

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

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JUN 29 2 38 PM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

RULE TYPE: Legislative Rule; CITE AUTHORITY WV Code 19-15-12

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 6 Commercial
TITLE OF RULE BEING AMENDED: Sale and Distribution of Fertilizer

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

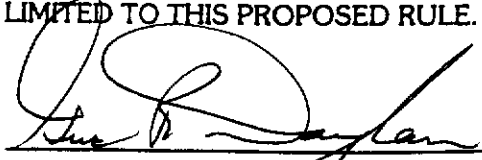
TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 31, 2000 AT 2:00 P.M.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Commissioner Gus R. Douglass
Room 28, Main Unit
State Capitol
Charleston, WV 25305-0170
(304) 558-2227

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

State of West Virginia
DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner

David E. Miller
Deputy Commissioner

Janet L. Fisher
Assistant Commissioner

SALE AND DISTRIBUTION OF FERTILIZER
TITLE 61 – SERIES 6
REVIEW OF PROPOSED CHANGES AND STATEMENT OF
CIRCUMSTANCES
JUNE 29, 2000

In accordance with §19-15-12 of the West Virginia Fertilizer Law, the commissioner may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of the code. The commissioner may enforce such rules relating to investigational allowances, definitions, records, fees and the distribution of regulated products as may be necessary to carry into effect the full intent and meaning of this article, including protection of the environment. The West Virginia Fertilizer Law passed into law on February 16, 2000, and became effective May 16, 2000. The following is a brief summary of the proposed changes to the Legislative Rule:

New rules have been added relating to the regulation of soil amendments and horticultural growing media. The rules cover labeling, directions for use, safe use, sampling, testing, deficiencies, and fees.

All fees are now in the Rule, and include:

	<u>Current Fee</u>	<u>Proposed Fee</u>
Fertilizer Formulation Permit	\$25.00	\$35.00
Large Package Product Registration	\$ 2.00	\$ 4.00
Small Package Product Registration	\$15.00	\$30.00
Soil Amendment, Compost, Horticultural Growing Media Product Registration	N/A	\$75.00
Registration Late Fee	N/A	\$10.00
Large Package Quarterly Inspection Fee	\$0.30 / ton	\$0.40 / ton
Small Package Quarterly Inspection Fee	\$15.00 / brand	SAME
Quarterly Inspection Fee Late Fee	10% additional	SAME
Short In Weight	4 X value of shortage	SAME
Fertilizer Deficiency Penalty	3 X value of deficiency	SAME
Soil Amendment Deficiency Penalty	N/A	3 X value of deficiency

Criminal and Civil Penalties are now in the Rule, and include:

	<u>First Offense</u>	<u>Subsequent Offenses</u>	<u>Imprisonment</u>
Criminal	\$100.00-200.00	\$200.00-500.00	≤ 6 months
Civil	≤ \$500.00	≤ \$1,000.00	

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Sale and Distribution of Fertilizer

Type of Rule: Legislative Interpretive Procedural

Agency West Virginia Department of Agriculture

Address 1900 Kanawha Blvd., East
Charleston, WV 25305-0170

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

The West Virginia Department of Agriculture currently has field investigators that perform fertilizer and other ag material inspections. No additional personnel would be needed to complete these inspections.

3. Objectives of these rules:

Due to waste products being reconditioned and sold as beneficial product for plants and soil it is necessary that we ensure no harm will be incurred to our state's plant, water, and soil.

Rule Title: Sale and Distribution of Fertilizer

4. **Explanation of Overall Economic Impact of Proposed Rule.**

A. **Economic Impact on State Government.**

Increase revenues to cover cost of laboratory equipment, mailings, and computer programs to support data. Increase in revenues for entire program would be \$95,432.60.

B. **Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.**

A registration increase of \$2.00 per brand for products over 10 lbs.; \$15.00 for products under 10 lbs.; increase tonage per ton by \$0.10 and add registration fees of \$75.00 for soil amendments and horticultural growing medium.

C. **Economic Impact on Citizens/Public at Large.**

May see a slight increase in cost of these materials, however they will be monitored and our state will not be a dumping ground for waste products that may be harmful to our plants, soil and water.

Date:

6/29/00

Signature of Agency Head or Authorized Representative

Steve R. Daylan

TITLE 61
LEGISLATIVE RULES
DEPARTMENT OF AGRICULTURE

SERIES 6
SALE AND DISTRIBUTION OF COMMERCIAL FERTILIZER

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§61-6-1. General.

1.1. Scope. These legislative regulations rules provide for regulation of commercial-fertilizer and fertilizer materials, soil amendments, and horticultural growing media; provide for registration of firms who formulate blends according to consumer specifications and establish registration fees; provide for labeling requirements, provide for dissemination of sampling and analysis data; provide for guarantees of minor or trace elements; establish commercial values for plant food ingredients; establish investigational allowances for secondary and micronutrient element guarantees and require conformity to terms and definitions as commonly accepted by the Association of American Plant Food Control Officials.

1.2. Authority. W. Va. Code §19-15-45 12

1.3. Filing Date. ~~June 13, 1989~~

1.4. Effective Date. ~~June 13, 1989~~

1.5. ~~Amendment of former regulation in this legislative regulation amending the following: Sale and Distribution of Commercial Fertilizer, Series 6, by amending Section 4.2.~~

§61-6-2. Administrative.

2.1. Article fifteen, chapter nineteen, Code of West Virginia places enforcement of the West Virginia Fertilizer Law with the West Virginia Commissioner of Agriculture and provides that he may act through his duly authorized agent.

2.2. All persons offering or exposing fertilizer regulated product for sale, including retailers, wholesalers, jobbers and brokers are equally responsible for full compliance with the fertilizer law and any person who has in his possession any unlawful fertilizer regulated product is responsible for compliance even to registration, payment of the tonnage fee, labeling and any other legal requirements.

2.3 Terms and definitions as used in regard to this article shall have the impact and meaning as defined in the current publication of the Association of American Plant Food Control Officials.

§61-6-3. Distributor Permit, Inspection, Tonnage, and Registration Fees.

3.1. All registrations of regulated products expire on the thirtieth day of June of the following year.

3.2. Each brand and grade of fertilizer shall be registered before being distributed in this state. The application for registration shall be submitted to the commissioner on forms furnished or approved by the commissioner, and shall be accompanied by a fee of four dollars (\$4.00) per brand and grade, except that those fertilizers sold in packages of ten pounds or less shall be registered at a fee of thirty dollars (\$30.00) each. Upon approval by the commissioner a copy of the registration shall be furnished to the applicant.

3.3. Each brand of soil amendment, compost, and horticultural growing media shall be registered before being distributed in this state. The application for registration shall be submitted to the commissioner on forms furnished or approved by the commissioner, and shall be accompanied by a fee of seventy-five dollars (75.00) per brand per year.

3.14. Any person who shall mix, manipulate or compound plant food ingredients according to consumer specifications shall apply to the Commissioner for a Certificate of Registration Fertilizer Formulation Permit. Such application shall be accompanied by a fee of ~~twenty-five~~ ~~thirty-five~~ dollars (~~\$25.00~~) (~~\$35.00~~). Such Certificate of Registration Fertilizer Formulation Permit shall expire on the thirtieth day of June next-following date of issue of the following year.

~~3.2.~~ 3.4.a. Each distributor shall calculate the grade of such consumer formulated fertilizer and shall guarantee such calculated analysis.

~~3.3.~~ 3.4.b. The distributor shall clearly indicate the grade of any consumer formulated bulk fertilizer on the invoice and ~~may~~ shall include a breakdown of ingredients used in such formulation. Such invoice shall constitute the distributors guarantee.

3.5. If the commissioner identifies any unregistered regulated product in commerce or any regulated product from any non-registered manufacturer or distributor during the registration year, the commissioner shall give the grantor a grace period of fifteen working days from issuance of notification within which to register the regulated product or distributor. Any person required to register regulated products or as a distributor, who fails to register within the grace period shall pay to the commissioner a penalty fee of ten dollars (\$10.00) in addition to the registration fee. The commissioner shall issue an embargo order on any regulated product until the registration is issued.

3.6. Application for registration of any industry by-product as a fertilizer, soil amendment, or horticultural growing media shall be accompanied by laboratory tests and field trial data proving that the product has use and value as a regulated product. Test results from the product shall prove that it presents no hazard to beneficial plant life, animals, humans, aquatic life, soil or water.

3.7. Every person who distributes a regulated product in this state shall: File with the commissioner on forms furnished or approved by the commissioner a quarterly statement for the periods ending on the thirtieth day of September, the thirty-first day of December, the thirty-first day of March and the thirtieth day of June, setting forth the number of net tons of each regulated product distributed in this state during such quarter. The report shall be due on or before the thirtieth day of the month following the close of each quarter.

3.8. There shall be paid to the commissioner for all fertilizers sold in packages over ten pounds and distributed in this state an inspection fee at the rate of forty cents (40¢) per ton per quarter; Provided, That sales to manufacturers or exchanges between them are hereby exempted. On individual packages of fertilizer containing ten pounds or less, there shall be paid an inspection fee of fifteen dollars (\$15.00) for each brand and grade sold or distributed. Where a person sells the same brand and grade of fertilizer in packages over ten pounds and in packages ten pounds or less, the inspection fees are paid respectively in each category. Fees so collected shall be used for the payment of the costs of inspection, sampling and analysis, and other expenses necessary for the administration of this article.

3.8.a. If the quarterly tonnage report is not filed and the payment of inspection fee is not paid within thirty days after the end of the quarter, a collection fee amounting to ten percent of the amount shall be assessed against the registrant, and the amount of fees due shall constitute a debt and become the basis of a judgment against the registrant.

3.9. If any regulated product in the possession of the distributor or retailer is found by the commissioner to be short in weight, the registrant of the regulated product shall within thirty days after official notice from the commissioner pay to the consumer a penalty equal to four times the value of the actual shortage. If the consumers cannot be found, the amount of penalty shall be paid to the commissioner and deposited in the department of agriculture's fees account.

§61-6-4. Labeling Requirements

4.1. The label for fertilizer, soil amendment, compost, or horticultural growing medium shall include the following information:

- 4.1.a. The quantity statement;
- 4.1.b. The brand and/or grade;
- 4.1.c. Purpose of product;
- 4.1.d. Directions for application;
- 4.1.e. The name and address of the registrant.

4.2. Additional labeling for fertilizer shall include guaranteed analysis * as follows:

- 4.2.a. Total Nitrogen (N)** %
 - % Ammoniacal Nitrogen
 - % Nitrate Nitrogen
 - % Water Insoluble Nitrogen
 - % Urea Nitrogen
 - % (Other recognized and determinable forms of N)

4.2.b. Available Phosphate (P2O5)..... %

4.2.c. Soluble Potash (K2O)..... %

4.2.d. Other nutrients, elemental basis*** %

4.2.e. Sources of nutrients, when shown on the label, shall be listed below the completed guaranteed analysis statement.

4.2.f. Directions for use for fertilizer distributed to the end user:

4.2.f.1. For specialty fertilizer, minimum directions for use shall include:

4.2.f.1.a. Recommended application rate or rates in units of weight or volume per unit of area coverage (where application rates are given in volume, the label shall provide sufficient information to calculate the application rates by weight); and

4.2.f.1.b Application timing and minimum intervals to apply the product when plants can utilize nutrients; and
4.2.f.1.c. The statement "Apply Only As Directed" or a statement of similar designation.

4.2.g. For all other fertilizers, minimum directions for use shall include at least one of the following;

4.2.g.1. A statement such as:

Use in accordance with recommendations of a qualified individual or institution, such as, but not limited to, a certified crop advisor, agronomist, university crop extension publication, or apply according to recommendations in your approved nutrient management plan; or

4.2.g.2 Detailed directions for a specific use.

* Zero (0) guarantees should not be made and shall not appear in statement except in nutrient guarantee breakdowns.

** If chemical forms of N are claimed or required, the form shall be shown. No implied order of the forms of nitrogen is intended.

*** As prescribed by regulation §61-6-5.2..

4.3. Additional labeling for soil amendments shall include the following:

4.3.a. Soil amending ingredients

4.3.b. "Name of ingredient"..... %, identify and list all

4.3.c. Total Other Ingredients %

4.4. Additional labeling for horticultural growing medium shall include:

4.4.a. Physical components, identify and list all

4.4.a.1. A listing of all physical components, whether organic or inorganic, shall be listed in order of decreasing amount by volume, if they comprise at least three per cent (3%) or more of total volume of the product.

4.4.b. Physical properties

4.4.c. Medium nutrient analysis

4.5. Slowly Released Plant Nutrients.

4.5.a. No fertilizer label shall bear a statement that connotes or implies that certain plant nutrients contained in a fertilizer are released slowly over a period of time, unless the slow release components are identified and guaranteed at a level of at least 15% of the total guarantee for that nutrient(s).

4.5.b Types of products with slow release properties recognized are (1) water insoluble, such as natural organics, ureaform materials, urea-formaldehyde products, isobutylidene diurea, oxamide, etc., (2) coated slow release, such as sulfur coated urea and other encapsulated soluble fertilizers, (3) occluded slow release, where fertilizers or fertilizer materials are mixed with waxes, resins, or other inert materials and formed into particles and (4) products containing water soluble nitrogen such as ureaform materials, urea-formaldehyde products, methylenediurea (MDU), dimethylenetriurea (DMTU), dicyanodiamide (DCD), etc. The terms, "water insoluble", "coated slow release", "slow release", "controlled release", "slowly available water soluble", and "occluded slow release" are accepted as descriptive of these products, provided the manufacturer can show a testing program substantiating the claim (testing under guidance of Experiment Station personnel or a recognized reputable researcher acceptable to the commissioner). A laboratory procedure, acceptable to the commissioner for evaluating the release characteristics of the product(s) must also be provided by the manufacturer.

§61-6-4 5. Secondary And Micronutrient Elements.

~~4.1.~~ 5.1. The basicity or acidity of a fertilizer expressed in terms of calcium carbonate equivalent in multiples of one hundred (100) pounds per ton, or percent in multiples of five percent (5%), may be shown on the application for registration and on the label.

~~4.2.~~ 5.2. Additional plant nutrients besides nitrogen, phosphorus and potassium, when mentioned or claimed on the label or container, shall be registered and shall be guaranteed. Guarantees shall be made on the elemental basis. Source of the elements guaranteed shall be provided to the Commissioner on request. Except guarantees for those water soluble nutrients labeled for hydroponic or continuous liquid feeding programs, when claims for such nutrients are made on the label, container or application for registration, the minimum percentages which will be accepted for registration are as follows:

ELEMENT	PERCENT
Calcium (Ca)	1.0000
Magnesium (Mg)	0.5000
Sulfur (S)	1.0000
Boron (B)	0.0200
Chlorine (Cl)	0.1000
Cobalt (Co)	0.0005
Copper (Cu)	0.0500
Iron (Fe)	0.1000
Manganese (Mn) 0.05	0.0500
Molybdenum (Mo)	0.0005
Sodium (Na)	0.1000
Zinc (Zn)	0.0500

~~4.3.~~ 5.3. Guarantees or claims for the preceding additional plant nutrients are the only ~~one~~ ones which will be accepted. Proposed labels and directions for use of the fertilizer shall be furnished to the Commissioner with the application for registration upon request.

~~4.3.5.4.~~ Warning or caution statements are required on the label of any product which contains 0.03 percent or more of Boron in a water soluble form, or 0.001 percent or more of Molybdenum. Any of the above listed elements which are guaranteed shall appear in the order listed immediately following guarantees for the primary nutrients: nitrogen available phosphate and soluble potash.

~~4.4.5.5.~~ Tolerances for determining deficiencies in secondary and micronutrient elements shall be those recommended by the Association of American Plant Food Control Officials.

~~§61-6-5~~ 6. Additional Information Required On Mixed Fertilizers.

~~5.1.~~ 6.1. Chlorine content of fertilizers branded for tobacco.

~~5.1.1.~~ 6.1.a. The maximum chlorine in tobacco plant bed fertilizer shall be not more than one percent (1.00%).

~~5.1.2.~~ 6.1.b. The maximum chlorine in regular field crop tobacco fertilizer shall be not more than three percent (3.00%).

~~5.1.3.~~ 6.1.c. The maximum chlorine in tobacco top dresser shall be not more than 5.00%.

~~5.1.4.~~ 6.1.d. All applications for the registration of tobacco fertilizer must show the maximum percent of chlorine and this information may also be shown on the label.

~~5.2.~~ 6.2. Pesticides in fertilizers.

~~5.2.1.~~ 6.2.a. Only pesticides which have prior approval by the United States Environmental Protection Agency and the West Virginia Commissioner of Agriculture shall be incorporated into fertilizers.

~~5.2.2.~~ 6.2.b. Directions for proper use must be shown on the label.

~~5.2.3.~~ 6.2.c. The amount of pesticide present in a fertilizer when used according to directions must be of such quantity as to provide adequate amounts of pesticide to control the pest or pests for which applies, but must not be in excessive amounts which would present a hazard to man, animals or plants plant life, animals, humans, aquatic life, soil or water when used according to directions.

~~5.3.~~ 6.3. When claims are made for qualities other than for plant foods and pesticides in specialty fertilizers, experimental evidence must be submitted with the application for registration substantiating the claim and if requested, a method of analysis to determine the quality claimed must also be submitted with the application for registration.

~~5.4.~~ 6.4. Each application for registration of a mixed fertilizer which has a total of eighteen percent (18%) or less plant food shall show the percentage of nitrogen derived from water insoluble form of plant or animal origin, and must be so stated on the label.

§61-6-7. Safe Use of Regulated Product

7.1. All regulated products shall be used in a safe manner which follows any written label directions established by the manufacturer, and which will prevent the products from becoming injurious to beneficial plant life, animals, humans, aquatic life, soil or water.

7.2. The use of the regulated products shall conform to the provisions of The Clean Water Act, approved Nutrient Management Plans, General Groundwater Protection Rules For Fertilizer And Manures, Best Management Practices For Fertilizer And Manures, and other provisions as established by state or federal laws.

7.3. All provisions of the West Virginia Fertilizer Secondary Containment regulations shall be followed by all persons storing dry and/or fluid fertilizer at their storage facility.

§61-6- 8. Methods Of Analysis And Publication Of Results.

~~6.1.~~ 8.1. The methods of analysis shall be those approved by the Association of Official

Analytical Chemists, AOAC International. When no official method has been published by AOAC International, the method of analysis shall be one approved by the Commissioner.

~~6-2-8.2.~~ When the Commissioner finds a fertilizer to be deficient and subject to penalty, he shall notify the registrant of such deficiency ten (10) days prior to reporting such results to other levels of distribution or use.

~~6-3-8.3.~~ The Commissioner shall, at least annually, publish a summary of the results of sampling and analysis of commercial fertilizers sold in this state and may include data relating to volume and use.

§61-6-9. Sampling, Analysis Investigational Allowances And Index Value.

~~7-1-9.1.~~ The investigational allowances and overall index values as printed in the current publication of the Association of American Plant Food Control Officials shall be used in determining fertilizer deficiencies and overall index value.

A commercial fertilizer shall be deemed deficient if the analysis of any nutrient is below the guarantee by an amount exceeding the values in the following schedule, or if the overall index value of the fertilizer is below 98%.

<u>Guarantee, percent</u>	<u>Nitrogen (N)</u>	<u>Avail. Phosphate (P2O5)</u>	<u>Sol. Potash (K2O)</u>
<u>Investigational Allowance, percent</u>			
<u>04 or less</u>	<u>0.49</u>	<u>0.67</u>	<u>0.41</u>
<u>05</u>	<u>0.51</u>	<u>0.67</u>	<u>0.43</u>
<u>06</u>	<u>0.52</u>	<u>0.67</u>	<u>0.47</u>
<u>07</u>	<u>0.54</u>	<u>0.68</u>	<u>0.53</u>
<u>08</u>	<u>0.55</u>	<u>0.68</u>	<u>0.60</u>
<u>09</u>	<u>0.57</u>	<u>0.68</u>	<u>0.65</u>
<u>10</u>	<u>0.58</u>	<u>0.69</u>	<u>0.70</u>
<u>12</u>	<u>0.61</u>	<u>0.69</u>	<u>0.79</u>
<u>14</u>	<u>0.63</u>	<u>0.70</u>	<u>0.87</u>
<u>16</u>	<u>0.67</u>	<u>0.70</u>	<u>0.94</u>
<u>18</u>	<u>0.70</u>	<u>0.71</u>	<u>1.01</u>
<u>20</u>	<u>0.73</u>	<u>0.72</u>	<u>1.08</u>
<u>22</u>	<u>0.75</u>	<u>0.72</u>	<u>1.15</u>
<u>24</u>	<u>0.78</u>	<u>0.73</u>	<u>1.21</u>
<u>26</u>	<u>0.81</u>	<u>0.73</u>	<u>1.27</u>
<u>28</u>	<u>0.83</u>	<u>0.74</u>	<u>1.33</u>
<u>30</u>	<u>0.86</u>	<u>0.75</u>	<u>1.39</u>
<u>32 or more [*]</u>	<u>0.88</u>	<u>0.76</u>	<u>1.44</u>

[*For DAP and MAP the investigational Allowance for Available Phosphate shall be: 0.70; For TSP the Investigational Allowance shall be: 1.53]

For guarantees not listed, calculate the appropriate value by interpolation.

The overall index value is calculated by comparing the commercial value guaranteed with the commercial value found. The values for commercial fertilizer nutrients are derived from the average retail value from a state-wide survey of bulk fertilizer blenders.

Secondary and minor elements shall be deemed deficient if any element is below the guarantee by an amount exceeding the values in the following schedule:

<u>Element</u>	<u>Investigational Allowance</u>
<u>Calcium)</u>	<u>0.2 unit + 5% of guarantee</u>
<u>Magnesium)</u>	<u>0.2 unit + 5% of guarantee</u>
<u>Sulfur)</u>	<u>0.2 unit + 5% of guarantee</u>
<u>Boron)</u>	<u>0.003 unit + 15% of guarantee</u>
<u>Cobalt)</u>	<u>0.0001 unit + 30% of guarantee</u>
<u>Chlorine)</u>	<u>0.005 unit + 10% of guarantee</u>
<u>Copper)</u>	<u>0.005 unit + 10% of guarantee</u>
<u>Iron)</u>	<u>0.005 unit + 10% of guarantee</u>
<u>Manganese)</u>	<u>0.005 unit + 10% of guarantee</u>
<u>Molybdenum)</u>	<u>0.0001unit + 30% of guarantee</u>
<u>Sodium)</u>	<u>0.005 unit + 10% of guarantee</u>
<u>Zinc)</u>	<u>0.005 unit + 10% of guarantee</u>

The maximum allowance when calculated in accordance to the above shall be 1 unit (1%).

7.2. 9.2. The methods of collecting samples and analysis thereof shall be those methods recommended by the Association of American Plant Food Control Officials and the Association of Official Analytical Chemists AOAC International respectively.

§61-6-10. Methods For Determining Deficiencies For Soil Amendments and Horticultural Growing Media.

10.1. For the purpose of determining commercial values to be applied under the provisions of this section, the commissioner shall determine from the registrant's sales invoice the values charged for the soil amending ingredients. If no invoice is available or if the invoice fails to provide sufficient information the commissioner may use other methods to determine values. The values so determined shall be used in determining and assessing penalties.

10.2. Any deficiencies beyond investigational allowances will be penalized according to the schedule as published in the AAPFCO Official Publication.

§61-6-11. Deficiency Penalties.

11.1 Penalty for nitrogen, available phosphate and soluble potash. -- If the analysis shall show that a fertilizer is deficient in one or more of its guaranteed primary plant nutrients (N-P-K) beyond the "investigational allowances" as established by this rule, or if the overall index value of the fertilizer is below the level established by rule, a penalty of three times the commercial value of such deficiency shall be assessed.

11.2 Penalty for soil amendment. If the analysis shows that any soil amendment falls short of the guaranteed analysis in any one soil amending ingredient or in total soil amending ingredients, a penalty shall be assessed in favor of the commissioner. A penalty of three times the value of the total soil amending ingredient deficiency shall be assessed when the total deficiency is more than 2% under the calculated total soil amending ingredient guarantee.

§61-6-12. Commercial Value Of Nitrogen, Phosphoric Acid And Potash.

~~8.1. The commercial value per pound of nitrogen, phosphoric acid and potash for non-specialty fertilizers are as follows:~~

Nitrogen (water soluble) — 15 cents
Nitrogen (water insoluble) — 50 cents
Phosphoric Acid — 10 cents
Potash — 8 cents

12.1. For the purpose of determining the commercial values to be applied under the provisions of section twelve of this rule, the commissioner shall determine and publish annually the values per unit of nitrogen, available phosphate and soluble potash in fertilizers in this state.

~~8.2.~~ 12.2. The value per pound of nitrogen, available phosphate phosphoric acid and soluble potash for specialty fertilizers shall be based upon the retail price of the fertilizer. The relative value of nitrogen, phosphoric acid and potash shall be in the following ratio:

Nitrogen (water soluble) 2
Nitrogen (water insoluble) 6
Phosphoric Acid 1
Potash 1

12.3 The commissioner shall determine from the registrant's sales invoice the values charged for the soil amending ingredients. If no invoice is available or if the invoice fails to provide sufficient information the commissioner may use other methods to determine values. The value so determined and published shall be used in determining and assessing penalty payments.

~~8.3.~~ 12.4. When a manufacturer wishes to return to his plant a lot of fertilizer regulated product which has been found deficient, in one (1) or more plant foods, the

manufacturer shall, within thirty (30) days of the notice of deficiency, give written notice to the Commissioner to that effect, and must furnish the Commissioner with reasonable evidence that the fertilizer regulated product was returned to the plant.

§61-6-13. Hearings, penalties and prosecutions.

13.1 Any person, registrant, distributor, or possessor from whom said violative sample was collected has the right to a hearing within fifteen (15) days from date of receipt of certified mail of said sample report.

13.2 Criminal penalties. – Any person violating any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than two hundred dollars for the first offense, and for each subsequent offense, shall be fined not less than two hundred nor more than five hundred dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned. Magistrates have concurrent jurisdiction with circuit courts to enforce the provisions of this article.

13.3. Civil penalties.

13.3.a. Any person violating any of the provisions of this article or the rules adopted under this article may be assessed a civil penalty by the commissioner. In determining the amount of any civil penalty, the commissioner shall give due consideration to the history of previous violations of any person; the seriousness of the violation, including any irreparable harm to the environment, and the demonstrated good faith of any person charged in attempting to achieve compliance with this article after written notification of the violation.

13.3.b. The commissioner may assess a penalty of not more than five hundred dollars for the first offense or non-serious violation, as determined by the commissioner in accordance with the rules promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code, and not more than one thousand dollars for a serious, repeat or intentional violation, as determined by the commissioner in accordance with the promulgated rules.

13.3.c. The civil penalty is payable to the state of West Virginia and is collectible in any manner now or hereafter provided for collection of a debt. Any person liable to pay the civil penalty and neglecting or refusing to pay the civil penalty, shall be assessed interest at ten percent per annum from the date the penalty was assessed. The penalty and interest constitute a lien in favor of the state of West Virginia and shall attach on the person's property when the lien is properly recorded in the county where the property is located. There may be no cost as a condition precedent to recording.

13.4 Notwithstanding any other provision of law to the contrary, the commissioner may propose for promulgation and adopt rules which permit consent agreements or negotiated settlements for the civil penalties assessed as a result of a violation of the provisions of this article.

13.5 Nothing in this article may be construed as to require the commissioner to report minor violations of this article when the commissioner believes that the public interest will be best served by a written notice.

13.6 No state court may allow the recovery of damages for administrative action taken if the court finds that there was probable cause for the action.

§61-6-9 13. Adoption, Supersedure And Effective Date.

~~9.1. 13.1. By virtue of the authority vested in me as Commissioner of Agriculture, (section fifteen, article fifteen, chapter nineteen, Code of West Virginia as amended 1974), I, Gus R. Douglass, do hereby prescribe, promulgate and declare in effect on the first day of July, 1974, the preceding rules and regulations for administration and enforcement of the West Virginia Fertilizer Law. All rules previously adopted are hereby rescinded.~~

~~9.2. The foregoing rules and regulations supersede all orders, rules, regulations and standards heretofore issued and now in effect. The Commissioner reserves the right to revoke, suspend, rescind or amend any rules, regulation or standard herein set forth.~~