

SENATE BILL 231

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Pat Boone

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO AGRICULTURE; ENACTING THE BENEFICIAL SUBSTANCES ACT; PROVIDING POWERS AND DUTIES; PREEMPTING LOCAL REGULATION; REQUIRING REGISTRATION; SPECIFYING LABELING, MISBRANDING AND ADULTERATION; ALLOWING INSPECTIONS, SAMPLING, ANALYSIS AND TESTING OF BENEFICIAL SUBSTANCES; ASSESSING FEES; REMOVING SOIL CONDITIONERS FROM THE NEW MEXICO FERTILIZER ACT TO INCLUDE THEM IN THE BENEFICIAL SUBSTANCES ACT; CREATING CRIMES; PRESCRIBING PENALTIES.

.229437.2SAAIC February 19, 2025 (9:37pm)

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight↔
delete = →bold, red, highlight, strikethrough↔

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new Section 76-11A-1 NMSA 1978 is enacted to read:

"76-11A-1. [NEW MATERIAL] SHORT TITLE.--Chapter 76, Article 11A NMSA 1978 may be cited as the "Beneficial Substances Act"."

SECTION 2. A new Section 76-11A-2 NMSA 1978 is enacted to read:

"76-11A-2. [NEW MATERIAL] DEFINITIONS.--As used in the Beneficial Substances Act:

A. "beneficial substance" means a substance or compound, other than primary, secondary and microplant nutrients, and excludes pesticides, that can be demonstrated by scientific research to be beneficial to one or more species of plants, soil or media;

B. "board" means the board of regents of New Mexico state university;

C. "brand" means the term, designation, trademark, product name or other specific designation under which individual beneficial substances are offered for sale;

D. "bulk" means in nonpackaged form;

E. "department" means the New Mexico department of agriculture;

F. "distribute" means to import, consign,

.229437.2SAAIC February 19, 2025 (9:37pm)

underscored material = new

[bracketed material] = delete

Amendments: new = →bold, blue, highlight←

delete = →bold, red, highlight, strikethrough←

manufacture, produce, compound, mix or blend beneficial substances or offer for sale, sell, barter or otherwise supply beneficial substances into this state;

G. "distributor" means a person who imports, consigns, manufactures, produces, compounds, mixes or blends beneficial substances or who offers for sale, sells, barter or otherwise supplies beneficial substances in this state;

H. "investigational allowance" means an allowance for variations inherent in the taking, preparation and analysis of an official sample of a beneficial substance;

I. "label" means the display of all written, printed or graphic matter upon the immediate container or statement accompanying a beneficial substance;

J. "labeling" means all labels and all other written, printed, graphic and electronic matter accompanying a beneficial substance or to which reference is made on the label or in literature accompanying the beneficial substance;

K. "official sample" means any sample of a beneficial substance taken by the department unless designated otherwise;

L. "percent" or "percentage" means by weight;

M. "plant amendment" means a substance applied to plants or seeds that is intended to improve growth, yield, product quality, reproduction, flavor or other favorable characteristics of plants except fertilizers, soil amendments,

underscored material = new

[bracketed material] = delete

Amendments: new = →bold, blue, highlight↔

delete = →bold, red, highlight, strikethrough↔

agricultural liming materials, animal and vegetable manure, pesticides, plant regulators or other materials that may be exempt by rule of the board;

N. "plant biostimulant" means a substance, microorganism or mixture of substances and microorganisms that when applied to seeds, plants, the rhizosphere, soil or other growth media act to support a plant's natural nutrition processes independently of the biostimulant's nutrient content and that improves nutrient availability, uptake, use, efficiency, tolerance to abiotic stress for consequent growth, development, quality or yield;

O. "plant inoculant" means a product consisting of microorganisms to be applied to the plant or soil to enhance the availability or uptake of plant nutrients through the root system;

P. "registrant" means a person who registers the beneficial substance that bears the person's company name on the label and who is the guarantor;

Q. "soil amending ingredient" means a substance that will improve the physical, chemical, biochemical, biological or other characteristics of the soil;

R. "soil amending ingredient form" means the chemical compound, such as salt, chelate, oxide and acid, of an ingredient or the physical form of an ingredient;

S. "soil amendment" means a substance or a mixture

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

of substances that is intended to improve the physical, chemical, biochemical, biological or other characteristic of the soil, except fertilizers, agricultural liming materials, unmanipulated animal manures, unmanipulated vegetable manures, pesticides and other materials exempt by rule; and

T. "soil inoculant" means a microbial product that is applied to colonize the soil to benefit the soil chemistry, biology, or structure."

SECTION 3. A new Section 76-11A-3 NMSA 1978 is enacted to read:

"76-11A-3. [NEW MATERIAL] SCOPE--SOLE ENFORCEMENT.--

A. Beneficial substances encompass plant biostimulants, soil amendments and other chemical or biological substances beneficial to plants or their growing environment, but exclude primary, secondary and microplant nutrients, including fertilizers, and pesticides. Efficacy data may be required to support beneficial substance ingredient claims if the ingredient is not currently defined by the association of American plant food control officials' official publication for the particular claim. Material that also makes pesticidal or plant regulator claims may be required to register with the federal environmental protection agency or related state departments.

B. The Beneficial Substances Act shall be administered solely by the board through the department.

.229437.2SAAIC February 19, 2025 (9:37pm)

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

C. No political subdivision shall regulate the registration, packaging, labeling, sale, storage, distribution, use and application of beneficial substances, and no political subdivision shall adopt or continue in effect local ordinances relating to the registration, packaging, labeling, sale, storage, distribution, use or application of beneficial substances. Local ordinances in effect on the effective date of the Beneficial Substances Act are void."

SECTION 4. A new Section 76-11A-4 NMSA 1978 is enacted to read:

"76-11A-4. [NEW MATERIAL] LABELING.--

A. The board may adopt such rules as necessary to ensure the accuracy or truthfulness of labels, labeling, registration documents and content of beneficial substances.

B. Except for materials exempt by rule, the following information shall appear in a readable and conspicuous form and shall be considered the label:

- (1) the brand, which provides a product name;
- (2) the net weight or net volume, which provides both United States customary and metric measurements;
- (3) the name and address of registrant or distributor, but shall include an address for the responsible party if other than the registrant or distributor;
- (4) a purpose statement, which is the statement identifying the purpose of the product;

.229437.2SAAIC February 19, 2025 (9:37pm)

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

(5) directions for use;

(6) a statement of composition that shows the amount of each ingredient, which is the agent in a product primarily responsible for the intended effects; and

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

C. For products that claim microorganisms, labels shall also include:

(1) the expiration date for use; and

(2) storage conditions."

SECTION 5. A new Section 76-11A-5 NMSA 1978 is enacted to read:

"76-11A-5. [NEW MATERIAL] REGISTRATION.--

A. Each beneficial substance product shall be registered before being distributed in this state. The application for registration shall be submitted to the department on a registration form furnished by the department and shall be accompanied by a fee not to exceed fifty dollars (\$50.00) per product. All registrations shall expire on December 31 each year.

B. A distributor shall not be required to register a beneficial substance that is already registered by another person if the label does not differ in any respect.

C. Each brand shall refer to a specific formulation.

.229437.2SAAIC February 19, 2025 (9:37pm)

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

Different brands may refer to the same specific formulation. Products for which formulations change, such as changes in the "contains beneficial substances" analysis, statement of composition or anything that implies a different product, shall obtain a new registration with a brand that distinguishes it from the previous formulation.

D. Each registration form shall be accompanied by a label or facsimile of a label for the product that is named. If the product is sold in more than one size or quantity, only one label shall be submitted."

SECTION 6. A new Section 76-11A-6 NMSA 1978 is enacted to read:

"76-11A-6. [NEW MATERIAL] INSPECTION FEE.--

A. An inspection fee set by the board at a rate not to exceed fifty cents (\$0.50) per ton with a minimum inspection fee of five dollars (\$5.00) per quarterly reporting period shall be paid to the department. Fees shall be used for the payment of the costs of inspection, sampling and analysis and other expenses necessary for the administration of the Beneficial Substances Act.

B. On individual packages of a beneficial substance containing five pounds or less, an annual inspection fee not to exceed fifty dollars (\$50.00) shall be paid to the department. Where a person sells beneficial substances in packages of five pounds or less and in packages over five pounds, the annual

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

registration and inspection fees apply only to that portion sold in packages of five pounds or less.

C. A person who distributes a beneficial substance in the state shall file with the department on forms furnished by the department a quarterly statement for the periods ending March 31, June 30, September 30 and December 31 setting forth the number of net tons of each beneficial substance distributed in the state during the quarter. The report is due on or before the last day of the month following the close of each quarter. The inspection fee shall be paid at the time of filing of the statement. If the tonnage report is not filed and the payment of the inspection fee is not made within thirty days after the end of the quarter, a collection fee of ten percent of the amount or ten dollars (\$10.00), whichever is greater, shall be assessed against the registrant, and the amount of fees due constitutes a debt and becomes the basis of a judgment against the registrant.

D. When more than one person is involved in the distribution of a beneficial substance, the first person who has the beneficial substance registered and who distributes to a nonregistrant dealer or consumer is responsible for reporting the tonnage and paying the inspection fee unless the report and payment have been previously made by a prior distributor."

SECTION 7. A new Section 76-11A-7 NMSA 1978 is enacted to read:

.229437.2SAAIC February 19, 2025 (9:37pm)

"76-11A-7. [NEW MATERIAL] EXEMPTIONS.--

A. The following soil amending materials are exempt from the labeling requirements of the Beneficial Substances Act. The following single ingredient soil amendments, when clearly and conspicuously identified as such on the label, are exempt from the statement of composition as required by Paragraph (6) of Subsection B of Section 4 of that act:

- (1) hay;
- (2) straw;
- (3) peat;
- (4) leaf mold;
- (5) sand;
- (6) perlite;
- (7) vermiculite;
- (8) gypsum; and
- (9) vermicompost.

B. In lieu of a statement of composition, the label of the following soil amendments, when clearly and conspicuously identified as such on the label, shall include an ingredient statement, unless specific beneficial substance claims are made:

- (1) compost;
- (2) garden soil;
- (3) landscaping soil or topsoil;
- (4) mulch or wood products;
- (5) planting mix;

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

- (6) potting mix; and
- (7) soilless growing media."

SECTION 8. A new Section 76-11A-8 NMSA 1978 is enacted to read:

"76-11A-8. [NEW MATERIAL] CANCELLATION OF REGISTRATION.--

A. The department may cancel the registration of a beneficial substance product or refuse to register a beneficial substance product due to:

- (1) an incomplete or insufficient registration application;
- (2) the misbranding or adulteration of a beneficial substance; or
- (3) a violation of the Beneficial Substances Act or rules promulgated in accordance with that act.

B. If the department cancels or refuses to renew an existing registration due to the misbranding or adulteration of a beneficial substance or due to a violation of the Beneficial Substances Act or a rule promulgated in accordance with that act, the registrant or applicant may request a hearing as provided by rule."

SECTION 9. A new Section 76-11A-9 NMSA 1978 is enacted to read:

"76-11A-9. [NEW MATERIAL] INSPECTIONS, SAMPLING AND ANALYSIS.--

A. The department shall sample, inspect, make

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

analyses of and test beneficial substances distributed within this state at any time and place to such an extent that is necessary to determine whether such beneficial substances are in compliance with the provisions of the Beneficial Substances Act. The department may enter upon public or private premises or carriers during regular business hours in order to have access to the beneficial substances and may examine records relating to the distribution of beneficial substances subject to the provisions of that act and the rules promulgated in accordance with that act.

B. If the owner of a factory, warehouse or other establishment or the owner's agent refuses to admit the employee or agent of the department to inspect as provided in Subsection A of this section, the department may ask the district court for a warrant directing the owner or the owner's agent to submit the premises described in the warrant to inspection.

C. The methods of analysis and sampling shall be those promulgated by the board from validated sources acceptable to the department.

D. The results of all analyses of official samples shall be forwarded by the department to the person named on the label and to the purchaser. When the inspection and analysis of an official sample indicates a beneficial substance has been adulterated or misbranded, the owner or operator may request a portion of the official sample and the department shall comply

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

with the request within thirty days following receipt of the analysis.

E. Upon request, the department shall furnish to the registrant a portion of any sample that is found subject to penalty or other legal action. Official samples shall be retained for a minimum of ninety days from issuance of a deficiency report."

SECTION 10. A new Section 76-11A-10 NMSA 1978 is enacted to read:

"76-11A-10. [NEW MATERIAL] UNLAWFUL ACTS.--It is unlawful for a person to:

A. distribute an unregistered beneficial substance, unless exempt from the registration requirements of the Beneficial Substances Act;

B. distribute any misbranded or adulterated beneficial substance;

C. distribute a beneficial substance if the label does not reflect its composition;

D. distribute a product as a beneficial substance if the sole mode of action functions as a pesticide;

E. fail to supply the department with analyses of a beneficial substance when requested by the department;

F. fail to disclose on the label sources of potentially deleterious components;

G. fail to cease distribution of a beneficial

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

substance for which the department has issued a stop sale order;
or

H. obstruct the department in the performance of the department's duties under the Beneficial Substances Act."

SECTION 11. A new Section 76-11A-11 NMSA 1978 is enacted to read:

"76-11A-11. [NEW MATERIAL] MISBRANDING.--A person shall not distribute a misbranded beneficial substance. A beneficial substance is deemed to be misbranded if:

A. its labeling is false or misleading in any particular;

B. it is distributed under the name of another beneficial substance;

C. it is not labeled as required by the provisions of the Beneficial Substances Act or rules promulgated in accordance with that act; ~~SCONC~~→and←~~SCONC~~

D. it purports to be or is represented as a beneficial substance or represented as containing a beneficial substance unless such beneficial substance conforms to the definitions of identity, if any, prescribed by rules of the board. In promulgating such rules, the board shall give due regard to commonly accepted official terms and definitions, such as those issued by the association of American plant food control officials ~~SCONC~~→."←~~SCONC~~ ~~SCONC~~→; and

E. it contains any hazardous waste defined in

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

Subsection K of Section 74-4-3 NMSA 1978 that is not itself
equivalent in composition to a beneficial substance."←SCONC

SECTION 12. A new Section 76-11A-12 NMSA 1978 is enacted
to read:

"76-11A-12. [NEW MATERIAL] ADULTERATION.--A person shall
not distribute an adulterated beneficial substance. A
beneficial substance is deemed to be adulterated if:

A. it contains any deleterious or harmful substance
in sufficient amount to render it injurious to beneficial plant
life, animals, humans, aquatic life, soil or water when applied
in accordance with directions for use on the label; or if
adequate warning statements and directions for use, which may be
necessary to protect plant life, animals, humans, aquatic life,
soil or water, are not shown upon the label;

B. its composition falls below or differs from that
which it is purported to possess by its label or any labeling
that describes the composition of the beneficial substance; or

C. it contains unwanted crop or weed seed or primary
noxious or secondary noxious weed seed."

SECTION 13. A new Section 76-11A-13 NMSA 1978 is enacted
to read:

"76-11A-13. [NEW MATERIAL] STOP SALE.--The department may
issue and enforce a "stop sale, use or removal" order to the
owner or custodian of any lot of products containing beneficial
substances and to hold the beneficial substance product at a

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

designated place when the department finds the beneficial substance product is being offered or exposed for sale in violation of any of the provisions of the Beneficial Substances Act or rules promulgated in accordance with that act until the law has been complied with and the beneficial substance product is released in writing by the department or the violations have been otherwise legally disposed of by written authority. The department shall release the beneficial substance product when the requirements of the provisions of that act have been complied with and all costs and expense incurred in connection with the order have been paid."

SECTION 14. A new Section 76-11A-14 NMSA 1978 is enacted to read:

"76-11A-14. [NEW MATERIAL] PENALTIES FOR VIOLATIONS OF ACT.--

A. If it appears from the examination of a beneficial substance that provisions of the Beneficial Substances Act or rules promulgated in accordance with that act have been violated, the department shall cause notice of the violation to be given to the registrant, distributor or possessor. The person notified shall be given an opportunity to be heard as provided by rule. If it appears after the hearing, either in the presence or the absence of the person notified, that any of the provisions of that act or rules promulgated in accordance with that act have been violated, the department may

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

assess an administrative penalty or certify the facts to the proper district attorney.

B. Notwithstanding other remedies at law, the department may apply for and the court may grant a temporary or permanent injunction restraining a person from violating or continuing to violate any of the provisions of the Beneficial Substances Act or rules promulgated pursuant to that act. The injunction shall be issued without bond.

C. The maximum amount of an administrative penalty shall not exceed five thousand dollars (\$5,000) for any one violation of that act."

SECTION 15. A new Section 76-11A-15 NMSA 1978 is enacted to read:

"76-11A-15. [NEW MATERIAL] RULES.--For the enforcement of the Beneficial Substances Act, the board shall promulgate rules relating to:

- A. the distribution of beneficial substances;
- B. inspection and sampling, analytical methods, product registration and fees, beneficial substances, ingredient material, investigational allowances, documentation and records, labels and labeling, misbranding and adulteration; and
- C. civil and administrative penalties."

SECTION 16. A new Section 76-11A-16 NMSA 1978 is enacted to read:

"76-11A-16. [NEW MATERIAL] ANNUAL REPORT.--The department

.229437.2SAAIC February 19, 2025 (9:37pm)

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

shall publish an annual report on the manufacture and distribution of beneficial substances in New Mexico, together with such data on their production and use as the department determines necessary and a report of the results of the analyses of official samples of beneficial substances sold in New Mexico as compared with the analyses guaranteed in the registration and on the label; provided that the information concerning production and use of the beneficial substance shall not disclose the operations of any person."

SECTION 17. Section 76-11-3 NMSA 1978 (being Laws 1963, Chapter 184, Section 3, as amended) is amended to read:

"76-11-3. DEFINITIONS.--As used in the New Mexico Fertilizer Act:

A. "board" means the board of regents of New Mexico state university;

B. "department" means the New Mexico department of agriculture;

C. "fertilizer" means ~~any~~ a substance that contains one or more recognized plant nutrients and that is used for its plant nutrient content and is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl limes, limestone, wood ashes, gypsum and other products exempt by rule of the board;

D. "fertilizer material" means a fertilizer that

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

either:

(1) contains important quantities of no more than one of the primary plant nutrients: nitrogen (N), phosphate (P_2O_5) and potash (K_2O);

(2) has eighty-five percent of its plant nutrient content present in the form of a single chemical compound; or

(3) is derived from a plant or animal residue or byproduct or a natural material deposit that has been processed in such a way that its content of plant nutrients has not been materially changed except by purification and concentration;

E. "specialty fertilizer" means a fertilizer distributed primarily for nonfarm use such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries and may include fertilizers used for research or experimental purposes;

F. "bulk fertilizers" means fertilizers distributed in a nonpackaged form;

G. "brand" means a term, design or trademark under which one or more fertilizers [~~or soil conditioners~~] are distributed in New Mexico;

H. "guaranteed analysis" means the minimum percentage of plant nutrients claimed in the order and form as prescribed by the board;

underscored material = new
[bracketed material] = delete
Amendments: new = → bold, blue, highlight
delete = → bold, red, highlight, strikethrough

I. "grade" means the percentages of total nitrogen, available phosphorus or phosphate and soluble potassium or soluble potash stated in whole numbers in the same terms, order and percentages as in the guaranteed analysis; provided, however, that fertilizer materials, bone meal, manures and similar raw materials may be guaranteed in fractional units;

J. "official sample" means ~~[any]~~ a sample of fertilizer ~~[or soil conditioner]~~ taken by the department unless designated otherwise;

K. "ton" means a net weight of two thousand pounds avoirdupois;

L. "percent" or "percentage" means the percentage by weight;

~~[M. "person" includes individual, partnership, association, firm and corporation;~~

~~N.]~~ M. "distributor" means a person that imports, consigns, manufactures, produces, compounds, mixes or blends fertilizer ~~[or soil conditioner]~~ or that offers for sale, sells, barter or otherwise supplies fertilizer ~~[or soil conditioner]~~ in the state;

~~[O.]~~ N. "registrant" means the person that registers a fertilizer ~~[or soil conditioner]~~ under the provisions of the New Mexico Fertilizer Act;

~~[P.]~~ O. "label" means the display of all written, printed or graphic matter upon the immediate container or

underscored material = new
[bracketed material] = delete
Amendments: new = → bold, blue, highlight
delete = → bold, red, highlight, strikethrough

statement accompanying a fertilizer; ~~[or soil conditioner;~~

Q.] P. "labeling" means all written, printed or graphic matter ~~[upon]~~ on or accompanying a fertilizer; ~~[or soil conditioner;~~

~~R. "soil conditioner" means a substance or mixture of substances intended for sale, offered for sale or sold for manurial, soil enriching or soil corrective purposes or intended to be used for promoting or stimulating the growth of plants, increasing the productivity of plants, improving the quality of crops or producing a chemical or physical change in the soil, except fertilizer as defined in this section, unmanipulated animal and vegetable manures and other products exempted by rules of the board;~~

S.] Q. "blender" means a person or system engaged in the business of blending fertilizer, including both mobile and fixed equipment used in blending;

~~[T.]~~ R. "blending" means the physical mixing or combining of fertilizer materials and filler materials as provided in Paragraphs (1) through (3) of this subsection, including mixing through the simultaneous or sequential application of any of the combinations provided in this subsection, to produce a uniform mixture:

(1) one or more fertilizer materials and one or more filler materials;

(2) two or more fertilizer materials; or

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

(3) two or more fertilizer materials and filler materials;

[U.] S. "custom blend" means a fertilizer blended according to specifications provided to a blender in a soil test nutrient recommendation or to meet the specific consumer's request prior to blending;

[V.] T. "deficiency" means the amount of nutrient found by analysis to be less than the guaranteed amount, which may result from a lack of nutrient ingredients or from lack of uniformity;

[W.] U. "investigational allowance" means an allowance for variations inherent in the taking, preparation and analysis of an official sample of fertilizer; and

[X.] V. "primary nutrient" means total nitrogen, available phosphate and soluble potash."

SECTION 18. Section 76-11-5 NMSA 1978 (being Laws 1963, Chapter 184, Section 5, as amended) is amended to read:

"76-11-5. LABELING.--

A. A fertilizer distributed in this state in containers shall have placed on or affixed to the container a label setting forth in clearly legible and conspicuous form the following information:

(1) the net weight or other measure prescribed as satisfactory to the board;

(2) brand and grade;

underscored material = new

[bracketed material] = delete

Amendments: new = →bold, blue, highlight←

delete = →bold, red, highlight, strikethrough←

- (3) guaranteed analysis;
- (4) name and address of the registrant; and
- (5) directions for use for fertilizer

distributed to a consumer.

B. If a fertilizer is distributed in bulk, a written or printed statement of the information required by Subsection A of this section shall accompany delivery and be supplied to the purchaser at time of delivery.

C. A fertilizer formulated according to specifications that are furnished by a consumer prior to mixing shall be labeled to show the net weight, guaranteed analysis and the name and address of the distributor.

~~[D. Each brand of soil conditioner distributed in the state shall be accompanied by a legible label bearing the following information:~~

- ~~(1) net weight or other measure prescribed as satisfactory by the board;~~
- ~~(2) the brand name under which the soil conditioner is distributed;~~
- ~~(3) an accurate statement of composition and purpose; and;~~
- ~~(4) the name and address of the registrant.]"~~

SECTION 19. Section 76-11-6 NMSA 1978 (being Laws 1963, Chapter 184, Section 6, as amended) is amended to read:

"76-11-6. INSPECTION FEES.--

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight↔
delete = →bold, red, highlight, strikethrough↔

A. There shall be paid to the department for all fertilizer [~~and soil conditioner~~] distributed in the state an inspection fee set by the board at a rate not to exceed thirty-five cents (\$.35); [~~a ton~~] provided that sales to manufacturers or exchanges between them are exempted. Fees so collected shall be used for the payment of the costs of inspection, sampling and analysis and other expenses necessary for the administration of the New Mexico Fertilizer Act.

B. On individual packages of fertilizer [~~or soil conditioner~~] containing five pounds or less, there shall be paid in lieu of the annual registration fee of five dollars (\$5.00) per brand and grade of fertilizer [~~and each soil conditioner~~] product and the required inspection fee an annual registration fee and inspection fee of fifteen dollars (\$15.00). Where a person sells fertilizer [~~or soil conditioner~~] in packages of five pounds or less and in packages over five pounds, the annual registration and inspection fee of fifteen dollars (\$15.00) applies only to that portion sold in packages of five pounds or less and that portion sold in packages over five pounds is subject to the inspection fee.

C. A person who distributes a fertilizer [~~or soil conditioner~~] in the state shall file with the department on forms furnished by the department a quarterly statement for the periods ending March 31, June 30, September 30 and December 31 setting forth the number of net tons of each fertilizer [~~or soil~~

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

~~conditioner~~] distributed in the state during the quarter. The report is due on or before the last day of the month following the close of each quarter. The inspection fee shall be paid at the time of filing of the statement. If the tonnage report is not filed and the payment of inspection fee is not made within thirty days after the end of the quarter, a collection fee amounting to ten percent, but not less than ten dollars (\$10.00), of the amount shall be assessed against the registrant, and the amount of fees due constitutes a debt and becomes the basis of a judgment against the registrant.

D. When more than one person is involved in the distribution of fertilizer [~~or soil conditioner~~], the first person who has the fertilizer [~~or soil conditioner~~] registered and who distributes to a nonregistrant dealer or consumer is responsible for reporting the tonnage and paying the inspection fee unless the report and payment have been previously made by a prior distributor."

SECTION 20. Section 76-11-7 NMSA 1978 (being Laws 1963, Chapter 184, Section 7, as amended) is amended to read:

"76-11-7. INSPECTION--SAMPLING--ANALYSIS.--

A. The department shall sample, inspect, make analyses of and test fertilizers [~~and soil conditioners~~] distributed within the state at a time and place and to the extent necessary to determine whether the fertilizer [~~or soil conditioner~~] is in compliance with the New Mexico Fertilizer

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

Act. The department may enter upon public or private premises or carriers during the regular business hours in order to have access to the fertilizer [~~or soil conditioners~~] and may examine records relating to the distribution of fertilizer [~~and soil conditioners~~] subject to the provisions of [~~the New Mexico Fertilizer~~] that act and [~~the~~] rules adopted [~~pursuant to~~] in accordance with that act.

B. The methods of analysis and sampling shall be those adopted by the department from sources such as the association of official agricultural chemists. In cases not covered by such methods, or in cases where methods in which improved applicability has been demonstrated are available, the department may adopt such appropriate methods from other sources.

C. The department, in determining for administrative purposes whether a fertilizer is deficient in plant food, shall be guided solely by the official sample, as defined by Section 76-11-3 NMSA 1978, obtained and analyzed as provided for in Subsection B of this section.

D. Upon request, the department shall furnish to the registrant a portion of any sample found subject to penalty or other legal action. Official samples establishing a penalty for nutrient deficiency shall be retained for a minimum of ninety days from issuance of a deficiency report."

SECTION 21. Section 76-11-10 NMSA 1978 (being Laws 1975,

.229437.2SAAIC February 19, 2025 (9:37pm)

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

Chapter 181, Section 10, as amended) is amended to read:

"76-11-10. MISBRANDING.--A person shall not distribute misbranded fertilizer [~~or soil conditioner~~]. A fertilizer [~~or soil conditioner~~] is misbranded if:

- A. its labeling is false or misleading in any particular;
- B. it is distributed under the name of another fertilizer [~~or soil conditioner~~] product;
- C. it is not labeled as required in Section 76-11-5 NMSA 1978 and in accordance with rules [~~prescribed under~~] promulgated in accordance with the New Mexico Fertilizer Act; or
- D. it purports to be or is represented as a fertilizer [~~or soil conditioner~~] or is represented as containing a plant nutrient or fertilizer [~~or soil conditioner~~] unless such plant nutrient or fertilizer [~~or soil conditioner~~] conforms to the definition of identity, if any, prescribed by rule of the board; in adopting such rules, the board shall give due regard to commonly accepted definitions and official fertilizer terms such as those issued by the association of American plant food control officials."

SECTION 22. Section 76-11-11 NMSA 1978 (being Laws 1963, Chapter 184, Section 11, as amended) is amended to read:

"76-11-11. TONNAGE REPORTS.--The person transacting, distributing or selling fertilizer [~~or soil conditioner~~] to a

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

nonregistrant shall mail the department a report showing the county of the consignee, the amounts in tons of each grade of fertilizer and each [~~soil conditioner~~] product and the form in which the fertilizer [~~or soil conditioner~~] was distributed such as bags, liquid, bulk or other forms. This information shall be reported by one of the following methods:

A. submitting a quarterly summary report approved by the department on or before the fifteenth day of each month covering shipments made during the preceding month; or

B. submitting a copy of the invoice within five business days after shipment. Information furnished to the department [~~under~~] pursuant to this section shall not be disclosed in such a way as to divulge the operation of any person."

SECTION 23. Section 76-11-12 NMSA 1978 (being Laws 1963, Chapter 184, Section 12, as amended) is amended to read:

"76-11-12. PUBLICATIONS.--The board shall publish at least annually and in a form it deems proper:

A. information concerning the distribution of fertilizers [~~and soil conditioners~~]; and

B. results of analysis based on official samples of fertilizers [~~and soil conditioners~~] distributed within the state as compared with the analysis guaranteed in the registration and the label."

SECTION 24. Section 76-11-13 NMSA 1978 (being Laws 1963,

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

Chapter 184, Section 13, as amended) is amended to read:

"76-11-13. RULES.--For the enforcement of the New Mexico Fertilizer Act, the board may prescribe and, after public hearing following due public notice, [~~adopt~~] promulgate the rules relating to the distribution of fertilizers [~~and soil conditioners that it may find~~] necessary to carry into effect the full intent and meaning of the New Mexico Fertilizer Act. Under this section, the board may promulgate rules for the storing, hauling and handling of anhydrous ammonia and other gaseous or liquid fertilizers and they shall have the same effect as law."

SECTION 25. Section 76-11-14 NMSA 1978 (being Laws 1963, Chapter 184, Section 14, as amended) is amended to read:

"76-11-14. SHORT WEIGHT.--If a fertilizer [~~or soil conditioner~~] in the possession of [~~the~~] a consumer is found by the department to be short in weight or other measure prescribed by the board, the registrant of the fertilizer [~~or soil conditioner~~] shall, within thirty days after official notice from the department, pay to the consumer a penalty equal to four times the value of the actual shortage."

SECTION 26. Section 76-11-15 NMSA 1978 (being Laws 1963, Chapter 184, Section 15, as amended) is amended to read:

"76-11-15. CANCELLATION OF REGISTRATIONS.--The department may cancel the registration of any brand of fertilizer [~~or soil conditioner~~] or refuse to register any brand of fertilizer [~~or~~

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

~~soil conditioner~~] upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasions or attempted evasions of the provisions of the New Mexico Fertilizer Act or any rules promulgated [~~under~~] in accordance with that act; provided that no registration shall be revoked or refused until the registrant is given an opportunity to appear for a hearing by the department."

SECTION 27. Section 76-11-16 NMSA 1978 (being Laws 1963, Chapter 184, Section 16, as amended) is amended to read:

"76-11-16. STOP SALE ORDERS.--The department may issue and enforce a written or printed "stop sale, use or removal" order to the owner or custodian of any lot of fertilizer [~~or soil conditioner~~] and to be held at a designated place when the department finds the fertilizer [~~or soil conditioner~~] is being offered or exposed for sale in violation of any of the provisions of the New Mexico Fertilizer Act until the law has been complied with and the fertilizer [~~or soil conditioner~~] is released in writing by the department or the violation has been otherwise legally disposed of by written authority. The department shall release the fertilizer [~~or soil conditioner~~] so withdrawn when the requirements of the provisions of [~~the New Mexico Fertilizer~~] that act have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid."

SECTION 28. Section 76-11-17 NMSA 1978 (being Laws 1963,

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

Chapter 184, Section 17, as amended) is amended to read:

"76-11-17. SEIZURE--CONDEMNATION--SALE.--

A. Any lot of fertilizer [~~or soil conditioner~~] not in compliance with the provisions of the New Mexico Fertilizer Act is subject to seizure on complaint of the department to a court of competent jurisdiction in the area in which the fertilizer [~~or soil conditioner~~] is located.

B. In the event the court finds the fertilizer [~~or soil conditioner~~] to be in violation of the New Mexico Fertilizer Act and orders the condemnation of the fertilizer [~~or soil conditioner~~], it shall be disposed of in any manner consistent with the quality of the fertilizer [~~or soil conditioner~~] and the laws of the state.

C. In no instance shall the disposition of the fertilizer [~~or soil conditioner~~] be ordered by the court without first giving the claimant an opportunity to apply to the court for release of the fertilizer [~~or soil conditioner~~] or for permission to process or relabel the fertilizer [~~or soil conditioner~~] to bring it into compliance with the New Mexico Fertilizer Act."

SECTION 29. Section 76-11-18 NMSA 1978 (being Laws 1963, Chapter 184, Section 18, as amended) is amended to read:

"76-11-18. VIOLATIONS.--

A. If it appears from the examination of a fertilizer [~~or soil conditioner~~] that any of the provisions of

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

the New Mexico Fertilizer Act or the rules [~~issued pursuant to~~ promulgated in accordance with] that act have been violated, the department shall cause notice of the violations to be given to the registrant, distributor or possessor from whom the sample was taken; a person notified shall be given opportunity to be heard under the rules prescribed by the board. If it appears after the hearing, either in the presence or the absence of the person notified, that any of the provisions of the New Mexico Fertilizer Act or rules issued pursuant to that act have been violated, the department may certify the facts to the proper district attorney.

B. A person convicted of violating any provision of the New Mexico Fertilizer Act or the rules issued pursuant to that act is guilty of a misdemeanor.

C. Nothing in the New Mexico Fertilizer Act shall require the department or its representative to report for prosecution or for the institution of seizure proceedings as a result of minor violations of the New Mexico Fertilizer Act when it believes that the public interests will be best served by a suitable notice of warning in writing.

D. The department may apply for and the court may grant a temporary or permanent injunction restraining a person from violating or continuing to violate any of the provisions of the New Mexico Fertilizer Act or any rule promulgated pursuant to that act, notwithstanding the existence of other remedies at

underscored material = new
[bracketed material] = delete
Amendments: new = → bold, blue, highlight ←
delete = → bold, red, highlight, strikethrough ←

law. The injunction shall be issued without bond."

SECTION 30. Section 76-11-19 NMSA 1978 (being Laws 1963, Chapter 184, Section 19, as amended) is amended to read:

"76-11-19. EXCHANGES BETWEEN MANUFACTURERS.--Nothing in the New Mexico Fertilizer Act shall be construed to restrict or avoid sales or exchanges of fertilizers [~~or soil conditioners~~] to each other by importers, manufacturers or manipulators that mix those materials for sale or as preventing the free and unrestricted shipments of fertilizer [~~or soil conditioners~~] to manufacturers or manipulators that have registered their brands as required by the provisions of the New Mexico Fertilizer Act."