The Legislature
of the
State of New Mexico

51st Legislature, 1st Session

LAWS 2013

CHAPTER 112

SENATE BILL 268, as amended

Introduced by

SENATOR PAT WOODS
SENATOR PHIL A. GRIEGO
SENATOR GAY G. KERNAN
SENATOR CLIFF R. PIRTLLE
Chapter 112

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

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

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

"76-11-1. SHORT TITLE.--Chapter 76, Article 11 NMSA
1978 may be cited as the "New Mexico Fertilizer Act"."

SECTION 2. 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 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

either:

(1) contains important quantities of no more

than one of the primary plant nutrients: nitrogen (N),

phosphate (P₂O₅) and potash (K₂O);

(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;

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

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

P. "label" means the display of all written, printed or graphic matter upon the immediate container or statement accompanying a fertilizer or soil conditioner;

Q. "labeling" means all written, printed or graphic matter upon 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. "blender" means a person or system engaged in the business of blending fertilizer, including both mobile and fixed equipment used in blending;

T. "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
(3) two or more fertilizer materials and
filler materials;

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

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

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

"76-11-4. REGISTRATION.--

A. Each brand and grade of fertilizer and each
soil conditioner product shall be registered before being
distributed in the state. The application for registration
shall be submitted to the department on a form furnished by
the department and shall be accompanied by a fee of five
dollars ($5.00) per brand or grade, except that those brands
or grades sold in packages of five pounds or less shall be
registered at a fee of fifteen dollars ($15.00) each. Upon
approval by the department, a copy of the registration shall
be furnished to the applicant. All registrations expire on
December 31 of each year.

B. A distributor shall not be required to register
a brand of fertilizer or soil conditioner that is already
registered under the New Mexico Fertilizer Act by another
person.

C. A distributor shall not be required to register
a fertilizer formulated according to specifications that are
furnished by a consumer prior to mixing but shall be required
to label the fertilizer as provided in Subsection C of
Section 76-11-5 NMSA 1978."

SECTION 4. 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;
(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 5. Section 76-11-6 NMSA 1978 (being Laws 1963,
Chapter 184, Section 6, as amended) is amended to read:
"76-11-6. INSPECTION FEES.--

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 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 6. 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
Act. The department may enter upon public or private
premises or carriers during the regular business hours in
order to have access to 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 Act and the rules adopted pursuant
to 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 7. Section 76-11-8 NMSA 1978 (being Laws 1963,
Chapter 184, Section 8, as amended) is amended to read:

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

A. If the analysis shows that a fertilizer falls
short of the guaranteed analysis in any one ingredient,
penalty shall be assessed in accordance with the following:

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

(2) available phosphoric acid or available
phosphorus: a penalty of three times the value of the
deficiency, if the deficiency exceeds 0.40 of one percent of
available phosphate on goods that are guaranteed up to and
including ten percent; 0.50 of one percent of available
phosphate on goods that are guaranteed above ten percent up
to and including twenty-five percent; and 0.75 of one percent
of available phosphate on goods guaranteed over twenty-five
percent. If guarantees are for available phosphorus, the
deficiencies shall be calculated for the appropriate
percentage of elemental phosphorus;

(3) soluble potash or soluble potassium: a
penalty of three times the value of the deficiency, if the
deficiency is in excess of 0.20 of one percent of soluble
potash on goods that are guaranteed two percent; 0.30 of one
percent of soluble potash on goods that are guaranteed three
percent; 0.40 of one percent of soluble potash on goods
guaranteed four percent; 0.50 of one percent of soluble
potash on goods guaranteed above four percent up to and
including eight percent; 0.60 of one percent of soluble
potash on goods guaranteed above eight percent up to and
including twenty percent; and 1.00 of one percent of soluble
potash on goods guaranteed over twenty percent. If
guarantees are for soluble potassium, the deficiencies shall
be calculated for the appropriate percentage of elemental
potassium; and

(4) deficiencies in any other constituent
shall be evaluated by the department and penalties therefor
prescribed by the board.

B. Nothing contained in this section shall prevent
a person from appealing to a court of competent jurisdiction
praying for judgment as to the justification of the penalties.

C. All penalties assessed under this section shall be paid to the consumer of the lot of fertilizer represented by the sample analyzed within three months after the date of notice from the department to the registrant. Receipts taken for penalty payments shall be promptly forwarded to the department. If the consumer cannot be found, the amount of the penalty shall be paid to the current school fund. If upon satisfactory evidence a person is shown to have altered the content of a fertilizer shipped to the person by a registrant or to have mixed or commingled fertilizer from two or more suppliers so that the result of either alteration changes the analysis of the fertilizer as originally guaranteed, that person shall be responsible for obtaining a registration and shall be held liable for all penalty payments and be subject to other provisions of the New Mexico Fertilizer Act, including seizure, condemnation and stop sale; provided that this provision does not apply to a consumer who mixes or otherwise alters fertilizer for use on property owned or leased by the consumer."

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

"76-11-9. COMMERCIAL VALUE.--For the purpose of determining the commercial values to be applied under the
provisions of Section 76-11-8 NMSA 1978, the department shall
determine and publish annually the values per pound of
nitrogen, available phosphate and soluble potash in
fertilizers in the state. If guarantees are provided, the
values shall be per pound of nitrogen, phosphorus and
potassium. The values determined and published shall be used
in determining and assessing penalties."

SECTION 9. Section 76-11-10 NMSA 1978 (being Laws 1975,
Chapter 181, Section 10) 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 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, fertilizer or soil conditioner
unless such plant nutrient, 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 10. 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
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 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 this section shall not be disclosed in such
a way as to divulge the operation of any person."

SECTION 11. 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 12. Section 76-11-13 NMSA 1978 (being Laws
1963, 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 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 13. 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 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
time the value of the actual shortage."

SECTION 14. 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 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 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 15. 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 Act have been complied with and all
costs and expenses incurred in connection with the withdrawal
have been paid."

SECTION 16. Section 76-11-17 NMSA 1978 (being Laws
1963, 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 17. 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 
the New Mexico Fertilizer Act or the rules issued pursuant to 
that act have been violated, the department shall cause 
otice 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 law. The injunction shall be issued without bond."

SECTION 18. 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."

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

"ADULTERATION.--No person shall distribute an
adulterated fertilizer product. A fertilizer shall be 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 or directions for
use that may be necessary to protect beneficial plant life,
animals, humans, aquatic life, soil or water are not shown on
the label;

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

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

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

"COOPERATION WITH OTHER AGENCIES.--The department may
cooperate with and enter into agreements with other state
agencies, other states and agencies of the federal government
to carry out the provisions of the New Mexico Fertilizer
Approved by me this 2nd day of April, 2013

Governor Susana Martinez
State of New Mexico