

1 SENATE BILL 231

2 57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

3 INTRODUCED BY

4 Pat Boone

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10 AN ACT

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

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

23 "76-11A-1. [NEW MATERIAL] SHORT TITLE.--Chapter 76,
24 Article 11A NMSA 1978 may be cited as the "Beneficial
25 Substances Act"."

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

3 "76-11A-2. [NEW MATERIAL] DEFINITIONS.--As used in the
4 Beneficial Substances Act:

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

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

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

15 D. "bulk" means in nonpackaged form;

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

18 F. "distribute" means to import, consign,
19 manufacture, produce, compound, mix or blend beneficial
20 substances or offer for sale, sell, barter or otherwise supply
21 beneficial substances into this state;

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

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

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

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

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

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

15 M. "plant amendment" means a substance applied to
16 plants or seeds that is intended to improve growth, yield,
17 product quality, reproduction, flavor or other favorable
18 characteristics of plants except fertilizers, soil amendments,
19 agricultural liming materials, animal and vegetable manure,
20 pesticides, plant regulators or other materials that may be
21 exempt by rule of the board;

22 N. "plant biostimulant" means a substance,
23 microorganism or mixture of substances and microorganisms that
24 when applied to seeds, plants, the rhizosphere, soil or other
25 growth media act to support a plant's natural nutrition

1 processes independently of the biostimulant's nutrient content
2 and that improves nutrient availability, uptake, use,
3 efficiency, tolerance to abiotic stress for consequent growth,
4 development, quality or yield;

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

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

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

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

18 S. "soil amendment" means a substance or a mixture
19 of substances that is intended to improve the physical,
20 chemical, biochemical, biological or other characteristic of the
21 soil, except fertilizers, agricultural liming materials,
22 unmanipulated animal manures, unmanipulated vegetable manures,
23 pesticides and other materials exempt by rule; and

24 T. "soil inoculant" means a microbial product that
25 is applied to colonize the soil to benefit the soil chemistry,

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1 biology, or structure."

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

4 "76-11A-3. [NEW MATERIAL] SCOPE--SOLE ENFORCEMENT.--

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

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

19 C. No political subdivision shall regulate the
20 registration, packaging, labeling, sale, storage, distribution,
21 use and application of beneficial substances, and no political
22 subdivision shall adopt or continue in effect local ordinances
23 relating to the registration, packaging, labeling, sale,
24 storage, distribution, use or application of beneficial
25 substances. Local ordinances in effect on the effective date of

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1 the Beneficial Substances Act are void."

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

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

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

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

11 (1) the brand, which provides a product name;

12 (2) the net weight or net volume, which
13 provides both United States customary and metric measurements;

14 (3) the name and address of registrant or
15 distributor, but shall include an address for the responsible
16 party if other than the registrant or distributor;

17 (4) a purpose statement, which is the
18 statement identifying the purpose of the product;

19 (5) directions for use;

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

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

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

- 3 (1) the expiration date for use; and
4 (2) storage conditions."

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

7 "76-11A-5. [NEW MATERIAL] REGISTRATION.--

8 A. Each beneficial substance product shall be
9 registered before being distributed in this state. The
10 application for registration shall be submitted to the
11 department on a registration form furnished by the department
12 and shall be accompanied by a fee not to exceed fifty dollars
13 (\$50.00) per product. All registrations shall expire on
14 December 31 each year.

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

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

25 D. Each registration form shall be accompanied by a

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1 label or facsimile of a label for the product that is named. If
2 the product is sold in more than one size or quantity, only one
3 label shall be submitted."

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

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

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

14 B. On individual packages of a beneficial substance
15 containing five pounds or less, an annual inspection fee not to
16 exceed fifty dollars (\$50.00) shall be paid to the department.
17 Where a person sells beneficial substances in packages of five
18 pounds or less and in packages over five pounds, the annual
19 registration and inspection fees apply only to that portion sold
20 in packages of five pounds or less.

21 C. A person who distributes a beneficial substance
22 in the state shall file with the department on forms furnished
23 by the department a quarterly statement for the periods ending
24 March 31, June 30, September 30 and December 31 setting forth
25 the number of net tons of each beneficial substance distributed

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1 in the state during the quarter. The report is due on or before
2 the last day of the month following the close of each quarter.
3 The inspection fee shall be paid at the time of filing of the
4 statement. If the tonnage report is not filed and the payment
5 of the inspection fee is not made within thirty days after the
6 end of the quarter, a collection fee of ten percent of the
7 amount or ten dollars (\$10.00), whichever is greater, shall be
8 assessed against the registrant, and the amount of fees due
9 constitutes a debt and becomes the basis of a judgment against
10 the registrant.

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

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

19 "76-11A-7. [NEW MATERIAL] EXEMPTIONS.--

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

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

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

- 14 (1) compost;
- 15 (2) garden soil;
- 16 (3) landscaping soil or topsoil;
- 17 (4) mulch or wood products;
- 18 (5) planting mix;
- 19 (6) potting mix; and
- 20 (7) soilless growing media."

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

23 "76-11A-8. [NEW MATERIAL] CANCELLATION OF REGISTRATION.--

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

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1 substance product due to:

2 (1) an incomplete or insufficient registration
3 application;

4 (2) the misbranding or adulteration of a
5 beneficial substance; or

6 (3) a violation of the Beneficial Substances
7 Act or rules promulgated in accordance with that act.

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

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

16 "76-11A-9. [NEW MATERIAL] INSPECTIONS, SAMPLING AND
17 ANALYSIS.--

18 A. The department shall sample, inspect, make
19 analyses of and test beneficial substances distributed within
20 this state at any time and place to such an extent that is
21 necessary to determine whether such beneficial substances are in
22 compliance with the provisions of the Beneficial Substances Act.
23 The department may enter upon public or private premises or
24 carriers during regular business hours in order to have access
25 to the beneficial substances and may examine records relating to

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1 the distribution of beneficial substances subject to the
2 provisions of that act and the rules promulgated in accordance
3 with that act.

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

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

13 D. The results of all analyses of official samples
14 shall be forwarded by the department to the person named on the
15 label and to the purchaser. When the inspection and analysis of
16 an official sample indicates a beneficial substance has been
17 adulterated or misbranded, the owner or operator may request a
18 portion of the official sample and the department shall comply
19 with the request within thirty days following receipt of the
20 analysis.

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

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

3 "76-11A-10. [NEW MATERIAL] UNLAWFUL ACTS.--It is unlawful
4 for a person to:

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

8 B. distribute any misbranded or adulterated
9 beneficial substance;

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

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

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

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

18 G. fail to cease distribution of a beneficial
19 substance for which the department has issued a stop sale order;
20 or

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

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

25 "76-11A-11. [NEW MATERIAL] MISBRANDING.--A person shall

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1 not distribute a misbranded beneficial substance. A beneficial
2 substance is deemed to be misbranded if:

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

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

7 C. it is not labeled as required by the provisions
8 of the Beneficial Substances Act or rules promulgated in
9 accordance with that act; and

10 D. it purports to be or is represented as a
11 beneficial substance or represented as containing a beneficial
12 substance unless such beneficial substance conforms to the
13 definitions of identity, if any, prescribed by rules of the
14 board. In promulgating such rules, the board shall give due
15 regard to commonly accepted official terms and definitions, such
16 as those issued by the association of American plant food
17 control officials."

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

20 "76-11A-12. [NEW MATERIAL] ADULTERATION.--A person shall
21 not distribute an adulterated beneficial substance. A
22 beneficial substance is deemed to be adulterated if:

23 A. it contains any deleterious or harmful substance
24 in sufficient amount to render it injurious to beneficial plant
25 life, animals, humans, aquatic life, soil or water when applied

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1 in accordance with directions for use on the label; or if
2 adequate warning statements and directions for use, which may be
3 necessary to protect plant life, animals, humans, aquatic life,
4 soil or water, are not shown upon the label;

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

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

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

12 "76-11A-13. [NEW MATERIAL] STOP SALE.--The department may
13 issue and enforce a "stop sale, use or removal" order to the
14 owner or custodian of any lot of products containing beneficial
15 substances and to hold the beneficial substance product at a
16 designated place when the department finds the beneficial
17 substance product is being offered or exposed for sale in
18 violation of any of the provisions of the Beneficial Substances
19 Act or rules promulgated in accordance with that act until the
20 law has been complied with and the beneficial substance product
21 is released in writing by the department or the violations have
22 been otherwise legally disposed of by written authority. The
23 department shall release the beneficial substance product when
24 the requirements of the provisions of that act have been
25 complied with and all costs and expense incurred in connection

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1 with the order have been paid."

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

4 "76-11A-14. [NEW MATERIAL] PENALTIES FOR VIOLATIONS OF
5 ACT.--

6 A. If it appears from the examination of a
7 beneficial substance that provisions of the Beneficial
8 Substances Act or rules promulgated in accordance with that act
9 have been violated, the department shall cause notice of the
10 violation to be given to the registrant, distributor or
11 possessor. The person notified shall be given an opportunity to
12 be heard as provided by rule. If it appears after the hearing,
13 either in the presence or the absence of the person notified,
14 that any of the provisions of that act or rules promulgated in
15 accordance with that act have been violated, the department may
16 assess an administrative penalty or certify the facts to the
17 proper district attorney.

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

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

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1 violation of that act."

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

4 "76-11A-15. [NEW MATERIAL] RULES.--For the enforcement of
5 the Beneficial Substances Act, the board shall promulgate rules
6 relating to:

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

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

15 "76-11A-16. [NEW MATERIAL] ANNUAL REPORT.--The department
16 shall publish an annual report on the manufacture and
17 distribution of beneficial substances in New Mexico, together
18 with such data on their production and use as the department
19 determines necessary and a report of the results of the analyses
20 of official samples of beneficial substances sold in New Mexico
21 as compared with the analyses guaranteed in the registration and
22 on the label; provided that the information concerning
23 production and use of the beneficial substance shall not
24 disclose the operations of any person."

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

2 "76-11-3. DEFINITIONS.--As used in the New Mexico
3 Fertilizer Act:

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

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

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

15 D. "fertilizer material" means a fertilizer that
16 either:

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

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

23 (3) is derived from a plant or animal residue
24 or byproduct or a natural material deposit that has been
25 processed in such a way that its content of plant nutrients has

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1 not been materially changed except by purification and
2 concentration;

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

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

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

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

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

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

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

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1 avoirdupois;

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

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

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

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

14 ~~[P.]~~ O. "label" means the display of all written,
15 printed or graphic matter upon the immediate container or
16 statement accompanying a fertilizer; ~~[or soil conditioner];~~

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

20 ~~R. "soil conditioner" means a substance or mixture
21 of substances intended for sale, offered for sale or sold for
22 manurial, soil enriching or soil corrective purposes or intended
23 to be used for promoting or stimulating the growth of plants,
24 increasing the productivity of plants, improving the quality of
25 crops or producing a chemical or physical change in the soil,~~

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1 ~~except fertilizer as defined in this section, unmanipulated~~
2 ~~animal and vegetable manures and other products exempted by~~
3 ~~rules of the board;~~

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

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

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

15 (2) two or more fertilizer materials; or

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

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

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

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

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

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

8 "76-11-5. LABELING.--

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

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

15 (2) brand and grade;

16 (3) guaranteed analysis;

17 (4) name and address of the registrant; and

18 (5) directions for use for fertilizer

19 distributed to a consumer.

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

24 C. A fertilizer formulated according to
25 specifications that are furnished by a consumer prior to mixing

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1 shall be labeled to show the net weight, guaranteed analysis and
2 the name and address of the distributor.

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

6 ~~(1) net weight or other measure prescribed as~~
7 ~~satisfactory by the board;~~

8 ~~(2) the brand name under which the soil~~
9 ~~conditioner is distributed;~~

10 ~~(3) an accurate statement of composition and~~
11 ~~purpose; and;~~

12 ~~(4) the name and address of the registrant.]"~~

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

15 "76-11-6. INSPECTION FEES.--

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

24 B. On individual packages of fertilizer ~~[or soil~~
25 ~~conditioner]~~ containing five pounds or less, there shall be paid

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1 in lieu of the annual registration fee of five dollars (\$5.00)
2 per brand and grade of fertilizer [~~and each soil conditioner~~]
3 product and the required inspection fee an annual registration
4 fee and inspection fee of fifteen dollars (\$15.00). Where a
5 person sells fertilizer [~~or soil conditioner~~] in packages of
6 five pounds or less and in packages over five pounds, the annual
7 registration and inspection fee of fifteen dollars (\$15.00)
8 applies only to that portion sold in packages of five pounds or
9 less and that portion sold in packages over five pounds is
10 subject to the inspection fee.

11 C. A person who distributes a fertilizer [~~or soil~~
12 ~~conditioner~~] in the state shall file with the department on
13 forms furnished by the department a quarterly statement for the
14 periods ending March 31, June 30, September 30 and December 31
15 setting forth the number of net tons of each fertilizer [~~or soil~~
16 ~~conditioner~~] distributed in the state during the quarter. The
17 report is due on or before the last day of the month following
18 the close of each quarter. The inspection fee shall be paid at
19 the time of filing of the statement. If the tonnage report is
20 not filed and the payment of inspection fee is not made within
21 thirty days after the end of the quarter, a collection fee
22 amounting to ten percent, but not less than ten dollars
23 (\$10.00), of the amount shall be assessed against the
24 registrant, and the amount of fees due constitutes a debt and
25 becomes the basis of a judgment against the registrant.

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

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

10 "76-11-7. INSPECTION--SAMPLING--ANALYSIS.--

11 A. The department shall sample, inspect, make
12 analyses of and test fertilizers [~~and soil conditioners~~]
13 distributed within the state at a time and place and to the
14 extent necessary to determine whether the fertilizer [~~or soil~~
15 ~~conditioner~~] is in compliance with the New Mexico Fertilizer
16 Act. The department may enter upon public or private premises
17 or carriers during the regular business hours in order to have
18 access to the fertilizer [~~or soil conditioners~~] and may examine
19 records relating to the distribution of fertilizer [~~and soil~~
20 ~~conditioners~~] subject to the provisions of [~~the New Mexico~~
21 ~~Fertilizer~~] that act and [~~the~~] rules adopted [~~pursuant to~~] in
22 accordance with that act.

23 B. The methods of analysis and sampling shall be
24 those adopted by the department from sources such as the
25 association of official agricultural chemists. In cases not

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1 covered by such methods, or in cases where methods in which
2 improved applicability has been demonstrated are available, the
3 department may adopt such appropriate methods from other
4 sources.

5 C. The department, in determining for administrative
6 purposes whether a fertilizer is deficient in plant food, shall
7 be guided solely by the official sample, as defined by Section
8 76-11-3 NMSA 1978, obtained and analyzed as provided for in
9 Subsection B of this section.

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

15 SECTION 21. Section 76-11-10 NMSA 1978 (being Laws 1975,
16 Chapter 181, Section 10, as amended) is amended to read:

17 "76-11-10. MISBRANDING.--A person shall not distribute
18 misbranded fertilizer [~~or soil conditioner~~]. A fertilizer [~~or~~
19 ~~soil conditioner~~] is misbranded if:

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

22 B. it is distributed under the name of another
23 fertilizer [~~or soil conditioner~~] product;

24 C. it is not labeled as required in Section
25 76-11-5 NMSA 1978 and in accordance with rules [~~prescribed~~

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1 ~~under~~ promulgated in accordance with the New Mexico Fertilizer
2 Act; or

3 D. it purports to be or is represented as a
4 fertilizer [~~or soil conditioner~~] or is represented as containing
5 a plant nutrient or fertilizer [~~or soil conditioner~~] unless such
6 plant nutrient or fertilizer [~~or soil conditioner~~] conforms to
7 the definition of identity, if any, prescribed by rule of the
8 board; in adopting such rules, the board shall give due regard
9 to commonly accepted definitions and official fertilizer terms
10 such as those issued by the association of American plant food
11 control officials."

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

14 "76-11-11. TONNAGE REPORTS.--The person transacting,
15 distributing or selling fertilizer [~~or soil conditioner~~] to a
16 nonregistrant shall mail the department a report showing the
17 county of the consignee, the amounts in tons of each grade of
18 fertilizer and each [~~soil conditioner~~] product and the form in
19 which the fertilizer [~~or soil conditioner~~] was distributed such
20 as bags, liquid, bulk or other forms. This information shall be
21 reported by one of the following methods:

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

25 B. submitting a copy of the invoice within five

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1 business days after shipment. Information furnished to the
2 department ~~[under]~~ pursuant to this section shall not be
3 disclosed in such a way as to divulge the operation of any
4 person."

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

7 "76-11-12. PUBLICATIONS.--The board shall publish at
8 least annually and in a form it deems proper:

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

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

15 SECTION 24. Section 76-11-13 NMSA 1978 (being Laws 1963,
16 Chapter 184, Section 13, as amended) is amended to read:

17 "76-11-13. RULES.--For the enforcement of the New Mexico
18 Fertilizer Act, the board may prescribe and, after public
19 hearing following due public notice, ~~[adopt]~~ promulgate the
20 rules relating to the distribution of fertilizers ~~[and soil~~
21 ~~conditioners that it may find]~~ necessary to carry into effect
22 the full intent and meaning of the New Mexico Fertilizer Act.
23 Under this section, the board may promulgate rules for the
24 storing, hauling and handling of anhydrous ammonia and other
25 gaseous or liquid fertilizers and they shall have the same

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1 effect as law."

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

4 "76-11-14. SHORT WEIGHT.--If a fertilizer [~~or soil~~
5 conditioner] in the possession of [~~the~~] a consumer is found by
6 the department to be short in weight or other measure prescribed
7 by the board, the registrant of the fertilizer [~~or soil~~
8 conditioner] shall, within thirty days after official notice
9 from the department, pay to the consumer a penalty equal to four
10 times the value of the actual shortage."

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

13 "76-11-15. CANCELLATION OF REGISTRATIONS.--The department
14 may cancel the registration of any brand of fertilizer [~~or soil~~
15 conditioner] or refuse to register any brand of fertilizer [~~or~~
16 soil conditioner] upon satisfactory evidence that the registrant
17 has used fraudulent or deceptive practices in the evasions or
18 attempted evasions of the provisions of the New Mexico
19 Fertilizer Act or any rules promulgated [~~under~~] in accordance
20 with that act; provided that no registration shall be revoked or
21 refused until the registrant is given an opportunity to appear
22 for a hearing by the department."

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

25 "76-11-16. STOP SALE ORDERS.--The department may issue

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1 and enforce a written or printed "stop sale, use or removal"
2 order to the owner or custodian of any lot of fertilizer [~~or~~
3 ~~soil conditioner~~] and to be held at a designated place when the
4 department finds the fertilizer [~~or soil conditioner~~] is being
5 offered or exposed for sale in violation of any of the
6 provisions of the New Mexico Fertilizer Act until the law has
7 been complied with and the fertilizer [~~or soil conditioner~~] is
8 released in writing by the department or the violation has been
9 otherwise legally disposed of by written authority. The
10 department shall release the fertilizer [~~or soil conditioner~~] so
11 withdrawn when the requirements of the provisions of [~~the New~~
12 ~~Mexico Fertilizer~~] that act have been complied with and all
13 costs and expenses incurred in connection with the withdrawal
14 have been paid."

15 SECTION 28. Section 76-11-17 NMSA 1978 (being Laws 1963,
16 Chapter 184, Section 17, as amended) is amended to read:

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

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

23 B. In the event the court finds the fertilizer [~~or~~
24 ~~soil conditioner~~] to be in violation of the New Mexico
25 Fertilizer Act and orders the condemnation of the fertilizer [~~or~~

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1 ~~soil conditioner~~], it shall be disposed of in any manner
2 consistent with the quality of the fertilizer [~~or soil~~
3 ~~conditioner~~] and the laws of the state.

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

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

13 "76-11-18. VIOLATIONS.--

14 A. If it appears from the examination of a
15 fertilizer [~~or soil conditioner~~] that any of the provisions of
16 the New Mexico Fertilizer Act or the rules [~~issued pursuant to~~]
17 promulgated in accordance with that act have been violated, the
18 department shall cause notice of the violations to be given to
19 the registrant, distributor or possessor from whom the sample
20 was taken; a person notified shall be given opportunity to be
21 heard under the rules prescribed by the board. If it appears
22 after the hearing, either in the presence or the absence of the
23 person notified, that any of the provisions of the New Mexico
24 Fertilizer Act or rules issued pursuant to that act have been
25 violated, the department may certify the facts to the proper

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1 district attorney.

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

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

11 D. The department may apply for and the court may
12 grant a temporary or permanent injunction restraining a person
13 from violating or continuing to violate any of the provisions of
14 the New Mexico Fertilizer Act or any rule promulgated pursuant
15 to that act, notwithstanding the existence of other remedies at
16 law. The injunction shall be issued without bond."

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

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

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as required by the provisions of the New Mexico Fertilizer Act."