

1 Introduced by Committee on Agriculture

2 Date:

3 Subject: Agriculture; solid waste; composting; poultry

4 Statement of purpose of bill as introduced: This bill proposes to require the
5 Agency of Agriculture, Food and Markets to regulate compost foraging as
6 farming. The bill would amend the definition of “farming” under Act 250 and
7 the Required Agricultural Practices to include compost foraging. The bill
8 would also require the manufacturer or distributor of animal health products,
9 feed supplements, biostimulants, soil amendments, and plant amendments sold
10 or distributed in the State to register the products with the Agency of
11 Agriculture, Food and Markets.

12 An act relating to the regulation of agricultural inputs for farming

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

14 * * * Compost Foraging; Farming * * *

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

16 § 6001. DEFINITIONS

17 ~~It~~ As used in this chapter:

18 * * *

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

20 * * *

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

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

4 * * *

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

8 * * *

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

11 * * *

12 (22) “Farming” means:

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

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

17 (C) the operation of greenhouses; or

18 (D) the production of maple syrup; or

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

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

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

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

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

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

14 * * *

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

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

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

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

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

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

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

12 Vermont Required Agricultural Practices Rule for the Agricultural

13 Nonpoint Source Pollution Control Program is amended to read:

14 Section 2. Definitions

15 * * *

16 2.16 Farming means:

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

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

20 or

21 (c) the operation of greenhouses; or

22 (d) the production of maple syrup; or

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

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

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

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

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

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

14 * * *

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

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

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

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

4 CHAPTER 218. AGRICULTURAL RESIDUALS MANAGEMENT

5 § 5131. PURPOSE

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

9 § 5132. DEFINITIONS

10 As used in this chapter:

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

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

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

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

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

1 process excluding livestock or poultry slaughtering and rendering operations.

2 “Food processing residuals” do not include food residuals from markets,

3 groceries, or restaurants.

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

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

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

11 § 5133. FOOD RESIDUALS; RULEMAKING

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

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

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

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

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

1 (D) protection of natural resources or the environment; and
2 (E) prevention of objectionable odors, noise, vectors, or other
3 nuisance conditions.

4 (2) The Secretary may adopt the rules required by this section as part of
5 the Required Agricultural Practices or as independent rules under this chapter.

6 (c) A farm producing compost under 10 V.S.A. § 6001(22)(H) shall be
7 regulated under this chapter and shall not require a certification or other
8 approval from the Agency of Natural Resources under 10 V.S.A. chapter 159.

9 Sec. 4. 10 V.S.A. § 6605 is amended to read:

10 § 6605. SOLID WASTE MANAGEMENT FACILITY CERTIFICATION

11 (a)(1) No person shall construct, substantially alter, or operate any solid
12 waste management facility without first obtaining certification from the
13 Secretary for such facility, site, or activity, except for sludge or septage
14 treatment or storage facilities located within the fenced area of a domestic
15 wastewater treatment plant permitted under chapter 47 of this title. This
16 exemption for sludge or septage treatment or storage facilities shall exist
17 only if:

18 * * *

19 (2) Certification shall be valid for a period not to exceed 10 years.

20 * * *

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

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

2 § 6605h. COMPOSTING REGISTRATION

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

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

10 § 6605j. ACCEPTED COMPOSTING PRACTICES

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

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

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

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

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

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

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

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

18 (b) A person operating a small scale composting facility ~~or operating a~~
19 ~~composting facility on a farm~~ who follows the accepted composting practices
20 shall not be required to obtain a discharge permit under section 1263 or 1264
21 of this title, a solid waste facility certification under chapter 159 of this title, or
22 an air emissions permit under chapter 23 of this title unless a permit is required

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

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

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

11 Sec. 7. APPLICATION OF SOLID WASTE MANAGEMENT RULES

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

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

21 RESIDUALS ONTO FARM FOR COMPOSTING

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

6 * * * Animal Health Products; Feed Supplements * * *

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

8 CHAPTER 26. COMMERCIAL FEEDS

9 * * *

10 § 323. DEFINITIONS

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

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

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

20 ~~(2)~~(3) “Commercial feed” means all materials except whole seeds
21 unmixed or physically altered entire unmixed seeds, when not adulterated
22 within the meaning of subsection 327(a) of this title, ~~which~~ that are distributed

1 for use as feed or for mixing in feed. The Secretary by regulation may exempt
2 from this definition, or from specific provisions of this chapter, commodities
3 such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical
4 compounds or substances when such commodities, compounds, or substances
5 are not intermixed or mixed with other materials; and are not adulterated
6 within the meaning of subsection 327(a) of this title.

7 ~~(3)~~(4) “Customer-formula feed” means commercial feed that consists of
8 a mixture of commercial feeds or feed ingredients each batch of which is
9 manufactured according to the specific instructions of the final purchaser.

10 ~~(4)~~(5) “Distribute” means to offer for sale, sell, exchange, or barter
11 commercial feed or animal health products or to supply, furnish, or otherwise
12 provide commercial feed or animal health products, through any means,
13 including sales outlets, catalogues, the telephone, the Internet, or any electronic
14 means.

15 ~~(5)~~(6) “Distributor” means any person who distributes commercial feeds
16 or animal health products.

17 ~~(6)~~(7) “Drug” means any substance intended for use in the diagnosis,
18 cure, mitigation, treatment, or prevention of disease in domestic animals other
19 than humans and substances other than feed intended to affect the structure or
20 any function of the animal body.

21 ~~(7)~~(8) “Feed ingredient” means each of the constituent materials making
22 up a commercial feed.

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

6 ~~(8)~~(10) “Label” means a display of written, printed, or graphic matter
7 upon or affixed to the container in which a commercial feed, animal health
8 product, or feed supplement is distributed, or on the invoice or delivery slip
9 with which a commercial feed, animal health product, or feed supplement is
10 distributed.

11 ~~(9)~~(11) “Labeling” means all labels and other written, printed, or
12 graphic matter upon a commercial feed, animal health product, or feed
13 supplement or any of its containers, or the wrapper accompanying the
14 commercial feed, animal health product, or feed supplement, or
15 advertisements, brochures, posters, and television and radio announcements
16 used in promoting the sale of the feed, animal health product, or feed
17 supplement.

18 ~~(10)~~(12) “Manufacture” means to produce, grind, mix, or blend, or
19 further process a commercial feed, animal health product, or feed supplement
20 for distribution.

21 ~~(11)~~(13) “Mineral feed” means a commercial feed intended to supply
22 primarily mineral elements or inorganic nutrients.

1 ~~(12)~~(14) “Official sample” means a sample of feed taken by the
2 Secretary in accordance with the provisions of subdivision 330(3) of this title.

3 ~~(13)~~(15) “Percent” or “percentages” means percentages by weights.

4 ~~(14)~~(16) “Permitted analytical variances” means those allowances for
5 the inherent variability in sampling and laboratory analysis.

6 ~~(15)~~(17) “Pet” means any domesticated animal normally maintained in
7 or near the household of the owner.

8 ~~(16)~~(18) “Pet food” means any commercial feed prepared and
9 distributed for consumption by pets.

10 ~~(17)~~(19) “Product” means the name of the commercial feed ~~which,~~
11 animal health product, or feed supplement that identifies it as to kind, class, or
12 specific use.

13 ~~(18)~~(20) “Specialty pet” means any domesticated animal pet normally
14 maintained in a cage or tank.

15 ~~(19)~~(21) “Specialty pet food” means any commercial feed prepared and
16 distributed for consumption by specialty pets.

17 ~~(20)~~(22) “Ton” means a net weight of 2,000 pounds avoirdupois.

18 § 324. REGISTRATION AND FEES

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

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

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

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

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

1 administering the provisions of this title and any other provisions of the law
2 relating to items registered under this chapter. If the Secretary so requests, the
3 application for registration shall be accompanied by a label or other printed
4 matter describing the product.

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

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

15 § 325. LABELING

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

18 (1) the net weight;

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

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

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

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

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

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

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

13 (1) the net weight or count;

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

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

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

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

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

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

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

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

7 (1) name and address of the manufacturer;

8 (2) name and address of the purchaser;

9 (3) date of delivery;

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

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

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

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

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

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

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

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

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

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

8 § 326. MISBRANDING

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

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

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

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

15 (4) it purports to be or is represented as a commercial feed, or if it
16 purports to contain or is represented as containing a commercial feed
17 ingredient, unless the commercial feed or feed ingredient conforms to the
18 definition, if any, prescribed by rule of the Commissioner; or

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

22 § 327. ADULTERATION

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

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

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

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

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

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

21 ~~(4)~~(5) it contains viable weed seeds in amounts exceeding the limits that
22 the Secretary shall establish by rule.

1 § 328. ~~TONNAGE REPORTING~~

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

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

11 § 329. RULES

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

19 (b) The official definitions of feed ingredients and official feed terms
20 adopted by the Association of American Feed Control Officials and published
21 in the official publication of that organization, together with any regulation
22 promulgated pursuant to the authority of the federal Food, Drug and Cosmetic

1 Act, 21 U.S.C. § 301 et seq., relevant to the subject matter of this chapter, are
2 hereby adopted as rules under this chapter, together with all subsequent
3 amendments. The Secretary may, by rule, amend or repeal any rule adopted
4 under this subsection.

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

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

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

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

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

19 § 330. INSPECTION; SAMPLING; ANALYSIS

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

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

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

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

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

18 § 331. PRODUCT DEFICIENCY; SHORT WEIGHT

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

22 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.

21 (c) In assessing a penalty under this section, the Secretary shall issue a
22 written notice of penalty to the registrant setting forth in a short and plain

1 statement the alleged violation and the proposed fine. The notice shall state
2 that the penalty will become final 14 days from the date the notice of penalty is
3 issued unless the registrant requests a hearing before the Secretary.

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

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

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

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

16 § 333. PENALTIES

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

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

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

9 § 334. COOPERATION WITH OTHER ENTITIES

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

14 § 336. ADMINISTRATIVE PENALTY

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

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

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

22 (3) Violated a cease and desist order.

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

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

5 * * * Biostimulants; Plant Amendments; Soil Amendments * * *

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

7 CHAPTER 28. FERTILIZER AND LIME

8 § 361. TITLE

9 This chapter shall be known as the “Fertilizer and Lime Law of 1986.”

10 § 362. ENFORCING OFFICIAL

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

13 § 363. DEFINITIONS

14 As used in this chapter:

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

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

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

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

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

12 ~~(2)~~(3) “Brand” means a term, design, or trademark used in connection
13 with one or more grades or formulas of fertilizer, biostimulant, plant
14 amendment, soil amendment, or lime.

15 ~~(3)~~(4) “Distribute” means to import, consign, manufacture, produce,
16 compound, mix, or blend fertilizer or to offer for sale, sell, barter, or otherwise
17 supply ~~or apply~~ a fertilizer, a biostimulant, a plant amendment, a soil
18 amendment, or lime in this State. “Distribute” shall include online sales.

19 ~~(4)~~(5) “Distributor” means any person who distributes fertilizer,
20 biostimulants, plant amendments, soil amendments, or lime.

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

4 (A) a pathogen reduction process established in 40 C.F.R.
5 § 503.32(a)(3), (4), (7), or (8);

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

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

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

12 ~~(5)~~(7) “Fertilizer” means any substance containing one or more
13 recognized plant nutrients that is used for its plant nutrient content and that is
14 designed for use or claimed to have value in promoting plant growth or health,
15 except unprocessed animal or vegetable manures and other products exempted
16 by the Secretary.

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

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

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

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

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

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

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

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

11 ~~(6)~~(9) “Grade” means the percentage of total nitrogen, available
12 phosphorus or phosphoric acid, and soluble potassium or potash stated in
13 whole numbers in the same terms, order, or percentages as in the guaranteed
14 analysis. Specialty fertilizers and fertilizer materials may be guaranteed in
15 fractional terms. Any grade expressed in fractional terms ~~which~~ that is not
16 preceded by a whole number shall be preceded by zero.

17 ~~(7)~~(10) “Guaranteed analysis” means:

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

21 (B) in reference to agricultural lime or agricultural liming material,
22 the minimum percentages of calcium oxide and magnesium oxide or calcium

1 carbonate and the calcium carbonate equivalent, or both, as claimed by the
2 manufacturer or producer of the product.

3 ~~(8)~~(11) “Label” means the display of all written, printed, or graphic
4 matter upon the immediate container, or a statement accompanying a fertilizer,
5 biostimulant, plant amendment, soil amendment, or lime.

6 ~~(9)~~(12) “Labeling” means all written, printed, or graphic material upon
7 or accompanying any ~~lime or~~ fertilizer, biostimulant, plant amendment, soil
8 amendment, or lime including advertisements, brochures, posters, and
9 television and radio announcements used in promoting the sale of the ~~lime or~~
10 fertilizer, biostimulant, plant amendment, soil amendment, or lime.

11 ~~(10)~~(13) “Official sample” means any sample of fertilizer, biostimulant,
12 plant amendment, soil amendment, or lime taken by the Secretary.

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

19 ~~(11)~~(15) “Percent” or “percentage” means the percentage by weight.

20 ~~(12)~~(16) “Primary nutrient” includes nitrogen, available phosphoric acid
21 or phosphorus, and soluble potash or potassium.

1 ~~(13)~~(17) “Product” means the name of the fertilizer, biostimulant, plant
2 amendment, soil amendment, or lime ~~which~~ that identifies it as to kind, class,
3 or specific use.

4 ~~(14)~~(18) “Registrant” means the person who registers ~~fertilizers a~~
5 fertilizer, biostimulant, plant amendment, soil amendment, or lime under the
6 provisions of this chapter.

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

16 ~~(15)~~(20) “Ton” means a net weight of 2,000 pounds avoirdupois.

17 ~~(16)~~(21) “Use” includes all purposes for which a fertilizer, a
18 biostimulant, a plant amendment, a soil amendment, or lime is applied.

19 ~~(17)~~(22) “Weight” means the weight of undried material as offered for
20 sale.

1 § 364. REGISTRATION

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

- 12 (1) the brand and grade or formulation;
- 13 (2) the guaranteed analysis if applicable; and
- 14 (3) the name and address of the registrant.

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

19 (c) A distributor shall not be required to register each grade of fertilizer
20 formulated or each formulation of soil amendment according to specifications
21 ~~which~~ that are furnished by a consumer prior to mixing, but shall be required to

1 label the fertilizer or soil amendment as provided in subsection 365(b) of this
2 title.

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

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

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

14 § 365. LABELS

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

18 (A) net weight;

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

21 (C) guaranteed analysis; and

22 (D) name and address of the registrant.

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

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

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

13 Total Calcium (Ca) percent

14 Total Magnesium (Mg) percent

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

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

21 (A) net weight or volume;

22 (B) brand name;

- 1 (C) purpose of product;
- 2 (D) directions for application;
- 3 (E) guaranteed analysis; and
- 4 (F) name and address of the registrant.

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

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

11 § 366. TONNAGE FEES

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

- 14 (1) a \$150.00 minimum tonnage fee;
- 15 (2) \$0.50 per ton of agricultural fertilizer distributed; and
- 16 (3) \$30.00 per ton of nonagricultural fertilizer distributed.

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

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

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

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

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

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

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

4 (h) [Repealed.]

5 § 367. INSPECTION; SAMPLING; ANALYSIS

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

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

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

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

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

8 § 368. MISBRANDING

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

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

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

15 (3) it contains unsubstantiated claims;

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

18 ~~(4)~~(5) it is labeled, or represented, to contain a plant nutrient ~~which that~~
19 does not conform to the standard of identity established by rule. In adopting
20 ~~these~~ rules under this chapter, the Secretary shall give consideration to
21 definitions recommended by the Association of American Plant Food Control
22 Officials.

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

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

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

5 § 369. ADULTERATION

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

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

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

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

19 (4) it contains heavy metals, radioactive substances, or synthetic
20 organics in amounts sufficient to render it injurious to livestock or human
21 health when applied in accordance with directions for use on the label, or if

1 adequate warning statements or directions for use ~~which~~ that may be necessary
2 to protect livestock or human health are not shown on the label.

3 § 370. PUBLICATION; CONSUMER INFORMATION REGARDING

4 ~~FERTILIZER~~ USE ON NONAGRICULTURAL TURF OF

5 FERTILIZER, BIOSTIMULANTS, PLANT AMENDMENTS, AND

6 SOIL AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

13 ~~(3) The Secretary shall develop proposed criteria for evaluating the~~
14 ~~effectiveness of the information program and shall present them to legislative~~
15 ~~committees on natural resources and energy and on agriculture by no later than~~
16 ~~January 1, 2007. By no later than July 1, 2007, the Secretary shall hold one or~~
17 ~~more public information meetings to obtain the input of the public on a draft~~
18 ~~assessment of the effectiveness of this section in increasing the use of best~~
19 ~~management practices in the use of fertilizers on nonagricultural turf. By no~~
20 ~~later than December 1, 2008, the Secretary shall provide those legislative~~
21 ~~committees with a final assessment of the effectiveness of this subsection,~~
22 ~~which shall include an analysis of the extent to which the information~~

1 ~~developed under this subsection has been effectively provided to and relied~~
2 ~~upon by retail customers who purchase fertilizers containing phosphorus and~~
3 ~~shall include any recommendations for making the program more effective.~~

4 [Repealed.]

5 § 371. RULES; ~~ENFORCEMENT~~

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

9 § 372. PLANT FOOD VARIATIONS

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

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

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

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

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

12 * * *

13 § 374. SHORT WEIGHT

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

19 (b) Each registrant shall be offered an opportunity for a hearing before the
20 Secretary. Penalty payments shall be made within 30 days after notice of the
21 Secretary's decision to assess a penalty. Proof of payment to the consumer
22 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
22 release the lot of fertilizer, biostimulant, plant amendment, soil amendment, or

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

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

21 * * *

22 § 379. EXCHANGES BETWEEN MANUFACTURERS

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

8 § 380. ADMINISTRATIVE PENALTY

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

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

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

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

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

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

22 ~~(5)~~(6) violated a cease and desist order.

1 § 381. GOLF COURSES; NUTRIENT MANAGEMENT PLAN

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

10 * * * Effective Dates * * *

11 Sec. 11. EFFECTIVE DATES

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

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