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S.102

Introduced by Committee on Agriculture

Date:

Subject: Agriculture; solid waste; composting; poultry

Statement of purpose of bill as introduced: This bill proposes to require the

Agency of Agriculture, Food and Markets to regulate compost foraging as

farming. The bill would amend the definition of “farming” under Act 250 and

the Required Agricultural Practices to include compost foraging. The bill

would also require the manufacturer or distributor of dosage form animal health products,

feed supplements, biostimulants, soil amendments, and plant amendments sold

or distributed in the State to register the products with the Agency of

Agriculture, Food and Markets.

An act relating to the regulation of agricultural inputs for farming

It is hereby enacted by the General Assembly of the State of Vermont:

* * * Compost Foraging; Farming * * *

Sec. 1. 10 V.S.A. § 6001 is amended to read:

§ 6001. DEFINITIONS

~~In~~ As used in this chapter:

* * *

(3)(A) “Development” means each of the following:

Commented [1]: This terminology if suggested so it specifically defines the intended products considered – NASC Products. It also would exclude Functional Treats or other products which would be AAFCO type feed products as well as approved animal drugs.

Commented [FL2R1]: Good with this.

1 * * *

2 (D) The word “development” does not include:

3 (i) The construction of improvements for farming, logging, or
4 forestry purposes below the elevation of 2,500 feet.

5 * * *

6 (vii) The construction of improvements below the elevation of
7 2,500 feet for the on-site storage, preparation, and sale of compost, provided
8 that one of the following applies:

9 * * *

10 (III) The compost is principally used on the farm where it was
11 produced.

12 * * *

13 (22) “Farming” means:

14 (A) the cultivation or other use of land for growing food, fiber,
15 Christmas trees, maple sap, or horticultural and orchard crops; or

16 (B) the raising, feeding, or management of livestock, poultry, fish, or
17 bees; or

18 (C) the operation of greenhouses; or

19 (D) the production of maple syrup; or

20 (E) the on-site storage, preparation, and sale of agricultural products
21 principally produced on the farm; or

1 (F) the on-site storage, preparation, production, and sale of fuel or
2 power from agricultural products or wastes principally produced on the farm;
3 or

4 (G) the raising, feeding, or management of four or more equines
5 owned or boarded by the farmer, including training, showing, and providing
6 instruction and lessons in riding, training, and the management of equines; or

7 (H) the importation of 2,000 cubic yards per year or less of food
8 residuals or food processing residuals onto a farm for the production of
9 compost, provided that:

10 (i) the compost is principally used on the farm where it is
11 produced; or

12 (ii) the compost is produced on a small farm that raises or
13 manages poultry.

14 * * *

15 (38) "Farm" means, for the purposes of subdivision (22)(H) of this
16 section, a parcel or parcels of land owned, leased, or managed by a person and
17 devoted primarily to farming that meets the threshold criteria as established
18 under the Required Agricultural Practices.

19 (39) "Food processing residuals" means the remaining organic material
20 from a food processing plant and may include whey and other dairy, cheese
21 making, and ice cream residuals or residuals from any food manufacturing
22 process excluding livestock or poultry slaughtering and rendering operations.

1 “Food processing residuals” does not include food residuals from markets,
2 groceries, or restaurants.

3 (40) “Food residuals” has the same meaning as in section 6602 of this
4 title.

5 (41) “Principally used” means, for the purposes of subdivision
6 (3)(D)(vii)(III) and (22)(H) of this section, that more than 50 percent, either by
7 volume or weight, of the compost produced on the farm is physically and
8 permanently incorporated into the native soils on the farm as a soil
9 enhancement and is not removed or sold at any time thereafter.

10 (42) “Small farm” has the same meaning as in 6 V.S.A. § 4871.

11 Sec. 2. Section 2 of the Agency of Agriculture, Food and Markets,

12 Vermont Required Agricultural Practices Rule for the Agricultural

13 Nonpoint Source Pollution Control Program is amended to read:

14 Section 2. Definitions

15 * * *

16 2.16 Farming means:

17 (a) the cultivation or other use of land for growing food, fiber, Christmas
18 trees, maple sap, or horticultural, viticultural, and orchard crops; or

19 (b) the raising, feeding, or management of livestock, poultry, fish, or bees;

20 or

21 (c) the operation of greenhouses; or

22 (d) the production of maple syrup; or

1 (e) the on-site storage, preparation, and sale of agricultural products
2 principally produced on the farm; or

3 (f) the on-site storage, preparation, production, and sale of fuel or power
4 from agricultural products or wastes principally produced on the farm; or

5 (g) the raising, feeding, or management of four or more equines owned or
6 boarded by the farmer, including training, showing, and providing instruction
7 and lessons in riding, training, and the management of equines; or

8 (h) the importation of 2,000 cubic yards per year or less of food residuals
9 or food processing residuals onto a farm for the production of compost,
10 provided that:

11 (1) the compost is principally used on the farm where it is produced; or

12 (2) the compost is produced on a small farm that raises or manages
13 poultry.

14 * * *

15 2.44 “Food residual” means source separated and uncontaminated material
16 that is derived from processing or discarding of food and that is recyclable, in a
17 manner consistent with 10 V.S.A. § 6605k. Food residual may include
18 preconsumer and postconsumer food scraps. “Food residual” does not mean
19 meat and meat-related products when the food residuals are composted by a
20 resident on site.

21 2.45 “Principally used” means that more than 50 percent, either by
22 volume or weight, of the compost produced on the farm is physically and

1 permanently incorporated into the native soils on the farm as a soil
2 enhancement and is not removed or sold at any time thereafter.

3 Sec. 3. 6 V.S.A. chapter 218 is added to read:

4 CHAPTER 218. AGRICULTURAL RESIDUALS MANAGEMENT

5 § 5131. PURPOSE

6 The purpose of this chapter is to establish a program for the management of
7 residual wastes generated, imported to, or managed on a farm for farming in
8 Vermont.

9 § 5132. DEFINITIONS

10 As used in this chapter:

11 (1) "Agency" means the Agency of Agriculture, Food and Markets.

12 (2) "Compost" means a stable humus-like material produced by the
13 controlled biological decomposition of organic matter through active
14 management but shall not mean sewage, septage, or materials derived from
15 sewage or septage.

16 (3) "Farm" means a parcel or parcels of land owned, leased, or managed
17 by a person and devoted primarily to farming that meets the threshold criteria
18 for regulation under the Required Agricultural Practices.

19 (4) "Farming" has the same meaning as in 10 V.S.A. § 6001(22).

20 (5) "Food processing residuals" means the remaining organic material
21 from a food processing plant and may include whey and other dairy, cheese
22 making, and ice cream residuals or residuals from any food manufacturing

1 process excluding livestock or poultry slaughtering and rendering operations.

2 “Food processing residuals” do not include food residuals from markets,
3 groceries, or restaurants.

4 (6) “Food residuals” means source separated and uncontaminated
5 material that is derived from processing or discarding of food and that is
6 recyclable or compostable. “Food residuals” may include preconsumer and
7 postconsumer food scraps. “Food residuals” include meat and meat-related
8 products when the disposition of the products is managed on a farm.

9 (7) “Secretary” means the Secretary of Agriculture, Food and Markets.

10 (8) “Source separation” has the same meaning as in 10 V.S.A. § 6602.

11 § 5133. FOOD RESIDUALS; RULEMAKING

12 (a) The Secretary shall regulate the importation of food residuals or food
13 processing residuals onto a farm.

14 (b)(1) The Secretary shall adopt by rule requirements for the management
15 of food residuals and food processing residuals on a farm. The rules may
16 include requirements regarding:

17 (A) the proper composting of food residuals or food processing
18 residuals;

19 (B) destruction of pathogens in food residuals, food processing
20 residuals, or compost;

21 (C) prevention of public health threat from food residuals, food
22 processing residuals, or compost;

1 Sec. 5. 10 V.S.A. § 6605h is amended to read:

2 § 6605h. COMPOSTING REGISTRATION

3 Notwithstanding sections 6605, 6605f, and 6611 of this title, the Secretary
4 may, by rule, authorize a person engaged in the production or management of
5 compost at a small scale composting facility to register with the Secretary
6 instead of obtaining a facility certification under section 6605 or 6605c of this
7 title. This section shall not apply to a farm producing compost under
8 subdivision 6001(22)(H) of this title.

9 Sec. 6. 10 V.S.A. § 6605j is amended to read:

10 § 6605j. ACCEPTED COMPOSTING PRACTICES

11 (a) The Secretary, in consultation with the Secretary of Agriculture, Food
12 and Markets, shall adopt by rule, pursuant to 3 V.S.A. chapter 25, and shall
13 implement and enforce accepted composting practices for the management of
14 composting in the State. These accepted composting practices shall address:

15 (1) standards for the construction, alteration, or operation of a
16 composting facility;

17 (2) standards for facility operation, including acceptable quantities of
18 product or inputs, vector management, odors, noise, traffic, litter control,
19 contaminant management, operator training and qualifications, recordkeeping,
20 and reporting;

- 1 (3) standards for siting of composting facilities, including siting and
2 operation of compost storage areas, compost bagging areas, and roads and
3 parking areas;
- 4 (4) standards for the composting process, including rotation,
5 management of compost piles, compost pile size, and monitoring of compost
6 operations;
- 7 (5) standards for management of runoff from compost facilities,
8 including liquids management from the feedstock area, active composting
9 areas, curing area, and compost storage area; the use of swales or stormwater
10 management around or within a compost facility; vegetative buffer
11 requirements; and run-off management from tipping areas;
- 12 (6) specified areas of the State unsuitable for the siting of commercial
13 composting that utilizes post-consumer food residuals or animal mortalities,
14 such as designated downtowns, village centers, village growth areas, or areas
15 of existing residential density; and
- 16 (7) definitions of “small-scale composting facility,” “medium-scale
17 composting facility,” and “de minimis composting exempt from regulation.”
- 18 (b) A person operating a small scale composting facility ~~or operating a~~
19 ~~composting facility on a farm~~ who follows the accepted composting practices
20 shall not be required to obtain a discharge permit under section 1263 or 1264
21 of this title, a solid waste facility certification under chapter 159 of this title, or
22 an air emissions permit under chapter 23 of this title unless a permit is required

1 by federal law or the Secretary of Natural Resources determines that a permit
2 is necessary to protect public health or the environment.

3 ~~(c) The Secretary of Natural Resources shall coordinate with the Secretary~~
4 ~~of Agriculture, Food and Markets in implementing and enforcing the accepted~~
5 ~~composting practices. The Secretary of Agriculture, Food and Markets and the~~
6 ~~Secretary of Natural Resources may, after opportunity for public review and~~
7 ~~comment, develop a memorandum of understanding for implementation and~~
8 ~~enforcement of the accepted composting practices. [Repealed.]~~

9 (d) The Secretary shall not regulate under this section a farm producing
10 compost under subdivision 6001(22)(H) of this title.

11 Sec. 7. APPLICATION OF SOLID WASTE MANAGEMENT RULES

12 Prior to adoption of rules under 6 V.S.A. § 5133, the Secretary of
13 Agriculture, Food and Markets shall require a person producing compost on a
14 farm under 10 V.S.A. § 6001(22)(H) to comply with Sections 6-1101 through
15 6-1111 of the Agency of Natural Resources' Vermont Solid Waste
16 Management Rules. After adoption of rules under 6 V.S.A. § 5133, Sections
17 6-1101 through 6-1111 of the Agency of Natural Resources' Vermont Solid
18 Waste Management Rules shall not apply to a person producing compost on a
19 farm under 10 V.S.A. § 6001(22)(H).

1 Sec. 8. UPDATE ON IMPLEMENTATION OF IMPORT OF FOOD

2 RESIDUALS ONTO FARM FOR COMPOSTING

3 On or before January 15, 2023, the Secretary of Agriculture, Food and
4 Markets and the Secretary of Natural Resources shall consult and present or
5 submit testimony to the Senate Committee on Agriculture and the House
6 Committee on Agriculture and Forestry regarding the import of food residuals
7 onto farms for the purpose of compost production.

8 * * * Dosage Form Animal Health Products; Feed Supplements * * *

9 Sec. 9. 6 V.S.A. chapter 26 is amended to read:

10 CHAPTER 26. COMMERCIAL FEEDS

11 * * *

12 § 323. DEFINITIONS

13 ~~When As~~ used in this chapter:

14 (1) “Dosage Form Animal Health ~~Product~~ means any product intended to affect the

15 ~~structure or function of the animal’s body “Animal health product” means any~~

14 ~~product marketed to prevent or~~

15 ~~_____~~
16 ~~cure a health condition or enhance or support protect the health or well-being of~~

17 ~~livestock, poultry horses, dogs, cats, or other domestic animals that does not provide~~

+718 nutritional benefit,

+819 does not require a prescription from a licensed veterinarian, is not intended for

+920 cosmetic purposes, or is exempted by the Secretary by rule.

Commented [3]: Dosage Form AH Product would also limit or not include functional treats with unapproved ingredients, which are food. I think this may open a door that would be unintended.

Commented [FL4R3]: Cary, This is ok. When I was creating the language, I was modeling language on other state’s animal remedy laws which include products that we do intend to register (antibiotics, vaccinations, topicals etc.

Commented [FL5R3]: Also if you want to remove livestock and poultry I am ok with that. NASC also uses the term “non-human food chain animals” Either way is fine with me.

Commented [6]: This would also include approved drugs and potentially drugs used by Veterinarians. FDA/CVM and other regulations on the human side limit claims to Structure Function Claims so we would recommend rewording. It would also be consistent with other VT statutes and AAFCO in the OP.

Commented [7]: FDA would also consider the term “protect” an impermissible claim.

~~20~~21 (2) "Brand name" means any word, name, symbol, or device, or any

~~22~~ combination thereof, identifying the commercial feed, dosage form animal health,
~~24~~~~23~~ product,

~~22~~24 or a distributor or registrant and distinguishing it from that of others.

~~32~~ unmixed or physically altered entire unmixed seeds, when not adulterated
~~43~~ within the meaning of subsection 327(a) of this title, ~~which that~~ are distributed
~~54~~ for use as feed or for mixing in feed. The Secretary by regulation may exempt
~~65~~ from this definition, or from specific provisions of this chapter, commodities
~~76~~ such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical
~~87~~ compounds or substances when such commodities, compounds, or substances
~~98~~ are not intermixed or mixed with other materials, and are not adulterated
~~40~~9 within the meaning of subsection 327(a) of this title.

~~11~~10 ~~(3)~~(4) "Customer-formula feed" means commercial feed that consists of
~~12~~11 a mixture of commercial feeds or feed ingredients each batch of which is
~~13~~12 manufactured according to the specific instructions of the final purchaser.

~~14~~13 ~~(4)~~(5) "Distribute" means to offer for sale, sell, exchange, or barter
~~15~~14 commercial feed or dosage form animal health products or to supply, furnish, or
otherwise

~~16~~15 provide commercial feed or dosage form animal health products, through any means,
~~17~~16 including sales outlets, catalogues, the telephone, the Internet, or any electronic
~~18~~17 means.

~~19~~18 ~~(5)~~(6) "Distributor" means any person who distributes commercial feeds
~~20~~19 or dosage form animal health products.

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Commented [8]: This is why the qualifier above – Dosage Form AH Product is added. So you are not in conflict here as ingredients are not included for nutritional benefits.

Commented [FL9R8]: I think this can stay in, especially if we are removing livestock from dosage form animal health products.

Commented [10]: This is good.

Commented [FL11R10]: This is good.

2120 ~~(6)(7)~~ "Drug" means any substance intended for use in the diagnosis,
2221 cure, mitigation, treatment, or prevention of disease in domestic animals other

Commented [12]: Hence the comment above to eliminate – diagnose, prevent, treat and / or cure ... keep SF boundaries which you have also done later in the language used.

Commented [FL13R12]: Nothing is changed here, just a comment.

1 than humans and substances other than feed intended to affect the structure or
2 any function of the animal body.

3 ~~(7)~~(8) “Feed ingredient” means each of the constituent materials making
4 up a commercial feed.

5 (9) “Feed supplement” means a material used with another to improve
6 the nutritive balance or performance of the total and intended to be fed
7 undiluted as a supplement to other feeds or offered free choice with other parts
8 of the ration separately available or further diluted and mixed to produce a
9 complete feed.

10 ~~(8)~~(10) “Label” means a display of written, printed, or graphic matter
11 upon or affixed to the container in which a commercial feed, dosage form animal
12 health product, or feed supplement is distributed, or on the invoice or delivery slip
13 with which a commercial feed, dosage form animal health product, or feed
14 supplement is distributed.

15 ~~(9)~~(11) “Labeling” means all labels and other written, printed, or
16 graphic matter upon a commercial feed, dosage form animal health product, or feed
17 supplement or any of its containers, or the wrapper accompanying the
18 commercial feed, dosage form animal health product, or feed supplement, or
19 advertisements, brochures, posters, and television, radio announcements, electronic
20 media, including the internet, social media and the like,
21 used in promoting the sale of the feed, dosage form animal health product, or feed
supplement.

Commented [FL14]: This

Commented [FL15R14]:

Commented [FL16R14]: This is a good addition.

1 ~~(10)~~(12) “Manufacture” means to produce, grind, mix, or blend, or
2 further process a commercial feed, dosage form animal health product, or feed
3 supplement
4 for distribution.

4 ~~(11)~~(13) “Mineral feed” means a commercial feed intended to supply
5 primarily mineral elements or inorganic nutrients.

6 ~~(12)~~(14) “Official sample” means a sample of feed taken by the
7 Secretary in accordance with the provisions of subdivision 330(3) of this title.

8 ~~(13)~~(15) “Percent” or “percentages” means percentages by weights.

9 ~~(14)~~(16) “Permitted analytical variances” means those allowances for
10 the inherent variability in sampling and laboratory analysis.

11 ~~(15)~~(17) “Pet” means any domesticated animal normally maintained in
12 or near the household of the owner.

13 ~~(16)~~(18) “Pet food” means any commercial feed prepared and
14 distributed for consumption by pets.

15 ~~(17)~~(19) “Product” means the name of the commercial feed ~~which,~~
16 dosage form animal health product, or feed supplement that identifies it as to kind,
17 class, or
18 specific use.

18 ~~(18)~~(20) “Specialty pet” means any domesticated animal pet normally
19 maintained in a cage or tank.

20 ~~(19)~~(21) “Specialty pet food” means any commercial feed prepared and
21 distributed for consumption by specialty pets.

22

~~(20)~~(22) “Ton” means a net weight of 2,000 pounds avoirdupois.

1 § 324. REGISTRATION AND FEES

2 (a) No person shall ~~manufacture or distribute~~ a commercial feed, feed supplement,
or

3 dosage form animal health product in this State unless that person has first filed with
the

4 ~~Vermont~~ Agency of Agriculture, Food and Markets, in a form and manner to
5 be prescribed by rules by the Secretary:

6 (1) the name of the manufacturer or distributor;

7 (2) the manufacturer's, or distributor's place of business;

8 (3) the location of each manufacturing or distribution facility; and

9 (4) any other information that the Secretary considers to be necessary.

10 (b) A person shall not distribute in this State a commercial feed, feed
11 supplement, or dosage form animal health product that has not been registered
pursuant to

12 the provisions of this chapter. Application shall be in a form and manner to be
13 prescribed by rule of the Secretary.

14 (c)(1) The application for registration of a commercial feed or feed
15 supplement shall be accompanied by a registration fee of \$105.00 per product.

16 The registration fees, along with any surcharges collected under subsection

17 ~~(e)~~(d) of this section, shall be deposited in the special fund created by

18 subsection 364(e) of this title. Funds deposited in this account shall be

19 restricted to implementing and administering the provisions of this title and

20 any other provisions of the law relating to fertilizer, lime, or seeds. If the

21 Secretary so requests, the application for registration shall be accompanied by

Commented [FL17]: Ok to add distribute, but should probably keep manufacture as well.

Commented [18]: I think you want to include all companies whether they are the actual manufacturer or not. You could say, manufacture or distribute ...

Commented [19]: I think you will get major push back from the industry and also potential consumer outcry as companies may not sell in VT. With the internet they are also very hard to catch. We would recommend a flat fee per company - \$250.00. I think the industry would accept - \$25.00 / \$30.00 per product

Commented [FL20R19]: This is just the feed and feed supplement part, Animal health dosage product is below.

BILL AS INTRODUCED
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22 a label or other printed matter describing the product.

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1 ~~(2)~~ The application for registration of manufacturers, which term includes
2 private-label distributors, of ~~an~~ dosage form animal health product shall be
31 accompanied by a registration register and list its products for a fee of \$105.00
42 per manufacturer ~~per product~~. The registration
42 fees, along with any surcharges collected under subsection (d) of this section,
53 shall be deposited in the special fund created by subsection 364(e) of this title.
64 Funds deposited in this account shall be restricted to implementing and
75 administering the provisions of this title and any other provisions of the law
86 relating to items registered under this chapter. If the Secretary so requests, the
97 application for registration shall be accompanied by a label or other printed
108 matter describing the product.
119 ~~(e)~~(d) No person shall distribute in this State any feed, feed supplement, or
1210 dosage from animal health product required to be registered under this chapter upon
which
1311 the Secretary has placed a withdrawal from distribution order because of
1412 nonregistration. A surcharge of \$10.00, in addition to the registration fee
1513 required by subsection ~~(b)~~(c) of this section, shall accompany the application
1614 for registration of each product upon which a withdrawal from distribution
1715 order has been placed for reason of nonregistration, and must be received
1816 before removal of the withdrawal from distribution order.
1917 ~~(d)~~(e) No person shall distribute a commercial feed product in the State that
2018 is labeled as bait or feed for white-tailed deer.
2119 § 325. LABELING
2220 (a) A commercial feed or feed supplement, except a customer-formula

Commented [21]: Same input as above. I think you will have outcry from both industry and consumers. Consider this example from another state:

(1)“The application for registration of Dosage Form Animal Health of \$250.00 per establishment register and thereafter every 2 years. The Commissioner may not charge an additional per product fee for listing products with the State. Funds deposited in this account shall be restricted to implementing and administering the provisions of this title and any other provision of law related administered by the Commissioner.”

Commented [22]: This could be quite expensive for companies that have more than few skews. Another possibility is to based in on the number skews sold into the state.

Commented [FL23R22]: I still think it is best to keep all products the same fee for simplicity. If the fee is different, I think we need to include a statement somewhere that the secretary determines if a product is a feed, feed supplement or animal health dosage form product. Also I think we might want to keep the original language to match (c) (1) directly above. This statement is actually confusing to me.

2321 feed, shall be accompanied by a label bearing the following information:

- 1 (1) the net weight;
- 2 (2) the product name and the brand name, if any, under which the
3 commercial feed or feed supplement is distributed;
- 4 (3) the guaranteed analysis as required by rule in section 329 of this
5 title;
- 6 (4) the common, usual name or collective term of each ingredient used
7 in the manufacture of the commercial feed or feed supplement in descending
8 order;
- 9 (5) the name and principal mailing address of the manufacturer or the
10 person responsible for distributing the commercial feed or feed supplement unless listed
in the local telephone directory then name, city, state and zip code is only required
;
- 11 (6) adequate directions for use for all commercial feeds or feed
12 supplements containing drugs and for ~~such~~ other feeds as the Secretary may
13 require by rule as necessary for their safe and effective use; and
- 14 (7) precautionary statements required to ~~assure~~ ensure the safe and
15 effective use of the commercial feed or feed supplement.
- 16 (b) An dosage form animal health product shall be accompanied by a label
bearing the
17 following information:
- 18 (1) the net weight or count;
- 19 (2) the product name and the brand name, if any, under which the
20 dosage form animal health product is distributed;
- 21 (3) the established name of each active ingredient and the amount of

Commented [FL24]: Not sure if we want to add this as it is the original statute. Animal health dosage form products are listed below.

22 active ingredient per serving in descending order;

1 (4) the established name of each inactive ingredient in alphabetical or
descending order by predominance;

~~order;~~

32 (5) the name and principal mailing address of the manufacturer or the

person responsible for distributing the dosage form animal health supplement product
unless listed in the local telephone directory then name, city, state and zip code is
only required;

4 ~~is~~

53 (6) adequate directions for use of the dosage form animal health product;

64 (7) precautionary statements and warnings required to ensure the safe

75 and effective use of the dosage form animal health product; and

86 (8) structure-function claim stating the intended use of the dosage form animal
health

97 product.

+08 (c) Customer-formula feed shall be accompanied by a label, invoice,

+19 delivery slip, or other shipping document, bearing the following information:

+210 (1) name and address of the manufacturer;

+311 (2) name and address of the purchaser;

+412 (3) date of delivery;

+513 (4) the name of each commercial feed and each other ingredient used in

+614 the mixture;

+715 (5) adequate directions for use for all customer-formula feeds containing

+816 drugs and for such other feeds as the Secretary may require by rule to assure

+917 ensure their safe and effective use;

2018 (6) the direction for use and precautionary statements;

Commented [FL25]: They added alphabetical. We originally wrote it as descending order.

Commented [FL26]: I have never denied a product if the address wasn't on the label as long as it is on the application and there is a way to contact the company from the label. Labels for these products can be very small.

Commented [FL27]: I

Commented [28]: This is good as it specifically defines the claims boundaries.

~~219~~ _____ (7) when a drug-containing product is used:

~~220~~ _____ (A) the purpose of the medication or a claim statement; and

1 (B) the established name of each active drug ingredient and the level
2 of each drug used in the final mixture; and

3 (8) the guaranteed analysis as required by rule pursuant to section 329 of
4 this title.

5 ~~(e)~~(d) For purposes of labeling customer-formula feeds, the guaranteed
6 analysis is not required when:

7 (1) one or more of the ingredients are provided to the manufacturer by
8 the final purchaser; or

9 (2) the manufacturer uses a guaranteed analysis provided by the final
10 purchaser as part of the specific instructions for blending a customer-formula
11 feed.

12 § 326. MISBRANDING

13 A commercial feed, feed supplement, or dosage form animal health product shall
14 be

14 deemed to be misbranded if:

15 (1) its labeling is false or misleading in any particular;

16 (2) it is distributed under the name of another commercial feed, feed
17 supplement, or dosage form animal health product;

18 (3) it is not labeled as required in section 325 of this title;

19 (4) it purports to be or is represented as a commercial feed, or if it
20 purports to contain or is represented as containing a commercial feed
21 ingredient, unless the commercial feed or feed ingredient conforms to the
22 definition, if any, prescribed by rule of the Commissioner; or

1 (5) information required to appear on the label in a conspicuous manner
2 cannot be easily identified or understood under customary conditions of
3 purchase and use.

4 § 327. ADULTERATION

5 (a) A commercial feed including whole seeds shall be deemed to be
6 adulterated if it bears or contains any poisonous or deleterious substance ~~which~~
7 that may render it injurious to human or animal health, but in case the
8 substance is not an added substance, the commercial feed shall not be
9 considered adulterated under this subsection if the quantity of the substance in
10 the commercial feed does not ordinarily render it injurious to health.

11 (b) Any other commercial feed, feed supplement, or dosage form animal health
12 product

shall be deemed to be adulterated if:

13 (1) any valuable constituent has been in whole or in part omitted or
14 abstracted therefrom or any less valuable substance substituted therefor;

15 (2) its composition or quality falls below or differs from that which it is
16 purported or is represented to possess by its labeling;

17 (3) if use of the product may result in contamination of a raw
18 agricultural product;

19 (4) it contains a drug and the methods used in or the facilities or controls
20 used for its manufacture, processing, or packaging do not conform to current
21 good manufacturing practice and rules promulgated by the Secretary to assure
22 that the drug meets the requirement of this chapter as to safety and has the

1 identity and strength and meets the quality and purity characteristics ~~which that~~
2 it purports or is represented to possess; or

3 ~~(4)(5)~~ it contains viable weed seeds in amounts exceeding the limits that
4 the Secretary shall establish by rule.

5 § 328. ~~TONNAGE REPORTING~~

6 ~~(a) Every person who registers a commercial feed pursuant to the~~
7 ~~provisions of this chapter shall report to the Agency of Agriculture, Food and~~
8 ~~Markets annually the total amount of combined feed is distributed within the~~
9 ~~State and which is intended for use within the State. The report shall be made~~
10 ~~on forms and in a manner to be prescribed by the Secretary for calendar years~~
11 ~~2016 and 2017.~~

12 ~~(b) This reporting requirement shall not apply to pet foods, within the~~
13 ~~meaning of subdivisions 323(16) and (19) of this title, and shall not apply to~~
14 ~~feeds intended for use outside the State. [Repealed.]~~

15 § 329. RULES

16 (a) The Secretary is authorized to adopt rules establishing procedures or
17 standards, or both, for product registration, labeling, adulteration, reporting,
18 inspection, sampling, guarantees, product analysis, or other conditions
19 necessary for the implementation and enforcement of this chapter. Where
20 appropriate, the rules shall be consistent with the model rules developed by the
21 Association of American Feed Control Officials and regulations adopted by the
22 federal Food, Drug and Cosmetic Act, 21 U.S.C. § 301 et seq.

1 (b) The official definitions of feed ingredients and official feed terms
2 adopted by the Association of American Feed Control Officials and published
3 in the official publication of that organization, together with any regulation
4 promulgated pursuant to the authority of the federal Food, Drug and Cosmetic
5 Act, 21 U.S.C. § 301 et seq., relevant to the subject matter of this chapter, are
6 hereby adopted as rules under this chapter, together with all subsequent
7 amendments. The Secretary may, by rule, amend or repeal any rule adopted
8 under this subsection.

9 (c) A person shall not manufacture or distribute raw milk as a commercial
10 feed or feed supplement in the State for any species unless all of the following
11 conditions are satisfied:

12 (1) the raw milk shall be decharacterized using a sufficient method to
13 render it distinguishable from products packaged for human consumption;

14 (2) raw animal feed, feed supplements, or pet food products shall be
15 packaged in containers that are labeled “not for human consumption”;

16 (3) raw animal feed, feed supplements, or pet food products shall not be
17 stored or placed for retail sale with, or in the vicinity of, milk or milk products
18 intended for human consumption; and

19 (4) notwithstanding any rule adopted under subsection (b) of this section
20 to the contrary of the provisions of this subsection, the manufacture and
21 distribution of raw animal feed, feed supplements, or pet food products shall
22 comply with the requirements of this chapter.

Commented [29]: We believe with the suggested the language herein would now be consistent with both AAFCO and FFDA.

Commented [FL30R29]: I think this is ok. If a product is defined as a drug by the FDA, we will no longer register the product.

1 § 330. INSPECTION; SAMPLING; ANALYSIS

2 (a) For the purpose of enforcing this chapter and determining whether or
3 not an operation may be subject to these provisions, the Secretary upon
4 presenting appropriate credentials is authorized:

5 (1) to enter any premises during normal business hours where
6 commercial feeds, feed supplements, or dosage form animal health products are
7 manufactured, processed, packed, or held for distribution and to stop and enter
8 any vehicle being used to transport or hold feeds;

9 (2) to inspect factories, warehouses, establishments, vehicles,
10 equipment, finished and unfinished materials, containers, and labeling;

11 (3) to sample commercial feed ~~and~~, feed ingredients, feed supplements,
12 or dosage form animal health products.

13 (b) Sampling and analysis shall be conducted in accordance with methods
14 published by the Association of Official Analytical Chemists or in accordance
15 with other generally recognized methods. The results of all analyses of official
16 samples shall be forwarded by the Secretary to the correspondent named in the
17 registration form and to the purchaser. When the inspection and analysis of an
18 official sample indicates that a commercial feed, feed supplement, or dosage form
animal
19 health product has been adulterated or misbranded and upon request within
20 30 days following receipt of the analysis, the Secretary shall furnish to the
21 registrant a portion of the sample concerned.

1 § 331. PRODUCT DEFICIENCY; SHORT WEIGHT

2 (a) No registrant may produce, package, distribute, or possess any
3 commercial feed, feed supplement, or dosage form animal health product that is short
4 weight or deficient in either guaranteed ingredients or guaranteed analysis.

5 The Secretary by rule shall establish permitted analytical variances that shall
6 be used to determine whether a commercial feed, feed supplement, or dosage form
7 animal health product is deficient.

8 (b) The Secretary is authorized to assess administrative penalties for any
9 product found to be short weight or deficient in guaranteed analysis or product facts.
In

10 assessing these penalties, the Secretary shall give consideration to the
11 appropriateness of the penalty with respect to the size of the business being
12 assessed, the gravity of the violation, the good faith of the registrant, and the
13 overall history of prior violations. Administrative penalties shall be paid to the
14 Secretary for deposit and use in the revolving account established by
15 subsection 364(e) of this title. Penalties shall be assessed in the following
16 manner:

17 (1) any registrant who is found to have violated this section for a
18 particular product for the first time during any calendar year shall receive an
19 administrative penalty of not more than \$150.00;

20 (2) any registrant who is found to have violated this section with regard
21 to the same product for the second time during the same calendar year shall

Commented [31]: Dosage Form Products would not have guaranteed analysis and this would capture these products also.

Commented [FL32R31]: This is fine.

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22 receive an administrative penalty of not more than \$300.00; and

1 (3) any registrant who is found to have violated this section with regard
2 to the same product on three or more occasions during the same calendar year
3 shall receive an administrative penalty of not more than \$500.00.

4 (c) In assessing a penalty under this section, the Secretary shall issue a
5 written notice of penalty to the registrant setting forth in a short and plain
6 statement the alleged violation and the proposed fine. The notice shall state
7 that the penalty will become final 14 days from the date the notice of penalty is
8 issued unless the registrant requests a hearing before the Secretary.

9 (d) Any registrant aggrieved by a decision of the Secretary may appeal
10 questions of law to a Superior Court within 30 days of the final decision of the
11 Secretary. The Secretary may enforce a final administrative penalty by filing
12 an action in any District or Superior Court.

13 § 332. DETAINED COMMERCIAL FEEDS, FEED SUPPLEMENTS, OR
14 DOSAGE FORM ANIMAL HEALTH PRODUCTS

15 (a) ~~“Withdrawal from distribution”~~ Withdrawal from distribution orders.
16 When the Secretary has reasonable cause to believe any lot of commercial
17 feed, feed supplement, or dosage form animal health product is being distributed in
18 violation of any of the provisions of this chapter or any of the rules under this
19 chapter, he or she may issue and enforce a written or printed “withdrawal from
20 distribution” order, warning the distributor not to dispose of the lot of
21 commercial feed, feed supplement, or dosage form animal health product in any
22 manner until written permission is given by the Secretary or the court. The Secretary

1 shall release the lot of commercial feed, feed supplement, or dosage form animal
2 health
3 product withdrawn when this chapter and rules have been complied with. If
4 compliance is not obtained within 30 days, the Secretary may begin, or upon
5 request of the distributor or registrant shall begin, proceedings for
6 condemnation.
7 (b) "Condemnation and confiscation."—Any lot of commercial feed, feed
8 supplement, or dosage form animal health product not in compliance with this
9 chapter and
10 rules shall be subject to seizure on complaint of the Secretary to a court of
11 competent jurisdiction in the area in which the commercial feed is located. In
12 the event the court finds the commercial feed, feed supplement, or dosage form
13 animal
14 health product to be in violation of this chapter and orders the condemnation of
15 the commercial feed, feed supplement, or dosage form animal health product, it shall
16 be
17 disposed of in any manner consistent with the quality of the commercial feed,
18 feed supplement, or dosage form animal health product and the laws of the State,
19 provided
20 that in no instance shall the disposition of the commercial feed, feed
21 supplement, or dosage form animal health product be ordered by the court without
22 first
23 giving the claimant an opportunity to apply to the court for release of the
24 commercial feed, feed supplement, or dosage form animal health product or for
25 permission
26 to process or relabel the commercial feed, feed supplement, or dosage form animal

20 product to bring it into compliance with this chapter.

1 § 333. PENALTIES

2 (a) Any person who violates any provision of this chapter, the rules
3 adopted under this chapter, or an order of the Secretary made pursuant to this
4 chapter shall be subject to a criminal fine not to exceed \$1,000.00. Each
5 violation shall be a separate and distinct offense and in the case of a continuing
6 violation each day's continuance shall be deemed a separate and distinct
7 offense.

8 (b) A State's Attorney or the Attorney General to whom any violation is
9 reported may cause appropriate proceedings to be instituted and prosecuted in
10 a court of competent jurisdiction without delay.

11 (c) The Secretary is hereby authorized to apply for and the court to grant a
12 temporary or permanent injunction restraining any person from violating or
13 continuing to violate any of the provisions of this chapter or any rule
14 promulgated under this chapter notwithstanding the existence of other
15 remedies at law. The injunction shall be issued without bond.

16 § 334. COOPERATION WITH OTHER ENTITIES

17 The Secretary may cooperate with and enter into agreements with
18 governmental agencies of this State, other states, agencies of the federal
19 government, and private associations in order to carry out the purpose and
20 provisions of this chapter.

1 § 336. ADMINISTRATIVE PENALTY

2 Consistent with chapter 1 of this title, the Secretary may assess an
3 administrative penalty upon determining that a person has violated a rule
4 issued under this chapter or has violated this chapter in the following manner:

5 (1) Distributed a feed, feed supplement, or dosage form animal health product
6 without first obtaining the appropriate product registration.

7 (2) Distributed a commercial feed, feed supplement, or dosage form animal
8 product without appropriate labeling.

9 (3) Violated a cease and desist order.

10 (4) Failed to meet the product guarantee on the label or for the custom
11 formula feed.

12 (5) Distributed a commercial feed ~~which,~~ feed supplement, or dosage form
13 animal health product that is adulterated as defined in section 327 of this chapter.

14 * * * Biostimulants; Plant Amendments; Soil Amendments * * *

15 Sec. 10. 6 V.S.A. chapter 28 is amended to read:

16 CHAPTER 28. FERTILIZER AND LIME

17 § 361. TITLE

18 This chapter shall be known as the "Fertilizer and Lime Law of 1986."

19 § 362. ENFORCING OFFICIAL

20 This chapter shall be administered by the Secretary of Agriculture, Food
21 and Markets; or ~~his or her~~ designee, hereafter referred to as the Secretary.

1 § 363. DEFINITIONS

2 As used in this chapter:

3 (1) “Agricultural lime” or “agricultural liming material” or “lime”
4 means ~~and includes:~~

5 (A) all products ~~whose~~ with calcium and magnesium compounds that
6 are capable of neutralizing soil acidity and ~~which~~ that are intended, sold, or
7 offered for sale for agricultural or plant propagation purposes;

8 (B) limestone consisting essentially of calcium carbonate or a
9 combination of calcium carbonate with magnesium carbonate capable of
10 neutralizing soil acidity; or

11 (C) industrial waste or industrial by-products ~~which~~ that contain
12 calcium, calcium and magnesium, or calcium, magnesium, and potassium in
13 forms that are capable of neutralizing soil acidity and which are intended, sold,
14 or offered for sale for agricultural purposes. For the purposes of this chapter,
15 the terms “agricultural lime,” “lime,” and “agricultural liming material” shall
16 have the same meaning.

17 (2) “Biostimulant” means a substance or micro-organism that, when
18 applied to seeds, plants, or the rhizosphere, stimulates natural processes to
19 enhance or benefit nutrient uptake, nutrient efficiency, tolerance to abiotic
20 stress, or crop quality and yield except for fertilizers, soil amendments, plant
21 amendments or pesticides.

1 ~~(2)~~(3) “Brand” means a term, design, or trademark used in connection
2 with one or more grades or formulas of fertilizer, biostimulant, plant
3 amendment, soil amendment, or lime.

4 ~~(3)~~(4) “Distribute” means to import, consign, manufacture, produce,
5 compound, mix, or blend fertilizer or to offer for sale, sell, barter, or otherwise
6 supply ~~or apply a~~ fertilizer, a biostimulant, a plant amendment, a soil
7 amendment, or lime in this State. “Distribute” shall include online sales.

8 ~~(4)~~(5) “Distributor” means any person who distributes fertilizer,
9 biostimulants, plant amendments, soil amendments, or lime.

10 (6) “Exceptional quality biosolid” means a product derived in whole or
11 in part from domestic wastes that have been subjected to and meet the
12 requirements of the following:

13 (A) a pathogen reduction process established in 40 C.F.R.
14 § 503.32(a)(3), (4), (7), or (8);

15 (B) one of the vector attraction reduction standards established in 40
16 C.F.R. part 503.33;

17 (C) the contaminant concentration limits in Vermont Solid Waste
18 Rules § 6-1303(a)(1); and

19 (D) if derived from a composting process, Vermont Solid Waste
20 Rules § 6-1303(a)(4).

21 ~~(5)~~(7) “Fertilizer” means any substance containing one or more
22 recognized plant nutrients that is used for its plant nutrient content and that is

1 designed for use or claimed to have value in promoting plant growth or health,
2 except unprocessed animal or vegetable manures and other products exempted
3 by the Secretary.

4 (A) A fertilizer material is a substance that either:

5 (i) contains important quantities of at least one of the primary
6 plant nutrients: nitrogen, phosphorus, or potassium;

7 (ii) has 85 percent or more of its plant nutrient content present in
8 the form of a single chemical compound; or

9 (iii) is derived from a plant or chemical residue or by-product or
10 natural material deposit ~~which that~~ has been processed in such a way that its
11 content of plant nutrients has not been materially changed except by
12 purification and concentration.

13 (B) A mixed fertilizer is a fertilizer containing any combination or
14 mixture of fertilizer materials.

15 (C) A specialty fertilizer is a fertilizer distributed for nonfarm use.

16 (D) A bulk fertilizer is a fertilizer distributed in a nonpackaged form.

17 (8) "Formulation" means a material or mixture of materials prepared
18 according to a particular formula.

19 ~~(6)~~(9) "Grade" means the percentage of total nitrogen, available
20 phosphorus or phosphoric acid, and soluble potassium or potash stated in
21 whole numbers in the same terms, order, or percentages as in the guaranteed
22 analysis. Specialty fertilizers and fertilizer materials may be guaranteed in

1 fractional terms. Any grade expressed in fractional terms ~~which~~ that is not
2 preceded by a whole number shall be preceded by zero.

3 ~~(7)~~(10) “Guaranteed analysis” means:

4 (A) in reference to fertilizer, the minimum percentages of plant
5 nutrients claimed by the manufacturer or producer of the product in the
6 following order and form: nitrogen, phosphorus, and potash; and

7 (B) in reference to agricultural lime or agricultural liming material,
8 the minimum percentages of calcium oxide and magnesium oxide or calcium
9 carbonate and the calcium carbonate equivalent, or both, as claimed by the
10 manufacturer or producer of the product.

11 ~~(8)~~(11) “Label” means the display of all written, printed, or graphic
12 matter upon the immediate container, or a statement accompanying a fertilizer,
13 biostimulant, plant amendment, soil amendment, or lime.

14 ~~(9)~~(12) “Labeling” means all written, printed, or graphic material upon
15 or accompanying any ~~lime or~~ fertilizer, biostimulant, plant amendment, soil
16 amendment, or lime including advertisements, brochures, posters, and
17 television and radio announcements used in promoting the sale of the ~~lime or~~
18 fertilizer, biostimulant, plant amendment, soil amendment, or lime.

19 ~~(40)~~(13) “Official sample” means any sample of fertilizer, biostimulant,
20 plant amendment, soil amendment, or lime taken by the Secretary.

21 (14) “Plant amendment” means any substance applied to plants or seeds
22 that is intended to improve growth, yield, product quality, reproduction, flavor

1 or other favorable characteristics of plants, except for fertilizer, soil
2 amendments, agricultural liming materials, animal and vegetable manures,
3 pesticides, plant regulators, and other materials exempted by rule adopted
4 under this chapter.

5 ~~(14)~~(15) “Percent” or “percentage” means the percentage by weight.

6 ~~(12)~~(16) “Primary nutrient” includes nitrogen, available phosphoric acid
7 or phosphorus, and soluble potash or potassium.

8 ~~(13)~~(17) “Product” means the name of the fertilizer, biostimulant, plant
9 amendment, soil amendment, or lime ~~which that~~ identifies it as to kind, class,
10 or specific use.

11 ~~(14)~~(18) “Registrant” means the person who registers ~~fertilizers a~~
12 fertilizer, biostimulant, plant amendment, soil amendment, or lime under the
13 provisions of this chapter.

14 (19) “Soil amendment” means a substance or mixture of substance that
15 is intended to improve the physical, chemical, biological, or other
16 characteristics of the soil, except fertilizers, agricultural liming materials,
17 unprocessed animal manures, unprocessed vegetable manures, pesticides,
18 biostimulants, and other materials exempted by rule. A compost product from
19 a facility under the jurisdiction of the Agency of Natural Resources’ Solid
20 Waste Management Rules or exceptional quality biosolids shall not be
21 regulated as a soil amendment under this chapter, unless marketed and
22 distributed for the use in the production of an agricultural commodity.

1 ~~(15)~~(20) “Ton” means a net weight of 2,000 pounds avoirdupois.

2 ~~(16)~~(21) “Use” includes all purposes for which a fertilizer, a
3 biostimulant, a plant amendment, a soil amendment, or lime is applied.

4 ~~(17)~~(22) “Weight” means the weight of undried material as offered for
5 sale.

6 § 364. REGISTRATION

7 (a) Each brand or grade or formula of fertilizer, biostimulant, plant
8 amendment, or soil amendment shall be registered in the name of the person
9 whose name appears upon the label before being distributed in this State. The
10 application for registration shall be submitted to the Secretary on a form
11 furnished by the Agency of Agriculture, Food and Markets and shall be
12 accompanied by a fee of ~~\$20.00 per nutrient or recognized plant food element~~
13 ~~to a maximum of \$140.00 per brand or grade~~ \$85.00 per grade or formulation
14 registered. Upon approval by the Secretary, a copy of the registration shall be
15 furnished to the applicant. All registrations expire on December 31 of each
16 year. The application shall include the following information:

- 17 (1) the brand and grade or formulation;
- 18 (2) the guaranteed analysis if applicable; and
- 19 (3) the name and address of the registrant.

20 (b) A distributor shall not be required to register any fertilizer ~~which,~~
21 biostimulant, plant amendment, or soil amendment that is already registered

1 under this chapter by another person, provided there is no change in the label
2 for the fertilizer, biostimulant, plant amendment, or soil amendment.

3 (c) A distributor shall not be required to register each grade of fertilizer
4 formulated or each formulation of soil amendment according to specifications
5 ~~which that~~ are furnished by a consumer prior to mixing, but shall be required to
6 label the fertilizer or soil amendment as provided in subsection 365(b) of this
7 title.

8 (d) The Secretary may request additional proof of testing of products prior
9 to registration for guaranteed analyses or adulterants.

10 (e) Each separately identified agricultural lime product shall be registered
11 before being distributed in this State. Registration shall be performed in the
12 same manner as fertilizer registration except that each application shall be
13 accompanied by a fee of \$50.00 per product.

14 ~~(e)~~(f) The registration and tonnage fees, along with any deficiency
15 penalties collected pursuant to sections 331 and 372 of this title, shall be
16 deposited in a special fund. Funds deposited in this fund shall be restricted to
17 implementing and administering the provisions of this title and any other
18 provisions of law relating to feeds and seeds.

19 § 365. LABELS

20 (a)(1) Any fertilizer or agricultural lime distributed in this State in
21 containers shall have placed on or affixed to the container a label setting forth
22 in clearly legible and conspicuous form the following information:

- 1 (A) net weight;
- 2 (B) brand and grade, provided that grade shall not be required when
- 3 no primary nutrients are claimed;
- 4 (C) guaranteed analysis; and
- 5 (D) name and address of the registrant.

6 (2) For bulk shipments, this information in written or printed form shall

7 accompany delivery and be supplied to the purchaser at the time of delivery.

8 (b) A fertilizer or lime formulated according to specifications furnished by

9 a consumer prior to mixing shall be labeled to show: the net weight, the

10 guaranteed analysis or name, analysis and weight of each ingredient used in the

11 mixture, and the name and address of the distributor and purchaser.

12 ~~(c)(4)~~ If the Secretary finds that a requirement for expressing calcium and

13 magnesium in elemental form would not impose an economic hardship on

14 distributors and users of agricultural liming materials by reason of conflicting

15 label requirements among states, he or she may require by rule that the

16 minimum percent of calcium oxide and magnesium oxide or calcium carbonate

17 and magnesium carbonate, or both, shall be expressed in the following terms:

18 Total Calcium (Ca) percent

19 Total Magnesium (Mg) percent

20 ~~(2) Under this rule, an affected person shall be given a reasonable time~~

21 ~~to come into compliance.~~

1 (d)(1) Any biostimulant, plant amendment, or soil amendment distributed
2 in this State in containers shall have placed on or affixed to the container a
3 label setting forth in clearly legible and conspicuous form the following
4 information:

5 (A) net weight or volume;

6 (B) brand name;

7 (C) purpose of product;

8 (D) directions for application;

9 (E) guaranteed analysis; and

10 (F) name and address of the registrant.

11 (2) For bulk shipments of fertilizer, biostimulants, plant amendments,
12 soil amendment, or lime, the information required under this subsection shall
13 accompany delivery in written or printed form and shall be supplied to the
14 purchaser at the time of delivery.

15 (4) Under ~~this a rule~~ adopted under this subsection, an affected person
16 shall be given a reasonable time to come into compliance.

17 § 366. TONNAGE FEES

18 (a) A person distributing fertilizer to a nonregistrant consumer in the State
19 annually shall pay the following fees to the Secretary:

20 (1) a \$150.00 minimum tonnage fee;

21 (2) \$0.50 per ton of agricultural fertilizer distributed; and

22 (3) \$30.00 per ton of nonagricultural fertilizer distributed.

1 (b) Persons distributing fertilizer shall report annually on or before
2 January 15 for the previous year ending December 31 to the Secretary
3 revealing the amounts of each grade of fertilizer and the form in which the
4 fertilizer was distributed within this State. Each report shall be accompanied
5 with payment and written permission allowing the Secretary to examine the
6 person's books for the purpose of verifying tonnage reports.

7 (c) No information concerning tonnage sales furnished to the Secretary
8 under this section shall be disclosed in such a way as to divulge the details of
9 the business operation to any person unless it is necessary for the enforcement
10 of the provisions of this chapter.

11 (d) Persons distributing a biostimulant, plant amendment, or soil
12 amendment in the State shall report annually on or before January 15 for the
13 previous year ending December 31 to the Secretary revealing the amounts of
14 each formulation of biostimulant, plant amendment, or soil amendment and the
15 form in which the biostimulant, plant amendment, or soil amendment was
16 distributed within this State. Each report shall include a written authorization
17 allowing the Secretary to examine the person's books for the purpose of
18 verifying tonnage reports. Biostimulants, plant amendments, and soil
19 amendments are exempt from tonnage fees.

20 (e) Agricultural limes, including agricultural lime mixed with wood ash,
21 are exempt from the tonnage fees required in this section.

1 (f) Lime and wood ash mixtures may be registered as agricultural liming
2 materials and guaranteed for potassium or potash, provided that the wood ash
3 totals less than 50 percent of the mixture.

4 (g)(1) All fees collected under subdivisions (a)(1) and (2) of this section
5 shall be deposited in the special fund created by subsection 364(e) of this title
6 and used in accordance with its provisions.

7 (2) All fees collected under subdivision (a)(3) of this section shall be
8 deposited in the Agricultural Water Quality Special Fund created under section
9 4803 of this title.

10 (h) [Repealed.]

11 § 367. INSPECTION; SAMPLING; ANALYSIS

12 For the purpose of enforcing this chapter and determining whether or not
13 fertilizers, biostimulants, plant amendments, soil amendments, and ~~limes-lime~~
14 distributed in this State endanger the health and safety of Vermont citizens, the
15 Secretary upon presenting appropriate credentials is authorized:

16 (1) To enter any public or private premises except domiciles during
17 regular business hours and stop and enter any vehicle being used to transport or
18 hold fertilizer, a biostimulant, a plant amendment, a soil amendment, or lime.

19 (2) To inspect blending plants, warehouses, establishments, vehicles,
20 equipment, finished or unfinished materials, containers, labeling, and records
21 relating to distribution, storage, or use.

1 (3) To sample and analyze any fertilizer, biostimulant, plant
2 amendment, soil amendment, or lime. The methods of sampling and analysis
3 shall be those adopted by the Association of Official Analytical Chemists. In
4 cases not covered by this method or in cases where methods are available in
5 which improved applicability has been demonstrated, the Secretary may
6 authorize and adopt methods which reflect sound analytical procedures.

7 (4) To develop any reasonable means necessary to monitor and adopt
8 rules for the use of fertilizers ~~and agricultural limes,~~ biostimulants, plant
9 amendments, soil amendments, and lime on Vermont soils where monitoring
10 indicates environmental or health problems. In addition, the Secretary may
11 develop and adopt rules for the proper storage of fertilizers ~~and limes,~~
12 biostimulants, plant amendments, soil amendments, and lime held for
13 distribution or sale.

14 § 368. MISBRANDING

15 (a) No person shall distribute a misbranded fertilizer, biostimulant, plant
16 amendment, soil amendment, or agricultural lime. A fertilizer, biostimulant,
17 plant amendment, or soil amendment shall be deemed to be misbranded if:

18 (1) its labeling is false or misleading in any particular;

19 (2) it is distributed under the name of another fertilizer product,
20 biostimulant, plant amendment, or soil amendment;

21 (3) it contains unsubstantiated claims;

1 (4) it is not labeled as required in section 365 of this title and in
2 accordance with rules adopted under this chapter; or
3 ~~(4)(5)~~ it is labeled, or represented, to contain a plant nutrient ~~which that~~
4 does not conform to the standard of identity established by rule. In adopting
5 ~~these rules under this chapter~~, the Secretary shall give consideration to
6 definitions recommended by the Association of American Plant Food Control
7 Officials.

8 (b) An agricultural lime shall be deemed to be misbranded if:
9 (1) its labeling is false or misleading in any particular; or
10 (2) it is not labeled as required by section 365 of this title and in
11 accordance with rules adopted under this chapter.

12 § 369. ADULTERATION

13 No person shall distribute an adulterated lime, biostimulant, plant
14 amendment, soil amendment, or fertilizer product. A fertilizer, biostimulant,
15 plant amendment, soil amendment, or lime shall be deemed to be adulterated
16 if:

17 (1) it contains any deleterious or harmful ingredient in an amount
18 sufficient to render it injurious to beneficial plant life when applied in
19 accordance with directions for use on the label, or if uses of the product may
20 result in contamination or condemnation of a raw agricultural commodity by
21 use, or if adequate warning statements or directions for use ~~which that~~ may be
22 necessary to protect plant life are not shown on the label;

- 1 (2) its composition falls below or differs from that which it is purported
2 to possess by its labeling;
- 3 (3) it contains crop seed or weed seed; or
- 4 (4) it contains heavy metals, radioactive substances, or synthetic
5 organics in amounts sufficient to render it injurious to livestock or human
6 health when applied in accordance with directions for use on the label, or if
7 adequate warning statements or directions for use ~~which that~~ may be necessary
8 to protect livestock or human health are not shown on the label.

9 § 370. PUBLICATION; CONSUMER INFORMATION REGARDING

10 ~~FERTILIZER~~ USE ON NONAGRICULTURAL TURF OF

11 FERTILIZER, BIOSTIMULANTS, PLANT AMENDMENTS, AND

12 SOIL AMENDMENTS

13 (a) The Secretary shall publish on an annual basis:

- 14 (1) information concerning the distribution of fertilizers, biostimulants,
15 plant amendments, soil amendments, and limes;
- 16 (2) results of analyses based on official samples of fertilizers,
17 biostimulants, plant amendments, soil amendments, and lime distributed within
18 the State as compared with guaranteed analyses required pursuant to the terms
19 of this chapter.

20 (b)(1) The Secretary, in consultation with the University of Vermont
21 Extension, fertilizer industry representatives, lake groups, and other interested

1 or affected parties, shall produce information for distribution to the general
2 public with respect to the following:

3 (A) problems faced by the waters of the State because of discharges
4 of phosphorus;

5 (B) an explanation of the extent to which phosphorus exists naturally
6 in the soil;

7 (C) voluntary best management practices for the use of fertilizers
8 containing phosphorus on nonagricultural turf; and

9 (D) best management practices for residential sources of phosphorus.

10 (2) The Secretary shall develop the information required under this
11 subsection and make it available to the general public in the manner deemed
12 most effective, which may include:

13 (A) conspicuous posting at the point of retail sale of fertilizer
14 containing phosphorus, according to recommendations for how that
15 conspicuous posting may best take place;

16 (B) public service announcements by means of electronic media;

17 (C) other methods deemed by the Secretary to be likely to be
18 effective.

19 ~~(3) The Secretary shall develop proposed criteria for evaluating the~~
20 ~~effectiveness of the information program and shall present them to legislative~~
21 ~~committees on natural resources and energy and on agriculture by no later than~~
22 ~~January 1, 2007. By no later than July 1, 2007, the Secretary shall hold one or~~

1 ~~more public information meetings to obtain the input of the public on a draft~~
2 ~~assessment of the effectiveness of this section in increasing the use of best~~
3 ~~management practices in the use of fertilizers on nonagricultural turf. By no~~
4 ~~later than December 1, 2008, the Secretary shall provide those legislative~~
5 ~~committees with a final assessment of the effectiveness of this subsection,~~
6 ~~which shall include an analysis of the extent to which the information~~
7 ~~developed under this subsection has been effectively provided to and relied~~
8 ~~upon by retail customers who purchase fertilizers containing phosphorus and~~
9 ~~shall include any recommendations for making the program more effective.~~

10 [Repealed.]

11 § 371. RULES; ~~ENFORCEMENT~~

12 The Secretary is authorized to adopt rules pursuant to 3 V.S.A. chapter 25
13 as may be necessary to implement the intent of this chapter and to enforce
14 those rules.

15 § 372. PLANT FOOD VARIATIONS

16 (a) The Secretary may assess a penalty upon finding that a fertilizer does
17 not conform to its guarantee for nitrogen, available phosphoric acid or
18 phosphorus, and soluble potash or potassium content. A fertilizer shall be
19 deemed out-of-conformance if the guarantee for the nitrogen, available
20 phosphoric acid or phosphorus, or soluble potash or potassium exceeds the
21 American Association of Plant Food Control Officials, established permitted
22 analytical variance at an established confidence level of 97.5 percent.

1 (b) A penalty of two times the value of the deficiencies shall be assessed
2 pursuant to procedures established by rule and shall be paid to the consumer.

3 (c) Each registrant shall be offered an opportunity for a hearing before the
4 Secretary. Penalty payments shall be made within 30 days after notice of the
5 Secretary's decision to assess a penalty. Proof of payment to the consumer
6 shall be promptly forwarded to the Secretary by the registrant.

7 (d) If the consumer cannot be found, the amount of the penalty payments
8 shall be paid to the Secretary who shall deposit the payment into the revolving
9 account established by subsection 364(e) of this title.

10 (e) Fertilizer that has been purchased from a registrant or distributor and is
11 altered so that the fertilizer's analysis is different from that originally
12 guaranteed shall be considered a new product. Before this new product can be
13 distributed to the consumer, it shall be registered in the proper manner. If a
14 product is not registered, the manufacturer of the product shall be considered
15 liable for purposes of enforcing the provisions of this chapter.

16 (f) This section is not an exclusive cause of action and persons affected
17 may utilize any other right of action available under the law.

18 * * *

19 § 374. SHORT WEIGHT

20 (a) If any fertilizer, biostimulant, plant amendment, soil amendment, or
21 agricultural liming material is found to be short in net weight, the registrant of
22 the fertilizer, biostimulant, plant amendment, soil amendment, or lime shall

1 pay a penalty of three times the value of the actual shortage to the affected
2 party.

3 (b) Each registrant shall be offered an opportunity for a hearing before the
4 Secretary. Penalty payments shall be made within 30 days after notice of the
5 Secretary's decision to assess a penalty. Proof of payment to the consumer
6 shall be promptly forwarded to the Secretary by the registrant.

7 (c) If the consumer cannot be found, the amount of the penalty payments
8 shall be paid to the Secretary who shall deposit the payment into the revolving
9 account established by subsection 364(e) of this title.

10 (d) This section is not an exclusive cause of action and persons affected
11 may utilize any other right of action available under law.

12 § 375. CANCELLATION OF REGISTRATION

13 The Secretary is authorized to cancel or suspend the registration of any
14 fertilizer, biostimulant, plant amendment, soil amendment, or liming material
15 lime or refuse a registration application if he or she finds that the provisions of
16 this chapter or the rules adopted under this chapter have been violated,
17 provided that no registration shall be revoked or refused without a hearing
18 before the Secretary.

19 § 376. DETAINED FERTILIZER AND LIME

20 (a) "Withdrawal from distribution"—orders. When the Secretary has
21 reasonable cause to believe any lot of fertilizer, biostimulant, plant
22 amendment, soil amendment, or lime is being distributed in violation of any of

1 the provisions of this chapter or any of the rules under this chapter, he or she
2 may issue and enforce a written or printed “withdrawal from distribution”
3 order, warning the distributor not to dispose of the lot of fertilizer,
4 biostimulant, plant amendment, soil amendment, or lime in any manner until
5 written permission is given by the Secretary or the court. The Secretary shall
6 release the lot of fertilizer, biostimulant, plant amendment, soil amendment, or
7 lime withdrawn when this chapter and rules have been complied with. If
8 compliance is not obtained within 30 days, the Secretary may begin, or upon
9 request of the distributor or registrant shall begin, proceedings for
10 condemnation.

11 (b) “Condemnation and confiscation.”—Any lot of fertilizer, biostimulant,
12 plant amendment, soil amendment, or lime not in compliance with this chapter
13 and rules shall be subject to seizure on complaint of the Secretary to a court of
14 competent jurisdiction in the area in which the fertilizer, biostimulant, plant
15 amendment, soil amendment, or lime is located. In the event the court finds
16 the fertilizer, biostimulant, plant amendment, soil amendment, or lime to be in
17 violation of this chapter and orders the condemnation of the fertilizer,
18 biostimulant, plant amendment, soil amendment, or lime, it shall be disposed
19 of in any manner consistent with the quality of the fertilizer, biostimulant,
20 plant amendment, soil amendment, or lime and the laws of the State, provided
21 that in no instance shall disposition of the fertilizer, biostimulant, plant
22 amendment, soil amendment, or lime be ordered by the court without first

1 giving the claimant an opportunity to apply to the court for release of the
2 fertilizer, biostimulant, plant amendment, soil amendment, or lime or for
3 permission to process or relabel the fertilizer, biostimulant, plant amendment,
4 soil amendment, or lime to bring it into compliance with this chapter.

5 * * *

6 § 379. EXCHANGES BETWEEN MANUFACTURERS

7 Nothing in this chapter shall be construed to restrict or impair sales or
8 exchanges of fertilizers, biostimulants, plant amendments, or soil amendments
9 to each other by importers, manufacturers, or manipulators who mix fertilizer
10 materials, biostimulants, plant amendments, or soil amendments for sale, or to
11 prevent the free and unrestricted shipments of fertilizer, biostimulants, plant
12 amendments, or soil amendments to manufacturers or manipulators who have
13 registered their brands as required by provisions of this chapter.

14 § 380. ADMINISTRATIVE PENALTY

15 Consistent with chapter 1 of this title, the Secretary may assess an
16 administrative penalty upon determining that a person has violated a rule
17 issued under this chapter or has violated this chapter in the following manner:

18 (1) distributed a specialty fertilizer, biostimulant, plant amendment, soil
19 amendment, or lime without first obtaining the appropriate product
20 registration;

21 (2) distributed a fertilizer, biostimulant, plant amendment, or soil
22 amendment, or lime without appropriate labeling;

1 (3) failed to report or to accurately report the amount and form of each
2 grade of fertilizer distributed in Vermont on an annual basis;

3 (4) failed to report or to accurately report the amount and form of each
4 formulation of biostimulant, plant amendment or soil amendment;

5 (5) failed to pay the appropriate tonnage fee; or

6 ~~(5)~~(6) violated a cease and desist order.

7 § 381. GOLF COURSES; NUTRIENT MANAGEMENT PLAN

8 ~~Beginning July 1, 2012, as As~~ a condition of the permit issued to golf
9 courses under chapter 87 of this title and ~~regulations~~-rules adopted thereunder,
10 a golf course shall be required to submit to the Secretary of Agriculture, Food
11 and Markets a nutrient management plan for the use and application of
12 fertilizer to grasses or other lands owned or controlled by the golf course. The
13 nutrient management plan shall ensure that the golf course applies fertilizer
14 according to the agronomic rates for the site-specific conditions of the golf
15 course.

16 * * * Effective Dates * * *

17 Sec. 11. EFFECTIVE DATES

18 (a) This section and Secs. 1-8 (compost foraging; farming) shall take effect
19 on passage.

20 (b) All other sections shall take effect on July 1, 2021.