

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

Form #6

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1989 JUN 13 PM 2:22  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE.

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

AMENDMENT TO AN EXISTING RULE: YES X, NO     

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 6

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

Sale and Distribution of Commercial Fertilizer

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) H.B. 2438 S.B. 312

SECTION \_\_\_\_\_, PASSED ON 4/8/89

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON

THE FOLLOWING DATE: June 13, 1989

WEST VIRGINIA LEGISLATIVE REGULATIONS  
STATE DEPARTMENT OF AGRICULTURE  
Chapter 19-15  
SERIES 6

TITLE: Sale And Distribution Of Commercial Fertilizer

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Section 1. General.

1.1 Scope - These legislative regulations provide for regulation of commercial fertilizer and fertilizer materials; provide for registration of firms who formulate blends according to consumer specifications and establish registration fees; 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 19-15-15

1.3 Filing Date -

1.4 Effective Date -

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.

Section 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 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 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.

Section 3. Distributor Registration.

3.1 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. Such application shall be accompanied by a fee of twenty-five dollars (\$25.00). Such Certificate of

Registration shall expire on the thirtieth day of June next following date of issue.

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

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

Section 4. Secondary And Micronutrient Elements.

4.1 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 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:

<u>ELEMENT</u>	<u>PERCENT</u>
Calcium (Ca)	1.00
Magnesium (Mg)	0.50
Sulfur (S)	1.00
Boron (B)	0.02
Chlorine (Cl)	0.10
Cobalt (Co)	0.0005
Copper (Cu)	0.05
Iron (Fe)	0.10
Manganese (Mn)	0.05
Molybdenum (Mo)	0.0005
Sodium (Na)	0.10
Zinc (Zn)	0.05

4.3 Guarantees or claims for the preceding additional plant nutrients are the only one 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. 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, phosphorus and potassium.

4.4 Tolerances for determining deficiencies in secondary and micro-nutrient elements shall be those recommended by the Association of American Plant Food Control Officials.

Section 5. Additional Information Required On Mixed Fertilizers.

5.1 Chlorine content of fertilizers branded for tobacco.

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

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

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

5.1.4 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 Pesticides in fertilizers.

5.2.1 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 Directions for proper use must be shown on the label.

5.2.3 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 when used according to directions.

5.3 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 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.

Section 6. Methods Of Analysis And Publication Of Results.

6.1 The methods of analysis shall be those approved by the Association of Official Analytical Chemists. When no official method has been published by AOAC, the method of analysis shall be one approved by the Commissioner.

6.2 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 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.

Section 7. Sampling, Analysis, Investigational Allowances And Index Value.

7.1 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.

7.2 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 respectively.

Section 8. Commercial Value Of Nitrogen, Phosphoric Acid And Potash.

8.1 The commercial value per pound of nitrogen, phosphoric acid and potash for nonspecialty fertilizers are as follows:

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

8.2 The value per pound of nitrogen, phosphoric acid and 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:

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

8.3 When a manufacturer wishes to return to his plant a lot of fertilizer 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 was returned to the plant.

Section 9. Adoption, Supersedure And Effective Date.

9.1 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.

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.



STATE OF WEST VIRGINIA  
DEPARTMENT OF AGRICULTURE

State Capitol  
Charleston, WV 25305

Cleve Benedict  
Commissioner

PROMULGATION HISTORY ABSTRACT

RULE TITLE: Sale and Distribution of Commercial Fertilizer

RULE TYPE: Legislative

FILED NOTICE FOR PUBLIC COMMENT

COMMENT PERIOD ENDED: 9/6/88

FILED AGENCY APPROVED RULE: 9/15/88

FILED AGENCY APPROVED RULE WITH LRMRC: 9/15/88

ACTION BY LRMRC: 10/17/88

LEGISLATIVE ACTION: 4/8/89

FINAL RULE FILED WITH SECRETARY OF STATE: 6/8/89.

EFFECTIVE DATE: 6/8/89

A handwritten signature in cursive script, reading "Cleve Benedict".

Cleve Benedict  
Agriculture Commissioner

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ENTERED

WEST VIRGINIA LEGISLATIVE REGULATIONS  
STATE DEPARTMENT OF AGRICULTURE  
Chapter 19-15

GENERAL INDEX  
FOR  
SERIES 6

TITLE: Sale And Distribution Of Commercial Fertilizer

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