fertilizers.

 (15) “Investigational allowance” means an allowance for variations inherent in the taking, preparation, and analysis of an official sample of commercial fertilizer.

 (16) “Soil amendment” includes every substance or mixture of substances that is intended to improve the physical characteristics of the soil, except commercial fertilizers, agricultural liming materials, unmanipulated animal manures, unmanipulated vegetable manures, pesticides, and other materials exempted by regulation.

 (17) “Unmanipulated manure” means substances composed primarily of excreta plant remains or mixtures of the substances which have not been processed.

 (18) “Manipulated manures” means substances composed primarily of excreta plant remains or mixtures of the substances which have been processed including the addition of plant foods, drying, grinding, and other means.

 (19) “Director” means the Director of Regulatory and Public Service Programs, Clemson University.

 (20) “Division” means the Division of Regulatory and Public Service Programs, Clemson University, and its employees, agents, and officials.

HISTORY: 1962 Code Section 3‑502; 1952 Code Section 3‑501; 1942 Code Section 6367; 1939 (41) 360; 1954 (48) 1509; 1978 Act No. 578 Section 1; 1988 Act No. 395; 1988 Act No. 595, Section 1, eff June 1, 1988; 1992 Act No. 388, Section 2, eff May 15, 1992; 2002 Act No. 340, Section 2, eff June 30, 2002; 2005 Act No. 107, Section 1, eff June 1, 2005.

**SECTION 46‑25‑30.** Guaranteed analysis of certain plant nutrients.

 Until the commission prescribes the alternative form of “guaranteed analysis”, the term “guaranteed analysis” shall mean the minimum percentage of plant nutrients claimed in the following order and form:

|  |  |  |
| --- | --- | --- |
|  |  |  |
|   | Total nitrogen (N) | percent |
|   | Available phosphoric acid (P(2)O(5)) | percent |
|   | Soluble potash (K(2)O) | percent |

 When the commission finds, after public hearing following due notice, that the requirement for expressing the guaranteed analysis of phosphorus and potassium in elemental form would not impose an economic hardship on distributors and users of fertilizer by reason of conflicting labeling requirements among the states, it may require by regulation thereafter that the guaranteed analysis shall be in the following form:

|  |  |  |
| --- | --- | --- |
|  |  |  |
|   | Total nitrogen (N) | percent |
|   | Available phosphorus (P) | percent |
|   | Soluble potassium (K) | percent |

 The effective date of the regulation shall not be less than six months following the issuance thereof and for a period of two years following the effective date of the regulation the equivalent of phosphorus and potassium may also be shown in the form of phosphoric acid and potash. After the effective date of a regulation issued under the provisions of this section, requiring that phosphorus and potassium be shown in the elemental form, the guaranteed analysis for nitrogen, phosphorus and potassium shall constitute the grade.

 For unacidulated mineral phosphatic materials and basic slag, bone, tankage and other organic phosphate materials, the total phosphoric acid and degree of fineness may also be guaranteed.

 Guarantees for other plant nutrients other than nitrogen, phosphorus, and potassium may be permitted or required by regulation of the commission. The guarantees for other such nutrients must be expressed in the form of the element. The sources of such other nutrients (oxides, salt, chelates, etc.) are required upon registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the commission. When any plant nutrients or other substances or compounds are guaranteed, they are subject to inspection and analysis in accord with the methods and regulations prescribed by the commission.

 In fertilizers designated for use in tobacco products, the chlorine content must be guaranteed by the registrant at the time of registration to comply with existing regulations promulgated under authority of this chapter. A change in the chlorine content must be reported immediately to the commission.

 The commission may require proof of claims made for any fertilizer. If no claims are made, proof of usefulness and value of the fertilizer may be required. For evidence of proof, the commission may rely on scientifically‑ accepted, experimental data and evaluations. The experimental design must be related to conditions applicable to South Carolina. The commission may request assistance from the Director of the Clemson Experiment Station or the Director of the Cooperative Extension Service or persons under their supervision for interpretation of data and for advice of the acceptability of data. Scientific data from any source may be used by the commission as a basis for acceptance or rejection of claims.

HISTORY: 1962 Code Section 3‑503; 1952 Code Section 3‑503; 1942 Code Section 6385; 1939 (41) 360; 1954 (48) 1509; 1978 Act No. 578 Section 2; 1988 Act No. 595, Section 2, eff June 1, 1988; 1992 Act No. 388, Section 3, eff May 15, 1992; 2005 Act No. 107, Section 2, eff June 1, 2005.

**SECTION 46‑25‑40.** Rules and regulations.

 The commission may establish such rules and regulations in regard to the inspection, analysis, distribution, and sale of commercial fertilizer, agricultural lime, and soil amendments as shall not be inconsistent with the provisions of this chapter and as in its judgment will best carry out the requirements thereof.

HISTORY: 1962 Code Section 3‑504; 1952 Code Section 3‑564; 1942 Code Sections 6381, 6384; 1939 (41) 360; 1954 (48) 1509; 1992 Act No. 388, Section 3, eff May 15, 1992.

**SECTION 46‑25‑45.** Commission to delegate duties to director; director to administer and enforce chapter and promulgate regulations.

 The commission shall delegate the duties provided in this chapter to the director who may administer and enforce this chapter and promulgate related regulations.

HISTORY: 1992 Act No. 388, Section 1, eff May 15, 1992.

**SECTION 46‑25‑50.** Sales between and to importers, registrants, and manipulators.

 Nothing in this chapter shall be construed to restrict or avoid sales or exchange of commercial fertilizers to each other by importers, registrants, or manipulators who mix fertilizer materials for sale or as preventing the free and unrestricted shipments of commercial fertilizers to registrants or manipulators who have registered their brands as required by the provisions of this chapter.

HISTORY: 1962 Code Section 3‑505; 1954 (48) 1509.

**SECTION 46‑25‑60.** Relief from liability of registrant for distributor’s alteration of content or labeling of fertilizer.

 If a penalty is incurred as a result of a distributor altering the content or labeling of a commercial fertilizer shipped in bulk to the distributor by a registrant, the commission or its authorized representative may relieve the registrant of the liability for payment of the penalty and, in lieu thereof, assess the penalty against the distributor who deliberately or inadvertently altered the fertilizer or its labeling.

HISTORY: 1962 Code Section 3‑506; 1952 Code Section 3‑548; 1942 Code Section 6378; 1939 (41) 360; 1954 (48) 1509; 1988 Act No. 595, Section 3, eff June 1, 1988; 1992 Act No. 388, Section 3, eff May 15, 1992.

**SECTION 46‑25‑70.** Misbranding.

 A commercial fertilizer is misbranded if it carries any false or misleading statement upon or attached to the container, or, if false or misleading statements concerning its agricultural value are made on the container or in any advertising matter accompanying or associated with the commercial fertilizer. It shall be unlawful to distribute a misbranded commercial fertilizer.

HISTORY: 1962 Code Section 3‑507; 1952 Code Section 3‑586; 1942 Code Section 6376; 1939 (41) 360; 1954 (48) 1509.

**SECTION 46‑25‑75.** Certain information to be published.

 The commission shall publish at least annually and in such forms as may be deemed proper (1) information concerning the distribution of commercial fertilizers; (2) results of analysis based on official samples of commercial fertilizers distributed within the State as compared with the analysis guaranteed under Sections 46‑25‑210 and 46‑25‑410.

HISTORY: 1978 Act No. 578 Section 3; 1992 Act No. 388, Section 3, eff May 15, 1992.

**SECTION 46‑25‑80.** Penalties for violations of chapter.

 A person or dealer who violates the provisions of this chapter is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

HISTORY: 1962 Code Section 3‑508; 1952 Code Section 3‑504; 1942 Code Section 6385‑1; 1939 (41) 360; 1954 (48) 1509; 1993 Act No. 184, Section 241, eff January 1, 1994.

ARTICLE 3

Registration; Brand Name or Trademark

**SECTION 46‑25‑210.** Registration of fertilizer; application; fee.

 (A) Each company guaranteeing commercial fertilizer offered for sale, sold, or distributed in this State must be registered with the State. The application for registration must be submitted to the commission on forms furnished by the commission. Upon approval by the commission or its authorized agent, a copy of the registration must be furnished to the applicant.

 (1) A person wishing to become a registrant, before engaging in business, shall secure a license or renewal from the commission or its authorized representative. The application for the license must be on forms furnished by and contain the information prescribed by the commission or its authorized representative. The application must be accompanied by an annual registration fee in accordance with the following schedule:

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
|   | Tonnage Volume of Registrant | License Fee |   |
|   | 0‑5,000 tons | One hundred dollars |   |
|   | 5,001‑25,000 tons | Two hundred dollars |   |
|   | More than 25,000 tons | Four Hundred dollars |   |

 A new registrant shall pay a license fee of one hundred dollars. On renewal the fee must be based on the tonnage volume of the registrant in accordance with the schedule above. The tonnage is determined from the monthly tonnage reports filed by the registrant in accordance with this chapter. The license must be renewed annually and is effective from July first through June thirtieth of the following year. Fees must be paid by the first day of July of each calendar year. The license may be revoked for a violation of a provision of this chapter or regulations promulgated by the authority.

 (2) All brands and grades of specialty fertilizer offered for sale, sold, or distributed in this State must be registered on forms supplied by the commission or its agent. All specialty fertilizers sold or distributed in this State are subject to an annual registration fee of thirty dollars for each product.

 (B)(1) A person desiring to become a distributor of fertilizer as defined in this chapter, except for those distributing specialty fertilizers only in packages of forty pounds or less, shall obtain an annual permit from the commission before engaging in such business. The exception for specialty fertilizer sales does not include ammonium nitrate or urea as a single nutrient fertilizer. Permits shall not be required for persons distributing only specialty fertilizers in packages of forty pounds or less; however, no person shall distribute restricted fertilizers in any quantity without a restricted fertilizer permit. Applications for a permit to do such business in South Carolina shall be submitted on application forms furnished by the commission or its agent. Upon approval of the commission, a copy of the permit shall be furnished to the applicant and when furnished, shall authorize the person receiving it to do business as a distributor. All permits shall expire on June thirtieth of each year.

 (2) The two authorized categories of permits are a general fertilizer permit and a restricted fertilizer permit. A person who engages in the distribution of commercial fertilizers without a valid permit must have all commercial fertilizer placed under a stop sale order until a valid permit is obtained.

 (3) A general fertilizer permit authorizes the permit holder to engage in the distribution of commercial fertilizers except those determined by the commission to be restricted fertilizers as defined in this chapter. This permit category is included in the application of all fertilizer registrants. A person holding a general fertilizer permit may not engage in the distribution of restricted fertilizers. No fee will be charged for this permit.

 (4) A restricted fertilizer permit authorizes the permit holder to engage in the distribution of all commercial fertilizers, including those that are designated as restricted fertilizers. A restricted fertilizer permit holder may refuse to sell to persons attempting to purchase restricted fertilizers out of season, in unusual quantities, or under suspect purchase patterns. A restricted fertilizer permit holder must record a valid state or federal driver’s license number, or other picture identification card number approved for purchaser identification use by the commission, for the purchaser of restricted fertilizer. This information and additional records as set forth by the commission must be maintained for a minimum of two years. A registrant may obtain this permit by indication of intent to distribute restricted fertilizers on the application for registration. No distributor or registrant shall supply restricted fertilizers to a distributor or other persons or entities for resale who do not hold a valid restricted fertilizer permit. The annual permit fee shall be two hundred fifty dollars. Fertilizer registrants shall not be subject to permitting fees.

 (5) Notwithstanding another provision of law, the Department of Motor Vehicles must provide to the director access to identifying information and drivers’ license records as needed to verify the identity of permit holders and persons purchasing restricted fertilizer. For homeland security purposes, identifying information relating to the holder of a general or restricted fertilizer permit is exempt from disclosure under the Freedom of Information Act.

 (C) Except as provided in this section, a person who violates a provision of this section is guilty of a misdemeanor and, upon conviction, is subject to the criminal penalties prescribed in Section 46‑9‑90(A) and the civil penalties prescribed by this chapter.

HISTORY: 1962 Code Section 3‑511; 1952 Code Sections 3‑512, 3‑516; 1942 Code Sections 6354, 6360; 1939 (41) 360; 1954 (48) 1509; 1978 Act No. 578 Section 4; 1988 Act No. 595, Section 4, eff June 1, 1988; 1992 Act No. 388, Section 3, eff May 15, 1992; 2002 Act No. 340, Section 3, eff June 30, 2002; 2008 Act No. 353, Section 2, Pt 30A.1, eff July 1, 2008.

**SECTION 46‑25‑240.** When registration and sale may be prohibited.

 The commission may prohibit the registration and sale of any fertilizer which has a misleading or deceptive trademark or commercial brand name, firm name, or carries exaggerated claims, or contains materials other than recognized plant nutrients which are injurious to growing plants.

HISTORY: 1962 Code Section 3‑514; 1952 Code Section 3‑515; 1942 Code Section 6359; 1939 (41) 360; 1954 (48) 1509; 1992 Act No. 388, Section 3, eff May 15, 1992.

**SECTION 46‑25‑250.** Revocation or refusal of registration for fraud.

 Where it shall appear to the commission that any registrant has been persistently fraudulent in his dealings, the commission may revoke or refuse to register such registrant.

HISTORY: 1962 Code Section 3‑515; 1952 Code Section 3‑520; 1942 Code Section 6382; 1939 (41) 360; 1954 (48) 1509; 1992 Act No. 388, Section 3, eff May 15, 1992.

**SECTION 46‑25‑260.** Exclusive use of brand name or trademark.

 The brand name or trademark registered by a person shall not be entitled to registration by another; and the person having first registered and used the brand name or trademark shall be entitled to it, even should the brand name or trademark not be offered for current registration.

HISTORY: 1962 Code Section 3‑516; 1952 Code Section 3‑517; 1942 Code Section 6357; 1939 (41) 360; 1954 (48) 1509.

ARTICLE 5

Labels, Tags, and Permit

**SECTION 46‑25‑410.** Information required on containers or with bulk shipments.

 All commercial fertilizer distributed in this State in containers shall have placed on or affixed to the container a label setting forth in clearly legible and conspicuous form (a) the net weight; (b) the brand and grade; (c) the guaranteed analysis; (d) the name and address of the registrant.

 When distributed in bulk, a written or printed statement of the information required by items (a), (b), (c) and (d) of the first paragraph of this section shall accompany delivery and be supplied to the purchaser.

HISTORY: 1962 Code Section 3‑531; 1952 Code Sections 3‑531, 3‑532; 1942 Code Section 6362; 1939 (41) 360; 1954 (48) 1509; 1978 Act No. 578 Section 5.

ARTICLE 7

Standards

**SECTION 46‑25‑510.** Sale or distribution of certain superphosphate prohibited.

 Superphosphate containing less than eighteen percent available phosphoric acid may not be offered for sale, sold, or distributed in this State.

HISTORY: 1962 Code Section 3‑541; 1952 Code Section 3‑541; 1942 Code Section 6363; 1939 (41) 360; 1945 (44) 97; 1954 (48) 1509; 1978 Act No. 578 Section 6; 1988 Act No. 595, Section 5, eff June 1, 1988.

**SECTION 46‑25‑520.** Regulations concerning minimum standards for certain fertilizer material.

 Minimum standards of soda, sulfate of ammonia and superphosphate and other fertilizer materials may be established by regulation.

HISTORY: 1962 Code Section 3‑542; 1952 Code Section 3‑542; 1942 Code Section 6363; 1939 (41) 360; 1945 (44) 97; 1954 (48) 1509; 1978 Act No. 578 Section 7.

**SECTION 46‑25‑540.** Filler.

 It shall be unlawful for any person to manufacture, offer for sale, or sell in this State any commercial fertilizer containing any substance used as a filler that is injurious to crop growth or deleterious to the soil, or to use in such commercial fertilizer as a filler any substance that contains inert plant nutrient material or any other substance for the purpose of or with the effect of deceiving or defrauding the purchaser. The commission shall determine what inert material or substance is injurious or objectionable.

HISTORY: 1962 Code Section 3‑544; 1952 Code Section 3‑544; 1942 Code Section 6364; 1939 (41) 360; 1954 (48) 1509; 1992 Act No. 388, Section 3, eff May 15, 1992.

**SECTION 46‑25‑570.** Wet or bad mechanical condition.

 No commercial fertilizer shall be offered for sale which contains such an amount of water as to render the handling or manipulation of such commercial fertilizer difficult, or to cause the clogging of fertilizer distributors by reason of its bad mechanical condition; such wet or bad mechanical condition of any commercial fertilizer shall be carefully observed by all fertilizer inspectors at the time of drawing their samples, and be reported to the commission or its duly authorized representative, who, if it confirms the opinion of the inspector, shall forbid the sale of that lot so inspected.

HISTORY: 1962 Code Section 3‑547; 1952 Code Section 3‑547; 1942 Code Section 6383; 1939 (41) 360; 1954 (48) 1509; 1992 Act No. 388, Section 3, eff May 15, 1992.

ARTICLE 9

Analyses and Inspections

**SECTION 46‑25‑710.** Analyses of official samples; inspectors, chemists and other personnel; reports.

 The commission shall cause one or more analyses to be made annually of such commercial fertilizers sold, or offered for sale under the provisions of this chapter, as may be sampled under its direction and in accordance with such regulations as it may adopt. For this purpose, the commission, or a committee thereof, shall appoint or cause to be appointed a sufficient number of administrative personnel, inspectors, and chemists who shall procure and analyze and otherwise experiment with samples of such commercial fertilizers in accordance with the methods prescribed by the commission or its duly authorized agent and who shall perform such other duties as the commission may direct. The analyses of all officially drawn samples will be compiled annually and published as directed by the commission.

HISTORY: 1962 Code Section 3‑561; 1952 Code Section 3‑561; 1942 Code Section 6368; 1939 (41) 360; 1954 (48) 1509; 1992 Act No. 388, Section 3, eff May 15, 1992.

**SECTION 46‑25‑720.** Entering premises; inspecting and sampling.

 In order to carry out the provisions of this chapter, any officer or agent of the commission or of a committee thereof authorized by the commission for the purpose, may at any hour during the day or night enter any factory, plant, car, or other place in which any commercial fertilizer or substance designed or intended for use as a fertilizer is stored, shipped, sold, or used, and may inspect and sample the contents and operation thereof; and it is hereby made a condition to the shipment or delivery for shipment of any fertilizer from any such factory, plant, car, or truck that such inspection and sampling be permitted by the owner or operator thereof.

HISTORY: 1962 Code Section 3‑562; 1952 Code Section 3‑562; 1942 Code Section 6372; 1939 (41) 360; 1954 (48) 1509; 1992 Act No. 388, Section 3, eff May 15, 1992.

ARTICLE 11

Inspection Tax; Reports and Records

**SECTION 46‑25‑810.** Inspection tax and tonnage reports; collection fee.

 For the purpose of carrying out the provisions of this chapter, all registrants or guarantors who distribute or sell any commercial fertilizer in South Carolina shall pay to the division an inspection tax of fifty cents for each ton of commercial fertilizer sold. A report of tonnage is due and the inspection tax payable quarterly for periods ending September thirtieth, December thirty‑first, March thirty‑first, and June thirtieth. The report is due within thirty days following the end of each quarter covering tonnage of commercial fertilizer sold during the preceding quarter by the registrant or guarantor transacting, distributing, or selling to a nonregistrant. If the tonnage report is not filed and the payment of inspection taxes is not made within fifteen days after the date due, a collection fee amounting to ten percent of the amount due must be assessed against the guarantor, and the amount of fees due constitutes a debt and becomes the basis of a judgment against the guarantor. If the tonnage report is not filed and the payment of the inspection tax and collection fee is not made within thirty days after the date due, the registration of the commercial fertilizer registered by the delinquent guarantor is automatically canceled. If the report is false, fifteen days after due written notice and opportunity for hearing have been given, the commission may cancel the registration of commercial fertilizer registered by the delinquent guarantor.

HISTORY: 1962 Code Section 3‑571; 1952 Code Sections 3‑502, 3‑566; 1942 Code Sections 6366, 6371; 1939 (41) 360; 1954 (48) 1509; 1992 Act No. 388, Section 3, eff May 15, 1992; 2002 Act No. 340, Section 5, eff June 30, 2002; 2005 Act No. 107, Section 3, eff June 1, 2005.

**SECTION 46‑25‑815.** Fertilizer inspection fee.

 In addition to the inspection tax on the distribution or sale of commercial fertilizer imposed pursuant to Section 46‑25‑810, there is imposed an inspection fee equal to one dollar a ton on the distribution or sale of commercial fertilizer in this State.

 The provisions of Section 46‑25‑810 with respect to the liability for reporting, payment, collection, and enforcement of the fifty cents a ton inspection fee on the distribution or sale of commercial fertilizer in this State are deemed to apply to the additional one dollar a ton inspection fee imposed pursuant to this section. All revenues of the fee imposed pursuant to this section must be retained and expended by the Division of Regulatory and Public Service Programs of Clemson University (Clemson PSA) for Clemson PSA programs. Unexpended revenues of this fee at the end of a fiscal year carry forward to the succeeding fiscal year for Clemson PSA and must be used for the same purposes.

HISTORY: 2014 Act No. 140 (S.699), Section 1, eff July 1, 2014.

**SECTION 46‑25‑820.** Annual registration fee and inspection tax on packages containing ten pounds or less.

 On individual packages of commercial fertilizer containing ten pounds or less, there must be paid in lieu of the fifty cents a ton inspection tax a combined annual registration fee and inspection tax of sixty dollars for each brand and grade sold or distributed. Where fertilizer is sold or distributed in packages of ten pounds or less as well as in packages over ten pounds, this annual registration and inspection tax of sixty dollars applies only to that portion sold in packages of ten pounds or less. That portion sold in packages over ten pounds is subject to the same regulation requirement provided in Section 46‑25‑210 and an inspection tax as provided in Section 46‑25‑810.

HISTORY: 1962 Code Section 3‑572; 1954 (48) 1509; 1988 Act No. 595, Section 6, eff June 1, 1988; 2008 Act No. 353, Section 2, Pt 30A.2, eff July 1, 2008.

**SECTION 46‑25‑825.** Registration of separately identified products.

 Each separately identified product shall be registered before being distributed in this State. The application for registration shall be submitted to the commission on the form furnished or approved by the commission and shall be accompanied by a fee of one hundred dollars per product. Upon approval by the commission, a copy of the registration shall be furnished to the applicant. All registrations expire on June thirtieth of the following year. Each manufacturer shall submit to the commission a copy of labels and advertising literature with the registration request for each soil amendment.

HISTORY: 2008 Act No. 353, Section 2, Pt 30A.5, eff July 1, 2008.

**SECTION 46‑25‑830.** Reports of sales to nonregistrants.

 The registrant or guarantor transacting, distributing, or selling commercial fertilizer to a nonregistrant shall mail to the commission or its duly authorized representative a report showing the following information: name and county of consignee, amount (tons) by grade, and analysis of commercial fertilizer. The report must be made on a special summary form provided by the commission.

 Registrants using computers or other mechanical means of compiling accurate fertilizer tonnage data, upon approval of the commission, may submit a summary of the tonnage, along with all other information required for the reporting system, other than the name of the consignee, not later than fifteen days after the first of the following month, in lieu of the special summary form as otherwise required.

HISTORY: 1962 Code Section 3‑573; 1954 (48) 1509; 1970 (56) 2399; 1988 Act No. 595, Section 7, eff June 1, 1988; 1992 Act No. 388, Section 3, eff May 15, 1992.

**SECTION 46‑25‑840.** Financial statement or bond; records.

 In order to guarantee faithful performance, each registrant must be able to furnish a satisfactory financial statement or surety bond to the commission or its authorized representative. The registrant must also satisfy the commission or its duly authorized representative that he has a good bookkeeping system and keeps such records as may be necessary to indicate accurately the tonnage of commercial fertilizer sold.

HISTORY: 1962 Code Section 3‑574; 1954 (48) 1509; 1992 Act No. 388, Section 3, eff May 15, 1992.

**SECTION 46‑25‑850.** Examination of registrant’s records.

 The commission or its authorized representative shall have authority to examine the registrant’s records and verify the tonnages of commercial fertilizer manufactured, stored, handled, or sold.

HISTORY: 1962 Code Section 3‑575; 1954 (48) 1509; 1992 Act No. 388, Section 3, eff May 15, 1992.

**SECTION 46‑25‑860.** Information confidential.

 Any information as to the amount of commercial fertilizer sold and business practices of any guarantor obtained from tonnage reports or from inspection of records and books shall remain confidential and shall not be revealed by the commission or its representatives to the public, persons, or other guarantors.

HISTORY: 1962 Code Section 3‑576; 1954 (48) 1509; 1992 Act No. 388, Section 3, eff May 15, 1992.

**SECTION 46‑25‑870.** Exemptions.

 Nothing in this article shall interfere with fertilizer passing through this State in transit; nor shall it apply to the delivery of commercial fertilizer moving between registrants.

HISTORY: 1962 Code Section 3‑577; 1952 Code Section 3‑566; 1942 Code Section 6366; 1939 (41) 360; 1954 (48) 1509.

ARTICLE 13

Penalties, Actions, and Orders

**SECTION 46‑25‑1010.** Penalties for plant nutrient deficiencies and other acts; appeals; distribution of penalty sums to consumers.

 (1) If the analysis shall show a commercial fertilizer is deficient (a) in one or more of its primary plant foods (NPK) beyond the “investigational allowances” as established by regulation or (b) if the overall commercial value of the fertilizer is below the level established by regulations, a penalty of three times the commercial value of such deficiency or deficiencies shall be assessed. When a fertilizer is subject to a penalty under both (a) and (b) the larger penalty shall apply.

 (2) Deficiencies beyond the investigational allowances as established by regulation in any other constituent covered under Section 46‑25‑30 which the registrant is required to or may guarantee, shall be evaluated and penalties prescribed therefor by the commission.

 (3) If the chlorine content of any lot branded for tobacco shall exceed the maximum amount guaranteed by more than one‑half of one percent, the registrant shall be liable for a penalty of ten percent of the value of the fertilizer for each additional one‑half of one percent of excess or fraction thereof. All penalties assessed under this section shall be paid to the consumer of the lot of fertilizer represented by the sample analyzed.

 (4) Nothing contained in this section shall prevent any person from appealing to a court of competent jurisdiction praying for judgment as to the justification of such penalties.

 (5) All penalties must be paid within thirty‑one calendar days after notice of assessment is made. Failure to pay penalties after notice may result in the revocation of the registrant’s license. All penalties assessed under this article for deficiencies in guaranteed analysis of a commercial fertilizer must be entirely for the benefit of the ultimate consumer of the fertilizer. All penalties must be paid by the registrant, manufacturer, distributor, or dealer to the purchaser through the commission, or its authorized representative, by a check or by a credit memorandum in the case of indebtedness of the purchaser to the seller. If the purchaser is not identified, the penalty must be paid by check to the State Treasurer who in turn shall send it to the commission or its authorized representative. The minimum penalty for any deficiency is ten dollars.

HISTORY: 1962 Code Section 3‑581; 1952 Code Section 3‑577; 1942 Code Section 6373; 1939 (41) 360; 1954 (48) 1509; 1978 Act No. 578 Section 8; 1988 Act No. 595, Section 8, eff June 1, 1988; 1992 Act No. 388, Section 3, eff May 15, 1992.

**SECTION 46‑25‑1060.** Determination and publication of commercial values to use in assessing penalties.

 For the purposes of determining the commercial values to be applied under the provisions of this chapter, the commission shall determine and publish annually the relative commercial values per unit of nitrogen, phosphoric acid, and potash in commercial fertilizers in this State. The values so determined and published shall be used in assessing penalties.

HISTORY: 1962 Code Section 3‑586; 1952 Code Section 3‑576; 1942 Code Section 6373; 1939 (41) 360; 1954 (48) 1509; 1992 Act No. 388, Section 3, eff May 15, 1992.

**SECTION 46‑25‑1080.** Penalty for shortage in weight.

 If any commercial fertilizer in the possession of the consumer is found by the commission to be short in weight, the registrant of such commercial fertilizer shall, within thirty days after official notice from the commission or its duly authorized representative, pay to the consumer a penalty equal to four times the value of the actual shortage. Underweight commercial fertilizer stored or offered for sale, other than in the possession of the consumer, shall be deemed misbranded.

HISTORY: 1962 Code Section 3‑588; 1952 Code Section 3‑575; 1942 Code Section 6375; 1939 (41) 360; 1954 (48) 1509; 1992 Act No. 388, Section 3, eff May 15, 1992.

**SECTION 46‑25‑1090.** Forfeiture for selling, transporting, or receiving improperly branded, tagged, or misbranded fertilizer.

 Every person or common carrier who shall sell, offer for sale, or transport in this State any commercial fertilizer without being properly branded or having attached thereto such labels and tags, as required by law, or any person who shall receive any such fertilizer may be required to forfeit to the State a sum not to exceed the selling price of each separate package sold, offered for sale, or received, to be recovered by suit brought in the name of the State in any court of competent jurisdiction. Such forfeitures, when collected, shall be paid to the State Treasurer, who shall hold them subject to the order of the commission. Provided, further, that the penalty defined in this section shall apply also to any misbranded fertilizer, a fertilizer being deemed to be misbranded if it carries any false or misleading statement upon or attached to the package.

HISTORY: 1962 Code Section 3‑589; 1952 Code Section 3‑586; 1942 Code Section 6376; 1939 (41) 360; 1954 (48) 1509; 1992 Act No. 388, Section 3, eff May 15, 1992.

**SECTION 46‑25‑1100.** Actions by State to recover fines and penalties; liens.

 The State may maintain an action in any court of competent jurisdiction against the vendor or owner of any commercial fertilizer sold, offered, or exposed for sale in this State or shipped or transported within or into the State in violation of law, to recover the fines and penalties due for the illegal sale, shipment, or transportation thereof regardless of the domicile or place of residence of such owner, or vendor, and shall have a lien upon such commercial fertilizer, as well as upon any other commercial fertilizers to be found within the State belonging to the offending party or parties, to secure the payment of such fines or penalties and costs and expense of such action, which lien shall be enforced by attachment of such commercial fertilizer under a writ of attachment to be issued in accordance with the practice prescribed in Sections 15‑19‑10 to 15‑19‑560, except that no security as required of other plaintiffs by Section 15‑19‑80, need be given by the State in such action.

HISTORY: 1962 Code Section 3‑590; 1952 Code Section 3‑582; 1942 Code Section 6377; 1939 (41) 360; 1954 (48) 1509.

**SECTION 46‑25‑1110.** Seller deemed agent for service of process on out‑of‑state manufacturer.

 Any seller of commercial fertilizers manufactured beyond this State shall be taken and deemed to be an agent of the manufacturer of such fertilizer for the purpose of the service of process and of such papers as may be necessary in the commencement of any action or suit in any court of competent jurisdiction authorized by this chapter.

HISTORY: 1962 Code Section 3‑591; 1952 Code Section 3‑582; 1942 Code Section 6377; 1939 (41) 360; 1954 (48) 1509.

**SECTION 46‑25‑1120.** Analysis of fertilizer ordered sold.

 If there be judgment in favor of this State, as plaintiff, in an action brought under Section 46‑25‑1100 and the commercial fertilizers be ordered sold under execution to satisfy such judgment, an inspector shall, under direction of the commission, prior to the sale, draw proper samples from such commercial fertilizer, and cause them to be analyzed by the University, and shall affix to the package thereof a statement of the result of such analysis on each package as required by this chapter, so that the purchaser at the sheriff’s or constable’s sale may purchase such commercial fertilizer under a full guaranteed analysis as provided by law.

HISTORY: 1962 Code Section 3‑592; 1952 Code Section 3‑584; 1942 Code Section 6377; 1939 (41) 360; 1954 (48) 1509; 1992 Act No. 388, Section 3, eff May 15, 1992.

**SECTION 46‑25‑1130.** Remission of certain penalties.

 The commission may remit, in whole or in part, upon payment of the expenses incident to an investigation, any penalty provided for in this article except the penalties provided for the deficiency in analysis, where the offending person or registrant is able to show that its violation of this chapter was beyond its reasonable ability to prevent; such remission of penalty by the commission to be on such condition as to it may seem equitable and fair.

HISTORY: 1962 Code Section 3‑593; 1952 Code Section 3‑585; 1942 Code Section 6377; 1939 (41) 360; 1954 (48) 1509; 1992 Act No. 388, Section 3, eff May 15, 1992.

**SECTION 46‑25‑1140.** “Stop sale, use, or removal” orders.

 The commission or its authorized representative may issue and enforce a written or printed “stop sale, use or removal order” to the owner or custodian of any lot of commercial fertilizer and hold at a designated place when the commission or its authorized representative finds such commercial fertilizer is being offered or exposed for sale in violation of any of the provisions of this chapter until the law has been complied with and the commercial fertilizer is released in writing by the commission or its duly authorized representative, or the violation has been otherwise legally disposed of by written authority. The commission or its duly authorized representative shall release the commercial fertilizer so withdrawn when the requirements of the provisions of this chapter have been complied with and all costs, expenses, and penalties incurred in connection therewith have been guaranteed or paid by the registrant.

HISTORY: 1962 Code Section 3‑594; 1954 (48) 1509; 1992 Act No. 388, Section 3, eff May 15, 1992.

**SECTION 46‑25‑1150.** Distribution of adulterated fertilizer prohibited.

 No person shall distribute an adulterated fertilizer product. A commercial fertilizer 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 or if adequate warning statements or directions for use, which may be necessary to protect plant life, are not shown on the label.

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

 (3) It contains unwanted crop seed or weed seed.

 In the event a penalty is incurred as a result of a distributor altering the content of a commercial fertilizer shipped to him by a registrant in bulk so that the result of the alteration changes the analysis of the commercial fertilizer as originally guaranteed by the registrant, the commission is hereby empowered to relieve the registrant of the liability for payment of the penalty and in lieu thereof assess the penalty against the distributor who altered the commercial fertilizer in the same manner and under the same conditions as provided by this article for assessing penalties against a registrant.

 The provisions of this section shall not be construed to limit, waive or in any manner modify the common law right of any person to sue for and collect damages resulting from the use of a defective or adulterated fertilizer product.

HISTORY: 1978 Act No. 578 Section 9; 1992 Act No. 388, Section 3, eff May 15, 1992.

**SECTION 46‑25‑1160.** Use of regulated materials not meeting requirements prohibited; penalties.

 It is unlawful for a person to receive or use any materials regulated by this chapter when he knows or should know that the material, the manufacturer, the distributor, or the deliverer fails to meet the requirements set forth in this chapter or in the regulations promulgated by the commission. A person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not to exceed one thousand dollars.

HISTORY: 1988 Act No. 595, Section 9, eff June 1, 1988; 1992 Act No. 388, Section 3, eff May 15, 1992.

**SECTION 46‑25‑1170.** Civil penalty in addition to other penalties.

 In addition to a denial, suspension, revocation, or modification of a provision of a license, permit, or certificate, or any other penalty provided in this chapter, a person who violates a provision of this chapter may be assessed a civil penalty by the director of not more than one thousand dollars for each offense.

HISTORY: 1988 Act No. 595, Section 9, eff June 1, 1988; 2002 Act No. 340, Section 4, eff June 30, 2002.