

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 909

By: Muegge of the Senate

and

Leist of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to agriculture; amending 2 O.S. 2001, Sections 3-81 and 3-82, which relate to pesticides; adding definition; adding certain persons to list of persons who are required to have valid pesticide applicator's license; requiring certain documents showing certain persons are qualified to conduct aerial operations; requiring the Board to promulgate certain rules consistent with Federal law; providing exception for noncommercial business location; prohibiting license for pesticide application for persons who have temporary certification; stating standards for certification; requiring additional information for pesticide registration; authorizing certain information to be kept confidential; amending 2 O.S. 2001, Sections 8-77.1, 8-77.3, 8-77.5, 8-77.7, 8-80.7 and 8-85.5, which relate to the Oklahoma Agricultural Code; amending short title; stating purpose of act; modifying definitions relating to the Oklahoma Fertilizer Act; providing for fees and registration of commercial and special fertilizer; providing for length of registrations for both fertilizers; providing for termination of certain registration; specifying penalty; modifying certain fees and registration requirements; requiring certain semiannual reports; providing for and modifying contents; increasing certain fees; clarifying language; prohibiting certain disclosure of information; requiring maintenance of accurate records; requiring certain fee and requiring certain report for agricultural liming material; increasing fees for registration of soil amendment products; specifying certain penalties; repealing 2 O.S. 2001, Section 8-77.8, which relates to certain distribution reports for fertilizer and inspection fees and 2 O.S. 2001, Section 8-85.6, which relates to reports for certain soil amendment products; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 2 O.S. 2001, Section 3-81, is amended to read as follows:

Section 3-81. As used in this subarticle:

1. "Aircraft" means any contrivance used or designed for navigation of or flight in the air over land or water and is designed for or adaptable for use in applying pesticides as sprays, dusts, or other forms;

2. "Active ingredient" means an ingredient, which defoliates plants, prevents fruit drop, inhibits sprouting, or destroys, repels, or mitigates insects, fungi, bacteria, rodents, weeds, or other pests;

3. "Adulterated" means and includes any pesticide if the pesticide strength or purity falls below the professed standard of quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the components of the pesticide, or if any valuable constituent of the components of the pesticide has been wholly or in part abstracted;

4. "Antidote" means the most practical immediate treatment in case of poisoning and includes but is not limited to first aid treatment;

5. "Business location" means any place, site, or facility maintained by a commercial or noncommercial applicator where records, including but not limited to, financial statements, payroll, insurance, and personnel documents are maintained, pesticides are stored, or customers are served. A location serving strictly as a telephone answering service shall not be considered a business location;

6. "Certificate" means a written document issued to an individual by the State Board of Agriculture which indicates that the individual has met the certification standards established by this subarticle for the category of pesticide application shown on the certificate. A certificate does not allow a person to do work as a commercial, noncommercial, service technician, or private applicator unless employed by a licensed entity or has a valid license issued by the Board;

7. "Certification standards" means the standards that a person shall meet to become a certified applicator;

8. "Certified applicator" means a person who has met the certification standards;

9. "Commercial application" means the advertising of services, recommendation for use, the preparation for application, and the physical act of applying a pesticide or employment of a device for hire or compensation;

10. "Commercial applicator" means any person engaging in the commercial application of pesticides or commercial employment of devices. Any farmer while working for a neighbor in agricultural production, not advertising, and not held out to be in the business of applying restricted use of pesticides, shall not be classified by the Board as a commercial applicator;

11. "Contract" means a binding, written agreement between two or more persons spelling out terms and conditions and includes, but is not limited to, warranties or guarantees for pesticide application. For structural pest control applications, the contract shall also include a statement, plat, or diagram showing all locations of visible termites and termite damaged materials which are observed, and how the application was performed;

12. "Defoliant" means any pesticide intended to cause the leaves or foliage to drop from a plant, with or without causing abscission;

13. "Desiccant" means any pesticide intended to artificially accelerate the drying of plant tissues;

14. "Device" means any instrument subject to the United States Environmental Protection Agency regulation intended for trapping, destroying, repelling, or mitigating insects or rodents, or mitigating fungi, bacteria, or weeds, or other pests designated by the Board, but not including equipment used for the application of pesticides when sold separately;

15. "Direct supervision" means that the certified applicator is responsible for assuring that persons working, subject to direct supervision, are qualified to handle pesticides and are instructed in the application of the specific pesticides used in each particular application conducted which is subject to their supervision. Certified applicators shall be accessible to the noncertified applicator at all times during the application of the pesticide by telephone, radio, or any device approved by the Board;

16. "Fungi" means all nonchlorophyll-bearing thallophytes, including but not limited to, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on humans or animals;

17. "Fungicide" means any pesticide intended for preventing, destroying, repelling, or mitigating any fungi or bacteria;

18. "Ground equipment" means any machine, equipment, or device other than aircraft designed for use, adaptable for use, or used on land or water in applying pesticides as sprays, dusts, aerosols, fogs, or other forms;

19. "Herbicide" means any pesticide intended for preventing, destroying, repelling, desiccating, or mitigating any weed, or for defoliating plants, preventing fruitdrop, and inhibiting sprouting;

20. "Inert ingredient" means an ingredient, which is not an active ingredient;

21. "Ingredient statement" means a statement containing the name and percentage of each active ingredient, and the total percentage of all inert ingredients in the pesticide. If the pesticide contains arsenic in any form, the percentages of total and water-soluble arsenic shall each be calculated as elemental arsenic;

22. "Insect" means any of the numerous small invertebrate six-legged animals generally having the body more or less obviously segmented, many belonging to the class Insecta, including, but not limited to, beetles, bugs, and flies as well as allied classes of

arthropods including spiders, mites, ticks, centipedes, and wood lice;

23. "Insecticide" means any pesticide intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment;

24. "Label" means the written, printed, or graphic matter attached to the pesticide, device, or container including the outside container or wrapper of the retail package of the pesticide or device;

25. "Labeling" means all labels and other written, printed, or graphic material:

- a. upon the pesticide, device, or any of its containers or wrappers,
- b. accompanying the pesticide or device at any time, or
- c. to which reference is made on the label or in literature accompanying the pesticide or device except when accurate, nonmisleading reference is made to current official publications of the United States Environmental Protection Agency, United States Department of Agriculture, United States Department of the Interior, the United States Public Health Service, State Experiment Stations, State Agricultural Colleges, or other federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides;

26. "License" means a written document issued to a person by the Board which shows that the person has met all established licensing requirements established by this subarticle and who is authorized to apply pesticides as a commercial, noncommercial, or private applicator pursuant to the license issued;

27. "Minimum standards" means the measures prescribed by the Board to bring appropriate pesticide services to the public;

28. "Misbranded" means and includes:

- a. any pesticide or device if its labeling bears any statement, design, or graphic representation relative to its ingredients which is false or misleading, or
- b. any pesticide or device:
 - (1) if it is an imitation of or is offered for sale under the name of another pesticide or device,
 - (2) if its labeling bears any reference to registration under this subarticle,
 - (3) if the labeling accompanying it does not contain instructions for use which are necessary and, if complied with, adequate for the protection of the public,
 - (4) if the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to humans and vertebrate animals,
 - (5) if the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there is one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase,
 - (6) if any word, statement, or other information required by or under the authority of this subarticle to appear on the labeling is not prominently placed with conspicuousness, as compared with other words, statements, designees, or graphic matter in the labeling, and in terms likely to be read and understood by an individual

under customary conditions of purchase and use,
or

- (7) if in the case of an insecticide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it shall be injurious to humans, vertebrate animals, or vegetation, except weeds, to which it is applied, or to the person applying the pesticide;

29. "Noncommercial applicator" means any person, other than a commercial or private applicator, who uses or supervises the use of a restricted use pesticide. The noncommercial applicator shall be under the supervision of an owner or manager of property and who is certified in the same manner as a commercial applicator. A noncommercial applicator is subject to all requirements except those pertaining to financial responsibility. Noncommercial applicator includes a government employee applying restricted use pesticides in the discharge of official duties;

30. "Non-restricted use pesticide" means any pesticide, other than a pesticide classified as restricted-use pesticide;

31. "Non-restricted use pesticide dealer" means any person engaged in the sale, storage, or distribution of any pesticide other than those pesticides classified by the United States Environmental Protection Agency or the Board as restricted use pesticides;

32. "Permit" means a written document issued by the Board which shows that a person has met all of the permitting requirements established by this subarticle and is authorized to sell pesticides as a restricted use or non-restricted use pesticide dealer in accordance with the type of permit issued;

33. "Pest" means any organism harmful to man including, but not limited to, insects, mites, nematodes, weeds, and pathogenic organisms. Pathogenic organisms include viruses, mycoplasma,

bacteria, rickettsia, and fungi which the Board declares to be a pest;

34. "Pesticide" means a substance or mixture of substances intended for defoliating or desiccating plants, preventing fruitdrop, inhibiting sprouting, or for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses, which the Board declares to be a pest, except viruses on or in humans or animals;

35. "Private applicator" means any person who uses or supervises the use of any restricted pesticide for purposes of producing any agricultural commodity on property owned or rented by the person, or employer, or on the property of another person if applied without compensation other than trading of personal services between producers of agricultural commodities;

36. "Registrant" means the person registering any pesticide or device pursuant to the provisions of this subarticle;

37. "Restricted use pesticide" means any pesticide classified for restricted use by the United States Environmental Protection Agency, either by regulation or through the registration process, or by the Board pursuant to the Oklahoma Agricultural Code;

38. "Restricted use pesticide dealer" means any person engaged in the sale, storage, or distribution of restricted use pesticides;

39. "Rodenticide" means any pesticide intended for preventing, destroying, repelling, or mitigating rodents or any other animal which the Board declares a pest;

40. "Service technician" means a person employed by a licensed commercial or noncommercial applicator who applies the pesticide or employs a device, but is not a certified applicator. A service technician or certified applicator shall be present at each application performed;

41. "Temporary certified applicator" means a person who has successfully completed the written examinations required for certification but has not successfully completed the practical examination;

42. "Use" means transportation, storage, mixing, application, safe handling, waste and container disposal, and other specific instructions contained on the label and labeling;

~~42.~~ 43. "Weed" means any plant or plant part which grows where not wanted; and

~~43.~~ 44. "Wood infestation report" means a document issued with a property transaction which shall, at a minimum, contain statements or certifications as to the presence or absence of termites and any other wood destroying organism, and the presence or absence of damage. The wood infestation report does not include a bid or proposal for treatment.

SECTION 2. AMENDATORY 2 O.S. 2001, Section 3-82, is amended to read as follows:

Section 3-82. A. LICENSE REQUIRED - 1. It shall be unlawful for any person to act, operate, or do business or advertise as a commercial, noncommercial, certified applicator, temporary certified applicator, service technician, or private applicator unless the person has obtained a valid applicator's license issued by the State Board of Agriculture for the category of pesticide application in which the person is engaged.

2. A license may be issued by the Board in any category of pesticide application if the applicant qualifies and the applicant is limited to the category of pesticide application named on the license. The Board may establish categories of pesticide application as necessary. Licenses shall be issued upon application to the Board on a form prescribed by the Board. The application shall contain information regarding the applicant's qualifications, proposed operations, and other information as specified by the

~~Board. An aerial license shall not be issued or be valid unless the applicant files with the Board a copy of a valid document issued by the Federal Aviation Administration showing that the person is qualified to operate or supervise the operation of an aircraft conducting agricultural operations.~~

3. A. An aerial license shall not be issued or be valid unless the applicant files with the Board a copy of a valid document issued by the Federal Aviation Administration showing that the person is qualified to operate or supervise the operation of an aircraft conducting agricultural operations. Applicants for an aerial license and pilots working under a license may be subject to a complete and thorough background examination.

B. The Board shall promulgate rules regarding aerial applicators and applications consistent with federal law and shall solicit the assistance of the Federal Aviation Agency in the enforcement of this subsection.

4. Each business location shall require a separate license and separate certified applicator except that a certified applicator for a noncommercial business location may also serve as the certified applicator for one (1) commercial business location.

5. A license shall not be issued for the category of pesticide application of any applicant or representative who has a temporary certification.

B. CERTIFICATION REQUIRED - 1. A license shall be issued only after satisfactory completion of the certification standards by the person who shall be the certified applicator under the license. Temporary certified applicators do not qualify as the certified applicator for a license, nor may they act as a certified applicator. The Board shall deny the application for certification, recertification, issuance, or renewal of a certificate or license for a failure to show proper qualification under the rules or for violations of any provisions of this subarticle. A certificate in

any category shall be valid for five (5) years unless suspended, canceled, or revoked by the Board or until recertification is required for the category, and may be renewed after successful completion of recertification requirements. The Board may require certified applicators to be recertified once in a five-year period.

2. A certified service technician identification shall be issued upon application and completion of certification standards determined by the Board. Temporary certified applicators may qualify as a certified service technician. No person shall act, do business as, or advertise as a service technician unless the person has met all the qualifications and standards as required by the Board. The service technicians' identification shall be issued in the name of the licensed entity. The licensee shall ensure that the service technician identification is returned to the Board upon termination of the employee. A service technician identification shall be valid for a period of five (5) years unless suspended, canceled, or revoked by the Board, until recertification is required by the Board, or until the service technician leaves the employ of the licensed entity.

3. Each license, except for private applicators, shall expire on the 31st day of December following issuance or renewal, and may be renewed for the ensuing calendar year, without penalty or reexamination, if a properly completed application is filed with the Board not later than the 1st day of January of each year. If application is not received by that date, a penalty of twice the amount of the renewal fee shall be charged for renewal of the license. After the 1st day of February, in addition to the penalty, a reexamination shall be required.

All private applicator licenses are in effect for five (5) years and may be renewed by application after completion of a continuing education program or written exam approved by the Board.

C. The following fees shall be paid to the Board:

1. A fee of Fifty Dollars (\$50.00) for each category of pesticide application shall be paid to the Board for the issuance or renewal of a commercial applicator business license, not more than Two Hundred Fifty Dollars (\$250.00) total category fees shall be charged annually to any business location of an applicator;

2. A fee of Twenty Dollars (\$20.00) shall be paid to the Board for each written examination conducted by the Board;

3. A fee of Twenty Dollars (\$20.00) shall be paid to the Board for each practical examination conducted by the Board;

4. A fee of Five Dollars (\$5.00) shall be paid to the Board for the issuance or renewal of a private applicator's license;

5. A fee of Twenty Dollars (\$20.00) shall be paid to the Board for the issuance or renewal of a noncommercial business license;

6. A fee of Ten Dollars (\$10.00) shall be paid to the Board for the issuance or renewal of service technician identification;

7. A fee of Five Dollars (\$5.00) shall be paid to the Board for the issuance of duplicate licenses or certificates or transfer of a service technician identification;

8. No fees shall be charged to governmental agencies or their employees in the discharge of their official duties;

9. A fee of Twenty Dollars (\$20.00) shall be paid to the Board for each recertification procedure; and

10. A fee of Twenty Dollars (\$20.00) shall be paid to the Board for each reciprocal certification procedure for applicator certifications.

D. All fees shall be deposited in the State Department of Agriculture Revolving Fund.

E. Fees shall be paid to the Board prior to the processing of any application.

F. Failure to pay any fee identified with licenses, permits, pesticide registrations, or certification shall require the Board to deny the application.

G. INSURANCE REQUIRED - 1. The Board shall not issue a commercial applicator's license until the applicant has furnished evidence of an insurance policy or certificate by an insurer or broker authorized to do business in this state insuring the commercial applicator and any agents against liability resulting from the operations of the commercial applicator. The insurance shall not be applied to damage or injury to agricultural crops, plants, or land being worked upon by the commercial applicator.

2. The amount of liability shall not be less than that set by the Board for each property damage arising out of actual use of any pesticide. The liability shall be maintained at not less than that sum at all times during the licensing period. The Board shall be notified fifteen (15) days prior to any reduction in liability.

3. If the furnished liability becomes unsatisfactory, the applicant shall immediately execute new liability upon notice from the Board. If new liability is not immediately obtained, the Board shall, upon notice, cancel the license. It shall be unlawful for the person to engage in the business of applying pesticides until the liability is brought into compliance and the license reinstated.

H. DAMAGES - No action for alleged damages to growing annual crops or plants may be brought or maintained unless the person claiming the damages has filed with the Board a written statement of alleged damages on a form prescribed by the Board within ninety (90) days of the date that the alleged damages occurred, or prior to the time that twenty-five percent (25%) of a damaged crop has been harvested.

I. PERMIT REQUIRED - 1. It shall be unlawful for any person to sell, offer for sale, or distribute within this state any restricted use pesticide without first obtaining a restricted use pesticide dealer's permit issued by the Board;

2. A permit may be issued by the Board in any category of pesticide sales if the applicant qualifies under the provisions of

this subarticle and the applicant is limited to the category of pesticide sales named on the permit. The Board may establish categories of pesticide sales as necessary;

3. The permit shall be issued only upon application on a form prescribed by the Board and the application shall contain information regarding the applicant's proposed operation and other information as specified by the Board;

4. Each business location engaged in the sale or distribution of restricted use pesticides shall require a separate permit;

5. The annual permit fee for a restricted use pesticide dealer permit shall be Twenty Dollars (\$20.00) for each location; and

6. The Board may require a certified applicator to be present at any location where designated restricted use pesticide sales occur.

J. PESTICIDE REGISTRATION REQUIRED - 1. Every pesticide or device distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate or interstate commerce shall be registered with the Board.

2. The registrant shall file with the Board a statement including, but not limited to:

- a. the name and address of the registrant and the name and address of the person whose name shall appear on the label, if other than the registrant,
- b. the name of the pesticide or device,
- c. a complete copy of the labeling accompanying the pesticide or device and a statement of all claims to be made for it, and directions for use, and
- d. if requested by the Board, a full description of the tests made and the results upon which the claims are based. In renewing a registration, a statement shall be required only with respect to information which is

different from the information furnished when the pesticide or device was last registered.

3. Each registrant shall pay to the Board an annual registration fee of One Hundred Dollars (\$100.00) for each pesticide or device label registered. These fees shall be used by the State Department of Agriculture for purposes of administering pesticide management programs.

4. The Board may require the submission of the complete formula of any pesticide. Trade secrets and formulations submitted by the registrant may be kept confidential. If it appears to the Board that the composition of the pesticide is adequate to warrant the proposed claims and if the pesticide, its labeling, and other material required to be submitted comply with the requirements of this subarticle, then the pesticide shall be registered.

5. If it does not appear to the Board that the pesticide or device is adequate to warrant the proposed claims for it or if the pesticide or device, its labeling, and other material required to be submitted do not comply with the provisions of this subarticle, it shall notify the applicant of the deficiencies in the pesticide, device, labeling, or other material required and afford the applicant an opportunity to make the necessary corrections. If the applicant claims, in writing, that the corrections are not necessary and requests in writing a hearing regarding the registration of the pesticide or device, the Board shall provide an opportunity for a hearing before refusing to issue the registration. In order to protect the public, the Board may at any time cancel the registration of a product or device. In no event, shall registration of a pesticide or device be considered as a defense or excuse for the commission of any offense prohibited under this subarticle.

6. The Board may require that pesticides be distinctively colored or discolored to protect the public health.

7. Registration shall not be required in the case of a pesticide shipped from one plant or place within this state to another plant or place within this state that is operated by the same person.

K. CATEGORIES OF LICENSES AND PERMITS - The Board may establish any category of license for pesticide application or any category of permit for pesticide sales.

L. PERMIT AND PESTICIDE REGISTRATION EXPIRATION - 1. All permits for pesticide sales shall be issued for a period of one (1) year and the permits shall be renewed annually and shall expire on a date determined by the Board. A permit may be renewed for the ensuing year, without penalty, if a properly completed application is filed with the Board not later than the fifteenth day of the month first following the date of expiration. If the application is not received by that date, a penalty of twice the amount of the renewal fee shall be charged for renewal of the permit.

2. All pesticide registrations shall be issued for a period of one (1) year. The registration shall be renewed annually and shall expire on a date to be determined by the Board. Pesticide registrations may be renewed for the ensuing year, without penalty, if a properly completed application is filed with the Board not later than the fifteenth day of the month first following the date of expiration. If the application is not received by that date, a penalty of twice the amount of the renewal fee shall be charged for renewal of the pesticide registration.

SECTION 3. AMENDATORY 2 O.S. 2001, Section 8-77.1, is amended to read as follows:

Section 8-77.1 A. Sections ~~105~~ 8-77.1 through ~~121~~ 8-77.18 of this subarticle shall be known and may be cited as the "Oklahoma Fertilizer Act".

B. The purpose of the Oklahoma Fertilizer Act is to provide assurances to the consumer that fertilizer products are properly

identified, and that the quality represented by the manufacturer is accurate as well as for regulation of the storage, use, and application of fertilizer to protect the consumer and the environment.

SECTION 4. AMENDATORY 2 O.S. 2001, Section 8-77.3, is amended to read as follows:

Section 8-77.3 ~~When~~ As used in the Oklahoma Fertilizer Act:

1. "Brand" means a term, design, or trademark used in connection with one or several grades of fertilizer;
2. "Broker" means a person who negotiates sales and purchases between a manufacturer, distributor, final consumer, or retailer of ~~commercial~~ fertilizer;
3. "Bulk fertilizer" means fertilizer distributed in a ~~non-~~nonpackaged form;
4. "Commercial fertilizer" means fertilizer sold in bulk quantities or packages greater than thirty (30) pounds;
5. "Custom blend" means a fertilizer formulated according to specifications furnished by the final consumer;
- ~~5.~~ 6. "Custom blender" means a person who mixes or commingles ~~commercial~~ fertilizer into a custom blend and who distributes the special blend. A custom blender shall not be required to register each grade of fertilizer formulated according to specifications which are furnished by the final consumer prior to mixing;
- ~~6.~~ 7. "Deficiency" means the amount of nutrient found by analysis less than that guaranteed, which may result from a lack of nutrient ingredients or from lack of uniformity;
- ~~7.~~ 8. "Distribute" means to import, consign, manufacture, blend, offer for sale, sell, barter, commercially apply, or supply fertilizer in this state;
- ~~8.~~ 9. "Distributor" means any person who distributes fertilizer;

~~9.~~ 10. "Fertilizer" means any substance containing one or more recognized plant nutrients which are 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, lime, limestone, and wood ashes;

~~10.~~ 11. "Fertilizer dealer" means any person operating a business that is engaged in the distribution or sale of a ~~commercial~~ fertilizer. The term "fertilizer dealer" shall not include an ultimate consumer who is engaged in the physical act of application of a ~~commercial~~ fertilizer or a retail store selling only bagged registered commercial fertilizer;

~~11.~~ 12. "Grade" means the percentage of total nitrogen, available phosphate, and soluble potash stated in whole numbers. Specialty fertilizer may be guaranteed in fractional units of less than one percent of total nitrogen, available phosphate, and soluble potash. Fertilizer materials, bone meal, manures, and similar materials may be guaranteed in fractional units;

~~12.~~ 13. "Guaranteed analysis" means the minimum percentage of plant nutrients claimed in the following order and form:

Total Nitrogen (N)	_____ %
Available Phosphate (P2O5)	_____ %
Soluble Potash (K2O)	_____ %.

When any plant nutrients, substances, or compounds are guaranteed, they shall be subject to inspection and analysis;

~~13.~~ 14. "Guarantor" means the person responsible to the State Board of Agriculture for any claims or guarantees associated with the manufacture, distribution, and use of a ~~commercial~~ fertilizer;

~~14.~~ 15. "Investigational allowance" means an allowance for variations inherent in the taking, preparation, and analysis of an official sample of fertilizer;

~~15.~~ 16. "Label" means the display of all written, printed, or graphic matter, upon the immediate container, or a statement accompanying a fertilizer;

~~16.~~ 17. "Labeling" means all written, printed, or graphic matter, upon or accompanying any fertilizer, or advertisements, brochures, posters, or television and radio announcements used in promoting the sale of a fertilizer;

~~17.~~ 18. "Licensee" means the person receiving a license to distribute a fertilizer under the provisions of the Oklahoma Fertilizer Act;

~~18.~~ 19. "Manipulated manures" means substances composed primarily of animal excreta, plant remains, or mixtures of these substances which have been processed by natural or mechanical drying or composting and no other chemicals have been added;

~~19.~~ 20. "Mixed fertilizer" means a fertilizer containing any combination or mixture of fertilizer materials;

~~20.~~ 21. "Official sample" means any sample of fertilizer taken by an authorized agent of the Board;

~~21.~~ 22. "Percent" or "percentage" means the portion of each hundred units of weight;

~~22.~~ 23. "Primary nutrient" means total nitrogen, available phosphate, and soluble potash;

~~23.~~ 24. "Registrant" means the person registering fertilizer under the provisions of the Oklahoma Fertilizer Act;

~~24.~~ 25. "Specialty fertilizer" means a fertilizer ~~distributed for non-farm use~~ sold in packages of less than thirty (30) pounds;

~~25.~~ 26. "Ton" means a net weight of two thousand (2,000) pounds avoirdupois; ~~and~~

~~26.~~ 27. "Ultimate consumer" means a person who receives fertilizer for personal use. The term "ultimate consumer" shall not include a person distributing fertilizer for profit to the general public; and

28. "Unmanipulated manures" means substances composed primarily of excreta, plant remains, or mixtures of these substances which have not been processed in any manner.

SECTION 5. AMENDATORY 2 O.S. 2001, Section 8-77.5, is amended to read as follows:

Section 8-77.5 A. The annual license fee for persons operating a business engaged in the distribution or sale of ~~a commercial~~ fertilizer shall be Fifty Dollars (\$50.00) and expire on a date to be determined by the State Board of Agriculture.

B. Any person operating a business that is engaged in the distribution, or sale of ~~a commercial~~ fertilizer shall obtain a license from the Board for each business location. The provisions of this subsection shall not apply to the ultimate consumer engaged in the physical act of application of a ~~commercial~~ fertilizer or to a retail store selling only bagged registered commercial fertilizer.

C. An application for license shall include:

1. The name and address of licensee; and

2. The name and address of each ~~distribution point~~ business location in the state.

The licensee shall inform the Board in writing of additional ~~distribution points~~ business locations established during the period of the license.

D. No person, whose name appears on the label, shall distribute in this state ~~a commercial or specialty~~ fertilizer until it is registered with the Board by ~~the distributor whose name appears on the label~~ such person. An application for each brand and product name of each grade of fertilizer shall be made on a form furnished by the Board. Upon the approval of an application by the Board, a copy of the registration shall be furnished to the applicant. A distributor shall not be required to register any fertilizer which is already registered under the Oklahoma Fertilizer Act by another person, provided the label does not differ in any respect.

E. Registrations for commercial fertilizer products sold in bulk quantities or packages of greater than thirty (30) pounds shall be permanent unless cancelled by the registrant or ~~by~~ the Board.

~~F.~~ F. 1. Registrations for specialty fertilizer products sold in packages of less than thirty (30) pounds shall pay a one-hundred-dollar registration fee for each product.

2. Specialty fertilizer product registrations shall expire on June 30 of each year.

3. If the Board finds any specialty fertilizer products that have not been registered, a penalty of One Hundred Dollars (\$100.00) per product will be assessed. The penalty shall be added to the registration fee and payment shall be made within thirty (30) days after receipt of notice.

G. A custom blender shall not be required to register each grade of fertilizer formulated according to specifications which are furnished by the final consumer prior to mixing, but shall be required to be licensed and shall be the guarantor of that custom blend.

~~F.~~ H. An application for registration shall include the following:

1. The brand and grade;
2. The guaranteed analysis;
3. Name and address of the registrant; ~~and~~
4. Net weight for packaged fertilizer; and
5. Oklahoma fertilizer license number.

SECTION 6. AMENDATORY 2 O.S. 2001, Section 8-77.7, is amended to read as follows:

Section 8-77.7 A. ~~An~~ Each registrant distributing fertilizer in this state shall file with the State Board of Agriculture, not later than the last day of January and July of each year, a semiannual inspection fee report setting forth, under oath, the number of tons sold or distributed during the period and pay an

inspection fee of sixty-five (\$.65) cents per ton of which thirty cents (\$.30) per ton shall be forwarded directly to a special Soil Fertility Research Account in the Plant and Soil Sciences Department of the Division of Agricultural Sciences and Natural Resources at Oklahoma State University for the sole purpose of conducting soil fertility research involving groundwater protection from plant food nutrients. Oklahoma State University shall present an annual report to the Agriculture Committees of the Legislature on the use of the special Soil Fertility Research Account Fund.

B. Each registrant distributing commercial fertilizer in this state shall file with the State Board of Agriculture not later than the last day of January, ~~April~~, and July, ~~and October~~ of each year, a ~~quarterly statement~~ semiannual tonnage report stating under oath, ~~setting forth the:~~

1. The number of net tons of ~~commercial~~ fertilizer distributed during the preceding ~~three (3)~~ six (6) calendar months. ~~The inspection fee and tonnage report shall be due within thirty (30) days following the close of the filing period and upon return of the statement the licensee shall pay the inspection fee;~~

2. The amount in tons of each grade of fertilizer distributed during the preceding six (6) calendar months; and

3. Whether the fertilizer was distributed in bag, bulk, or liquid.

C. If no fertilizer was sold or distributed in this state for the ~~quarter~~ semiannual period, the registrant shall submit a statement reflecting that information and shall remit a minimum fee of ~~Five Dollars (\$5.00)~~ Ten Dollars (\$10.00). If the inspection fee and tonnage report ~~is~~ are not filed and the payment of the inspection fee is not made within thirty (30) days after the end of the specified filing period, a collection fee of ten percent (10%) of the inspection fee due or a minimum ~~Five Dollars (\$5.00)~~, of Ten Dollars (\$10.00) shall be assessed and added to the amount due.

~~C.~~ D. Sales or exchanges between importers, manufacturers, distributors, registrants, or licensees are exempt.

~~D.~~ E. When more than one person is involved in the distribution of a fertilizer, the last person who has the fertilizer registered and who distributed the fertilizer to a nonregistrant dealer or consumer is responsible for reporting the tonnage and paying the inspection fee, unless the report and payment is made by a prior distributor or manufacturer of the fertilizer.

~~E.~~ F. If the Board finds any deficient inspection fees due as a result of an audit of the records of any person subject to the provisions of the Oklahoma Fertilizer Act, the Board shall assess a penalty fee of ten percent (10%) of the amount due, with a maximum not to exceed Two Thousand Dollars (\$2,000.00) or a minimum of One Hundred Dollars (\$100.00) whichever is greater. The audit penalty shall be added to the deficient inspection fees due and payment shall be made within thirty (30) days of notice of the deficiency.

G. No information furnished to the Board under this section shall be disclosed in a way which divulges proprietary information about the operation of any person.

H. Each registrant, distributor, or manufacturer shall keep accurate records of the tonnage of fertilizer distributed in this state.

SECTION 7. AMENDATORY 2 O.S. 2001, Section 8-80.7, is amended to read as follows:

Section 8-80.7 A. For the purpose of helping to defray the expenses of inspection, administering, and carrying out the provisions of the Oklahoma Agricultural Liming Materials Act, an inspection fee of ten cents (\$0.10) per ton shall be paid to the State Board of Agriculture on all agricultural liming material sold or distributed for use within this state.

B. All agricultural liming material fees collected shall be deposited in the State Department of Agriculture Revolving Fund.

C. Manufacturers, importers, and other guarantors distributing agricultural liming materials in the state shall file with the Board not later than the last day of January and July of each year, a semiannual report on forms furnished by the Board setting forth, ~~by counties,~~ the number of net tons of agricultural liming material distributed in this state during the preceding six (6) calendar months. This report shall be accompanied by payment of the inspection fee. If no lime was sold or distributed in this state for the semiannual period, manufacturers shall submit a statement reflecting that information and shall remit a minimum fee of Five Dollars (\$5.00). The Board shall have authority to audit records of each person to determine the accuracy of these reports.

D. Any agricultural liming material on which the inspection fee has not been paid shall be subject to a stop-sale, removal order, or seizure.

E. The Board may publish and distribute semiannually or annually to each person, distributor, registrant, licensee, and other interested persons a report showing the tons of agricultural liming material sold in ~~each county of~~ Oklahoma. This report shall in no way divulge the operation of any registrant, distributor, or licensee.

SECTION 8. AMENDATORY 2 O.S. 2001, Section 8-85.5, is amended to read as follows:

Section 8-85.5 A. Each soil amendment product shall be registered with the State Board of Agriculture before it is distributed in this state. Application for registration shall be submitted to the Board, on a form prepared for that purpose, showing the information required on the label, as provided in Section 8-85.4 of this title, except net weight of product.

B. The registration fee shall be ~~Twenty-five Dollars (\$25.00)~~ One Hundred Dollars (\$100.00) for each product.

C. All registrations shall expire on December 31 of the year for which the soil amendment product is registered.

D. The applicant shall submit with the application for registration a copy of the label and a copy of all advertisements, brochures, posters, and television and radio announcements to be used in promoting the sale of the soil amendment.

E. If the Board finds any soil amendment products that have not been registered, a penalty of One Hundred Dollars (\$100.00) per product shall be assessed. The penalty shall be added to the registration fee and payment shall be made within thirty (30) days after receipt of notice.

SECTION 9. REPEALER 2 O.S. 2001, Sections 8-77.8 and 8-85.6, are hereby repealed.

SECTION 10. This act shall become effective July 1, 2002.

SECTION 11. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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JT

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