

1 TO THE HONORABLE SENATE:

2 The Committee on Agriculture to which was referred Senate Bill No. 265
3 entitled “An act relating to the use of food residuals for farming” respectfully
4 reports that it has considered the same and recommends that the bill be
5 amended by striking out all after the enacting clause and inserting in lieu
6 thereof the following:

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

8 § 6001. DEFINITIONS

9 In this chapter:

10 * * *

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

12 * * *

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

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

16 * * *

17 (vii) The construction of improvements below the elevation of
18 2,500 feet for the onsite storage, preparation, and sale of compost, provided
19 that one of the following applies:

20 * * *

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

3 * * *

4 (22) "Farming" means:

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

7 (B) the raising, feeding, or management of livestock, poultry, fish, or
8 bees; or

9 (C) the operation of greenhouses; or

10 (D) the production of maple syrup; or

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

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

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

19 (H) the importation of up to 2,000 cubic yards per year or less of
20 food residuals or food processing residuals onto a farm for the production of
21 compost, provided that:

1 (i) the compost is principally used on the farm where it is

2 produced; or

3 (ii) the compost is produced on a small farm that raises or

4 manages poultry.

5 * * *

6 (38) “Farm” means, for the purposes of subdivision (22)(H) of this
7 section, a parcel or parcels of land owned, leased, or managed by a person and
8 devoted primarily to farming that meets the threshold criteria as established
9 under the Required Agricultural Practices.

10 (39) “Food processing residuals” means the remaining organic material
11 from a food processing plant and may include whey and other dairy, cheese
12 making, and ice cream residuals or residuals from any food manufacturing
13 process excluding livestock or poultry slaughtering and rendering operations.

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

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

18 (41) “Principally used” means, for the purposes of subdivision
19 (3)(D)(vii)(III) or (22)(H) of this section, that more than 50 percent, either by
20 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 (42) “Small farm” has the same meaning as in 6 V.S.A. § 4871.

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

5 Vermont Required Agricultural Practices Rule for the Agricultural

6 Nonpoint Source Pollution Control Program is amended to read:

7 Section 2. Definitions

8 * * *

9 2.16 Farming means:

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

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

14 (c) the operation of greenhouses; or

15 (d) the production of maple syrup; or

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

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

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

4 (h) the importation of up to 2,000 cubic yards per year or less of food
5 residuals or food processing residuals onto a farm for the production of
6 compost, provided that:

7 (i) the compost is principally used on the farm where it is
8 produced; or

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

11 * * *

12 2.44 “Food residual” means source separated and uncontaminated material
13 that is derived from processing or discarding of food and that is recyclable, in a
14 manner consistent with 10 V.S.A. § 6605k. Food residual may include
15 preconsumer and postconsumer food scraps. “Food residual” does not mean
16 meat and meat-related products when the food residuals are composted by a
17 resident on site.

18 2.45 “Principally used” means that more than 50 percent, either by
19 volume or weight, of the compost produced on the farm is physically and
20 permanently incorporated into the native soils on the farm as a soil
21 enhancement and is not removed or sold at any time thereafter.

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

2 CHAPTER 218. AGRICULTURAL RESIDUALS MANAGEMENT

3 § 5131. PURPOSE

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

7 § 5132. DEFINITIONS

8 As used in this chapter:

9 (1) “Agency” means the Agency of Agriculture, Food and Markets.

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

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

17 (4) “Farming” has the same meaning as in 10 V.S.A. § 6001(22).

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

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

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

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

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

10 § 5133. FOOD RESIDUALS; RULEMAKING

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

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

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

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

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

1 (n) A farm producing compost under subdivision 6001(22)(H) is exempt
2 from the requirements of this section.

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

4 § 6605h. COMPOSTING REGISTRATION

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

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

12 § 6605j. ACCEPTED COMPOSTING PRACTICES

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

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

19 (2) standards for facility operation, including acceptable quantities of
20 product or inputs, vector management, odors, noise, traffic, litter control,

1 contaminant management, operator training and qualifications, recordkeeping,
2 and reporting;

3 (3) standards for siting of composting facilities, including siting and
4 operation of compost storage areas, compost bagging areas, and roads and
5 parking areas;

6 (4) standards for the composting process, including rotation,
7 management of compost piles, compost pile size, and monitoring of compost
8 operations;

9 (5) standards for management of runoff from compost facilities,
10 including liquids management from the feedstock area, active composting
11 areas, curing area, and compost storage area; the use of swales or stormwater
12 management around or within a compost facility; vegetative buffer
13 requirements; and run-off management from tipping areas;

14 (6) specified areas of the State unsuitable for the siting of commercial
15 composting that utilizes post-consumer food residuals or animal mortalities,
16 such as designated downtowns, village centers, village growth areas, or areas
17 of existing residential density; and

18 (7) definitions of “small-scale composting facility,” “medium-scale
19 composting facility,” and “de minimis composting exempt from regulation.”

20 (b) A person operating a small scale composting facility ~~or operating a~~
21 ~~composting facility on a farm~~ who follows the accepted composting practices

1 shall not be required to obtain a discharge permit under section 1263 or 1264
2 of this title, a solid waste facility certification under chapter 159 of this title, or
3 an air emissions permit under chapter 23 of this title unless a permit is required
4 by federal law or the Secretary of Natural Resources determines that a permit
5 is necessary to protect public health or the environment.

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

12 (d) The Secretary shall not regulate under this section a farm producing
13 compost under subdivision 6001(22)(H).

14 Sec. 7. APPLICATION OF SOLID WASTE MANAGEMENT RULE

15 Prior to adoption of rules under 6 V.S.A. § 5133, the Secretary of
16 Agriculture, Food and Markets shall require a person producing compost on a
17 farm under subdivision 6001(22)(H) to comply with Sections 6-1101 through
18 6-1110 of the Agency of Natural Resources' Vermont Solid Waste
19 Management Rules. After adoption of rules under 6 V.S.A. § 5133, Sections
20 6-1101 through 6-1110 of the Agency of Natural Resources' Vermont Solid

1 Waste Management Rules shall not apply to a person producing compost on a
2 farm under subdivision 6001(22)(H).

3 Sec. 8. UPDATE ON IMPLEMENTATION OF IMPORT OF FOOD
4 RESIDUALS ONTO FARM FOR COMPOSTING

5 On or before January 15, 2022, the Secretary of Agriculture, Food and
6 Markets and the Secretary of Natural Resources shall consult and present or
7 submit testimony to the Senate Committee on Agriculture and the House
8 Committee on Agriculture and Forestry regarding the import of food residuals
9 onto farms for the purpose of compost production.

10 Sec. 9. EFFECTIVE DATE

11 This act shall take effect on passage.

12

13

14

15 (Committee vote: _____)

16

17

Senator _____

18

FOR THE COMMITTEE

SOIL AMENDMENTS, PLANT AMENDMENTS AND BIOSTIMULANTS

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

CHAPTER 28. FERTILIZER AND LIME

* * *

§ 363. DEFINITIONS

As used in this chapter:

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

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

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

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

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

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

(4) “Class A Biosolids” means sludge or septage that has been subjected to a treatment process for the reduction of pathogens to below detectable levels, removal of organic, inorganic and biological contaminants, and vector attraction reduction that is used for soil amendment.

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

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

(5)(6) “Fertilizer” means any substance containing one or more recognized plant nutrients that is used for its plant nutrient content and that is designed for use or claimed to have value in promoting plant growth or health, except unprocessed animal or vegetable manures and other products exempted by the Secretary.

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

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

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

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

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

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

Commented [MO1]: Is this the definition you want to use? Or should we ask ANR?

Commented [BL2R1]: We should use ANR's, not sure where their rule is

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

(7) “Formulation” means a material or mixture of materials prepared according to a particular formula.

(8) “Grade” means the percentage of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or potash stated in whole numbers in the same terms, order, or percentages as in the guaranteed analysis. Specialty fertilizers and fertilizer materials may be guaranteed in fractional terms. Any grade expressed in fractional terms which that is not preceded by a whole number shall be preceded by zero.

(7) “Guaranteed analysis” means:

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

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

(10) “Label” means the display of all written, printed, or graphic matter upon the immediate container, or a statement accompanying a fertilizer or lime.

(11) “Labeling” means all written, printed, or graphic material upon or accompanying any lime or fertilizer, including advertisements, brochures, posters, and television and radio announcements used in promoting the sale of the lime or fertilizer.

(12) “Official sample” means any sample of fertilizer or lime taken by the Secretary.

(13) “Plant amendment” means any substance applied to plants or seeds that is intended to improve growth, yield, product quality, reproduction, flavor or other favorable characteristics of

Commented [M03]: Should this reference biostimulants, plant amendments, and soil amendments

Commented [FL4R3]: Cary, yes. I must have missed this one.

Commented [BL5R3]: Yes. We need all of them here.

plants, except for fertilizer, soil amendments, agricultural liming materials, animal and vegetable manures, pesticides, plant regulators, and other materials exempted by rule adopted under this chapter.

Commented [MO6]: Should it read: flavor, or other flavor characteristics of plants,

Commented [FL7R6]: Cary, I think this stands as is. Favorable characteristics could be something other than flavor, such as blossom size or color.

~~(11)~~(14) “Percent” or “percentage” means the percentage by weight.

~~(12)~~(15) “Primary nutrient” includes nitrogen, available phosphoric acid or phosphorus, and soluble potash or potassium.

~~(13)~~(16) “Product” means the name of the lime which that identifies it as to kind, class, or specific use.

Commented [MO8]: Product is used to refer to other things than lime.

~~(14)~~(17) “Registrant” means the person who registers fertilizers a fertilizer, biostimulant, plant amendment, soil amendment, or lime under the provisions of this chapter.

Commented [FL9R8]: Lime is the only product currently listed in statute. It should be changed to include fertilizer, soil amendment, plant amendment and biostimulant.

(18) “Soil amendment” means a substance or mixture of substance that is intended to improve the physical, chemical, biological, or other characteristics of the soil, except fertilizers, agricultural liming materials, unmanipulated animal manures, unmanipulated vegetable manures, pesticides, biostimulants, and other materials exempted by rule. A Class A biosolid product is a soil amendment.

Commented [BL10]: We use ‘unprocessed’ in other parts of this chapter. Is one better than the other?

Commented [FL11R10]: I think unprocessed is better because unmanipulated means: not altered misleadingly or for a particular purpose

~~(15)~~(19) “Ton” means a net weight of 2,000 pounds avoirdupois.

~~(16)~~(20) “Use” includes all purposes for which a fertilizer or lime is applied.

~~(17)~~(21) “Weight” means the weight of undried material as offered for sale.

§ 364. REGISTRATION

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

- (1) the brand and grade or formulation;
- (2) the guaranteed analysis if applicable; and

(3) the name and address of the registrant.

(b) A distributor shall not be required to register any fertilizer ~~which~~, biostimulant, plant amendment, or soil amendment that is already registered under this chapter by another person, provided there is no change in the label for the fertilizer, biostimulant, plant amendment, or soil amendment.

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

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

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

§ 365. LABELS

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

(A) net weight;

(B) brand and grade, provided that grade shall not be required when no primary nutrients are claimed;

(C) guaranteed analysis; and

(D) name and address of the registrant.

(2) For bulk shipments, this information in written or printed form shall accompany delivery and be supplied to the purchaser at the time of delivery.

(b) A fertilizer or lime formulated according to specifications furnished by a consumer prior to mixing shall be labeled to show: the net weight, the guaranteed analysis or name, analysis and weight of each ingredient used in the mixture, and the name and address of the distributor and purchaser.

(c)(1) If the Secretary finds that a requirement for expressing calcium and magnesium in elemental form would not impose an economic hardship on distributors and users of agricultural liming materials by reason of conflicting label requirements among states, he or she may require by rule that the minimum percent of calcium oxide and magnesium oxide or calcium carbonate and magnesium carbonate, or both, shall be expressed in the following terms:

Total Calcium (Ca) percent

Total Magnesium (Mg) percent

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

(A) net weight or volume;

(B) brand name;

(C) purpose of product;

(D) directions for application;

(E) guaranteed analysis; and

(F) name and address of the registrant.

(3) For bulk shipments ~~of what?~~ this information in written or printed form shall accompany delivery and be supplied to the purchaser at the time of delivery.

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

Commented [BL12]: Do we make this \$85 and register lime as a fertilizer?

Commented [FL13R12]: I think so, but Cary should weigh in.

Commented [BL14]: This gets referenced several times in these chapters, think we need to change to either all products registered or..generic to laws relating to either chapter.

Commented [BL15]: North Dakota is proposing to require a statement of purpose to help clarify the intent of the product—as this is a whole new playing field for companies.

Commented [MO16]: Of what?

Commented [FL17R16]: This is as in current statute, should probably be amended to “fertilizer, lime, soil amendment, plant amendment or biostimulant”

§ 366. TONNAGE FEES

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

- (1) a \$150.00 minimum tonnage fee;
- (2) \$0.50 per ton of agricultural fertilizer distributed; and
- (3) \$30.00 per ton of nonagricultural fertilizer distributed.

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

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

(d) Persons distributing a biostimulant, plant amendment, or soil amendment in the State shall report annually on or before January 15 for the previous year ending December 31 to the Secretary revealing the amounts of each formulation of biostimulant, plant amendment, or soil amendment and the form in which the biostimulant, plant amendment, or soil amendment was distributed within this State. Each report shall be accompanied by with [written] permission allowing the Secretary to examine the person's books for the purpose of verifying tonnage reports. Biostimulants, plant amendments, and soil amendments are exempt from tonnage fees.

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

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

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

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

(h) [Repealed.]

§ 367. INSPECTION; SAMPLING; ANALYSIS

For the purpose of enforcing this chapter and determining whether or not fertilizers, biostimulants, plant stimulants, and limes distributed in this State endanger the health and safety of Vermont citizens, the Secretary upon presenting appropriate credentials is authorized:

(1) To enter any public or private premises except domiciles during regular business hours and stop and enter any vehicle being used to transport or hold fertilizer or lime.

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

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

(4) To sample and analyze any Class A biosolid for detection of organic, inorganic or biological contaminants or any other substance that may be deleterious to agriculture, human or animal health.

(5) To develop any reasonable means necessary to monitor and adopt rules for the use of fertilizers and agricultural limes on Vermont soils where monitoring indicates environmental or health problems. In addition, the Secretary may develop and adopt rules for the proper storage of fertilizers and limes held for distribution or sale.

Commented [MO18]: Should this be rewritten to say shall include a written authorization allowing....

Commented [FL19R18]: Yes

Commented [MO20]: What is the plural limes or lime? Both are used in the chapter.

Commented [FL21R20]: Cary, I believe the plural is lime.

Commented [BL22R20]: lime

§ 368. MISBRANDING

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

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

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

(3) contains unsubstantiated claims;

(4) it is not labeled as required in section 365 of this title and in accordance with rules adopted under this chapter; or

(4)(5) it is labeled, or represented, to contain a plant nutrient which that does not conform to the standard of identity established by rule. In adopting these rules under this chapter, the Secretary shall give consideration to definitions recommended by the Association of American Plant Food Control Officials.

(b) An agricultural lime shall be deemed to be misbranded if:

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

(2) it is not labeled as required by section 365 of this title and in accordance with rules adopted under this chapter.

§ 369. ADULTERATION

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

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

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

(3) it contains crop seed or weed seed; or

(4) it contains heavy metals, radioactive substances, or synthetic organics in amounts sufficient to render it injurious to livestock or human health when applied in accordance with directions for use on the label, or if adequate warning statements or directions for use which may be necessary to protect livestock or human health are not shown on the label.

§ 370. PUBLICATION; CONSUMER INFORMATION REGARDING

FERTILIZER USE ON NONAGRICULTURAL TURF OF
FERTILIZER, BIOSTIMULANTS, PLANT AMENDMENTS, AND
SOIL AMENDMENTS

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

(1) information concerning the distribution of fertilizers, biostimulants, plant amendments, soil amendments, and limes;

(2) results of analyses based on official samples of fertilizers, biostimulants, plant amendments, soil amendments, and lime distributed within the State as compared with guaranteed analyses required pursuant to the terms of this chapter.

(b)(1) The Secretary, in consultation with the University of Vermont Extension, fertilizer industry representatives, lake groups, and other interested or affected parties, shall produce information for distribution to the general public with respect to the following:

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

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

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

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

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

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

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

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

(3) The Secretary shall develop proposed criteria for evaluating the effectiveness of the information program and shall present them to legislative committees on natural resources and energy and on agriculture by no later than January 1, 2007. By no later than July 1, 2007, the Secretary shall hold one or more public information meetings to obtain the input of the public on a draft assessment of the effectiveness of this section in increasing the use of best management practices in the use of fertilizers on nonagricultural turf. By no later than December 1, 2008, the Secretary shall provide those legislative committees with a final assessment of the effectiveness of this subsection, which shall include an analysis of the extent to which the information developed under this subsection has been effectively provided to and relied upon by retail customers who purchase fertilizers containing phosphorus and shall include any recommendations for making the program more effective.

§ 371. RULES: ENFORCEMENT

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

§ 372. PLANT FOOD VARIATIONS

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

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

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

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

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

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

* * *

§ 374. SHORT WEIGHT

(a) If any fertilizer, biostimulant, plant amendment, soil amendment, or agricultural liming material is found to be short in net weight, the registrant of the fertilizer, biostimulant, plant amendment, soil amendment, or lime shall pay a penalty of three times the value of the actual shortage to the affected party.

(b) Each registrant shall be offered an opportunity for a hearing before the Secretary. Penalty payments shall be made within 30 days after notice of the Secretary's decision to assess a penalty. Proof

of payment to the consumer shall be promptly forwarded to the Secretary by the registrant.

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

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

§ 375. CANCELLATION OF REGISTRATION

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

§ 376. DETAINED FERTILIZER AND LIME

(a) “Withdrawal from distribution” orders. When the Secretary has reasonable cause to believe any lot of fertilizer, biostimulant, plant amendment, soil amendment, or lime is being distributed in violation of any of the provisions of this chapter or any of the rules under this chapter, he or she may issue and enforce a written or printed “withdrawal from distribution” order, warning the distributor not to dispose of the lot of fertilizer, biostimulant, plant amendment, soil amendment, or lime in any manner until written permission is given by the Secretary or the court. The Secretary shall release the lot of fertilizer, biostimulant, plant amendment, soil amendment, or lime withdrawn when this chapter and rules have been complied with. If compliance is not obtained within 30 days, the Secretary may begin, or upon request of the distributor or registrant shall begin, proceedings for condemnation.

(b) “Condemnation and confiscation.” Any lot of fertilizer, biostimulant, plant amendment, soil amendment, or lime not in compliance with this chapter and rules shall be subject to seizure on complaint of the Secretary to a court of competent jurisdiction in the area in which the fertilizer, biostimulant, plant amendment, soil amendment, or lime is located. In the event the court finds the fertilizer, biostimulant, plant amendment, soil amendment, or lime to be in violation of this chapter and orders the condemnation of the fertilizer, biostimulant, plant amendment, soil amendment, or lime, it shall be disposed of in any manner consistent with the quality of the fertilizer, biostimulant, plant amendment, soil amendment, or lime and the laws of the State, provided that in no instance shall disposition of the fertilizer, biostimulant, plant amendment, soil amendment, or lime be ordered by the court without first giving the claimant an opportunity to apply to the court for release of the fertilizer, biostimulant, plant amendment, soil amendment, or lime or for permission to process or relabel the fertilizer, biostimulant, plant amendment, soil amendment, or lime to bring it into compliance with this chapter.

* * *

§ 379. EXCHANGES BETWEEN MANUFACTURERS

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

§ 380. ADMINISTRATIVE PENALTY

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

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

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

Commented [MO23]: Should lime be included?

Commented [FL24R23]: yes

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

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

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

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

§ 381. GOLF COURSES; NUTRIENT MANAGEMENT PLAN

~~Beginning July 1, 2012, as a condition of the permit issued to golf courses under chapter 87 of this title and regulations rules adopted thereunder, a golf course shall be required to submit to the Secretary of Agriculture, Food and Markets a nutrient management plan for the use and application of fertilizer to grasses or other lands owned or controlled by the golf course. The nutrient management plan shall ensure that the golf course applies fertilizer according to the agronomic rates for the site-specific conditions of the golf course. (Added 2011.No.37, § 2,eff.Jan1, 2020.)...~~

Commented [BL25]: missing/?

Commented [FL26R25]: I added the rest.

COMMERCIAL FEED, FEED SUPPLEMENTS AND ANIMAL HEALTH PRODUCTS

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

CHAPTER 26. COMMERCIAL FEEDS

Commented [BL27]: this has now been updated with white-tail deer language, so slightly outdated.

§ 323. DEFINITIONS

When used in this chapter:

~~(1) “Animal health product” means any product marketed to prevent or cure or enhance or protect the health or well-being of livestock, poultry, or other domestic animals that does not provide nutrition, does not require a prescription from a licensed veterinarian, is not intended for cosmetic purposes or exempted by the Secretary.~~

Commented [MO28]: I find the clause about what is not covered to be confusing. Could it read: "...other domestic animals, except that it shall not include a product that does not provide nutrition, does not require a prescription from a licensed veterinarian, is not intended for cosmetic purposes, or is exempted by the Secretary by rule."

~~(2) “Brand name” means any word, name, symbol, or device, or any combination thereof, identifying the commercial feed or a distributor or registrant and distinguishing it from that of others.~~

Commented [FL29R28]: Cary, I'm fine with this change.

~~(3) “Commercial feed” means all materials except whole seeds unmixed or physically altered entire unmixed seeds, when not adulterated within the meaning of subsection 327(a) of this title, which are distributed for use as feed or for mixing in feed. The Secretary by regulation may exempt from this definition, or from specific provisions of this chapter, commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or~~

substances when such commodities, compounds, or substances are not intermixed or mixed with other materials, and are not adulterated within the meaning of subsection 327(a) of this title.

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

~~(4)~~(5) “Distribute” means to offer for sale, sell, exchange, or barter commercial feed or to supply, furnish, or otherwise provide commercial feed.

~~(5)~~(6) “Distributor” means any person who distributes commercial feeds.

~~(6)~~(7) “Drug” means any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in domestic animals other than humans and substances other than feed intended to affect the structure or any function of the animal body.

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

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

~~(8)~~(10) “Label” means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.

~~(9)~~(11) “Labeling” means all labels and other written, printed, or graphic matter upon a commercial feed or any of its containers, or the wrapper accompanying the commercial feed, or

Commented [MO30]: Total of what? Feed?

Commented [BL31R30]: I think it of the ration

Commented [MO32]: What does “offered free choice” mean?

Commented [MO33]: I am just confused by this sentence in general. I think I would like to rewrite unless this definition is derived from some source that should be relied on. Let me know if I can rewrite.

Commented [FL34R33]: Cary, AAFCO’s definition is “a feed used with another to improve the nutritive balance or performance of the total and intended to be fed undiluted as a supplement to other feeds or offered free choice with other parts of the ration separately available of further diluted and mixed to produce a complete feed.”

Commented [FL35R33]:

Commented [BL36R33]: Ok to re-write.

advertisements, brochures, posters, and television and radio announcements used in promoting the sale of the feed.

~~(10)~~(12) “Manufacture” means to grind, mix, or blend, or further process a commercial feed for distribution.

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

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

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

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

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

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

~~(17)~~(19) “Product” means the name of the commercial feed which identifies it as to kind, class, or specific use.

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

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

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

§ 324. REGISTRATION AND FEES

(a) No person shall manufacture a commercial feed, feed supplement, or animal health product in this State unless that person has first filed with the Vermont Agency of Agriculture, Food and Markets, in a form and manner to be prescribed by rules by the Secretary:

- (1) the name of the manufacturer;
- (2) the manufacturer's place of business;
- (3) the location of each manufacturing facility; and
- (4) any other information which that the Secretary considers to be necessary.

(b) A person shall not distribute in this State a commercial feed, feed supplement, or animal health product that has not been registered pursuant to the provisions of this chapter. Application shall be in a form and manner to be prescribed by rule of the Secretary.

(c)(1) The application for registration of a commercial feed or feed supplement shall be accompanied by a registration fee of \$105.00 per product. The registration fees, along with any surcharges collected under subsection (e)(d) of this section, shall be deposited in the special fund created by subsection 364(e) of this title. Funds deposited in this account shall be restricted to implementing and administering the provisions of this title and any other provisions of the law relating to fertilizer, lime, or seeds. If the Secretary so requests, the application for registration shall be accompanied by a label or other printed matter describing the product.

(2) The application for registration of an animal health supplement shall be accompanied by a registration fee of \$105.00 per product. The registration fees, along with any surcharges collected under subsection (d) of this section, shall be deposited in the special fund created by subsection 364(e) of this title. Funds deposited in this account shall be restricted to implementing and administering the provisions of this title and any other provisions of the law relating to

fertilizer, lime, or seeds. If the Secretary so requests, the application for registration shall be accompanied by a label or other printed matter describing the product.

(e)(d) No person shall distribute in this State any feed, feed supplement, or animal health product required to be registered under this chapter upon which the Secretary has placed a withdrawal from distribution order because of nonregistration. A surcharge of \$10.00, in addition to the registration fee required by subsection (b)(c) of this section, shall accompany the application for registration of each product upon which a withdrawal from distribution order has been placed for reason of nonregistration, and must be received before removal of the withdrawal from distribution order.

§ 325. LABELING

(a) A commercial feed or feed supplement, except a customer-formula feed, shall be accompanied by a label bearing the following information:

(1) the net weight;

(2) the product name and the brand name, if any, under which the commercial feed or feed supplement is distributed;

(3) the guaranteed analysis as required by rule in section 329 of this title;

(4) the common, usual name or collective term of each ingredient used in the manufacture of the commercial feed or feed supplement in descending order;

(5) the name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed or feed supplement;

(6) adequate directions for use for all commercial feeds or feed supplements containing drugs and for ~~such~~ other feeds as the Secretary may require by rule as necessary for their safe and effective use; and

(7) precautionary statements required to assure the safe and effective use of the commercial feed or feed supplement.

(b) An animal health product shall be accompanied by a label bearing the following information:

Commented [BL37]: Should we add feed and animal health supplement...or she we just say generically the items registered under this chapter?

Commented [FL38R37]: I like items registered under this chapter.

(1) the net weight or count;

(2) the product name and the brand name, if any, under which the animal health product is distributed;

(3) the established name of each active ingredient and the amount of active ingredient per serving in descending order;

(4) the established name of each inactive ingredient in alphabetical order;

(5) the name and principal mailing address of the manufacturer or the person responsible for distributing the animal health supplement;

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

(7) precautionary statements and warnings required to assure the safe and effective use of the animal health product; and

(8) **structure-function claim** stating the intended use of the animal health product.

(c) Customer-formula feed shall be accompanied by a label, invoice, delivery slip, or other shipping document, bearing the following information:

(1) name and address of the manufacturer;

(2) name and address of the purchaser;

(3) date of delivery;

(4) the name of each commercial feed and each other ingredient used in the mixture;

(5) adequate directions for use for all customer-formula feeds containing drugs and for such other feeds as the Secretary may require by rule to assure their safe and effective use;

(6) the direction for use and precautionary statements;

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

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

Commented [MO39]: What is structure-function claim?

Commented [FL40R39]: Cary, this comes straight from NASC. Their definition of Animal Health Supplement is "articles (other than food) intended to affect the structure or any function of the body other than providing nutrition." So a structure-function claim would be a claim stating how the product affects the structure or function of the animal the product is intended for. For example, does the product provide added immunity? Does it calm the animal?

Commented [BL41R39]: Could be re-worded to statement of purpose about the intended use, or structure-function claim

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

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

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

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

or

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

§ 326. MISBRANDING

A commercial feed, feed supplement, or animal health product shall be deemed to be misbranded if:

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

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

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

(4) it purports to be or is represented as a commercial feed, or if it purports to contain or is represented as containing a commercial feed ingredient, unless the commercial feed or feed

ingredient conforms to the definition, if any, prescribed by rule of the Commissioner; or

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

§ 327. ADULTERATION

(a) A commercial feed including whole seeds shall be deemed to be adulterated if it bears or contains any poisonous or deleterious substance which that may render it injurious to health, but

Commented [BL42]: AAFCO just voted on this model bill language. To get at some of the same concerns as ours: . Adulteration (new language bold and underscored) A commercial feed shall be deemed to be adulterated: (a) (1) If it bears or contains any poisonous or deleterious substance which may render it injurious to human or animal health; but in case the substance is not an added substance, such commercial feed shall not be considered adulterated under this subsection if the quantity of such substance in such commercial feed does not ordinarily render it injurious to human or animal health;

Commented [BL43R42]: Not sure, but I think we could double down using this language. Industry was worried that it was overly broad (e.g. if the handling of the feed caused worker health issues, it would be adulterated—but I don't see that)

in case the substance is not an added substance, the commercial feed shall not be considered adulterated under this subsection if the quantity of the substance in the commercial feed does not ordinarily render it injurious to health.

(b) Any other commercial feed, feed supplement, or animal health product shall be deemed to be adulterated if:

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

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

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

(4) it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice and rules promulgated by the Secretary to assure that the drug meets the requirement of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics ~~which~~ that it purports or is represented to possess; or

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

§ 328. TONNAGE REPORTING

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

(b) This reporting requirement shall not apply to pet foods, within the meaning of subdivisions 323(16)(18) and (19)(21) of this title, and shall not apply to feeds intended for use outside the State.

Commented [MO44]: Should these dates be changed? Do you still want the report? Could we repeal the section?

Commented [FL45R44]: Cary and Linda?

Commented [BL46R44]: Please remove. This is virtually an impossible task, the data streams don't exist anywhere. And having it here reminds them to ask again.

§ 329. RULES

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

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

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

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

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

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

and

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

§ 330. INSPECTION; SAMPLING; ANALYSIS

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

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

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

(3) to sample commercial feed and feed ingredients, feed supplements, or animal health products.

(b) Sampling and analysis shall be conducted in accordance with methods published by the Association of Official Analytical Chemists or in accordance with other generally recognized methods. The results of all analyses of official samples shall be forwarded by the Secretary to the correspondent named in the registration form and to the purchaser. When the inspection and analysis of an official sample indicates that a commercial feed has been adulterated or misbranded and upon request within 30 days following receipt of the analysis, the Secretary shall furnish to the registrant a portion of the sample concerned. § 331. PRODUCT DEFICIENCY; SHORT WEIGHT

(a) No registrant may produce, package, distribute, or possess any commercial feed, feed supplement, or animal health product that is short weight or deficient in either guaranteed

ingredients or guaranteed analysis. The Secretary by rule shall establish permitted analytical variances that shall be used to determine whether a commercial feed is deficient.

(b) The Secretary is authorized to assess administrative penalties for any product found to be short weight or deficient in guaranteed analysis. In assessing these penalties, the Secretary shall give consideration to the appropriateness of the penalty with respect to the size of the business being assessed, the gravity of the violation, the good faith of the registrant, and the overall history of prior violations. Administrative penalties shall be paid to the Secretary for deposit and use in the revolving account established by subsection 364(e) of this title. Penalties shall be assessed in the following manner:

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

(2) any registrant who is found to have violated this section with regard to the same product for the second time during the same calendar year shall receive an administrative penalty of not more than \$300.00; and

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

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

Commented [BL47]: See we are having to go to approps, do we propose updating these?

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

§ 332. DETAINED COMMERCIAL FEEDS, FEED SUPPLEMENTS, OR
ANIMAL HEALTH PRODUCTS

(a) “Withdrawal from distribution” orders. When the Secretary has reasonable cause to believe any lot of commercial feed, feed supplement, or animal health product is being distributed in violation of any of the provisions of this chapter or any of the rules under this chapter, he or she may issue and enforce a written or printed “withdrawal from distribution” order, warning the distributor not to dispose of the lot of commercial feed, feed supplement, or animal health product in any manner until written permission is given by the Secretary or the court. The Secretary shall release the lot of commercial feed, feed supplement, or animal health product withdrawn when this chapter and rules have been complied with. If compliance is not obtained within 30 days, the Secretary may begin, or upon request of the distributor or registrant shall begin, proceedings for condemnation.

(b) “Condemnation and confiscation.” Any lot of commercial feed, feed supplement, or animal health product not in compliance with this chapter and rules shall be subject to seizure on complaint of the Secretary to a court of competent jurisdiction in the area in which the commercial feed is located. In the event the court finds the commercial feed, feed supplement, or animal health product to be in violation of this chapter and orders the condemnation of the commercial feed, feed supplement, or animal health product, it shall be disposed of in any manner consistent with the quality of the commercial feed, feed supplement, or animal health product and the laws of the State, provided that in no instance shall the disposition of the

commercial feed, feed supplement, or animal health product be ordered by the court without first giving the claimant an opportunity to apply to the court for release of the commercial feed, feed supplement, or animal health product or for permission to process or relabel the commercial feed, feed supplement, or animal health product to bring it into compliance with this chapter.

§ 333. PENALTIES

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

Commented [BL48]: Again, update>

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

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

§ 334. COOPERATION WITH OTHER ENTITIES

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

* * *

§ 336. ADMINISTRATIVE PENALTY

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

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

(2) Distributed a commercial feed, feed supplement, or animal health product without appropriate labeling.

(3) Violated a cease and desist order.

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

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

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