

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 455

BY AGRICULTURAL AFFAIRS COMMITTEE

AN ACT

1 RELATING TO AGRICULTURE; AMENDING SECTION 22-603, IDAHO CODE, TO REMOVE CODE
2 REFERENCES; AMENDING SECTION 22-605, IDAHO CODE, TO REVISE PROVISIONS
3 REGARDING A CERTAIN FEE AND TO MAKE TECHNICAL CORRECTIONS; REPEALING
4 SECTION 22-608, IDAHO CODE, RELATING TO INSPECTION FEES; REPEALING SEC-
5 TION 22-609, IDAHO CODE, RELATING TO TONNAGE REPORTS; AMENDING SECTION
6 22-2205, IDAHO CODE, TO REVISE PROVISIONS REGARDING A CERTAIN FEE AND
7 TO MAKE TECHNICAL CORRECTIONS; REPEALING SECTION 22-2208, IDAHO CODE,
8 RELATING TO TONNAGE FEES; REPEALING SECTION 22-2209, IDAHO CODE, RELAT-
9 ING TO TONNAGE REPORTS; AMENDING SECTION 22-2217, IDAHO CODE, TO REMOVE
10 CODE REFERENCES AND TO MAKE TECHNICAL CORRECTIONS; REPEALING CHAPTER
11 32, TITLE 22, IDAHO CODE, RELATING TO THE ARTIFICIAL PRODUCTION OF RAIN-
12 FALL; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
13

14 Be It Enacted by the Legislature of the State of Idaho:

15 SECTION 1. That Section 22-603, Idaho Code, be, and the same is hereby
16 amended to read as follows:

17 22-603. DEFINITIONS. When used in this chapter:

18 (1) "Biosolid(s)" means a primary organic solid material produced by
19 wastewater treatment processes that can be beneficially recycled for its
20 plant nutrient content and soil amending characteristics, as regulated un-
21 der the code of federal regulations, 40 CFR 503, as amended.

22 (2) "Brand" means a term, design, or trademark used in connection with
23 one (1) or several grades of fertilizer.

24 (3) "Calcium carbonate equivalent" means the acid-neutralizing capac-
25 ity of an agricultural liming material expressed as a weight percentage of
26 calcium carbonate.

27 (4) "Compost" means a biologically stable material derived from the
28 composting process.

29 (5) "Composting" means the biological decomposition of organic matter.
30 It is accomplished by mixing and piling in such a way to promote aerobic
31 and/or anaerobic decay. The process inhibits pathogens, viable weed seeds
32 and odors.

33 (6) "Coproduct" means a chemical substance produced for a commercial
34 purpose during the manufacture, processing, use or disposal of another chem-
35 ical substance or mixture.

36 (7) "Deficiency" means the amount of nutrient found by analysis to be
37 less than that guaranteed, which may result from a lack of nutrient ingredi-
38 ents or from lack of uniformity.

39 (8) "Department" means the Idaho state department of agriculture or its
40 authorized representative.

1 (9) "Distribute" means to import, consign, manufacture, produce, com-
2 pound, mix, or blend fertilizer, or to offer for sale, sell, barter or other-
3 wise distribute or supply fertilizer in this state.

4 (10) "Distributor" means any person who distributes.

5 (11) "Fertilizer" means any substance containing one (1) or more recog-
6 nized plant nutrient which is used for its plant nutrient content and which
7 is designed for use or claimed to have value in promoting plant growth, and
8 includes limes and gypsum. It does not include unmanipulated animal manure
9 and vegetable organic waste-derived material, or biosolids regulated under
10 the code of federal regulations, 40 CFR 503, as amended.

11 (a) "Bulk fertilizer" means a fertilizer distributed in a nonpackaged
12 form.

13 (b) "Customer formula fertilizer" means a mixture of fertilizer or ma-
14 terials of which each batch is mixed according to the specific instruc-
15 tions of the final purchaser.

16 (c) "Fertilizer material" means a fertilizer which either:

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

20 (ii) Has eighty-five percent (85%) or more of its plant nutrient
21 content present in the form of a single chemical compound, or

22 (iii) Is derived from a plant or animal residue or byproduct
23 or natural material deposit which has been processed in such a
24 way that its content of plant nutrients has not been materially
25 changed except by purification and concentration.

26 (d) "Micronutrient fertilizer" means a fertilizer that contains valu-
27 able concentrations of micronutrients, but does not contain valuable
28 concentrations of total nitrogen (N), available phosphate (P_2O_5), sol-
29 uble potash (K_2O), calcium (Ca), magnesium (Mg), or sulfur (S).

30 (e) "Mixed fertilizer" means a fertilizer containing any combination
31 or mixture of fertilizer materials.

32 (f) "Packaged fertilizer" means fertilizers, either agricultural or
33 specialty, distributed in nonbulk form.

34 (g) "Specialty fertilizer" means a fertilizer distributed for nonagri-
35 cultural use.

36 (h) "Waste-derived fertilizer" includes any commercial fertilizer
37 derived from an industrial byproduct, coproduct or other material that
38 would otherwise be disposed of if a market for reuse were not an option,
39 but does not include fertilizers derived from biosolids or biosolid
40 products regulated under the code of federal regulations, 40 CFR 503, as
41 amended.

42 (12) "Grade" means the percentage of total nitrogen, available phos-
43 phate, and soluble potash stated in whole numbers in the same terms, order,
44 and percentages as in the guaranteed analysis. Provided however, that spe-
45 cialty fertilizers may be guaranteed in fractional units of less than one
46 percent (1%) of total nitrogen, available phosphate, and soluble potash:
47 provided further, that fertilizer materials, bone meal, and similar materi-
48 als may be guaranteed in fractional units.

1 (13) "Guaranteed analysis" means the minimum percentage of plant nutri-
 2 ents claimed, for a total nitrogen, available phosphate, or soluble potash
 3 fertilizer, consistent with the grade and in the following order and form:

4 (a) Total nitrogen %
 5 Available phosphate %
 6 Soluble potash %

7 (b) Unless approved by the department, all fertilizer intended for
 8 agricultural use with a total nitrogen, available phosphate, or soluble
 9 potash guarantee shall contain five percent (5%) or more of available
 10 nitrogen, phosphate, or potash, singly, collectively, or in combina-
 11 tion.

12 (c) For unacidulated mineral phosphatic materials and basic slag,
 13 the guaranteed analysis shall contain both total and available phos-
 14 phate and the degree of fineness. For bone, tankage, and other organic
 15 phosphatic materials, the guaranteed analysis shall contain total and
 16 available phosphate.

17 (d) The guaranteed analysis for limes shall include the percentage of
 18 calcium or magnesium expressed as their carbonate; the calcium carbon-
 19 ate equivalent as determined by methods prescribed by the association
 20 of official analytical chemists, international (AOAC); and the minimum
 21 percentage of material that will pass respectively a one hundred (100)
 22 mesh, sixty (60) mesh, and ten (10) mesh sieve.

23 (e) The guarantees for nutrients other than total nitrogen, avail-
 24 able phosphate and soluble potash shall be expressed in the form of the
 25 element. The source (oxides, salts, chelates, etc.) of such other nu-
 26 trients may be required to be stated on the application for registration
 27 and shall be included on the label. Other beneficial substances or com-
 28 pounds, determinable by laboratory methods, also may be guaranteed by
 29 permission of the department. Other guarantees shall not be included
 30 with the guarantee for nutrients, but shall be listed separately as
 31 "nonnutrient substances." When any plant nutrients or other substances
 32 or compounds are guaranteed they shall be subject to inspection and
 33 analysis in accordance with the methods and rules prescribed by the de-
 34 partment.

35 (f) In a fertilizer with the principal constituent of calcium sulfate
 36 (gypsum), the percentage of calcium sulfate ($\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$) shall be given
 37 along with the percentage of total sulfur (S).

38 (14) "Investigational allowance" means an allowance for variations in-
 39 herent in the taking, preparation and analysis of an official sample of fer-
 40 tilizer.

41 (15) "Label" means the display of all written, printed, or graphic mat-
 42 ter, upon the immediate container, or a statement accompanying a fertilizer.

43 (16) "Labeling" means all written, printed, or graphic matter, upon or
 44 accompanying any fertilizer, or advertisements, brochures, posters, and
 45 television and radio announcements used in promoting the sale of such fer-
 46 tilizer.

47 (17) "Lime" means a substance or a mixture of substances, the princi-
 48 pal constituent of which is calcium carbonate (CaCO_3), calcium hydroxide
 49 ($\text{Ca}(\text{OH})_2$), calcium oxide (CaO), magnesium carbonate (MgCO_3), magnesium hy-

1 droxide ($Mg(OH)_2$) or magnesium oxide (MgO), singly or combined, and capable
2 of neutralizing soil acidity.

3 (18) "Manipulation" means actively processed or treated in any manner.

4 (19) "Manufacture" means to compound, produce, granulate, mix, blend,
5 repackage, or otherwise alter the composition of fertilizer materials.

6 (20) "Micronutrient" means boron (B), chlorine (Cl), cobalt (Co), cop-
7 per (Cu), iron (Fe), manganese (Mn), molybdenum (Mo), nickel (Ni), sodium
8 (Na), and zinc (Zn).

9 (21) "Official sample" means any sample of fertilizer taken by the di-
10 rector or his authorized agent and designated as "official" by the depart-
11 ment.

12 (22) "Organic waste-derived material" means grass clippings, leaves,
13 weeds, bark, plantings, prunings and other vegetative wastes, wood wastes
14 from logging and milling operations, and food wastes. "Organic waste-de-
15 rived material" does not include products that contain biosolids as defined
16 in this section.

17 (23) "Packaged fertilizer" means fertilizers, either agricultural or
18 specialty, distributed in nonbulk form.

19 (24) "Percent" or "percentage" means the percentage by weight.

20 (25) "Person" means an individual, partnership, association, firm or
21 corporation.

22 (26) "Primary nutrient" means total nitrogen, available phosphate, and
23 soluble potash.

24 (27) "Production" means to compound or fabricate a fertilizer through a
25 physical or chemical process. Production does not include mixing, blending,
26 or repackaging fertilizer products.

27 (28) "Registrant" means the person who registers fertilizer under the
28 provisions of this act.

29 (29) "Storage container" means a container, including a railcar, nurse
30 tank or other container that is used or intended for the storage of bulk liq-
31 uid or dry fertilizer. It does not include a mobile container at a storage
32 facility for less than fifteen (15) days if this storage is incidental to the
33 loading or unloading of a storage container at the bulk fertilizer storage
34 facility. Storage container does not include underground storage contain-
35 ers or surface impoundments such as lined ponds or pits.

36 (30) "Storage facility" means a location at which undivided quantities
37 of liquid bulk fertilizer in excess of five hundred (500) U.S. gallons or
38 undivided quantities of dry bulk fertilizer in excess of fifty thousand
39 (50,000) pounds are held in a storage container. Temporary field storage of
40 less than thirty (30) days is not considered a storage facility.

41 (31) "Ton" means a net weight of two thousand (2,000) pounds avoirdu-
42 pois.

43 (32) "Tonnage-only distributor" means any person who assumes the re-
44 sponsibility for inspection fees and reports ~~as provided for in sections~~
45 ~~22-608(1) and 22-609, Idaho Code.~~ A tonnage-only distributor must register
46 with the department on forms provided by the director. ~~A tonnage-only dis-~~
47 ~~tributor is subject to section 22-608, Idaho Code.~~

48 When not specifically stated in this section or otherwise designated by
49 the department in rule, the department will be guided by the definitions of
50 general terms, fertilizer materials and soil and plant amendment materials

1 as set forth in the Official Publication of the Association of American Plant
2 Food Control Officials (AAPFCO) or the Merck Index, published by Merck Co.,
3 Inc.

4 SECTION 2. That Section 22-605, Idaho Code, be, and the same is hereby
5 amended to read as follows:

6 22-605. REGISTRATION OF PRODUCTS AND STORAGE FACILITIES. (1) Regis-
7 tration of products.

8 (a) Each separately identifiable fertilizer product except individual
9 customer-formula mixes shall be registered by the person who manufac-
10 tures or distributes fertilizer into or within the state of Idaho before
11 being offered for sale, sold, or otherwise distributed into or within
12 this state. Companies planning to mix customer-formula fertilizers
13 shall include the statement "customer-formula mixes" or "CFM" on the
14 registration application form. The application for registration shall
15 be submitted to the department on forms furnished by the department, and
16 shall be accompanied by a nonrefundable fee of ~~twenty-five~~ seventy-five
17 dollars (\$275.00) per separately identifiable fertilizer product.
18 Upon approval by the department, a certificate of registration shall be
19 furnished to the applicant. All registrations expire on December 31 of
20 each year. The application shall include the following information:

- 21 (i) The brand, grade and product name for each product;
22 (ii) The name and address of the registrant; and
23 (iii) A current label meeting the requirements of section 22-607,
24 Idaho Code, for each product.

25 (b) A distributor is not required to register any fertilizer that is
26 already registered under this chapter, as long as the label remains un-
27 changed.

28 (c) If an application for renewal of the product registration provided
29 for in this section is not postmarked by January 31 ~~of any one (1) year~~, a
30 penalty of ten dollars (\$10.00) per product shall be assessed and added
31 to the original fee and shall be paid by the applicant before the renewal
32 registration certificate is issued.

33 (d) The department shall examine the fertilizer product registration
34 application form and labels for conformance with the requirements of
35 this chapter. If the application, information and appropriate labels
36 are in proper form and contain all the required information, the fertil-
37 izer products shall be registered by the department and a certificate
38 of registration shall be issued to the applicant. The department may
39 refuse to register or, cancel the registration, of any fertilizer prod-
40 uct which would be in violation of any provision of this chapter.

41 (e) In reviewing the fertilizer product registration application,
42 the department may consider experimental data, manufacturers' eval-
43 uations, data from agricultural experiment stations' product review
44 evaluations, and other authoritative sources to substantiate labeling
45 claims. The data shall be from statistically designed and analyzed tri-
46 als representative of the soil, crops, and climatic conditions found in
47 the northwestern area of the United States.

48 (f) In determining whether approval of a label statement or guarantee
49 of an ingredient is appropriate, the department may require the submis-

1 sion of a written statement describing the methodology of laboratory
2 analysis ~~utilized~~ used, the source of the ingredient material, and any
3 reference material ~~relied upon~~ on to support the label statement or
4 guarantee of ingredient.

5 (g) Any waste-derived fertilizer distributed as a single-ingredient
6 product or blended with other fertilizer ingredients must be identified
7 as "waste-derived fertilizer" by the registrant in the application for
8 registration.

9 (h) The registrant of a waste-derived fertilizer shall state in the
10 application for registration the levels of nonnutritive metals includ-
11 ing, but not limited to, arsenic (As), cadmium (Cd), mercury (Hg), lead
12 (Pb) and selenium (Se). The registrant shall provide a laboratory re-
13 port or other documentation verifying the levels of the nonnutritive
14 metals in the waste-derived fertilizer. The registrant shall provide a
15 new laboratory report upon a change of any nutrient source containing
16 waste-derived material.

17 (i) Any person distributing commercial fertilizer into or within Idaho
18 to an Idaho registrant or a tonnage-only distributor must be a regis-
19 trant or a tonnage-only distributor.

20 (j) If a product is found being offered for sale, sold, or otherwise
21 distributed into or within Idaho prior to registration, the department
22 is authorized to assess a penalty of twenty-five dollars (\$25.00) on
23 each product in addition to the annual registration fee as provided in
24 this section.

25 (2) Registration of storage facilities.

26 (a) Distributors shall register each of their in-state storage fa-
27 cilities with the department. The application for registration shall
28 be submitted to the department on forms furnished by the department
29 and shall be accompanied by a nonrefundable fee of one hundred dollars
30 (\$100) per distributor. Upon approval by the department, a certificate
31 of registration shall be furnished to the applicant. All registrations
32 expire on December 31 of each year. The application shall include the
33 following information:

34 (i) The name and address of the registrant and location of storage
35 facility;

36 (ii) Listing of storage containers by volume, per storage facil-
37 ity.

38 (b) If an application for renewal of the storage facility registration
39 provided for in this section is not postmarked by January 31 ~~of any one~~
40 ~~(1) year~~, a penalty of ten dollars (\$10.00) per storage facility shall
41 be assessed and added to the original fee and shall be paid by the appli-
42 cant before the renewal registration certificate is issued.

43 (c) The department shall be notified of the installation of any addi-
44 tional storage container or containers to a storage facility within
45 thirty (30) days of installation.

46 (d) If the department is not notified within thirty (30) days of the in-
47 stallation of any additional storage container or containers, a penalty
48 of fifty dollars (\$50.00) shall be assessed.

49 SECTION 3. That Section 22-608, Idaho Code, be, and the same is hereby
50 repealed.

1 SECTION 4. That Section 22-609, Idaho Code, be, and the same is hereby
2 repealed.

3 SECTION 5. That Section 22-2205, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 22-2205. PRODUCTS -- REGISTRATION REQUIRED. (1) Each separately iden-
6 tifiable soil amendment or plant amendment product shall be registered
7 before being distributed in this state. The application for registration
8 shall be submitted to the department on a form furnished by the department,
9 and shall be accompanied by a nonrefundable fee of ~~one hundred~~ ninety dol-
10 lars (\$~~100~~90.00) per product and a label of each product, unless a current
11 label is on file at the department. Companies planning to mix customer_for-
12 mula soil amendments or plant amendments shall include the statement
13 "customer_formula mixes" under the "products" column on the registration
14 application form. Upon approval by the department, a certificate of regis-
15 tration shall be furnished to the applicant.

16 (2) In determining whether a label statement of an ingredient is ap-
17 propriate, the department may require the submission of a written statement
18 describing the method of laboratory analysis used, the source of all ingre-
19 dient material, and any reference material relied on to support the label
20 statement or guarantee of the ingredients.

21 (3) Upon receipt of a complete application for registration of a prod-
22 uct, the department may test and analyze an official sample of the product to
23 determine whether the contents of the official sample conform to the label.
24 In his discretion, the director may also require an applicant for registra-
25 tion of a soil amendment or a plant amendment to submit any data concerning
26 the efficacy or safety of the product for its intended use.

27 (4) Refusal to register, denial, suspension.

28 (a) If it appears to the director that composition of the soil amendment
29 or plant amendment does not warrant the proposed claims for it, or if the
30 soil amendment or plant amendment and its labeling or other material re-
31 quired to be submitted do not comply with this chapter or rules adopted
32 under this chapter, the director shall notify the applicant of the man-
33 ner in which the soil amendment or plant amendment labeling or other ma-
34 terial required to be submitted fails to comply with this chapter so as
35 to give the applicant an opportunity to make the necessary corrections.
36 If the applicant does not make the required changes within ninety (90)
37 days from the receipt of the notice, the director may refuse to regis-
38 ter the soil amendment or plant amendment. The applicant may request
39 a hearing as provided in the administrative procedure act, chapter 52,
40 title 67, Idaho Code.

41 (b) When the director determines that a soil amendment or plant amend-
42 ment or its labeling does not comply with this chapter or rules adopted
43 under this chapter, or when necessary to prevent unreasonable adverse
44 effects on the environment, the director may refuse to register or may
45 suspend, revoke or modify the registration of the soil amendment or
46 plant amendment in accordance with the provisions of the administrative
47 procedure act, chapter 52, title 67, Idaho Code.

48 (5) Registrations are effective through the last day of the calendar
49 year in which they are issued. If a registration is being renewed, the direc-

1 tor may suspend the requirement that a soil amendment or plant amendment be
2 analyzed if there is no material change in the label for the product.

3 (6) If the application for renewal of the soil amendment or plant amend-
4 ment registration provided for in this section is not submitted ~~before Feb-~~
5 ~~ruary 1 of any one (1) year by January 31,~~ a penalty of ten dollars (\$10.00)
6 per product shall be assessed and added to the original fee. The applicant
7 shall pay the penalty before the renewal soil amendment or plant amendment
8 registration may be issued.

9 (7) Any waste-derived soil amendment or waste-derived plant amendment
10 distributed as a single-ingredient product or blended with other soil amend-
11 ments or plant amendment ingredients must be identified as "waste-derived
12 soil amendment or plant amendment" by the applicant in the application for
13 registration.

14 (8) An applicant applying to register a waste-derived soil amendment
15 or plant amendment shall state in the application the concentration of met-
16 als or metalloids including, but not limited to, arsenic (As), cadmium (Cd),
17 mercury (Hg), lead (Pb), and selenium (Se). The applicant shall provide a
18 laboratory report or other documentation verifying the levels of the metals
19 or metalloids in the waste-derived soil amendment or plant amendment.

20 (9) A distributor is not required to register a soil amendment or plant
21 amendment product that is already registered under this chapter, ~~se~~ as long
22 as the label remains unchanged.

23 SECTION 6. That Section [22-2208](#), Idaho Code, be, and the same is hereby
24 repealed.

25 SECTION 7. That Section [22-2209](#), Idaho Code, be, and the same is hereby
26 repealed.

27 SECTION 8. That Section 22-2217, Idaho Code, be, and the same is hereby
28 amended to read as follows:

29 22-2217. STOP-SALE ORDERS. (1) The director may issue and enforce a
30 written "stop-sale, use or removal" order to the manufacturer, distributor,
31 owner, or custodian of any soil amendment or plant amendment, or any lot
32 thereof, if he determines that:

33 (1a) A soil amendment or plant amendment is not properly registered or
34 ~~whose~~ its registration has been revoked under this chapter; or

35 (2b) ~~The proper tonnage fees or tonnage reports have not been submitted~~
36 ~~to the department pursuant to section 22-2208 or 22-2209, Idaho Code; or~~

37 ~~(3)~~ A soil amendment or plant amendment is misbranded or adulterated.

38 (2) The order may require the person to whom it is directed to hold the
39 soil amendment or plant amendment, or lot thereof, ~~which~~ that is the subject
40 of the order, at a designated place until the requirements of this chapter
41 are satisfied and all costs and expenses reasonably incurred by the depart-
42 ment in connection with the withdrawal are paid by or on behalf of the person
43 to whom the order was directed.

44 SECTION 9. That Chapter 32, Title 22, Idaho Code, be, and the same is
45 hereby repealed.

1 SECTION 10. An emergency existing therefor, which emergency is hereby
2 declared to exist, this act shall be in full force and effect on and after
3 July 1, 2022.