

1 Introduced by Committee on Agriculture

2 Date:

3 Subject: Agriculture; commercial feed; fertilizer; lime; feed supplements;
4 biostimulants

5 Statement of purpose of bill as introduced: This bill proposes to require the
6 manufacturer or distributor of animal health products, feed supplements, and
7 biostimulants sold or distributed in the State to register the products with the
8 Agency of Agriculture, Food and Markets.

9 An act relating to the regulation of commercial feed and fertilizer

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

11 Sec. 1. 6 V.S.A. chapter 26 is amended to read:

12 CHAPTER 26. COMMERCIAL FEEDS

13 * * *

14 § 323. DEFINITIONS

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

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

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

4 ~~(2)~~(3) “Commercial feed” means all materials except whole seeds
5 unmixed or physically altered entire unmixed seeds, when not adulterated
6 within the meaning of subsection 327(a) of this title, ~~which~~ that are distributed
7 for use as feed or for mixing in feed. The Secretary by regulation may exempt
8 from this definition, or from specific provisions of this chapter, commodities
9 such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical
10 compounds or substances when such commodities, compounds, or substances
11 are not intermixed or mixed with other materials; and are not adulterated
12 within the meaning of subsection 327(a) of this title.

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

16 ~~(4)~~(5) “Distribute” means to offer for sale, sell, exchange, or barter
17 commercial feed or animal health products or to supply, furnish, or otherwise
18 provide commercial feed or animal health products, through any means,
19 including sales outlets, catalogues, the telephone, the Internet, or any electronic
20 means.

1 ~~(5)~~(6) “Distributor” means any person who distributes commercial feeds
2 or animal health products.

3 ~~(6)~~(7) “Drug” means any substance intended for use in the diagnosis,
4 cure, mitigation, treatment, or prevention of disease in domestic animals other
5 than humans and substances other than feed intended to affect the structure or
6 any function of the animal body.

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

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

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

19 ~~(9)~~(11) “Labeling” means all labels and other written, printed, or
20 graphic matter upon a commercial feed, animal health product, or feed
21 supplement or any of its containers, or the wrapper accompanying the

1 commercial feed, animal health product, or feed supplement, or
2 advertisements, brochures, posters, and television and radio announcements
3 used in promoting the sale of the feed, animal health product, or feed
4 supplement.

5 ~~(10)~~(12) “Manufacture” means to produce, grind, mix, or blend, or
6 further process a commercial feed, animal health product, or feed supplement
7 for distribution.

8 ~~(11)~~(13) “Mineral feed” means a commercial feed intended to supply
9 primarily mineral elements or inorganic nutrients.

10 ~~(12)~~(14) “Official sample” means a sample of feed taken by the
11 Secretary in accordance with the provisions of subdivision 330(3) of this title.

12 ~~(13)~~(15) “Percent” or “percentages” means percentages by weights.

13 ~~(14)~~(16) “Permitted analytical variances” means those allowances for
14 the inherent variability in sampling and laboratory analysis.

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

17 ~~(16)~~(18) “Pet food” means any commercial feed prepared and
18 distributed for consumption by pets.

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

1 ~~(18)~~(20) “Specialty pet” means any domesticated animal pet normally
2 maintained in a cage or tank.

3 ~~(19)~~(21) “Specialty pet food” means any commercial feed prepared and
4 distributed for consumption by specialty pets.

5 ~~(20)~~(22) “Ton” means a net weight of 2,000 pounds avoirdupois.

6 § 324. REGISTRATION AND FEES

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

11 (1) the name of the manufacturer;

12 (2) the manufacturer’s place of business;

13 (3) the location of each manufacturing facility; and

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

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

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

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

1 ~~(e)~~(d) of this section, shall be deposited in the special fund created by
2 subsection 364(e) of this title. Funds deposited in this account shall be
3 restricted to implementing and administering the provisions of this title and
4 any other provisions of the law relating to fertilizer, lime, or seeds. If the
5 Secretary so requests, the application for registration shall be accompanied by
6 a label or other printed matter describing the product.

7 (2) The application for registration of an animal health product shall be
8 accompanied by a registration fee of \$105.00 per product. The registration
9 fees, along with any surcharges collected under subsection (d) of this section,
10 shall be deposited in the special fund created by subsection 364(e) of this title.
11 Funds deposited in this account shall be restricted to implementing and
12 administering the provisions of this title and any other provisions of the law
13 relating to items registered under this chapter. If the Secretary so requests, the
14 application for registration shall be accompanied by a label or other printed
15 matter describing the product.

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

1 order has been placed for reason of nonregistration, and must be received
2 before removal of the withdrawal from distribution order.

3 ~~(d)~~(e) No person shall distribute a commercial feed product in the State that
4 is labeled as bait or feed for white-tailed deer.

5 § 325. LABELING

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

8 (1) the net weight;

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

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

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

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

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

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

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

5 (1) the net weight or count;

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

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

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

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

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

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

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

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

21 (1) name and address of the manufacturer;

1 (2) name and address of the purchaser;

2 (3) date of delivery;

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

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

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

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

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

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

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

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

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

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

1 § 326. MISBRANDING

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

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

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

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

8 (4) it purports to be or is represented as a commercial feed, or if it
9 purports to contain or is represented as containing a commercial feed
10 ingredient, unless the commercial feed or feed ingredient conforms to the
11 definition, if any, prescribed by rule of the Commissioner; or

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

15 § 327. ADULTERATION

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

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

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

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

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

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

15 ~~(4)~~(5) it contains viable weed seeds in amounts exceeding the limits that
16 the Secretary shall establish by rule.

17 § 328. ~~TONNAGE REPORTING~~

18 ~~(a) Every person who registers a commercial feed pursuant to the~~
19 ~~provisions of this chapter shall report to the Agency of Agriculture, Food and~~
20 ~~Markets annually the total amount of combined feed is distributed within the~~
21 ~~State and which is intended for use within the State. The report shall be made~~

1 ~~on forms and in a manner to be prescribed by the Secretary for calendar years~~
2 ~~2016 and 2017.~~

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

6 § 329. RULES

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

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

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

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

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

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

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

15 § 330. INSPECTION; SAMPLING; ANALYSIS

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

19 (1) to enter any premises during normal business hours where
20 commercial feeds, feed supplements, or animal health products are

1 manufactured, processed, packed, or held for distribution and to stop and enter
2 any vehicle being used to transport or hold feeds;

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

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

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

16 § 331. PRODUCT DEFICIENCY; SHORT WEIGHT

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

20 The Secretary by rule shall establish permitted analytical variances that shall

1 be used to determine whether a commercial feed, feed supplement, or animal
2 health product is deficient.

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

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

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

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

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

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

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

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

1 the Secretary may begin, or upon request of the distributor or registrant shall
2 begin, proceedings for condemnation.

3 (b) “Condemnation and confiscation.” Any lot of commercial feed, feed
4 supplement, or animal health product not in compliance with this chapter and
5 rules shall be subject to seizure on complaint of the Secretary to a court of
6 competent jurisdiction in the area in which the commercial feed is located. In
7 the event the court finds the commercial feed, feed supplement, or animal
8 health product to be in violation of this chapter and orders the condemnation of
9 the commercial feed, feed supplement, or animal health product, it shall be
10 disposed of in any manner consistent with the quality of the commercial feed,
11 feed supplement, or animal health product and the laws of the State, provided
12 that in no instance shall the disposition of the commercial feed, feed
13 supplement, or animal health product be ordered by the court without first
14 giving the claimant an opportunity to apply to the court for release of the
15 commercial feed, feed supplement, or animal health product or for permission
16 to process or relabel the commercial feed, feed supplement, or animal health
17 product to bring it into compliance with this chapter.

18 § 333. PENALTIES

19 (a) Any person who violates any provision of this chapter, the rules
20 adopted under this chapter, or an order of the Secretary made pursuant to this
21 chapter shall be subject to a criminal fine not to exceed \$1,000.00. Each

1 violation shall be a separate and distinct offense and in the case of a continuing
2 violation each day's continuance shall be deemed a separate and distinct
3 offense.

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

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

12 § 334. COOPERATION WITH OTHER ENTITIES

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

17 § 336. ADMINISTRATIVE PENALTY

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

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

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

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

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

18 ~~(2)~~(3) “Brand” means a term, design, or trademark used in connection
19 with one or more grades or formulas of fertilizer, biostimulant, plant
20 amendment, soil amendment, or lime.

1 ~~(3)~~(4) “Distribute” means to import, consign, manufacture, produce,
2 compound, mix, or blend fertilizer or to offer for sale, sell, barter, or otherwise
3 supply or apply fertilizer, a biostimulant, a plant amendment, a soil
4 amendment, or lime in this State. “Distribute” shall include online sales.

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

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

10 (A) a pathogen reduction process established n 40 C.F.R.
11 § 503.32(a)(3), (4), (7), or (8);

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

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

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

18 ~~(5)~~(7) “Fertilizer” means any substance containing one or more
19 recognized plant nutrients that is used for its plant nutrient content and that is
20 designed for use or claimed to have value in promoting plant growth or health,

1 except unprocessed animal or vegetable manures and other products exempted
2 by the Secretary.

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

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

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

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

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

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

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

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

18 ~~(6)~~(9) “Grade” means the percentage of total nitrogen, available
19 phosphorus or phosphoric acid, and soluble potassium or potash stated in
20 whole numbers in the same terms, order, or percentages as in the guaranteed
21 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 ~~(10)~~(13) “Official sample” means any sample of fertilizer, biostimulant,
20 plant amendment, soil amendment, or lime taken by the Secretary.

1 (14) “Plant amendment” means any substance applied to plants or seeds
2 that is intended to improve growth, yield, product quality, reproduction, flavor
3 or other favorable characteristics of plants, except for fertilizer, soil
4 amendments, agricultural liming materials, animal and vegetable manures,
5 pesticides, plant regulators, and other materials exempted by rule adopted
6 under this chapter.

7 ~~(11)~~(15) “Percent” or “percentage” means the percentage by weight.

8 ~~(12)~~(16) “Primary nutrient” includes nitrogen, available phosphoric acid
9 or phosphorus, and soluble potash or potassium.

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

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

16 (19) “Soil amendment” means a substance or mixture of substance that
17 is intended to improve the physical, chemical, biological, or other
18 characteristics of the soil, except fertilizers, agricultural liming materials,
19 unprocessed animal manures, unprocessed vegetable manures, pesticides,
20 biostimulants, and other materials exempted by rule. An exceptional quality
21 biosolid product marketed and distributed for the use in the production of an

1 agricultural commodity is a soil amendment unless specifically registered
2 under this chapter as a fertilizer.

3 ~~(15)(20)~~ “Ton” means a net weight of 2,000 pounds avoirdupois.

4 ~~(16)(21)~~ “Use” includes all purposes for which a fertilizer, a
5 biostimulant, a plant amendment, a soil amendment, or lime is applied.

6 ~~(17)(22)~~ “Weight” means the weight of undried material as offered for
7 sale.

8 § 364. REGISTRATION

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

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

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

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

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

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

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

21 § 365. LABELS

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

4 (A) net weight;

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

7 (C) guaranteed analysis; and

8 (D) name and address of the registrant.

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

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

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

21 Total Calcium (Ca) percent

1 Total Magnesium (Mg) percent

2 ~~(2) Under this rule, an affected person shall be given a reasonable time~~
3 ~~to come into compliance.~~

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

8 (A) net weight or volume;

9 (B) brand name;

10 (C) purpose of product;

11 (D) directions for application;

12 (E) guaranteed analysis; and

13 (F) name and address of the registrant.

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

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

20 § 366. TONNAGE FEES

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

- 3 (1) a \$150.00 minimum tonnage fee;
4 (2) \$0.50 per ton of agricultural fertilizer distributed; and
5 (3) \$30.00 per ton of nonagricultural fertilizer distributed.

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

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

16 (d) Persons distributing a biostimulant, plant amendment, or soil
17 amendment in the State shall report annually on or before January 15 for the
18 previous year ending December 31 to the Secretary revealing the amounts of
19 each formulation of biostimulant, plant amendment, or soil amendment and the
20 form in which the biostimulant, plant amendment, or soil amendment was
21 distributed within this State. Each report shall include a written authorization

1 allowing the Secretary to examine the person's books for the purpose of
2 verifying tonnage reports. Biostimulants, plant amendments, and soil
3 amendments are exempt from tonnage fees.

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

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

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

12 (2) All fees collected under subdivision (a)(3) of this section shall be
13 deposited in the Agricultural Water Quality Special Fund created under section
14 4803 of this title.

15 (h) [Repealed.]

16 § 367. INSPECTION; SAMPLING; ANALYSIS

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

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

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

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

13 (4) To develop any reasonable means necessary to monitor and adopt
14 rules for the use of fertilizers ~~and agricultural limes,~~ biostimulants, plant
15 amendments, soil amendments, and lime on Vermont soils where monitoring
16 indicates environmental or health problems. In addition, the Secretary may
17 develop and adopt rules for the proper storage of fertilizers ~~and limes~~ fertilizer,
18 biostimulants, plant amendments, soil amendments, and lime held for
19 distribution or sale.

20 § 368. MISBRANDING

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

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

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

7 (3) it contains unsubstantiated claims;

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

10 ~~(4)~~(5) it is labeled, or represented, to contain a plant nutrient ~~which~~ that
11 does not conform to the standard of identity established by rule. In adopting
12 ~~these~~ rules under this chapter, the Secretary shall give consideration to
13 definitions recommended by the Association of American Plant Food Control
14 Officials.

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

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

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

19 § 369. ADULTERATION

20 No person shall distribute an adulterated lime, biostimulant, plant
21 amendment, soil amendment, or fertilizer product. A fertilizer, biostimulant,

1 plant amendment, soil amendment, or lime shall be deemed to be adulterated

2 if:

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

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

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

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

17 § 370. PUBLICATION; CONSUMER INFORMATION REGARDING

18 ~~FERTILIZER~~ USE ON NONAGRICULTURAL TURF OF

19 FERTILIZER, BIOSTIMULANTS, PLANT AMENDMENTS, AND

20 SOIL AMENDMENTS

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

- 1 (1) information concerning the distribution of fertilizers, biostimulants,
2 plant amendments, soil amendments, and limes;
- 3 (2) results of analyses based on official samples of fertilizers,
4 biostimulants, plant amendments, soil amendments, and lime distributed within
5 the State as compared with guaranteed analyses required pursuant to the terms
6 of this chapter.
- 7 (b)(1) The Secretary, in consultation with the University of Vermont
8 Extension, fertilizer industry representatives, lake groups, and other interested
9 or affected parties, shall produce information for distribution to the general
10 public with respect to the following:
- 11 (A) problems faced by the waters of the State because of discharges
12 of phosphorus;
- 13 (B) an explanation of the extent to which phosphorus exists naturally
14 in the soil;
- 15 (C) voluntary best management practices for the use of fertilizers
16 containing phosphorus on nonagricultural turf; and
- 17 (D) best management practices for residential sources of phosphorus.
- 18 (2) The Secretary shall develop the information required under this
19 subsection and make it available to the general public in the manner deemed
20 most effective, which may include:

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

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

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

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

20 [Repealed.]

21 § 371. RULES; ~~ENFORCEMENT~~

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

4 § 372. PLANT FOOD VARIATIONS

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

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

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

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

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

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

9 * * *

10 § 374. SHORT WEIGHT

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

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

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

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

6 § 375. CANCELLATION OF REGISTRATION

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

13 § 376. DETAINED FERTILIZER AND LIME

14 (a) “Withdrawal from distribution” orders. When the Secretary has
15 reasonable cause to believe any lot of fertilizer, biostimulant, plant
16 amendment, soil amendment, or lime is being distributed in violation of any of
17 the provisions of this chapter or any of the rules under this chapter, he or she
18 may issue and enforce a written or printed “withdrawal from distribution”
19 order, warning the distributor not to dispose of the lot of fertilizer,
20 biostimulant, plant amendment, soil amendment, or lime in any manner until
21 written permission is given by the Secretary or the court. The Secretary shall

1 release the lot of fertilizer, biostimulant, plant amendment, soil amendment, or
2 lime withdrawn when this chapter and rules have been complied with. If
3 compliance is not obtained within 30 days, the Secretary may begin, or upon
4 request of the distributor or registrant shall begin, proceedings for
5 condemnation.

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

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§ 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, or lime without appropriate labeling;
- (3) failed to report or to accurately report the amount and form of each grade of fertilizer distributed in Vermont on an annual basis;

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

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

4 (5)(6) violated a cease and desist order.

5 § 381. GOLF COURSES; NUTRIENT MANAGEMENT PLAN

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

14 Sec. 3. EFFECTIVE DATE

15 This act shall take effect on July 1, 2021.