WEST VIRGINIA CODE CHAPTER 19 ARTICLE 15

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§19-15-1. Definitions of words and terms.

(a) "Brand" means a term, design or trademark used in connection with one or several grades of regulated product.

(b) "Bulk fertilizer" means fertilizer delivered to the purchaser either in solid or liquid state in a nonpackage form to which a label cannot be attached.

(c) "Commissioner" means the commissioner of agriculture of the State of West Virginia or his or her duly authorized agent.

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

(e) "Custom media" means a horticultural growing medium prepared to exact specifications of the person who will be planting in the medium.

(f) "Department" means the Department of Agriculture of the State of West Virginia.

(g) "Distribute" means to import, consign, to offer for sale, sell, barter, warehouse or otherwise supply a regulated product in this state.

(h) "Distributor" means any person who distributes a regulated product in this state.

(i) "Embargo" means a written stop sale order issued by the commissioner of agriculture prohibiting the sale, use of or transportation of any regulated product in any manner until the embargo is released by the commissioner.

(j) "Fertilizer" means any substance containing one or more recognized plant nutrients, including natural organic fertilizer, which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes and gypsum and other products exempted by rule of the commissioner.

(k) "Fertilizer material" means a fertilizer which either:

(1) Contains important quantities of no more than one of the primary plant nutrients: (nitrogen (N), available phosphate (P205) and soluble potash (K20); or

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

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

(l) "Grade" means the percentage of total nitrogen, available phosphate and soluble potash

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stated in whole numbers in the same terms, order and percentages as in the guaranteed analysis: Provided, That specialty fertilizers may be guaranteed in fractional units of less than one percent of total nitrogen, available phosphate and soluble potash: Provided, however, That fertilizer materials, bone meal, manures and similar raw materials may be guaranteed in fractional units.

(m) "Guaranteed analysis" means the minimum percentage of plant nutrients claimed in the following order and form:

(1) Total nitrogen (N) percent

Available phosphate (P205) percent

Soluble potash (K201) percent

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

(3) Guarantees for other plant nutrients may be permitted or required by rule of the commissioner and shall be expressed in the form of the element. The sources of such other nutrients (oxides, salt, chelates, etc.) may be required to be stated on the application for 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 commissioner. When any plant nutrients or other substances or compounds are guaranteed, they shall be subject to inspection and analysis in accord with the methods and rules prescribed by the commissioner.

(n) "Horticultural growing medium" means any substance or mixture of substances promoted as or intended to function as a commercial or consumer growing medium for the managed growth of horticultural crops in containers.

(o) "Investigational allowance" means an allowance for variations inherent in the collection, preparation and analysis of an official sample of regulated product.

(p) "Label" means the display of all written, printed or graphic matter upon the immediate container or statement accompanying a regulated product.

(q) "Labeling" means all written, printed or graphic matter, upon or accompanying any regulated product, or advertisements, brochures, posters or electronic announcements used in promoting the sale of regulated products.

(r) "Local legislation" means, but not limited to, any ordinance, motion, resolution, amendment, regulation or rule adopted by a political subdivision.

(s) "Manufacture" means to produce, compound, mix, blend or in any way alter the chemical

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or physical characteristics of a regulated product.

(t) "Manufacturer" means any person who manufactures a regulated product.

(u) "Mixed fertilizer" means a fertilizer containing any combination or mixture of fertilizer materials.

(v) "Natural organic fertilizer" means materials derived from either plant or animal products containing one or more elements other than carbon, hydrogen and oxygen which are essential for plant growth. These materials may be subjected to biological degradation processes under normal conditions of aging, rainfall, sun-curing, air drying, composting, rotting, enzymatic or anaerobic/aerobic bacterial action or any combination of these. These materials may not be mixed with synthetic materials or changed in any physical or chemical manner from their initial state except by manipulations such as drying, cooking, chopping, grinding, shredding, hydrolysis or pelleting.

(w) "Official sample" means any sample of regulated product collected by the commissioner or his or her agent and designated as "official" by the commissioner.

(x) "Percent" or "percentage" means the percentage by weight.

(y) "Person" means an individual, partnership, association, firm or corporation.

(z) "Political subdivision" means any local government entity which includes, but is not limited to, any city, county or municipal corporation and any other body corporate and politic that is responsible for government activities in a geographical area smaller than that of the state.

(aa) "Primary nutrients" means nitrogen (N), available phosphate (P205) and soluble potash (K20).

(bb) "Registrant" means the person who registers regulated products under the provisions of this article.

(cc) "Regulated product" means any product governed by this article, including any fertilizer, specialty fertilizer, soil amendment and horticultural growing medium.

(dd) "Soil amendment" means any substance or mixture of substances, imported, manufactured, prepared or sold for manurial, soil enriching or soil corrective purposes, or intended to be used for promoting or stimulating the growth of plants, increasing the productivity of plants, improving the quality of crops or producing any chemical or physical change in the soil. The following are exempt from the definition of "soil amendment": Fertilizer, unmanipulated animal manures, horticultural growing medium, agricultural liming materials, unmixed mulch and unmixed peat.

(ee) "Specialty fertilizer" means a fertilizer distributed primarily for nonfarm use, such as

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home gardens, lawns, shrubbery, flowers, house plants, golf courses, municipal parks, cemeteries, greenhouses and nurseries.

(ff) "Synthetic" means any substance generated from another material or materials by means of a chemical reaction.

(gg) "Ton" means a net weight of two thousand pounds avoirdupois.

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

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§19-15-2. Registration.

(a) Any person or persons whose name appears upon the label of any regulated product as manufacturer or distributor shall obtain a permit to distribute in the state prior to distributing the regulated product. 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 established by legislative rule: Provided, That the commissioner shall take final action upon all completed permit applications within thirty days of receipt if the application is uncontested, or within ninety days if the application is contested.

(b) Each brand or grade of regulated product 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 established by legislative rule. Upon approval by the commissioner a copy of the registration shall be furnished to the applicant. All registrations expire on June 30 of the following year.

The application for fertilizer, soil amendment or horticultural growing medium shall include the following information:

(1) The net weight;

(2) The brand and, in the case of fertilizer when primary nutrients are claimed, the grade;

(3) The guaranteed analysis, or other information related to ingredients, guaranteed analysis of ingredients, percentages of ingredients, source of ingredients, physical components, physical properties or nutrient analysis as the commissioner may require;

(4) The purpose of the product;

(5) Directions for application; and

(6) The name and address of the registrant.

(c) A distributor is not required to register any regulated product which is already registered under this article by another person, providing the label does not differ in any respect.

(d) A distributor is not required to register each grade of regulated product formulated according to specifications which are furnished by a consumer prior to mixing, but is required to register his or her firm in a manner and at a fee established by legislative rule, and to label the regulated product as provided in subsection (c), section three of this article.

(e) Any person applying for registration of a fertilizer or specialty fertilizer, soil amendment or horticultural growing medium shall include with the application a label and any advertising literature.

(f) The commissioner may require proof of any claims made for any regulated product. If no

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claims are made, he or she may require proof of the usefulness and value of the regulated product. For evidence of proof the commissioner may rely on experimental data, evaluations or advice supplied from such sources as the director of the agricultural experiment station. The experimental design shall be related to state conditions for which the product is intended. The commissioner may accept or reject other sources of proof as additional evidence in evaluating regulated products.

(g) If the commissioner identifies any unregistered regulated product in commerce or any regulated product from any nonregistered 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 as established by legislative rule in addition to the registration fee. The commissioner may issue an embargo order on any regulated product until the registration is issued.

(h) Exemptions for horticultural growing medium:

(1) Distribution of horticultural growing media planted with live plant material is exempt from the labeling and registration requirements of this article.

(2) Distribution of custom media is exempt from the registration requirements of this article, if it is prepared for a single end user.

(3) Distribution of horticultural growing media containing plant nutrients of three percent or less are exempt from the requirements of this article.

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§19-15-3. Labels.

(a) Any regulated product 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 the information required by subdivisions (1), (2), (3), (4), (5) and (6), subsection (b), section two of this article. When compost is used as an ingredient, the label shall identify the source of the compost. A label may be in multiple languages, but one language must be English.

(b) In case of bulk shipments, the same information required on a label, in written or printed form, shall accompany delivery and be supplied to the purchaser at time of delivery.

(c) A regulated product formulated according to specifications which are furnished by a consumer prior to mixing shall be labeled to show the net weight, guaranteed analysis of each ingredient, guaranteed analysis of the finished product and the name and address of the distributor.

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§19-15-4. Inspection fees.

(a) There shall be paid to the commissioner for all fertilizers distributed in this state an inspection fee established by legislative rule: Provided, That sales to manufacturers or exchanges between them are hereby exempted. Fees 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.

On individual packages of fertilizer containing ten pounds or less, there shall be paid in lieu of a per ton inspection fee, an inspection fee established by legislative rule for each brand and grade sold or distributed. Where a person sells fertilizer in packages over ten pounds the inspection fee for each brand or grade shall apply only to that portion sold in packages of ten pounds or less, and that portion sold in packages over ten pounds shall be subject to the same per ton inspection fee provided by rule.

(b) Every person who distributes a fertilizer in this state shall:

File with the commissioner on forms furnished or approved by the commissioner a quarterly statement for the periods ending on September 30, December 31, the thirty-first day of March and June 30, setting forth the number of net tons of each fertilizer 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 and upon such statement shall pay the inspection fee at the rate stated in subsection (a) of this section.

If the tonnage report is not filed and the payment of inspection fee is not made within thirty days after the end of the quarter, a collection fee established by legislative rule 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.

(c) When more than one person is involved in the distribution of a fertilizer, the last person who has the fertilizer registered or distributes to a nonregistrant (dealer or consumer) is responsible for reporting the tonnage and paying the inspection fee, unless the report and payment is made by a prior distributor of a fertilizer.

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§19-15-5. Tonnage reports.

The person transacting, distributing or selling fertilizer to a nonregistrant shall furnish the commissioner a report showing the county of the consignee, the amounts (tons) of each grade of fertilizer, and the form in which the fertilizer was distributed (bags, bulk, liquid, etc.). This information shall be reported by one of the following methods: (a) Submitting a summary report approved by the commissioner on or before the fifteenth day of each month covering shipments made during the preceding month; or (b) by electronic transfer using the UFTRS system or other electronic system approved by the commissioner. No information furnished to the commissioner under this section may be disclosed in such a way as to divulge the operation of any person. The commissioner shall assess a late fee established by legislative rule against the registrant who is responsible for reporting if the monthly report is not filed by the due date.

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§19-15-6. Inspection, sampling and analysis.

(a) It is the duty of the commissioner, who may act through his or her authorized agent, to sample, inspect, make analyses of, and test regulated products distributed within this state at any time and place and to such an extent as he or she may consider necessary to determine whether such regulated products are in compliance with the provisions of this article. The commissioner individually or through his or her agent is authorized to enter upon any public or private premises or carriers during operating hours in order to have access to regulated products subject to the provisions of this article and the rules pertaining thereto, and to the records relating to their distribution.

(b) The methods of sampling and analysis to determine plant food deficiencies in fertilizer or deficiencies in other regulated products shall be those established by the Association of American Plant Food Control Officials and AOAC International or other methods approved by the commissioner by legislative rule.

(c) The commissioner, in determining for administrative purposes whether any fertilizer is deficient in plant food, or whether any other regulated product in compliance with this article shall be guided solely by the official sample as defined in subsection(v), section one of this article, and obtained and analyzed as provided for in subsection (b) of this section.

(d) The results of official analysis of regulated products and portions of official samples, shall be distributed by the commissioner as provided by legislative rule. The results of official analysis of fertilizers and portions of official samples shall be distributed by the commissioner as provided by legislative rule. Official samples establishing a penalty for nutrient deficiency shall be retained for a minimum of thirty days from issuance of a deficiency report.

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§19-15-7. Deficiencies.

(a) 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" established by 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.

(b) 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 two percent under the calculated total soil amending ingredient guarantee.

(c) Penalty for other deficiencies. -- Deficiencies beyond the investigational allowances established by rule in any other constituent which the registrant is required to or may guarantee shall be evaluated and penalties prescribed by the commissioner.

(d) 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.

(e) All penalties assessed under this section shall be paid to the consumer of the lot of regulated product represented by the sample analyzed. Within three months after the date of notice from the commissioner to the registrant, the penalty shall be collected and promptly forwarded to the commissioner. 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.

(f) 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 is properly subject to official action.

(g) If, upon evidence satisfactory to the commissioner, a person is found to have: (1) Altered the content of any regulated product shipped to him by a registrant; or (2) mixed or commingled regulated product from two or more suppliers so that the result of either alteration changes the analysis of the regulated product as originally guaranteed, then the person who has altered, mixed or commingled shall become responsible for obtaining a registration, as the case may be; shall be held liable for all assessments; and shall be subject to other provisions of this article, including, by way of example, but not by way of limitation, seizure, condemnation and embargo.

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§19-15-8. Commercial value.

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

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§19-15-9. Misbranding.

No person shall distribute misbranded regulated products. A regulated product is considered to be misbranded:

(a) If its label is false or misleading in any particular;

(b) If it is distributed under the name of another regulated product;

(c) If it is not labeled as required in section three of this article and in accordance with rules prescribed under this article; or

(d) If it purports to be, to contain or is represented as a fertilizer, plant nutrient, soil amendment, or horticultural growing medium, but is not according to the definition prescribed by rule of the commissioner. In the adopting of legislative rules defining these terms the commissioner shall give regard to commonly accepted definitions and official terms such as those issued by the Association of American Plant Food Control Officials (AAPFCO).

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§19-15-10. Adulteration.

No person may distribute an adulterated regulated product. A regulated product is considered to be adulterated:

(a) If it contains any deleterious or harmful ingredient in sufficient amount to render it injurious to beneficial plant life, animals, humans, aquatic life, soil or water 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, animals, humans, aquatic life, soil or water are not shown upon the label;

(b) If its composition falls below or differs from that which it is purported to possess by its labeling; or

(c) If it contains unwanted crop seed, weed seed or noxious weed seed, as defined in article 16, chapter 19 of the West Virginia Seed Law.

(d) If adulteration levels of one or more metals in regulated products are in excess of those officially adopted by the Association of American Plant Food Control Officials.

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§19-15-11. Publications.

[Repealed.]

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§19-15-12. Rules.

The commissioner may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this 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.

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§19-15-13. Short weight.

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 established by legislative rule.

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§19-15-14. Cancellation of registrations.

The commissioner is authorized and empowered to cancel the registration of any brand of regulated product or to refuse to register any brand of regulated product upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in evading or attempting to evade the provisions of this article or any rule promulgated thereunder: Provided, That no registration may be revoked or refused until the registrant is given the opportunity to appear for a hearing conducted by the commissioner.

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§19-15-15. Embargo orders.

The commissioner may issue and enforce a written or printed embargo order requiring the owner or custodian of any lot of regulated product to hold it at a designated place, when the commissioner finds the regulated product is being offered or exposed for sale in violation of any of the provisions of this article, until the law has been complied with and the regulated product is released in writing by the commissioner, or until the violation has been otherwise legally disposed of by written authority. The commissioner shall release the regulated product embargoed when the requirements of the provisions of this article have been complied with and all costs and expenses incurred in connection with the embargo have been paid.

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§19-15-16. Seizure, condemnation and sale.

Any lot of regulated product not in compliance with the provisions of this article is subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the county or judicial circuit where the product is located. In the event the court finds that the regulated product is in violation of this article and orders its condemnation, the product may be disposed of in any manner consistent with its quality and the laws of the state: Provided, That in no instance may the disposition of the regulated product be ordered by the court without first giving the claimant an opportunity to apply to the court for its release or for permission to process or relabel the regulated product to bring it into compliance with this article.

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§19-15-16a. Local legislation prohibited.

No political subdivision may regulate the registration, packaging, labeling, sale, storage, distribution, use and application of fertilizers; and, in addition, no political subdivision may adopt or continue in effect local legislation relating to the registration, packaging, labeling, sale, storage, distribution, use or application of fertilizers.

Local legislation in violation of this section is void and unenforceable.

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§19-15-17. Violations.

(a) If it appears from the examination of any regulated product that any of the provisions of this article or the rules issued thereunder have been violated, the commissioner shall cause notice of the violation to be given to the registrant, distributor or possessor from whom the sample was collected. Any person so notified shall be given an opportunity to be heard under legislative rules proposed and promulgated by the commissioner. If it appears after the hearing, either in the presence or absence of the person so notified, that any of the provisions of this article or rules issued thereunder have been violated, the commissioner may prosecute in any court of competent jurisdiction any person violating the provisions of this article.

(b) Any person convicted of violating any provisions of this article or rules issued thereunder is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $200 for the first offense and not less than $200 nor more than $500 for each subsequent offense.

(c) Nothing in this article may be construed as requiring the commissioner or his or her agent to report for prosecution or for the institution of seizure proceedings as a result of minor violations of the article when he or she believes that the public interest will be best served by a suitable notice of warning in writing.

(d) It is the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(e) The commissioner is hereby authorized to apply for and the court to grant a temporary or permanent injunction, to be issued without bond, restraining any person from violating or continuing to violate any provision of this article or rule promulgated thereunder notwithstanding the existence of other remedies at law.

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§19-15-18. Exchanges between manufacturers.

Nothing in this article may be construed to restrict or avoid sales or exchanges of regulated products between importers, manufacturers or manipulators who mix regulated materials for sale, or to prevent the free and unrestricted shipment of regulated products to manufacturers or manipulators who have registered their brands as required by the provisions of this article.

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§19-15-19. Expenditure of registration, inspection and penalty fees.

All registration, inspection and such penalty fees not paid to the consumer shall be deposited in a special account with the state Treasurer and shall be expended on order of the commissioner.

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§19-15-20. Constitutionality.

If any clause, sentence, paragraph or part of this article shall for any reason be judged invalid by any court of competent jurisdiction, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered.

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§19-15-21. Repeal.

All laws and parts of laws in conflict with or inconsistent with the provisions of this article are hereby repealed.

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