

CHAPTER 343

AGRICULTURE

HOUSE BILL 08-1231

BY REPRESENTATIVE(S) Hodge, Carroll T., Curry, Fischer, McFadyen, and Stafford;
also SENATOR(S) Brophy, and Isgar.

AN ACT**CONCERNING CHANGES TO THE REGULATION OF FERTILIZER.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 12 of title 35, Colorado Revised Statutes, is amended to read:

35-12-101. Short title. This article shall be known and may be cited as the "Commercial Fertilizer, Soil Conditioner, AND Plant Amendment ~~and Agricultural Liming Material Act of 1977~~ ACT".

35-12-102. Administration of article. This article shall be administered by the commissioner of agriculture referred to in this article as the "commissioner"; or his THE COMMISSIONER'S duly authorized representatives.

35-12-103. Definitions. As used in this article, unless the context otherwise requires:

(1) ~~"Agricultural liming material" means a product whose calcium and magnesium compounds are capable of neutralizing soil acidity. The commissioner shall set the minimum standard of calcium carbonate equivalent allowable by regulation.~~

(2) ~~(Deleted by amendment, L. 96, p. 101, § 1, effective March 20, 1996.)~~

(3) (1) "Availability" ~~of a plant nutrient~~ means the immediate potential property of ~~an agent or product~~ A PLANT NUTRIENT to be utilized by a plant and have agronomic value when used according to directions. ~~Methods of availability shall be defined by regulation.~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

~~(4)~~ "Basic supplier" means a person who produces within Colorado, ships into Colorado, distributes for use in Colorado, or distributes for shipment into Colorado fertilizer materials, soil conditioners, plant amendments, or agricultural liming materials.

~~(5)~~ "Brand" means a term, design, or trademark used in connection with one or several grades of commercial fertilizer, soil conditioner, plant amendment, or agricultural liming material.

~~(6)~~ (2) "Bulk fertilizer", "bulk soil conditioner", OR "bulk plant amendment" or "bulk agricultural liming material" means a commercial fertilizer, soil conditioner, OR plant amendment, or agricultural liming material, respectively, distributed in nonpackaged form or in a container containing more than one hundred pounds.

~~(7)~~ (3) "Commercial fertilizer" means a fertilizer material, mixed fertilizer, or any other substance containing one or more essential available plant nutrients which THAT is used DISTRIBUTED for its plant nutrient content and which is designed for use and has value in promoting plant growth. It "COMMERCIAL FERTILIZER" does not include untreated animal and untreated vegetable manures, untreated peat moss and untreated peat humus COMPOST AND TREATED MANURE DISTRIBUTED WITHOUT COMMERCIAL FERTILIZER LABELING, soil conditioners, plant amendments, agricultural liming materials, gypsum, and other products exempted by regulation RULE of the commissioner.

~~(8)~~ (4) "Commission" means the state agricultural commission.

~~(9)~~ (5) "Commissioner" means the commissioner of agriculture of Colorado or his THE COMMISSIONER'S authorized agent.

(6) "COMPOST" MEANS A SUBSTANCE, DERIVED FROM A PROCESS OF BIOLOGICALLY DEGRADING ORGANIC MATERIALS, THAT CONTAINS ONE OR MORE ESSENTIAL AVAILABLE PLANT NUTRIENTS AND COMPLIES WITH THE MINIMUM STANDARDS SPECIFIED BY RULE OF THE COMMISSIONER THAT REGULATE COMPOST.

~~(10)~~ (7) "Customer formulated" "CUSTOM mix" means a commercial fertilizer, soil conditioner, OR plant amendment or agricultural liming material prepared expressly for, and according to specifications furnished by, the A customer prior to mixing.

~~(11)~~ (8) "Department" means the Colorado department of agriculture and includes the state agricultural commission, the commissioner of agriculture, and all employees and agents of the department.

(9) "DISTRIBUTE" MEANS TO IMPORT, CONSIGN, SELL, OFFER TO SELL, BARTER, OR OTHERWISE SUPPLY A COMMERCIAL FERTILIZER, SOIL CONDITIONER, PLANT AMENDMENT, COMPOST, OR MANURE, FOR USE IN OR SHIPMENT TO THIS STATE.

~~(12)~~ (10) "Distributor" means any person who imports or consigns DISTRIBUTES a commercial fertilizer, soil conditioner, plant amendment, or agricultural liming material or who offers for sale, sells, barter, or otherwise supplies these products for use in or shipment into this state COMPOST, OR MANURE.

(11) "ESSENTIAL" MEANS NECESSARY FOR THE MAINTENANCE AND GROWTH OF PLANTS.

(12) "FERTILIZER" MEANS A SUBSTANCE OR PRODUCT THAT CONTAINS ONE OR MORE ESSENTIAL AVAILABLE PLANT NUTRIENTS.

~~(13) "Fertilizer material" is a commercial fertilizer which either:~~

~~(a) Contains significant quantities of no more than one of the primary plant nutrients, nitrogen, phosphoric acid, and potash, or~~

~~(b) Has approximately eighty-five percent of its plant nutrient content present in the form of a single chemical compound.~~

~~(14) "Fineness of an agricultural liming material" means the percentage by weight of the material which will pass United States standard sieves of specified sizes. The commissioner shall promulgate regulations which set forth standards of fineness and shall be guided by the specifications for sieve sizes established by the American society of testing materials.~~

~~(15) (13) "Grade" means the percentage of total nitrogen, available phosphoric acid PHOSPHATE, and soluble potash stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis. except that fertilizer materials, bone meal, and similar raw materials may be guaranteed in fractional units.~~

~~(16) (a) (H)~~ (14) (a) "Guaranteed analysis" means the minimum percentage of plant nutrients claimed in the following order and form:

Total Nitrogen (N) percent

Available Phosphate (P₂O₅) percent

Soluble Potash (K₂O) percent

~~(H) For bone meal tankage and other organic phosphate materials, the total phosphoric acid may also be guaranteed.~~

~~(HH) (b) Guarantees for plant nutrients, other than nitrogen, phosphorus, and potassium, may be permitted or required by regulation RULE of the commissioner. The guarantees for such THESE other nutrients shall be expressed in the form, availability, and minimum quantity of the element set by regulation RULE. The sources of such other nutrients, salts, chelates, and similar compounds are required to be stated on the application for registration and may be included as a parenthetical statement on the label.~~

~~(IV) Potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of one hundred pounds per ton may be required by regulation.~~

~~(b) (Deleted by amendment, L. 96, p. 101, § 1, effective March 20, 1996.)~~

(c) Guaranteed analysis of a ~~customer formulated~~ CUSTOM mix may appear as in paragraph (a) ~~(f)~~ of this subsection ~~(16)~~ (14) or may include the net weight and guaranteed analysis of each plant nutrient or fertilizer ~~material~~ in the mix.

~~(17)~~ (15) "Investigational allowance" means an allowance for variations inherent in the taking, preparation, and analysis of an official sample of commercial fertilizer, soil conditioner, OR plant amendment. ~~or agricultural liming material.~~

~~(18)~~ (16) "Label" means the display of all written, printed, or graphic matter on the immediate container of, or a statement accompanying, a commercial fertilizer, soil conditioner, plant amendment, ~~or agricultural liming material~~ COMPOST, OR MANURE.

~~(19)~~ (17) "Labeling" means all written, printed, ~~or graphic, matter,~~ OR VERBAL INFORMATION on, accompanying, or used in promoting any commercial fertilizer, soil conditioner, plant amendment, ~~or agricultural liming material~~ COMPOST, OR MANURE, including advertisements, brochures, AND posters and television, ~~and~~ radio, AND INTERNET announcements. ~~used in promoting the sale of commercial fertilizer, soil conditioner, plant amendment, or agricultural liming material.~~

~~(20)~~ (Deleted by amendment, L. 96, p. 101, § 1, effective March 20, 1996.)

~~(21)~~ (18) "Manufacturing facility" means any place where a commercial fertilizer, soil conditioner, plant amendment, or ~~agricultural liming material~~ COMPOST is manufactured, produced, compounded, mixed, blended, or in any way altered chemically or physically. Mobile units shall be considered a part of the manufacturing facility where the units are based.

(19) "MANURE" MEANS ANIMAL OR VEGETABLE MANURE AND INCLUDES TREATED AND UNTREATED MANURE.

~~(22)~~ "Mixed fertilizer" is a fertilizer containing any combination or mixture of fertilizer materials.

~~(23)~~ (20) "Official sample" means any sample of commercial fertilizer, soil conditioner, plant amendment, ~~or agricultural liming material~~ COMPOST, OR MANURE THAT IS taken by an agent of the department and designated as "official" by the department.

~~(24)~~ (21) "Packaged fertilizer", "packaged soil conditioner", OR "packaged plant amendment" ~~or "packaged agricultural liming material"~~ means a commercial fertilizer, soil conditioner, OR plant amendment, ~~or agricultural liming material,~~ respectively, THAT IS distributed in a closed container ~~containing~~ AND CONTAINS one hundred pounds or less OF THE COMMERCIAL FERTILIZER, SOIL CONDITIONER, OR PLANT AMENDMENT.

~~(25)~~ (22) "Percent" or "percentage" means the percentage by weight.

~~(26)~~ (23) "Plant amendment and soil conditioner guaranteed analysis" means the percentage of each of the ingredients.

~~(27)~~ (24) "Plant amendments" means any ~~device~~ DEVICES or ~~substance~~ SUBSTANCES applied to the soil, plants, or seeds ~~which is~~ THAT ARE intended to improve germination, growth, yield, product quality, reproduction, flavor, or other desirable characteristics of plants. ~~except~~ "PLANT AMENDMENTS" DOES NOT INCLUDE commercial fertilizers, soil amendments, ~~agricultural liming materials, animal and vegetable~~ UNTREATED manures, pesticides, plant regulators, ~~and~~ COMPOST AND TREATED MANURES THAT ARE DISTRIBUTED WITHOUT PLANT AMENDMENT LABELING, OR other materials ~~which may be~~ exempted by ~~regulations~~ RULES promulgated by the commissioner.

~~(28)~~ (25) "Plant nutrients" ~~are~~ MEANS those chemical or organic forms of nitrogen (N), phosphorus (P₂O₅), potassium (K₂O), other secondary and micronutrients, calcium (Ca), magnesium (Mg), sulfur (S), boron (B), copper (Cu), iron (Fe), manganese (Mn), molybdenum (Mo), or zinc (Zn) ~~which~~ THAT are absorbed by crops and ~~provide the necessary food for the maintenance and growth of~~ ARE ESSENTIAL TO THE plants.

(26) "PRODUCT" MEANS A COMMERCIAL FERTILIZER, PLANT AMENDMENT, OR SOIL CONDITIONER IN THE FORM IN WHICH IT IS INTENDED TO BE DISTRIBUTED. FOR THE PURPOSES OF THIS ARTICLE, A PRODUCT THAT DIFFERS FROM ANOTHER PRODUCT IN THE NAME OF THE PRODUCT, COMPOSITION, LABELING CLAIMS OR DIRECTIONS FOR USE, GRADE, OR GUARANTEED ANALYSIS SHALL BE CONSIDERED A SEPARATE PRODUCT THAT REQUIRES ITS OWN REGISTRATION.

~~(29)~~ (27) "Registrant" means a person who is registered or is required to be registered to manufacture or distribute commercial fertilizers, soil conditioners, plant amendments, or ~~agricultural liming materials~~ COMPOST under the provisions of this article.

~~(30)~~ (28) "Sewage sludge, ~~and~~ sewage effluents, AND BIOSOLIDS" means all materials resulting from ~~waste~~ DOMESTIC WASTEWATER treatment ~~which~~ THAT contain concentrations of organic or inorganic materials.

~~(31)~~ (29) "Soil conditioner" means a substance, defined by ~~regulation~~ RULE of the commissioner, intended to improve the chemical or physical characteristics of the soil ~~which~~ THAT is sold, offered for sale, or intended for sale. It does not include commercial fertilizers, plant amendments, ~~agricultural liming materials, untreated animal or untreated vegetable~~ manures, ~~untreated peat moss, untreated peat humus~~ COMPOST AND TREATED MANURES THAT ARE DISTRIBUTED WITHOUT SOIL CONDITIONER LABELING CLAIMS, or any other materials that may be exempted by ~~regulation~~ RULE of the commissioner. Soil conditioners may be sold in package or in bulk.

~~(32)~~ (30) "Specialty fertilizer" ~~is~~ MEANS a commercial fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, parks, cemeteries, greenhouses, hydroponic facilities, and nurseries.

~~(33)~~ (31) "Ton" means a net weight of two thousand pounds avoirdupois.

~~(34)~~~~(a)~~ (32) "Treated manures" means substances composed primarily of excreta, plant ~~remains~~ OR ANIMAL MATERIAL, sewage sludge, ~~and~~ sewage effluents, AND

BIOSOLIDS, or mixtures of such substances ~~which~~ THAT have been treated in any manner, including mechanical drying, grinding, pelleting, or other means, or by adding other chemicals or substances.

~~(b) In "treated manures" the minimum percentages of total nitrogen, available phosphoric acid, and soluble or available potash are to be guaranteed, the guarantee being stated in multiples of half percentages.~~

~~(35) "Unit" means twenty pounds of plant food or one percent of a ton.~~

~~(36)~~ (33) "Untreated manures" means substances composed primarily of excreta, plant remains, or mixtures of such substances ~~which~~ THAT have not been treated in any manner, including mechanical drying, grinding, pelleting, or other means, or by adding other chemicals or substances.

35-12-104. Registration. (1) Each ~~brand and grade of commercial fertilizer, soil conditioner, plant amendment, or agricultural liming material~~ PRODUCT shall be registered by the person whose name appears on the label before being distributed in, into, or for use in this state. The application for registration shall be submitted to the commissioner on forms furnished by the commissioner and shall be accompanied by a fee as established by the ~~agricultural~~ commission. For ~~the fiscal year commencing on July 1, 2007, and for each subsequent~~ EACH fiscal year, COMMENCING ON JULY 1, fifty percent of the department's direct and indirect costs of administering and enforcing the provisions of this article shall be funded from the general fund. The ~~agricultural~~ commission shall establish a fee schedule to cover the remaining direct and indirect costs. All registrations shall expire ANNUALLY on ~~June 30 of each year~~ THE DATE SPECIFIED BY RULE OF THE COMMISSIONER. APPLICATIONS FOR RENEWAL OF REGISTRATIONS MUST BE SUBMITTED ON OR BEFORE SUCH DATE. Each application for registration OR RENEWAL OF REGISTRATION shall include the following information:

(a) The name and address of the registrant;

(b) The ~~brand~~ NAME OF THE PRODUCT;

(c) The grade, if a commercial fertilizer;

(d) The guaranteed analysis;

(e) The sources from which the guaranteed plant nutrients, soil conditioner, OR plant amendment ~~or agricultural liming material~~ derive; AND

(f) One copy of ~~all labeling~~ THE LABEL used in this state for ~~promotion and~~ THE sale of each of the products being registered.

~~(1.5) Notwithstanding the amount specified for any fee in subsection (1) of this section, the commissioner by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commissioner by rule or as otherwise provided by law~~

~~may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.~~

~~(2) and (3) Repealed.~~

(2) THE REGISTRATION REQUIREMENTS OF SUBSECTION (1) OF THIS SECTION SHALL NOT APPLY TO CUSTOM MIX FERTILIZERS, UNTREATED MANURE, OR COMPOST AND TREATED MANURES THAT ARE DISTRIBUTED WITHOUT COMMERCIAL FERTILIZER, PLANT AMENDMENT, OR SOIL CONDITIONER LABELING CLAIMS.

~~(4) (3) The commissioner may require proof of labeling statements and other claims made for any commercial fertilizer, soil conditioner, OR plant amendment or agricultural liming material before he approves APPROVING any registration. If the registrant makes no claims, the commissioner may require proof of the usefulness and value of the commercial fertilizer, soil conditioner, OR plant amendment. or agricultural liming material. As evidence of proof, the commissioner may rely on experimental data, evaluations, or advice furnished by experts such as Colorado state university and may accept or reject additional sources of proof in his evaluation of EVALUATING any commercial fertilizer, soil conditioner, OR plant amendment. or agricultural liming material. In all cases, only experimental proof shall relate to those conditions in Colorado for which use the product is intended.~~

~~(5) (4) Commercial fertilizer shall contain the minimum stipulated quantities of plant nutrients required by regulations RULES promulgated by the commissioner.~~

~~(6) (5) The commissioner may stipulate by regulation RULE the quantities of active substances required in soil conditioners OR plant amendments or agricultural liming materials to be sold or distributed for use in this state.~~

~~(7) (6) If a NO commercial fertilizer, soil conditioner, OR plant amendment or agricultural liming material, not registered in the preceding year in this state, is SHALL BE sold or distributed for use in this state without a current registration. a penalty for failure to register as established by the agricultural commission shall be assessed against the person responsible for registration, with each day subsequent to the time of the first sale or distribution for use in the state deemed a separate, continuing violation. The sum total of all such daily penalties shall not exceed five hundred dollars. Any and all such penalties shall constitute a debt and shall be paid by the registrant at the time the application for registration is submitted to the commissioner ANY PERSON WHO FAILS TO RENEW THE REGISTRATION OF COMMERCIAL FERTILIZER, SOIL CONDITIONER, OR PLANT AMENDMENT ON OR BEFORE THE EXPIRATION DATE OF THE REGISTRATION SHALL PAY A LATE FEE, AS ESTABLISHED BY THE COMMISSION, IN ADDITION TO THE REGISTRATION FEE.~~

~~(8) (7) Each manufacturing facility which THAT produces custom formulated mixes and each distributor of bulk commercial fertilizers, bulk soil conditioners, bulk plant amendments, or bulk agricultural liming materials who does not produce registered commercial fertilizers, soil conditioners, plant amendments, or agricultural liming materials shall register on forms furnished by the commissioner IN THIS STATE MUST BE REGISTERED. All registrations shall expire ANNUALLY on June 30 of each year THE DATE SPECIFIED BY RULE OF THE COMMISSIONER. APPLICATIONS FOR RENEWAL OF REGISTRATIONS MUST BE SUBMITTED ON OR BEFORE~~

SUCH DATE.

(8) (a) EACH MANUFACTURING FACILITY IN THIS STATE PRODUCING COMPOST THAT IS DISTRIBUTED WITHOUT COMMERCIAL FERTILIZER, PLANT AMENDMENT, OR SOIL CONDITIONER CLAIMS SHALL REGISTER WITH THE COMMISSIONER UNLESS EXEMPTED BY RULE OF THE COMMISSIONER.

(b) THE APPLICATION FOR REGISTRATION SHALL BE SUBMITTED TO THE COMMISSIONER ON FORMS FURNISHED BY THE COMMISSIONER AND SHALL BE ACCOMPANIED BY A FEE ESTABLISHED BY THE COMMISSION. ANY PERSON WHO FAILS TO RENEW SAID MANUFACTURING FACILITY REGISTRATION SHALL PAY A LATE FEE, AS ESTABLISHED BY THE COMMISSION, IN ADDITION TO THE REGISTRATION FEE.

(c) AT THE TIME OF REGISTRATION, EACH MANUFACTURING FACILITY SHALL SUBMIT COPIES OF ALL LABELS THAT WILL BE AFFIXED TO OR ACCOMPANY THE COMPOST PRODUCTS IT DISTRIBUTES.

~~(9) The registration requirements of this section shall not apply to untreated animal manure, untreated vegetable manure, untreated peat moss, or untreated peat humus.~~

35-12-105. Labels. (1) Any packaged commercial fertilizer distributed in this state shall have placed on or affixed to the container a label setting forth in clearly legible and conspicuous form the following information:

(a) The name and address of the registrant;

(b) The net weight OR OTHER MEASURE PRESCRIBED BY RULE;

(c) The ~~brand~~ NAME OF THE PRODUCT and grade;

(d) The guaranteed analysis in the form specified in section 35-12-103 ~~(16) (a)~~ ~~(1) and in the order specified in section 35-12-103 (13) (a)~~ (14) (a);

(e) THE DATE OF MANUFACTURE, PROCESSING, PACKAGING, OR REPACKAGING, OR A CODE THAT PERMITS THE DETERMINATION OF SUCH DATE, OR, IF DISTRIBUTED IN BULK, THE SHIPMENT OR DELIVERY DATE;

(f) DIRECTIONS FOR USE AS SPECIFIED BY RULE OF THE COMMISSIONER.

(2) Any commercial fertilizer distributed in this state in bulk shall be accompanied by a printed or written statement showing the information required in subsection (1) of this section.

(3) Any packaged soil conditioner or plant amendment distributed in this state shall have placed or affixed on the container a label setting forth in clearly legible and conspicuous form the following information:

(a) The name and address of the registrant;

(b) The net weight or other measure prescribed by ~~regulation~~ RULE;

(c) The ~~brand~~ NAME OF THE PRODUCT;

(d) An accurate statement of composition, including the percent of each ~~soil conditioner ingredient or each plant amendment~~ ingredient;

(e) The purpose of the product;

(f) ~~Repeated.~~ THE DATE OF MANUFACTURE, PROCESSING, PACKAGING, OR REPACKAGING, OR A CODE THAT PERMITS DETERMINATION OF THE DATE, OR, IF DISTRIBUTED IN BULK, THE SHIPMENT OR DELIVERY DATE;

(g) DIRECTIONS FOR USE AS SPECIFIED BY RULE OF THE COMMISSIONER.

(4) Any soil conditioner or plant amendment distributed in bulk in this state shall be accompanied by a printed or written statement showing the information required in subsection (3) of this section.

(5) Any ~~customer formulated~~ CUSTOM mix delivered in containers shall have placed on or affixed to the container a label, or if delivered in bulk, shall be accompanied by a printed or written statement, which label and statement shall set forth the following information:

(a) The name and address of the manufacturer;

(b) The net weight or measure as prescribed by ~~regulation~~ RULE of the commissioner;

(c) The guaranteed analysis and quantity of each registered product contained in the mix;

(d) THE DATE ON WHICH THE PRODUCT WAS MANUFACTURED OR DELIVERED; AND

(e) DIRECTIONS FOR USE AS SPECIFIED BY RULE OF THE COMMISSIONER.

(6) No product may be labeled, advertised, distributed, or sold as a commercial fertilizer, soil conditioner, OR plant amendment ~~or agricultural liming material~~ unless its substance conforms to the applicable definitions prescribed in this article or in the rules ~~and regulations~~ promulgated by the commissioner pursuant to this article.

~~(7) Any agricultural liming material distributed, sold, or offered or advertised for sale in this state shall have placed on or affixed to each container a label or tag setting forth clearly in legible and conspicuous form at least the following information:~~

~~(a) The name and address of the registrant;~~

~~(b) The net weight;~~

~~(c) The brand;~~

~~(d) The identification of the type;~~

~~(e) The calcium carbonate equivalent, determined by the approved methods of the association of official analytical chemists;~~

~~(f) The fineness, as defined in section 35-12-103 (14).~~

~~(8) Any agricultural liming material distributed in bulk in this state shall be accompanied by a printed or written statement showing the information required in subsection (7) of this section.~~

~~(9)~~ (7) No additional substances other than those allowed in section 35-12-103 ~~(13)~~ (12) may be listed or guaranteed on a label or labeling or on a written statement accompanying the bulk distribution of commercial fertilizers, soil conditioners, OR plant amendments ~~or agricultural liming materials~~ without the permission of the commissioner. The commissioner may allow additional substances to be listed or guaranteed on the label, labeling, or written statement if satisfactory supportive data is furnished to the commissioner in order to substantiate the value and usefulness of the substance. The commissioner may rely on sources other than the department, such as ~~the~~ Colorado state university, for assistance in evaluating the supportive data. If the commissioner permits such additional substances to be listed or guaranteed, the nature of the substances shall be determinable by laboratory methods. The substances shall be subject to inspection and analysis pursuant to methods and procedures prescribed by the commissioner ~~as rules~~ BY RULE.

~~(10)~~ (8) The commissioner may allow or require commercial fertilizers, soil conditioners, OR plant amendments ~~or agricultural liming materials~~ to be sold and labeled by volume in addition to or instead of by weight pursuant to rules ~~and regulations~~ promulgated by ~~him~~ THE COMMISSIONER.

35-12-106. Distribution fees. (1) ~~A registrant~~ ALL REGISTRANTS, except those who package only in containers of ten pounds or less, shall pay the commissioner A DISTRIBUTION FEE AS ESTABLISHED BY THE COMMISSION for all commercial fertilizers, soil conditioners, OR plant amendments ~~or agricultural liming materials~~ distributed in this state. ~~an inspection fee as established by the agricultural commission.~~ For the purpose of funding the groundwater protection fund created in section 25-8-205.5 (8), C.R.S., an additional fee per ton of commercial fertilizer shall be paid to the commissioner as established by the ~~agricultural~~ commission. This increment per ton of commercial fertilizer shall be collected by the commissioner and transmitted to the state treasurer, who shall credit the same to the groundwater protection fund. ~~created in section 25-8-205.5 (8), C.R.S.~~

(2) Registrants of specialty fertilizers, soil conditioners, OR plant amendments ~~or agricultural liming materials~~ packaged in containers of ten pounds or less shall pay the commissioner A DISTRIBUTION FEE AS ESTABLISHED BY THE COMMISSION, for all specialty fertilizers, soil conditioners, OR plant amendments ~~or agricultural liming materials~~ distributed in this state. ~~an inspection fee as established by the agricultural commission.~~

(3) Each person registering any commercial fertilizer, soil conditioner, OR plant amendment ~~or agricultural liming material~~ and each person producing custom

~~formulated~~ mixes in this state shall keep adequate records showing the pounds or tonnage ~~shipped to or sold, offered or exposed for sale, or distributed in this state,~~ and the commissioner ~~or his duly authorized representatives have~~ HAS the authority to examine such records to verify the statement of pounds or tonnage.

(4) Each registrant shall file an affidavit ~~semiannually~~ WITH THE COMMISSIONER within forty-five days after ~~each January 1 and each July 1 with~~ THE DATE SPECIFIED BY RULE OF the commissioner ~~which~~ THAT discloses the pounds or tonnage of commercial fertilizer, soil conditioner, OR plant amendment ~~or agricultural liming material sold or~~ distributed in the state during the preceding ~~six-month~~ TWELVE-MONTH period and ANY other information as required by rules adopted by the department. ~~of agriculture.~~ If the affidavit is not filed and the ~~inspection~~ DISTRIBUTION fee is not paid within the forty-five-day period, or if the report of pounds or tonnage is false, the commissioner may revoke the registration ~~of such person, and, if the affidavit is not filed and the inspection fee is not paid within the forty-five-day period;~~ AND ASSESS a penalty of five dollars per day for each ~~subsequent day shall be assessed~~ ESTABLISHED BY THE COMMISSION. The ~~inspection~~ DISTRIBUTION fee and the penalty shall constitute a debt and become the basis for a judgment against ~~such person~~ THE REGISTRANT.

(5) When more than one person is involved in the distribution of a commercial fertilizer, soil conditioner, OR plant amendment, ~~or agricultural liming material~~ the last registrant TO DISTRIBUTE THE PRODUCT is responsible for reporting the ~~semiannual~~ ANNUAL pounds or tonnage and paying the ~~inspection fee~~ DISTRIBUTION FEE, UNLESS THE ANNUAL REPORT AND PAYMENT HAS BEEN MADE BY A PRIOR DISTRIBUTOR.

(6) ~~Inspection~~ DISTRIBUTION fees are not required for ingredients ~~which~~ THAT have already been included in the tonnage or pounds for which a Colorado ~~inspection~~ DISTRIBUTION fee has been paid.

(7) The ~~inspection~~ DISTRIBUTION fees required to be paid by this section shall not apply to untreated ~~animal manure, untreated vegetable manure untreated peat moss, or untreated peat humus~~ OR COMPOST AND TREATED MANURE DISTRIBUTED WITHOUT COMMERCIAL FERTILIZER, SOIL CONDITIONER, OR PLANT AMENDMENT LABELING CLAIMS.

~~(8) Notwithstanding the amount specified for any fee in this section, the commissioner by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commissioner by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.~~

~~(9)~~ (8) For the EACH fiscal year, ~~commencing on July 1, 2007,~~ and for each ~~subsequent fiscal year,~~ fifty percent of the direct and indirect costs of administering and enforcing the provisions of this article shall be funded from the general fund. The ~~agricultural~~ commission shall establish a fee schedule to cover the remaining direct and indirect costs. All moneys collected pursuant to this section shall be

transmitted to the state treasurer, who shall credit the same to the inspection and consumer services cash fund created in section 35-1-106.5.

35-12-107. County tonnage reports. (Repealed)

35-12-108. Inspection, sampling, analysis. (1) ~~It is the duty of The commissioner to SHALL sample, inspect, make analyses of, and test commercial fertilizers, soil conditioners, plant amendments, and agricultural liming materials COMPOST distributed within this state at such time and place and to such an extent as he THE COMMISSIONER deems advisable to determine whether such products are in compliance with the provisions of this article. The commissioner who may act through his authorized agent, is authorized to enter upon any public or private premises or carriers during regular business hours in order to have access to commercial fertilizers, soil conditioners, plant amendments, and agricultural liming materials COMPOST subject to the provisions of this article and the rules and regulations adopted by the commissioner pursuant thereto~~ TO THIS ARTICLE.

(2) The methods of analysis and sampling shall be those adopted by the commissioner from ~~such~~ sources ~~as~~ INCLUDING the association of official analytical chemists INTERNATIONAL OR A SUCCESSOR ORGANIZATION, Colorado state university, or other authoritative sources deemed reliable by the commissioner.

(3) The commissioner, in determining ~~for administrative purpose~~ whether any commercial fertilizer, soil conditioner, plant amendment, or ~~agricultural liming material is in violation of~~ COMPOST VIOLATES this article, shall base such determination solely upon official samples ~~as defined in section 35-12-103(23) and~~ obtained and analyzed in accordance with subsections (1) and (2) of this section.

(4) The result of an analysis of a sample of any commercial fertilizer, soil conditioner, plant amendment, or ~~agricultural liming material which~~ COMPOST THAT indicates a deficiency shall be forwarded promptly to the registrant. Upon request within thirty days ~~of~~ AFTER the date the analysis report is forwarded, the commissioner shall furnish to the registrant a portion of any official sample. If, within forty-five days after forwarding of the analysis report indicating a deficiency, no adequate evidence contradicting the analysis report is made available to the commissioner, the report of the sample analysis shall become official.

35-12-109. Deviation from guaranteed analysis - penalties. (1) ~~If an official analysis shows that a commercial fertilizer is deficient in one or more of its guaranteed primary plant nutrients, nitrogen, available phosphoric acid, and soluble potash, beyond the investigational allowance and compensations as established by regulation and if the overall index value of the fertilizer is below the level established by regulation, the deficiency shall be evaluated and a penalty of three times the commercial value of such deficiency in the lot of such fertilizer represented by the sample shall be assessed by the commissioner against the registrant:~~

(2) ~~If an official report of a sample analysis shows that a commercial fertilizer, soil conditioner, plant amendment, or agricultural liming material is deficient beyond the investigational allowance as established by regulation in any constituents guaranteed, other than nitrogen, available phosphoric acid, and soluble potash,~~

pursuant to section 35-12-103 (16) (a) (III), the deficiency shall be evaluated and a penalty of three times the commercial value of the deficiency, determined in accordance with the provisions of section 35-12-110, shall be assessed against the registrant by the commissioner.

~~(3) All penalties assessed under this section shall be paid by the registrant of the deficient commercial fertilizer, soil conditioner, plant amendment, or agricultural liming material to the consumer of the deficient commercial fertilizer, soil conditioner, plant amendment, or agricultural liming material within three months after the date of notice from the commissioner to the registrant. Receipt from such payment shall be taken and promptly forwarded to the commissioner. If the purchaser or consumer cannot be found, the amount of the penalty shall be paid to the state treasurer.~~

35-12-110. Commercial value. ~~(1) For the purpose of determining the commercial values to be applied under the penalty assessment provisions of section 35-12-109, the commissioner shall determine the values under the applicable provisions of the following:~~

~~(a) The value per unit of nitrogen, available phosphoric acid, and soluble potash shall be current market value.~~

~~(b) The value per unit of other plant nutrients, soil conditioner ingredients, plant amending ingredients, and agricultural liming materials shall be determined by reference to the invoice price.~~

35-12-111. Misbranding. (1) No person shall distribute a misbranded product. A commercial fertilizer, soil conditioner, plant amendment, or ~~agricultural liming material~~ COMPOST is misbranded:

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

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

(c) If it is not labeled as required in section 35-12-105 and in accordance with ~~regulations~~ RULES prescribed under this article;

(d) (I) If it purports to be, ~~or~~ is represented as, OR IS REPRESENTED AS CONTAINING a commercial fertilizer, soil conditioner, plant amendment, or ~~agricultural liming material~~ or is represented as containing a plant nutrient, commercial fertilizer, soil conditioner, plant amendment, or ~~agricultural liming material~~ COMPOST, unless the plant nutrient, commercial fertilizer, soil conditioner, plant amendment, or ~~agricultural liming material~~ COMPOST conforms to the definitions of terms prescribed by this article or under the ~~regulations~~ RULES promulgated by the commissioner.

(II) In the adoption of such ~~regulations~~ RULES, THE COMMISSIONER SHALL GIVE due regard ~~shall be given~~ to commonly accepted definitions and official terms such as those issued by the association of American plant food control officials OR A SUCCESSOR ORGANIZATION.

(e) If it does not conform to the ingredient form, availability, minimums, labeling, and investigational allowances set forth in the rules ~~and regulations~~ promulgated by the commissioner.

~~(2) Untreated animal manure, untreated vegetable manure, untreated peat moss, or untreated peat humus is misbranded if not labeled to conform to the definitions of terms prescribed by this article or under the regulations promulgated by the commissioner or if its labeling is false or misleading.~~

35-12-112. Adulteration. (1) No person shall distribute an adulterated product. A commercial fertilizer, soil conditioner, plant amendment, or ~~agricultural liming material~~ COMPOST is deemed adulterated:

(a) If it contains any deleterious or harmful ~~ingredient~~ SUBSTANCE in sufficient amount to render it injurious to HUMAN HEALTH OR beneficial plant, animal, or aquatic life, when applied in accordance with directions for use on the label OR NORMAL APPLICATION PRACTICES, or if adequate warning statements or directions for use, which may be necessary to protect HUMAN HEALTH OR beneficial plant, animal, or aquatic life, are not shown on the label;

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

(c) If it contains unwanted crop seed or weed seed;

(d) IF THE CONCENTRATION OF ANY METAL IN THE PRODUCT EXCEEDS THE LEVEL ESTABLISHED FOR THAT CONSTITUENT BY RULE OF THE COMMISSIONER; OR

(e) IF IT CONTAINS AN INFECTIOUS AGENT IN SUFFICIENT AMOUNT TO RENDER IT INJURIOUS TO HUMAN HEALTH OR BENEFICIAL PLANT, ANIMAL, OR AQUATIC LIFE.

35-12-113. Publications. The commissioner shall publish at least annually, in such form as ~~he~~ THE COMMISSIONER deems proper, information concerning the sales of commercial fertilizers, soil conditioners, AND plant amendments, ~~and agricultural liming materials~~, together with such data on their production and use as ~~he~~ THE COMMISSIONER considers advisable, and a report of the results of the analyses based on official samples of commercial fertilizers, soil conditioners, AND plant amendments ~~and agricultural liming materials~~ sold within the state as compared with the analyses guaranteed under sections 35-12-103 ~~(16)~~ (14), 35-12-104, and 35-12-105. ~~The information concerning production and use of commercial fertilizers, soil conditioners, plant amendments, and agricultural liming materials shall be shown separately for the periods July 1 to December 31 and January 1 to June 30 of each year, and no disclosure shall be made of~~ INFORMATION CONCERNING THE SALE, PRODUCTION, AND USE OF COMMERCIAL FERTILIZERS, SOIL CONDITIONERS, AND PLANT AMENDMENTS SHALL NOT IDENTIFY OR OTHERWISE DISCLOSE the operations of any person.

35-12-114. Rules. The commissioner ~~or his authorized agent~~ is authorized, pursuant to section 24-4-103, C.R.S., to adopt and enforce rules ~~and regulations~~ TO IMPLEMENT, ADMINISTER, AND ENFORCE THIS ARTICLE. THE RULES SHALL INCLUDE, BUT ARE NOT LIMITED TO, RULES relating to sampling, analytical methods, ingredient

form, availability, minimums, exempted materials, investigational allowances, definitions, records, labels, labeling, liability bond, misbranding, mislabeling, ~~and the distribution of~~ commercial fertilizers, specialty fertilizers, ~~and~~ soil conditioners, plant amendments, and ~~agricultural liming materials~~ COMPOST, as may be necessary to carry into effect the full intent and meaning of this article. THE COMMISSIONER SHALL NOT ADOPT ANY RULE THAT IS INCONSISTENT WITH A RULE PROMULGATED BY A STATE ENTITY FOR ANY SUBSTANCE GOVERNED BY THIS ARTICLE.

35-12-115. Investigations - access - subpoena. (1) ~~If any commercial fertilizer, soil conditioner, plant amendment, or agricultural liming material in the possession of the consumer is found by the commissioner to be short in weight, the registrant or manufacturing facility of the commercial fertilizer, soil conditioner, plant amendment, or agricultural liming material shall, within thirty days after official notice from the commissioner, pay to the consumer an amount equal to four times the value of the actual shortage~~ THE COMMISSIONER, UPON THE COMMISSIONER'S OWN MOTION OR UPON THE COMPLAINT OF ANY PERSON, MAY MAKE ANY INVESTIGATIONS NECESSARY TO ENSURE COMPLIANCE WITH THIS ARTICLE.

(2) (a) AT ANY TIME DURING REGULAR BUSINESS HOURS, FOR THE PURPOSE OF CARRYING OUT ANY PROVISION OF THIS ARTICLE OR ANY RULE MADE PURSUANT TO THIS ARTICLE, THE COMMISSIONER SHALL HAVE FREE AND UNIMPEDED ACCESS UPON CONSENT OR UPON OBTAINING AN ADMINISTRATIVE SEARCH WARRANT:

(I) TO ALL BUILDINGS, YARDS, WAREHOUSES, STORAGE FACILITIES, VEHICLES, AND ANY OTHER PUBLIC OR PRIVATE PROPERTIES, PREMISES, OR CARRIERS IN WHICH ANY COMMERCIAL FERTILIZER, SOIL CONDITIONER, PLANT AMENDMENT, OR COMPOST IS KEPT, STORED, HANDLED, PROCESSED, DISTRIBUTED, OR TRANSPORTED;

(II) TO ALL BUSINESS RECORDS RELATED TO THE PRODUCTION OR DISTRIBUTION OF ANY COMMERCIAL FERTILIZER, SOIL CONDITIONER, PLANT AMENDMENT, OR COMPOST, INCLUDING BUT NOT LIMITED TO ANY RECORDS REQUIRED TO BE KEPT BY THIS ARTICLE OR ANY RULE PROMULGATED PURSUANT TO THIS ARTICLE. THE COMMISSIONER MAY ALSO MAKE COPIES OF SUCH RECORDS.

(b) THE COMMISSIONER SHALL HAVE FULL AUTHORITY TO ADMINISTER OATHS AND TAKE STATEMENTS; TO ISSUE ADMINISTRATIVE SUBPOENAS REQUIRING THE ATTENDANCE OF WITNESSES BEFORE THE COMMISSIONER AND THE PRODUCTION OF ALL BOOKS, MEMORANDA, PAPERS, AND OTHER DOCUMENTS, ARTICLES, OR INSTRUMENTS; AND TO COMPEL THE DISCLOSURE BY WITNESSES OF ALL FACTS KNOWN TO THEM RELATIVE TO THE MATTERS UNDER INVESTIGATION. UPON THE FAILURE OR REFUSAL OF ANY WITNESS TO OBEY ANY SUBPOENA, THE COMMISSIONER MAY PETITION THE DISTRICT COURT AND, UPON A PROPER SHOWING, THE COURT MAY ENTER AN ORDER COMPELLING THE WITNESS TO APPEAR AND TESTIFY OR PRODUCE DOCUMENTARY EVIDENCE. FAILURE TO OBEY SUCH AN ORDER OF THE COURT SHALL BE PUNISHABLE AS A CONTEMPT OF COURT.

(3) COMPLAINTS OF RECORD MADE TO THE COMMISSIONER AND THE RESULTS OF THE INVESTIGATIONS OF THE COMMISSIONER MAY, IN THE DISCRETION OF THE COMMISSIONER, BE CLOSED TO PUBLIC INSPECTION, EXCEPT AS PERMITTED BY COURT ORDER, DURING THE INVESTIGATORY PERIOD AND UNTIL DISMISSED OR UNTIL NOTICE OF HEARING AND CHARGES ARE SERVED. ANY ACTION TAKEN BY THE

COMMISSIONER SHALL BE A PUBLIC RECORD AS DEFINED IN SECTION 24-72-202, C.R.S.

35-12-116. Cancellation of registration or refusal to register. (1) The commissioner may revoke or suspend the registration of or may refuse to register any ~~grade and brand name of~~ commercial fertilizer, soil conditioner, OR plant amendment ~~or agricultural liming material, or custom formulated plant mix, or distributor of bulk agricultural fertilizer, soil conditioner, plant amendments, and agricultural liming materials~~ upon a finding supported by satisfactory evidence that the registrant or person applying for registration has violated any provision of this article OR ANY RULE ADOPTED PURSUANT TO THIS ARTICLE. No registration shall be refused, suspended, or revoked until the registrant has been given the NOTICE AND opportunity of a hearing ~~pursuant to section 24-4-105~~ REQUIRED BY ARTICLE 4 OF TITLE 24, C.R.S.

(2) THE COMMISSIONER MAY REVOKE OR SUSPEND THE REGISTRATION OF OR MAY REFUSE TO REGISTER ANY MANUFACTURING FACILITY REQUIRED TO BE REGISTERED UNDER SECTION 35-12-104 (7) OR (8) UPON A FINDING THAT THE REGISTRANT OR PERSON APPLYING FOR REGISTRATION HAS SUBMITTED FALSE INFORMATION TO THE COMMISSIONER OR HAS VIOLATED ANY PROVISION OF THIS ARTICLE OR ANY RULE ADOPTED PURSUANT TO THIS ARTICLE. NO REGISTRATION SHALL BE REFUSED, SUSPENDED, OR REVOKED UNTIL THE REGISTRANT HAS BEEN GIVEN NOTICE AND OPPORTUNITY FOR A HEARING PURSUANT TO ARTICLE 4 OF TITLE 24, C.R.S.

35-12-117. Stop distribution, stop use, or removal orders. (1) The commissioner may issue and enforce a written or printed stop ~~sale~~ DISTRIBUTION, stop use, or removal order directed to the owner or custodian of any lot of commercial fertilizer, soil conditioner, plant amendment, ~~agricultural liming material, manure, peat moss, or peat humus~~ OR COMPOST when the commissioner finds the commercial fertilizer, soil conditioner, plant amendment, ~~agricultural liming material~~ OR COMPOST ~~manure peat moss, or peat humus~~ is being ~~offered or exposed for sale~~ DISTRIBUTED or ~~use or is being~~ used in violation of any of the provisions of this article. The commissioner shall release the commercial fertilizer, soil conditioner, plant amendment, ~~agricultural liming material~~ OR COMPOST ~~manure peat moss, or peat humus~~ from the order when the owner or custodian has complied with requirements of this article and has paid all costs and expenses incurred in connection with the entry and enforcement of such order. ANY PERSON WHO HAS RECEIVED A STOP DISTRIBUTION, STOP USE, OR REMOVAL ORDER MAY REQUEST A HEARING, PURSUANT TO ARTICLE 4 OF TITLE 24, C.R.S., TO DETERMINE WHETHER THE VIOLATION OCCURRED.

(2) IN THE EVENT THAT A PERSON FAILS TO COMPLY WITH A STOP DISTRIBUTION, STOP USE, OR REMOVAL ORDER WITHIN TWENTY-FOUR HOURS AFTER THE ISSUANCE OF THE ORDER, THE COMMISSIONER MAY BRING SUIT FOR A TEMPORARY RESTRAINING ORDER AND INJUNCTIVE RELIEF IN ORDER TO PREVENT ANY FURTHER OR CONTINUED VIOLATION OF SUCH ORDER.

(3) MATTERS BROUGHT BEFORE A COURT PURSUANT TO THIS SECTION SHALL HAVE PREFERENCE OVER OTHER MATTERS ON THE COURT'S CALENDAR.

(4) WHENEVER THE COMMISSIONER POSSESSES EVIDENCE SATISFACTORY TO THE

COMMISSIONER THAT A PERSON HAS ENGAGED OR IS ABOUT TO ENGAGE IN A VIOLATION OF THIS ARTICLE OR RULES ADOPTED PURSUANT TO THIS ARTICLE, THE COMMISSIONER MAY APPLY TO A COURT OF COMPETENT JURISDICTION TO TEMPORARILY OR PERMANENTLY RESTRAIN OR ENJOIN THE ACT OR PRACTICE IN QUESTION AND TO ENFORCE COMPLIANCE WITH THIS ARTICLE AND RULES ADOPTED PURSUANT TO THIS ARTICLE. IN ANY SUCH ACTION, THE COMMISSIONER SHALL NOT BE REQUIRED TO PLEAD OR PROVE IRREPARABLE INJURY OR THE INADEQUACY OF THE REMEDY AT LAW. UNDER NO CIRCUMSTANCES SHALL THE COURT REQUIRE THE COMMISSIONER TO POST A BOND.

35-12-118. Seizure, condemnation, and sale. Any lot of commercial fertilizer, soil conditioner, plant amendment, ~~agricultural liming material manure peat moss, or peat humus which~~ OR COMPOST THAT IS IN VIOLATION OF THIS ARTICLE SHALL BE SUBJECT TO SEIZURE ON COMPLAINT OF THE COMMISSIONER TO A COURT OF COMPETENT JURISDICTION IN THE COUNTY IN WHICH THE PRODUCT IS LOCATED. IN THE EVENT THE COURT FINDS THE PRODUCT TO BE IN VIOLATION OF THIS ARTICLE AND ORDERS THE CONDEMNATION OF THE PRODUCT, IT SHALL BE DISPOSED OF IN ANY MANNER CONSISTENT WITH THE QUALITY OF THE PRODUCT AND THE LAWS OF THIS STATE. IN NO INSTANCE SHALL THE DISPOSITION OF THE COMMERCIAL FERTILIZER, SOIL CONDITIONER, PLANT AMENDMENT, ~~agricultural liming material manure peat moss, or peat humus~~ OR COMPOST BE ORDERED BY THE COURT WITHOUT FIRST AFFORDING THE OWNER AN OPPORTUNITY TO APPLY TO THE COURT FOR RELEASE OF THE PRODUCT OR FOR PERMISSION TO PROCESS OR RELABEL THE PRODUCT TO BRING IT INTO COMPLIANCE WITH THIS ARTICLE.

35-12-119. Civil penalties. (1) ~~Any person convicted of violating any provision of this article or any rule or regulation adopted under it may be fined not less than twenty-five dollars nor more than one hundred dollars for the first offense and not less than one hundred dollars nor more than five hundred dollars for any subsequent offense committed within a three-year period after a prior conviction~~ WHO VIOLATES ANY PROVISION OF THIS ARTICLE OR ANY RULE ADOPTED PURSUANT TO THIS ARTICLE IS SUBJECT TO A CIVIL PENALTY, AS DETERMINED BY THE COMMISSIONER. THE MAXIMUM PENALTY SHALL NOT EXCEED ONE THOUSAND DOLLARS PER VIOLATION. EACH DAY THE VIOLATION OCCURS SHALL CONSTITUTE A SEPARATE VIOLATION.

(2) ~~Upon learning of a violation or alleged violation of this article, the commissioner may investigate and hold a hearing concerning the nature and extent of the violation. If the commissioner finds that the violation is minor or that the public interest will be adequately served by the issuance of an administrative warning, he may issue a written warning to the alleged violator. If the commissioner finds that the violation is gross, willful, or repeated, he may file a complaint and institute prosecution through an appropriate district attorney. After conviction in such a prosecution, the fact and circumstances of any previous administrative warning to the violator may be considered by the court as bearing upon the amount of the fine to be assessed~~ NO CIVIL PENALTY MAY BE IMPOSED UNLESS THE PERSON CHARGED IS GIVEN NOTICE AND OPPORTUNITY FOR A HEARING PURSUANT TO ARTICLE 4 OF TITLE 24, C.R.S.

(3) IF THE COMMISSIONER IS UNABLE TO COLLECT SUCH CIVIL PENALTY OR IF ANY PERSON FAILS TO PAY ALL OR A SET PORTION OF THE CIVIL PENALTY AS DETERMINED BY THE COMMISSIONER, THE COMMISSIONER MAY RECOVER SUCH AMOUNT PLUS COSTS AND ATTORNEY FEES BY ACTION IN ANY COURT OF COMPETENT JURISDICTION.

(4) BEFORE IMPOSING ANY CIVIL PENALTY, THE COMMISSIONER MAY CONSIDER THE EFFECT OF SUCH PENALTY ON THE ABILITY OF THE PERSON CHARGED TO STAY IN BUSINESS.

35-12-120. Exchange between manufacturers. ~~Nothing in this article shall be construed to restrict or avoid sales or exchanges of commercial fertilizers, soil conditioners, plant amendments, or agricultural liming materials to each other by importers, manufacturers, or manipulators who mix these materials for sale or to prevent the free and unrestricted shipments of commercial fertilizers, soil conditioners, plant amendments, or agricultural liming materials to manufacturers or manipulators who have registered as required by the provisions of this article.~~

SECTION 2. 35-1.5-102 (6) (a), (6) (b), (6) (c), (6) (d), and (6) (f), Colorado Revised Statutes, are amended to read:

35-1.5-102. Definitions. As used in this article, unless the context otherwise requires:

- (6) "Plant nutrient" means:
 - (a) ~~An agricultural liming material as defined in section 35-12-103 (1);~~
 - (b) A plant amendment as defined in section 35-12-103 ~~(27)~~ (24);
 - (c) A plant nutrient as defined in section 35-12-103 ~~(28)~~ (25);
 - (d) A soil conditioner as defined in section 35-12-103 ~~(31)~~ (29);
 - (f) A commercial fertilizer as defined in section 35-12-103 ~~(7)~~ (3);

SECTION 3. Repeal. 35-9-118 (4.5), Colorado Revised Statutes, is repealed as follows:

35-9-118. Powers and duties of the commissioner. ~~(4.5) No later than January 1, 2003, the commissioner shall advise the senate and house agriculture committees of the general assembly regarding the effectiveness of the exemption of certain pesticides from the state sales and use tax pursuant to sections 39-26-716 (2) (e) and 39-26-716 (3) (e), C.R.S., in increasing sales of such pesticides by Colorado pesticide dealers and reducing purchases by Colorado purchasers of such pesticides from sources outside of Colorado. No later than January 1, 2000, the commissioner shall make recommendations to said committees regarding the elimination of the state sales and use tax on commercial fertilizers, soil conditioners, plant amendments, agricultural liming materials, and other compounds used in the production of agricultural and livestock products.~~

SECTION 4. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 6, 2008, if adjournment sine

die is on May 7, 2008); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: May 29, 2008