

1 SENATE BILL 268

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Pat Woods

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9  
10 AN ACT

11 RELATING TO AGRICULTURE; AMENDING AND ENACTING SECTIONS OF THE  
12 NEW MEXICO FERTILIZER ACT; CHANGING DEFINED TERMS; ADDING  
13 DEFINITIONS; PROVIDING PENALTIES FOR ALTERING FERTILIZERS TO BE  
14 PAID TO CONSUMERS; LIMITING ADULTERATION OF FERTILIZERS;  
15 PROVIDING FOR COOPERATION WITH OTHER GOVERNMENTAL ENTITIES.

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

20 "76-11-1. SHORT TITLE.--~~[Article 13 of Chapter 45, NMSA~~  
21 ~~1953]~~ Chapter 76, Article 11 NMSA 1978 may be cited as the "New  
22 Mexico Fertilizer Act"."

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

25 "76-11-3. DEFINITIONS.--As used in the New Mexico

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1 Fertilizer Act:

2 A. "board" means the board of regents of ~~[the]~~ New  
3 Mexico state university;

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

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

13 D. "fertilizer material" means a ~~commercial~~  
14 fertilizer ~~[which]~~ that either:

15 (1) contains important quantities of no more  
16 than one of the primary plant nutrients: nitrogen (N),  
17 ~~[phosphoric acid]~~ phosphate ( $P_2O_5$ ) and potash ~~[or]~~ (K<sub>2</sub>O);

18 (2) has ~~[approximately]~~ eighty-five percent of  
19 its plant nutrient content present in the form of a single  
20 chemical compound; or

21 (3) is derived from a plant or animal residue  
22 or byproduct or a natural material deposit ~~[which]~~ that has  
23 been processed in such a way that its content of ~~[primary]~~  
24 plant nutrients has not been materially changed except by  
25 purification and concentration;

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

7           F. "bulk fertilizers" means [~~commercial~~]  
8 fertilizers distributed in a nonpackaged form;

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

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

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

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

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

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

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

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

19 Q. "labeling" means all written, printed or graphic  
20 matter upon or accompanying ~~[any commercial]~~ a fertilizer or  
21 soil conditioner; ~~[and]~~

22 R. "soil conditioner" means ~~[any]~~ a substance or  
23 mixture of substances intended for sale, offered for sale or  
24 sold for manurial, soil enriching or soil corrective purposes  
25 or intended to be used for promoting or stimulating the growth

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1 of plants, increasing the productivity of plants, improving the  
2 quality of crops or producing ~~[any]~~ a chemical or physical  
3 change in the soil, except ~~[commercial]~~ fertilizer as defined  
4 in this section, unmanipulated animal and vegetable manures and  
5 other products exempted by ~~[regulations]~~ rules of the board;

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

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

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

17 (2) two or more fertilizer materials; or

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

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

24 V. "deficiency" means the amount of nutrient found  
25 by analysis to be less than the guaranteed amount, which may

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1 result from a lack of nutrient ingredients or from lack of  
2 uniformity;

3 W. "investigational allowance" means an allowance  
4 for variations inherent in the taking, preparation and analysis  
5 of an official sample of fertilizer; and

6 X. "primary nutrient" means total nitrogen,  
7 available phosphate and soluble potash."

8 SECTION 3. Section 76-11-4 NMSA 1978 (being Laws 1963,  
9 Chapter 184, Section 4, as amended) is amended to read:

10 "76-11-4. REGISTRATION.--

11 A. Each brand and grade of [~~commercial~~] fertilizer  
12 and each soil conditioner product shall be registered before  
13 being distributed in [~~this~~] the state. The application for  
14 registration shall be submitted to the department on a form  
15 furnished by the department and shall be accompanied by a fee  
16 of five dollars (\$5.00) per brand or grade, except that those  
17 brands or grades sold in packages of five pounds or less shall  
18 be registered at a fee of fifteen dollars (\$15.00) each. Upon  
19 approval by the department, a copy of the registration shall be  
20 furnished to the applicant. All registrations expire on  
21 December 31 of each year.

22 B. A distributor shall not be required to register  
23 [~~any~~] a brand of [~~commercial~~] fertilizer or soil conditioner  
24 [~~which~~] that is already registered under the New Mexico  
25 Fertilizer Act by another person.

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1 C. A distributor shall not be required to register  
2 a [~~commercial~~] fertilizer formulated according to  
3 specifications [~~which~~] that are furnished by a consumer prior  
4 to mixing but shall be required to label the fertilizer as  
5 provided in Subsection C of Section [~~45-13-15 NMSA 1953~~]  
6 76-11-5 NMSA 1978."

7 SECTION 4. Section 76-11-5 NMSA 1978 (being Laws 1963,  
8 Chapter 184, Section 5, as amended) is amended to read:

9 "76-11-5. LABELING.--

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

- 14 (1) the net weight or other measure prescribed
- 15 as satisfactory to the board;
- 16 (2) brand and grade;
- 17 (3) guaranteed analysis; [~~and~~]
- 18 (4) name and address of the registrant; and
- 19 (5) directions for use for fertilizer
- 20 distributed to a consumer.

21 B. If a [~~commercial~~] fertilizer is distributed in  
22 bulk, a written or printed statement of the information  
23 required by [~~Paragraphs (1), (2), (3) and (4) of~~] Subsection A  
24 of this section shall accompany delivery and be supplied to the  
25 purchaser at time of delivery.

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1 C. A [~~commercial~~] fertilizer formulated according  
2 to specifications [~~which~~] that are furnished by a consumer  
3 prior to mixing shall be labeled to show the net weight,  
4 guaranteed analysis and the name and address of the  
5 distributor.

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

9 (1) net weight or other measure prescribed as  
10 satisfactory by the board;

11 (2) the brand name under which the soil  
12 conditioner is distributed;

13 (3) an accurate statement of composition and  
14 purpose; and

15 (4) the name and address of the registrant."

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

18 "76-11-6. INSPECTION FEES.--

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

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1 for the administration of the New Mexico Fertilizer Act.

2 B. On individual packages of [~~commercial~~]  
3 fertilizer or soil conditioner containing five pounds or less,  
4 there shall be paid in lieu of the annual registration fee of  
5 five dollars (\$5.00) per brand and grade of [~~commercial~~]  
6 fertilizer and each soil conditioner product and the required  
7 inspection fee an annual registration fee and inspection fee of  
8 fifteen dollars (\$15.00). Where a person sells [~~commercial~~]  
9 fertilizer or soil conditioner in packages of five pounds or  
10 less and in packages over five pounds, the annual registration  
11 and inspection fee of fifteen dollars (\$15.00) [~~shall apply~~]  
12 applies only to that portion sold in packages of five pounds or  
13 less, and that portion sold in packages over five pounds [~~shall~~  
14 ~~be~~] is subject to the inspection fee.

15 C. [~~Every~~] A person who distributes a [~~commercial~~]  
16 fertilizer or soil conditioner in [~~this~~] the state shall file  
17 with the department on forms furnished by the department a  
18 quarterly statement for the periods ending March 31, June 30,  
19 September 30 and December 31 setting forth the number of net  
20 tons of each [~~commercial~~] fertilizer or soil conditioner  
21 distributed in [~~this~~] the state during the quarter. The report  
22 [~~shall be~~] is due on or before the last day of the month  
23 following the close of each quarter. The inspection fee shall  
24 be paid at the time of filing of the statement. If the tonnage  
25 report is not filed and the payment of inspection fee is not

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1 made within thirty days after the end of the quarter, a  
2 collection fee amounting to ten percent, but not less than ten  
3 dollars (\$10.00), of the amount shall be assessed against the  
4 registrant, and the amount of fees due [~~shall constitute~~]  
5 constitutes a debt and [~~become~~] becomes the basis of a judgment  
6 against the registrant.

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

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

16 "76-11-7. INSPECTION--SAMPLING--ANALYSIS.--

17 A. The department shall sample, inspect, make  
18 analyses of and test [~~commercial~~] fertilizers and soil  
19 conditioners distributed within [~~this~~] the state at a time and  
20 place and to the extent [~~as it may be deemed~~] necessary to  
21 determine whether the [~~commercial~~] fertilizer or soil  
22 conditioner is in compliance with the New Mexico Fertilizer  
23 Act. The department may enter upon [~~any~~] public or private  
24 premises or carriers during the regular business hours in order  
25 to have access to [~~commercial~~] fertilizer or soil conditioners

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1 and may examine records relating to the distribution of  
2 fertilizer and soil conditioners subject to the provisions of  
3 the New Mexico Fertilizer Act and the ~~[regulations pertaining~~  
4 ~~thereto]~~ rules adopted pursuant to that act.

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

12 C. The department, in determining for  
13 administrative purposes whether ~~[any commercial]~~ a fertilizer  
14 is deficient in plant food, shall be guided solely by the  
15 official sample, as defined by Section ~~[45-13-13 NMSA 1953 of~~  
16 ~~the New Mexico Fertilizer Act]~~ 76-11-3 NMSA 1978, obtained and  
17 analyzed as provided for in Subsection B of this section.

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

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

25 "76-11-8. PLANT FOOD DEFICIENCY.--

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1           A. If the analysis shows that ~~[any commercial]~~ a  
2 fertilizer falls short of the guaranteed analysis in any one  
3 ingredient, penalty shall be assessed in accordance with the  
4 following:

5                   (1) total nitrogen: a penalty of three times  
6 the value of the deficiency, if the deficiency is in excess of  
7 0.20 of one percent on goods that are guaranteed two percent;  
8 0.25 of one percent on goods that are guaranteed three percent;  
9 0.35 of one percent on goods that are guaranteed four percent;  
10 0.40 of one percent on goods that are guaranteed five percent  
11 up to and including eight percent; 0.50 of one percent on goods  
12 guaranteed above eight percent up to and including thirty  
13 percent; and 0.75 of one percent on goods guaranteed over  
14 thirty percent;

15                   (2) available phosphoric acid or available  
16 phosphorus: a penalty of three times the value of the  
17 deficiency, if the deficiency exceeds 0.40 of one percent of  
18 available ~~[phosphoric acid ( $P_2O_5$ )]~~ phosphate on goods that are  
19 guaranteed up to and including ten percent; 0.50 of one percent  
20 of available ~~[phosphoric acid ( $P_2O_5$ )]~~ phosphate on goods that  
21 are guaranteed above ten percent up to and including twenty-  
22 five percent; and 0.75 of one percent of available ~~[phosphoric~~  
23 ~~acid ( $P_2O_5$ )]~~ phosphate on goods guaranteed over twenty-five  
24 percent. If guarantees are for available phosphorus, the  
25 deficiencies shall be calculated for the appropriate percentage

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1 of elemental phosphorus;

2 (3) soluble potash or soluble potassium: a  
3 penalty of three times the value of the deficiency, if the  
4 deficiency is in excess of 0.20 of one percent of soluble  
5 potash [~~(K<sub>2</sub>O)~~] on goods that are guaranteed two percent; 0.30  
6 of one percent of soluble potash [~~(K<sub>2</sub>O)~~] on goods that are  
7 guaranteed three percent; 0.40 of one percent of soluble potash  
8 [~~(K<sub>2</sub>O)~~] on goods guaranteed four percent; 0.50 of one percent  
9 of soluble potash [~~(K<sub>2</sub>O)~~] on goods guaranteed above four  
10 percent up to and including eight percent; 0.60 of one percent  
11 of soluble potash [~~(K<sub>2</sub>O)~~] on goods guaranteed above eight  
12 percent up to and including twenty percent; and 1.00 of one  
13 percent of soluble potash [~~(K<sub>2</sub>O)~~] on goods guaranteed over  
14 twenty percent. If guarantees are for soluble potassium, the  
15 deficiencies shall be calculated for the appropriate percentage  
16 of elemental potassium; and

17 (4) deficiencies in any other constituent [~~or~~  
18 ~~constituents~~] shall be evaluated by the department and  
19 penalties therefor prescribed by the board.

20 B. Nothing contained in this section shall prevent  
21 [~~any~~] a person from appealing to a court of competent  
22 jurisdiction praying for judgment as to the justification of  
23 the penalties.

24 C. All penalties assessed under this section shall  
25 be paid to the consumer of the lot of [~~commercial~~] fertilizer

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1 represented by the sample analyzed within three months after  
2 the date of notice from the department to the registrant.  
3 Receipts taken [~~therefor and found, and~~] for penalty payments  
4 shall be promptly forwarded to the department. If the consumer  
5 cannot be found, the amount of the penalty shall be paid to the  
6 [~~common~~] current school fund. If upon satisfactory evidence a  
7 person is shown to have altered the content of a fertilizer  
8 shipped to the person by a registrant or to have mixed or  
9 commingled fertilizer from two or more suppliers so that the  
10 result of either alteration changes the analysis of the  
11 fertilizer as originally guaranteed, that person shall be  
12 responsible for obtaining a registration and shall be held  
13 liable for all penalty payments and be subject to other  
14 provisions of the New Mexico Fertilizer Act, including seizure,  
15 condemnation and stop sale; provided that this provision does  
16 not apply to a consumer who mixes or otherwise alters  
17 fertilizer for use on property owned or leased by the  
18 consumer."

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

21 "76-11-9. COMMERCIAL VALUE.--For the purpose of  
22 determining the commercial values to be applied under the  
23 provisions of Section [~~45-13-18 NMSA 1953~~] 76-11-8 NMSA 1978,  
24 the department shall determine and publish annually the values  
25 per pound of nitrogen, available [~~phosphoric acid~~] phosphate

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1 and soluble potash in ~~[commercial]~~ fertilizers in ~~[this]~~ the  
2 state. If guarantees are provided, the values shall be per  
3 pound of nitrogen, phosphorus and potassium. The values ~~[so]~~  
4 determined and published shall be used in determining and  
5 assessing penalties."

6 SECTION 9. Section 76-11-10 NMSA 1978 (being Laws 1975,  
7 Chapter 181, Section 10) is amended to read:

8 "76-11-10. MISBRANDING.--~~[No]~~ A person shall not  
9 distribute misbranded fertilizer or soil conditioner. A  
10 ~~[commercial]~~ fertilizer or soil conditioner ~~[shall be deemed to~~  
11 ~~be]~~ is misbranded if:

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

14 B. it is distributed under the name of another  
15 fertilizer or soil conditioner product;

16 C. it is not labeled as required in Section  
17 ~~[45-13-15 NMSA 1953]~~ 76-11-5 NMSA 1978 and in accordance with  
18 ~~[regulations]~~ rules prescribed under the New Mexico Fertilizer  
19 Act; or

20 D. it purports to be or is represented as a  
21 ~~[commercial]~~ fertilizer or soil conditioner or is represented  
22 as containing a plant nutrient, ~~[commercial]~~ fertilizer or soil  
23 conditioner unless such plant nutrient, ~~[commercial]~~ fertilizer  
24 or soil conditioner conforms to the definition of identity, if  
25 any, prescribed by ~~[regulation]~~ rule of the board; in adopting

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1 such [~~regulations~~] rules, the board shall give due regard to  
2 commonly accepted definitions and official fertilizer terms  
3 such as those issued by the association of American plant food  
4 control officials."

5 SECTION 10. Section 76-11-11 NMSA 1978 (being Laws 1963,  
6 Chapter 184, Section 11, as amended) is amended to read:

7 "76-11-11. TONNAGE REPORTS.--The person transacting,  
8 distributing or selling [~~commercial~~] fertilizer or soil  
9 conditioner to a nonregistrant shall mail the department a  
10 report showing the county of the consignee, the amounts in tons  
11 of each grade of [~~commercial~~] fertilizer and each soil  
12 conditioner product and the form in which the fertilizer or  
13 soil conditioner was distributed such as bags, liquid, bulk or  
14 other forms. This information shall be reported by one of the  
15 following methods:

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

19 B. submitting a copy of the invoice within five  
20 business days after shipment. [~~No~~] Information furnished to  
21 the department under this section shall not be disclosed in  
22 such a way as to divulge the operation of any person."

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

25 "76-11-12. PUBLICATIONS.--The board shall publish at

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1 least annually and in a form [~~as~~] it deems proper:

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

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

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

10 "76-11-13. [~~REGULATIONS~~] RULES.--For the enforcement of  
11 the New Mexico Fertilizer Act, the board may prescribe and,  
12 after public hearing following due public notice, adopt the  
13 [~~regulations~~] rules relating to the distribution of  
14 [~~commercial~~] fertilizers and soil conditioners [~~as~~] that it may  
15 find necessary to carry into effect the full intent and meaning  
16 of the New Mexico Fertilizer Act. Under this section, the  
17 board [~~is empowered to~~] may promulgate [~~regulations~~] rules for  
18 the storing, hauling and handling of anhydrous ammonia and  
19 other gaseous or liquid fertilizers, and they shall have the  
20 same effect as law."

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

23 "76-11-14. SHORT WEIGHT.--If [~~any commercial~~] a  
24 fertilizer or soil conditioner in the possession of the  
25 consumer is found by the department to be short in weight or

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1 other measure prescribed by the board, the registrant of the  
2 [~~commercial~~] fertilizer or soil conditioner shall, within  
3 thirty days after official notice from the department, pay to  
4 the consumer a penalty equal to four times the value of the  
5 actual shortage."

6 SECTION 14. Section 76-11-15 NMSA 1978 (being Laws 1963,  
7 Chapter 184, Section 15, as amended) is amended to read:

8 "76-11-15. CANCELLATION OF REGISTRATIONS.--The department  
9 may cancel the registration of any brand of [~~commercial~~]  
10 fertilizer or soil conditioner or refuse to register any brand  
11 of [~~commercial~~] fertilizer or soil conditioner upon  
12 satisfactory evidence that the registrant has used fraudulent  
13 or deceptive practices in the evasions or attempted evasions of  
14 the provisions of the New Mexico Fertilizer Act or any  
15 [~~regulations~~] rules promulgated [~~thereunder~~] under that act;  
16 provided that no registration shall be revoked or refused until  
17 the registrant is given an opportunity to appear for a hearing  
18 by the department."

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

21 "76-11-16. STOP SALE ORDERS.--The department may issue  
22 and enforce a written or printed "stop sale, use or removal"  
23 order to the owner or custodian of any lot of [~~commercial~~]  
24 fertilizer or soil conditioner and to be held at a designated  
25 place when the department finds the [~~commercial~~] fertilizer or

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1 soil conditioner is being offered or exposed for sale in  
2 violation of any of the provisions of the New Mexico Fertilizer  
3 Act until the law has been complied with and the [~~commercial~~]  
4 fertilizer or soil conditioner is released in writing by the  
5 department or the violation has been otherwise legally disposed  
6 of by written authority. The department shall release the  
7 [~~commercial~~] fertilizer or soil conditioner so withdrawn when  
8 the requirements of the provisions of the New Mexico Fertilizer  
9 Act have been complied with and all costs and expenses incurred  
10 in connection with the withdrawal have been paid."

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

13 "76-11-17. SEIZURE--CONDEMNATION--SALE.--

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

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

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1 state.

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

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

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

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

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1 attorney.

2 B. ~~[Any]~~ A person convicted of violating any  
3 provision of the New Mexico Fertilizer Act or the ~~[regulations]~~  
4 rules issued ~~[thereunder shall be]~~ pursuant to that act is  
5 guilty of a misdemeanor.

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

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

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

21 "76-11-19. EXCHANGES BETWEEN MANUFACTURERS.--Nothing in  
22 the New Mexico Fertilizer Act shall be construed to restrict or  
23 avoid sales or exchanges of ~~[commercial]~~ fertilizers or soil  
24 conditioners to each other by importers, manufacturers or  
25 manipulators ~~[who]~~ that mix those materials for sale or as

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1 preventing the free and unrestricted shipments of [~~commercial~~]  
2 fertilizer or soil conditioners to manufacturers or  
3 manipulators [~~who~~] that have registered their brands as  
4 required by the provisions of the New Mexico Fertilizer Act."

5 SECTION 19. A new section of the New Mexico Fertilizer  
6 Act is enacted to read:

7 "[NEW MATERIAL] ADULTERATION.--No person shall distribute  
8 an adulterated fertilizer product. A fertilizer shall be  
9 deemed to be adulterated if:

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

17 B. its composition falls below or differs from that  
18 which it is purported to possess by its labeling; or

19 C. it contains unwanted crop seed or weed seed."

20 SECTION 20. A new section of the New Mexico Fertilizer  
21 Act is enacted to read:

22 "[NEW MATERIAL] COOPERATION WITH OTHER AGENCIES.--The  
23 department may cooperate with and enter into agreements with  
24 other state agencies, other states and agencies of the federal  
25 government to carry out the provisions of the New Mexico

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Fertilizer Act."

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