

HOUSE BILL NO. 131

INTRODUCED BY Z. PERRY

BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AGRICULTURAL REPORTING AND FEE REQUIREMENTS RELATING TO PRODUCE, AGRICULTURAL SEED, COMMERCIAL FEED, AND COMMERCIAL FERTILIZERS; AMENDING SECTIONS 80-3-314, 80-5-131, 80-9-206, 80-10-101, 80-10-201, 80-10-202, 80-10-203, 80-10-204, 80-10-207, AND 80-10-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 80-3-314, MCA, is amended to read:

**"80-3-314. Reporting requirements -- assessment fees -- exceptions.** (1) Produce sold or distributed in this state must be reported on forms approved by the department and must be assessed a fee for each produce unit or equivalent poundage. The fee amount may be adjusted by rule but must be at least 3 cents and not more than 7 cents for each produce unit.

(2) The produce dealer who first distributes produce in this state or a grower who retails Montana-grown produce with gross annual sales exceeding \$25,000 shall pay the produce assessment fee established in subsection (1). However, any produce dealer in possession of the produce may be held responsible for payment of the fee unless the grower has paid for a produce dealer license or has made available to the produce dealer a written form provided by the department stating that the assessment fees are being paid.

(3) The report and fees are due ~~on or before the 30th day of the month following each calendar quarter~~ 30 days after the last day of the reporting period. The reporting periods end June 30 and December 31.

(4) Payment of the produce assessment fee is not required on produce that is:

- (a) grown and retailed in Montana by the grower if annual gross retail sales by the grower do not exceed \$25,000;
- (b) grown in this state, not packaged for market, and sold for resale by the grower;
- (c) in the case of vegetative seed potato products, intended or used for planting purposes; or
- (d) purchased from or distributed by a produce dealer licensed under 80-3-321 if the produce has been

1 reported and the assessment fee has been paid.

2 (5) Fees must be paid only if they total more than \$5 in a reporting period."

3

4 **Section 2.** Section 80-5-131, MCA, is amended to read:

5 **"80-5-131. Assessment on sales into Montana -- reporting -- rulemaking.** (1) Except as provided  
6 in this subsection, seed labelers located outside Montana who sell agricultural seed in Montana shall report those  
7 sales and pay a fee of 20 cents per \$100 in gross annual sales of agricultural seed. The department may by rule  
8 adjust the assessment fee to maintain adequate funding for the administration of this part. The assessment fee  
9 may not be less than 20 cents per \$100 or more than 30 cents per \$100 in gross annual sales of agricultural  
10 seed. Fees must be paid only if they total more than \$5 in a reporting period.

11 (2) The department shall by rule establish:

12 (a) reporting requirements, including persons who shall report, the form of reports, the reporting period,  
13 and the scope of information to be reported;

14 (b) the due date applicable to reports; and

15 (c) penalty provisions applicable to reports that are not received by the due date, not to exceed ~~\$10~~ \$25  
16 or 10% of the assessment due, whichever is greater.

17 (3) Failure to submit the report as required or to pay the assessment in full constitutes a violation subject  
18 to the penalty provisions of this chapter."

19

20 **Section 3.** Section 80-9-206, MCA, is amended to read:

21 **"80-9-206. Inspection fees -- filing of annual statement.** (1) An inspection fee must be paid on all  
22 commercial feeds, including customer formula feeds, except pet foods and specialty pet foods, distributed in this  
23 state as follows:

24 (a) The feed manufacturer has primary responsibility for paying inspection fees. However, the distributor  
25 is responsible for inspection fees if the manufacturer has not paid them.

26 (b) Except as provided in this subsection (1)(b), the inspection fee is 18 cents a ton. Inspection fees must  
27 be paid on each commercial feed, including customer formula feeds and feed ingredients that are defined as  
28 commercial feeds even though they are used in the manufacture of other commercial feeds. However, premises  
29 prepared and used within a feed plant or transferred from one plant to another within the same organization are  
30 exempt. The department may by rule adjust the inspection fee to maintain adequate funding for the administration

1 of this part. The fee may not be less than 18 cents a ton or more than 25 cents a ton.

2 (c) A person producing a commercial feed with a feed mixing plant at a feed lot or a poultry, swine, or  
3 dairy operation may not be required to pay inspection fees on the commercial feeds produced and used in the  
4 feeding operation at the site, but is responsible for any unpaid inspection fees on commercial feed purchased by  
5 that person and on any commercial feed that person produces and distributes other than in that person's feeding  
6 operations at the site.

7 (d) Fees must be paid only if they total more than \$5 in an annual reporting period.

8 (2) Each person who holds a license as required in 80-9-201(1) shall:

9 (a) file, not later than January 31 of each year, an annual statement setting forth the number of tons of  
10 commercial feeds distributed in this state during the preceding calendar year and, upon filing the statement, shall  
11 pay the inspection fee. Inspection fees that have not been remitted to the department on or before January 31  
12 have a penalty fee of 10% or a minimum of ~~\$10~~ \$25, whichever is more, added to the amount due. The  
13 assessment of this penalty fee does not prevent the department from taking other action as provided in this  
14 chapter.

15 (b) keep those records that are necessary or are required by the department to indicate accurately the  
16 tonnage of commercial feed distributed in this state. The department may examine the records to verify  
17 statements of tonnage.

18 (c) make accurate and prompt reports as required. Failure to do so is sufficient cause for the department  
19 to cancel or refuse to reissue a license."

20

21 **Section 4.** Section 80-10-101, MCA, is amended to read:

22 **"80-10-101. Definitions.** As used in this chapter, the following definitions apply:

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

25 (2) "Blending" means the physical mixing or combining, including mixing through simultaneous or  
26 sequential application, of any combination of materials to produce a uniform mixture of:

27 (a) one or more fertilizer materials with one or more filler materials; or

28 (b) two or more fertilizer materials.

29 (3) (a) "Commercial fertilizer" includes any substance containing one or more recognized plant nutrients  
30 that is used for its plant nutrient content and that is designed for use or claimed to have value in promoting plant

1 growth, yield, or quality of the crop.

2 (b) Commercial fertilizer includes the following types of fertilizer:

3 (i) Bulk fertilizer is commercial fertilizer, dry or liquid, that is distributed in nonpackage form or in  
4 containers of greater than 1,000 pounds.

5 (ii) Fertilizer material is commercial fertilizer that either:

6 (A) contains important quantities of not more than one of the primary plant nutrients;

7 (B) has 85% or more of its plant nutrient content present in the form of a single chemical compound; or

8 (C) is derived from a plant or animal residue or byproduct or a natural material deposit that has been  
9 processed in such a way that its content of primary plant nutrients has not been materially changed except by  
10 purification and concentration.

11 (iii) Mixed fertilizer is commercial fertilizer, dry or liquid, that contains any combination or mixture of  
12 fertilizer materials.

13 (iv) Specialty fertilizer is commercial fertilizer, dry or liquid, that is distributed primarily for nonfarm use  
14 and includes commercial fertilizers used for research or experimental purposes.

15 (4) "Custom blend" means a fertilizer blended according to specifications provided to a blender in a soil  
16 test nutrient recommendation or to meet a specific consumer request prior to blending.

17 (5) "Deficiency" means the amount of nutrient found by analysis to be less than that guaranteed.  
18 Deficiency may result from a lack of nutrient ingredients or a lack of uniformity.

19 (6) "Distribute" means to offer for sale, sell, barter, or otherwise supply commercial fertilizers or soil  
20 amendments.

21 ~~(7) "Distributor" means a person who distributes.~~

22 ~~(8)~~(7) "Grade" means the percentages of total nitrogen, available phosphate, and soluble potash stated  
23 in whole numbers in the same terms, order, and percentages as in the guaranteed analysis. Specialty fertilizers  
24 may be guaranteed in fractional units of less than 1% of total nitrogen, available phosphate, and soluble potash.  
25 Fertilizer materials, bonemeal, manures, and similar materials may be guaranteed in fractional units.

26 ~~(9)~~(8) "Guaranteed analysis" means the minimum percentage of plant nutrients as described in  
27 80-10-102.

28 ~~(10)~~(9) "Investigational allowance" means an allowance for variations inherent in the taking, preparation,  
29 and analysis of an official sample of fertilizer.

30 ~~(11)~~(10) "Label" means the display of all written, printed, or graphic matter on a container or a statement

1 accompanying a fertilizer or soil amendment.

2 ~~(12)~~(11) "Labeling" means all written, printed, or graphic matter on or accompanying any fertilizer or soil  
3 amendment and advertisements, brochures, websites, posters, and television and radio announcements used  
4 in promoting the sale of a fertilizer or soil amendment.

5 ~~(13)~~(12) "Licensee" means a person licensed under 80-10-202.

6 ~~(14)~~(13) "Local legislation" means but is not limited to any ordinance, motion, resolution, amendment,  
7 regulation, or rule adopted by a political subdivision.

8 ~~(15)~~(14) "Manufacture" means the formulation, mixing, blending, or further processing of commercial  
9 fertilizers or soil amendments.

10 ~~(16)~~(15) "Manufacturer" means a person who manufactures commercial fertilizer or soil amendments.

11 ~~(17)~~(16) "Official sample" means any sample of commercial fertilizer taken by the department and  
12 designated as official by the department.

13 ~~(18)~~(17) "Other ingredients" means nonsoil amending ingredients present in soil amendments.

14 ~~(19)~~(18) "Percent or percentage" means the percentage by weight.

15 ~~(20)~~(19) "Person" means an individual, partnership, association, firm, or corporation.

16 ~~(21)~~(20) "Political subdivision" means any local government entity, including but not limited to any city,  
17 county, town, or municipal corporation and any other corporate or political body that is responsible for government  
18 activities in a geographic area smaller than the state.

19 ~~(22)~~(21) "Primary nutrient" means the total nitrogen (N), available phosphate ( $P_2O_5$ ), and soluble potash  
20 ( $K_2O$ ).

21 ~~(23)~~ "Quarterly" means the periods from January 1 through March 31, April 1 through June 30, July 1  
22 through September 30, and October 1 through December 31.

23 ~~(24)~~(22) "Registrant" means the person who registers a commercial fertilizer or a soil amendment.

24 ~~(25)~~(23) (a) "Soil amendment" means any substance that is intended to improve the physical or chemical  
25 characteristics of soil.

26 (b) The term does not include commercial fertilizers, unmanipulated animal or vegetable manures,  
27 pesticides, and other ingredients that are exempted from the definition by rule.

28 ~~(26)~~(24) "Supplier" means a person who distributes fertilizers or soil amendments into Montana.

29 ~~(27)~~(25) "Ton" means a net weight of 2,000 pounds.

30 ~~(28)~~(26) "Unmanipulated animal or vegetable manures" means substances composed primarily of

1 excreta, plant remains, or mixtures of those substances that have not been processed in any manner, including  
2 the addition of plant nutrients, drying, grinding, and other means."

3

4 **Section 5.** Section 80-10-201, MCA, is amended to read:

5 **"80-10-201. Registration.** (1) (a) Each brand and grade of fertilizer and each soil amendment except  
6 unmanipulated animal or vegetable manures must be registered by the manufacturer or the supplier on behalf  
7 of the manufacturer before distribution in this state. The application for registration must be submitted to the  
8 department on a form approved by the department and must be accompanied by:

9 (i) a nonrefundable fee of \$20 per grade for each fertilizer and for each soil amendment;

10 (ii) a nonrefundable fee of \$35 for each specialty fertilizer; and

11 (iii) a fee of \$10 for each commercial and specialty fertilizer to be used for ground water protection, as  
12 required in 80-15-302(3).

13 (b) Upon approval, the department shall furnish a copy of the registration to the applicant. All  
14 registrations expire on December 31 of each year.

15 (2) (a) The application for registration must include:

16 (i) the brand and grade;

17 (ii) the guaranteed analysis;

18 (iii) the source of each plant food element guaranteed;

19 (iv) the name and address of the registrant;

20 (v) the net weight for packaged products;

21 (vi) an electronic copy of each label and labeling when requested by the department; and

22 (vii) analytical information on nutrient ingredients and nonnutrient ingredients as required by rule.

23 (b) The department shall require the applicant to furnish replicated data, performed by a reputable  
24 investigator whose work is recognized as acceptable by the director of the agricultural experiment station or the  
25 director's designee, verifying any claims for effectiveness or agricultural value of any fertilizer or soil amendment  
26 product that is not generally recognized as having the values claimed at the use rates recommended.

27 (3) A distributor or licensee is not required to register any brand and grade of commercial fertilizer that  
28 is already registered under this section by another person.

29 (4) Registration is not required for custom blends resulting from blending of registered products.

30 (5) A manufacturer or supplier may not register a product until full payment of the assessment fees

1 provided for in 80-10-103 and 80-10-207 has been received by the department for each product."

2

3 **Section 6.** Section 80-10-202, MCA, is amended to read:

4 **"80-10-202. License required.** A person may not distribute in this state any type of fertilizer or soil  
5 amendment, except unmanipulated animal or vegetable manures or specialty fertilizer, until a license to distribute  
6 has been obtained from the department for each facility distributing into this state and for each handling facility  
7 in this state. All new applicants ~~or those failing to renew their licenses by January 1 of each year~~ shall pay a  
8 nonrefundable \$75 fee for each license. All licenses expire on December 31 of each year and are subject to the  
9 following:

10 (1) The application for license must be on forms approved by the department.

11 (2) License renewals received by the department prior to January 1 of each year must be accompanied  
12 by a fee of \$50 for each license.

13 (3) The department may collect a \$25 late penalty for a license renewal received after December 31.

14 ~~(3)~~(4) Before distributing any commercial fertilizer or soil amendment into the state, a person must be  
15 licensed as a supplier."

16

17 **Section 7.** Section 80-10-203, MCA, is amended to read:

18 **"80-10-203. Fertilizer to be uniform.** (1) The plant nutrient content of every brand and grade of  
19 commercial fertilizer shall remain uniform for the period of registration.

20 (2) The manufacturer or ~~distributor~~ licensee shall at all times deliver a uniform grade of fertilizer or soil  
21 amendment. When two or more fertilizers are delivered in the same load, they shall be thoroughly and uniformly  
22 mixed unless they are in separate compartments."

23

24 **Section 8.** Section 80-10-204, MCA, is amended to read:

25 **"80-10-204. Labeling.** (1) All commercial fertilizer distributed in this state in containers must have affixed  
26 to the container a label setting forth in clearly legible and conspicuous form the following information:

27 (a) net weight;

28 (b) name and address of the registrant or guarantor;

29 (c) brand;

30 (d) grade, except if no primary nutrients are claimed;

1 (e) guaranteed analysis;

2 (f) directions for use of the fertilizer by the end user; and

3 (g) other requirements as established by rule.

4 (2) Any bin in the state in which commercial fertilizer is stored for distribution must have affixed to or

5 printed on it a label setting forth in clearly legible and conspicuous form:

6 (a) the guaranteed analysis of the product in the bin; and

7 (b) other requirements established by rule.

8 (3) All commercial fertilizer delivered in this state in bulk, whether a manufactured grade or blended

9 grade, must be accompanied by a clearly legible document that must be supplied to the purchaser at the time

10 of delivery. The document must show:

11 (a) net weight;

12 (b) name and address of the ~~distributor~~ licensee, registrant, or guarantor;

13 (c) guaranteed analysis or, on custom-blended fertilizer, the net weight and guaranteed analysis of each

14 ingredient added; and

15 (d) other requirements as established by rule.

16 (4) (a) When distributed in containers, soil amendments must have a label affixed to the container setting

17 forth in clearly legible and conspicuous form the following information:

18 (i) net weight;

19 (ii) name and address of the registrant or guarantor;

20 (iii) brand and product name;

21 (iv) guaranteed analysis;

22 (v) soil amending ingredients listed in the following form:

23 Name of ingredient (identify and list all) ..... %

24 Total other ingredients ..... %

25 (vi) purpose of the product; and

26 (vii) other requirements, such as particle size, as established by rule.

27 (b) In the case of bulk shipments of soil amendments, the information required in subsection (4)(a) must

28 be in clearly legible written or printed form, must accompany delivery, and must be supplied to the purchaser at

29 the time of delivery."

30



1           **Section 9.** Section 80-10-207, MCA, is amended to read:

2           **"80-10-207. Fees.** (1) (a) Each in-state manufacturer or out-of-state supplier shall pay to the department  
3 fees on all commercial fertilizer distributed in this state, except specialty fertilizers and unmanipulated animal or  
4 vegetable manures. Sales to manufacturers or exchanges between manufacturers are exempt. The fees are as  
5 follows:

6           (i) The department may by rule adjust the inspection fee to maintain adequate funding for the  
7 administration of this part. The fee may not be less than 20 cents per ton or more than 25 cents per ton. A change  
8 in fee becomes effective on the first day of a reporting period. All in-state manufacturers and out-of-state suppliers  
9 of nonexempt products must be given notice of a change in fees before the effective date.

10           (ii) The department may by rule adjust the anhydrous ammonia inspection fee to maintain adequate  
11 funding for the administration and enforcement of part 5 of this chapter. The fee may not be less than 65 cents  
12 per ton or more than \$1.30 per ton. A change in fee becomes effective on the first day of a reporting period. All  
13 in-state manufacturers and out-of-state suppliers of anhydrous ammonia must be given notice of a change in fees  
14 before the effective date of the fee adjustment.

15           (iii) The assessment fee prescribed in 80-10-103 must be used to fund educational and experimental  
16 programs as provided in 80-10-103 through 80-10-106.

17           (b) If fertilizer material or soil amendment is added to fertilizer for which a fee has been paid under  
18 subsection (1)(a), a fee is due only on the fertilizer material or soil amendment for which a fee has not been paid.

19           (c) Fees must be paid only if they total more than \$5 in a reporting period.

20           (2) There must be paid to the department on all soil amendments distributed in this state an inspection  
21 fee of 10 cents per ton subject to the following provisions:

22           (a) sales to manufacturers or exchanges between them are exempt; and

23           (b) when less than 50 tons of a registered soil amendment is sold in a ~~quarterly~~ reporting period, no  
24 payment is due.

25           (3) (a) (i) Each licensee who distributes a soil amendment or commercial fertilizer, except specialty  
26 fertilizer and unmanipulated animal or vegetable manures, to an unlicensed person in this state shall file with the  
27 department on forms approved by the department a semiannual tonnage statement for the reporting periods  
28 ending June 30 and December 31. ~~setting forth~~ This tonnage statement must indicate the number of net tons of  
29 each commercial fertilizer and soil amendment distributed in this state during the 6-month period. The ~~report~~  
30 tonnage statement is due ~~on or before the 30th day of the month following the close of each period~~ 30 days after

1 the last day of the reporting period. There are no fees associated with the semiannual ~~report~~ tonnage statement.

2 (ii) Each in-state manufacturer and out-of-state supplier who distributes a soil amendment or commercial  
3 fertilizer in this state to a person regardless of license status, except specialty fertilizer and unmanipulated animal  
4 or vegetable manures, shall file with the department on forms approved by the department ~~a quarterly an~~  
5 inspection fee statement for each of the reporting periods ending June 30 and December 31. ~~setting forth~~ The  
6 inspection fee statement must indicate the number of net tons of each commercial fertilizer and soil amendment  
7 distributed in this state during the ~~quarter~~ reporting period and to whom it was distributed. The report is due ~~on~~  
8 ~~or before~~ 30 days after the ~~end of the quarterly~~ last day of the reporting period. The in-state manufacturer or  
9 out-of-state supplier shall pay the fees set forth in subsection (1) at that time.

10 (b) If the ~~tonnage report~~ inspection fee statement required by subsection (3)(a)(ii) is not filed and the  
11 payment of fees is not made within 30 days after the end of the ~~quarterly~~ reporting period, a ~~collection fee of 15%~~  
12 ~~annual percentage rate~~ late fee of 10% on the amount due but not less than ~~\$10~~ \$25 must be assessed against  
13 the in-state manufacturer or out-of-state supplier, ~~and the.~~ The amount of fees due constitutes a debt and  
14 becomes the basis of a judgment against the in-state manufacturer or out-of-state supplier.

15 (4) Except as provided in subsection (5), all fees collected for licenses, registration, and inspection and  
16 money collected as penalties must be deposited in the state treasury to the credit of the state special revenue  
17 fund for the purpose of administering this chapter, including the cost of equipment and facilities and the cost of  
18 inspecting, analyzing, and examining commercial fertilizer and soil amendments manufactured or distributed in  
19 this state. Reserve funds may be invested by the department with interest credited to the state special revenue  
20 fund.

21 (5) All fees collected under subsection (1)(a)(ii) must be deposited in the state treasury to the credit of  
22 the state special revenue fund, anhydrous ammonia account, for the administration and enforcement of part 5  
23 of this chapter and the rules adopted under part 5. The department may direct the board of investments to invest  
24 the funds collected under subsection (1)(a)(ii) pursuant to the provisions of 17-6-201. The income from the  
25 investment must be deposited in the anhydrous ammonia account in the state special revenue fund."

26

27 **Section 10.** Section 80-10-303, MCA, is amended to read:

28 **"80-10-303. Violations -- enforcement proceedings -- judicial review.** (1) If it appears from the  
29 examination of commercial fertilizer or from the inspection of an anhydrous ammonia facility that this chapter or  
30 the rules adopted under this chapter have been violated, the department shall give notice of the violations to the

1 registrant, licensee, distributor, or possessor from whom the sample was taken. A person notified must be given  
2 an opportunity to be heard under rules of the department. If it appears after a hearing, either in the presence or  
3 absence of the person notified, that this chapter or rules issued under this chapter have been violated, the  
4 department may certify the facts to the proper prosecuting attorney.

5 (2) A person who violates this chapter or the rules adopted under this chapter or who obstructs, prevents,  
6 or attempts to prevent the department from performing its duty may be fined not less than \$300 or more than \$500  
7 for the first violation and not less than \$300 or more than \$1,000 for a subsequent violation. In all actions under  
8 this chapter involving the composition of a lot of commercial fertilizer, a certified copy of the official analysis of  
9 the department is prima facie evidence of the composition.

10 (3) This chapter does not require the department to report for prosecution or for the beginning of seizure  
11 proceedings minor violations of this chapter when it believes that the public interest will be best served by a  
12 suitable notice of warning in writing.

13 (4) A prosecuting attorney to whom a violation is reported shall prosecute the violator in a court of  
14 competent jurisdiction without delay.

15 (5) The department may apply for and the court may grant a temporary or permanent injunction  
16 restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule  
17 adopted under the chapter notwithstanding the existence of other remedies at law. The injunction must be issued  
18 without bond.

19 (6) If an in-state manufacturer or supplier fails to pay a fee required under 80-10-207, the manufacturer  
20 or supplier may be fined an amount up to \$1,000 or twice the fee that should have been paid, whichever is higher.  
21 If a supplier fails to obtain a license as required in ~~80-10-202(3)~~ 80-10-202, the supplier may be assessed a civil  
22 penalty of \$500 for each ~~quarter~~ reporting period that the supplier fails to be licensed, in addition to any other  
23 amounts owed to the state.

24 (7) If a person adversely affected by an act, order, or ruling made by the department under this chapter  
25 is not entitled to a hearing before the department to determine the person's rights, the person may within 45 days  
26 sue in the district court of any county where the alleged violation giving rise to the department's act, order, or  
27 ruling occurred for a new trial of the issues bearing upon the act, order, or ruling. After the trial the court may  
28 issue and enforce those orders, judgments, or decrees that it considers proper, just, and equitable."  
29

30 NEW SECTION. **Section 11. Saving clause.** [This act] does not affect rights and duties that matured,

1 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

2

3 NEW SECTION. **Section 12. Severability.** If a part of [this act] is invalid, all valid parts that are  
4 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
5 the part remains in effect in all valid applications that are severable from the invalid applications.

6

7 NEW SECTION. **Section 13. Effective date.** [This act] is effective on passage and approval.

8

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