

CHAPTER 04.1-40.1

BIOSTIMULANT AND BENEFICIAL SUBSTANCE REGULATION

4.1-40.1-01. Definitions.

1. "Beneficial substance" means a substance or compound, which includes a plant amendment, plant biostimulant, plant inoculant, soil amendment, soil inoculant, and other chemical or biological materials benefiting the growing environment of plants demonstrated by scientific research to be beneficial to one or more species of plants, soils, or media. The term does not include a primary, secondary, or microplant nutrient or pesticides.
2. "Brand" means a term, designation, trademark, product name, or other specific designation under which an individual beneficial substance is offered for sale.
3. "Bulk" means products in nonpackaged form.
4. "Distribute" means to import, consign, manufacture, produce, compound, mix, or blend beneficial substances, or offer for sale, sell, barter, or otherwise supply beneficial substances in the state.
5. "Distributor" means a person that imports, consigns, manufactures, produces, compounds, mixes, or blends beneficial substances, or offers for sale, sells, barter, or otherwise supplies beneficial substances in the state.
6. "Label" means the display of all written, printed, or graphic matter upon the immediate container or statement accompanying a beneficial substance.
7. "Labeling" means informational materials advertising the sale of a beneficial substance, which includes a written, printed, graphic, or electronic communication.
8. "Official sample" means any sample of a beneficial substance taken by the commissioner or the commissioner's agent and designated as official by the commissioner.
9. "Person" means an individual or organization.
10. "Plant amendment" means a substance applied to a plant or seed intended to improve growth, yield, product quality, reproduction, flavor, or other favorable characteristics of plants. The term does not include fertilizers, soil amendments, agricultural liming materials, animal and vegetable manure, pesticides, plant regulators, and other materials which may be exempt by regulation.
11. "Plant biostimulant" means a substance or micro-organism that, when applied to seeds, plants, the rhizosphere, soil, or other growth media, supports a plant's natural nutrition processes independently of the biostimulant's nutrient content, which ultimately improves nutrient availability, uptake, or use efficiency; tolerance to abiotic stress; and consequent growth, development, quality, or yield.
12. "Plant inoculant" means a product consisting of micro-organisms applied to a plant or soil to enhance the availability or uptake of plant nutrients through the root system.
13. "Registrant" means the person that registers the beneficial substance that bears the person's company name on the label and is the guarantor.
14. "Soil amendment" means any substance or a mixture of substances which is intended to improve the physical, chemical, biochemical, biological, or other characteristic of the soil. The term does not include fertilizers, agricultural liming materials, unmanipulated animal manures, unmanipulated vegetable manures, pesticides, and other materials exempt by regulation.
15. "Soil inoculant" means a microbial product applied to colonize soil to benefit soil chemistry, biology, or structure.

4.1-40.1-02. Required labeling.

1. Except for materials exempt under this chapter, the label on a beneficial substance must contain in a readable and conspicuous form:
 - a. The brand, including the product name;
 - b. The net weight or net volume in both customary and metric measurements;
 - c. The name and address of the guarantor, registrant, and manufacturer;
 - d. A statement identifying the purpose of the product;

- e. The directions for use; and
- f. A statement of composition showing the amount of each ingredient under the heading "CONTAINS BENEFICIAL SUBSTANCES", which is the agent in a product primarily responsible for the intended effects, containing the:
 - (1) Name and percentage of each beneficial substance and the ingredient source if applicable;
 - (2) Genus and species of the micro-organism, if applicable; and
 - (3) Specific measurement of the colony forming unit or other acceptable unit.
- 2. For a product claiming micro-organisms, the labels must include the:
 - a. Information required under subsection 1;
 - b. Expiration date for use; and
 - c. Appropriate storage conditions and practices.
- 3. If an ingredient not presently defined by the American association of plant food control officials in the United States is used in a beneficial substance, the label must include efficacy data to support beneficial substance ingredient claims.
- 4. If a beneficial substance is part of a bulk shipment, the information provided under subsection 1 must accompany delivery and be supplied to the purchaser at the time of delivery.

4.1-40.1-03. Distributor's license - Fees.

- 1. A person may not distribute a beneficial substance in this state without first obtaining a distributor's license from the commissioner.
- 2. A license is required for each location or mobile mechanical unit used by a distributor in the state.
- 3. The application for a license must be submitted on a form furnished by the commissioner and must be accompanied by a fee of one hundred dollars.
- 4. A license is effective for a two-year period beginning July first and ending June thirtieth of each even-numbered year.
- 5. A license renewal application received after July thirty-first must be assessed a penalty of one hundred dollars per location.
- 6. A license issued under this section:
 - a. Is not transferable;
 - b. Must be conspicuously posted at each location used by the distributor; and
 - c. Must be carried in each mobile mechanical unit operated by the distributor in the state.
- 7. The commissioner shall forward all fees received under this section to the state treasurer for deposit in the environment and rangeland protection fund.

4.1-40.1-04. Product registration - Fees.

- 1. Each brand of a beneficial substance must be registered in the name of the person appearing on the label before being offered for sale or distributed in this state.
- 2. The application for registration must be submitted to the commissioner on a form furnished by the commissioner and must be accompanied by a:
 - a. Current product label; and
 - b. Fee of fifty dollars per product.
- 3. Each brand registration is effective for a two-year period beginning July first and ending June thirtieth of each even-numbered year.
- 4. A request for a registration renewal received after July thirty-first must be assessed a penalty of one hundred dollars per product.
- 5. A distributor is not required to register a product listed in subsection 1 if that product is already registered by another person, provided the label complies with the issued registration.
- 6. The commissioner shall forward all fees received under this section to the state treasurer for deposit in the environment and rangeland protection fund.

4.1-40.1-05. Inspection fee.

1. An inspection fee of ten dollars or twenty cents per ton [907.18 kilograms], whichever is greater, must be paid to the commissioner on a beneficial substance distributed in this state.
2. This subsection does not apply to:
 - a. Exchanges of product between a manufacturer and distributor; or
 - b. An individual beneficial substance sold exclusively in a package of ten pounds [4.54 kilograms] or less.
3. On or before January thirty-first, each licensed person that distributes a beneficial substance in this state shall:
 - a. File with the commissioner a form stating the number of net tons [kilograms] of each listed product distributed in this state during the preceding calendar year; and
 - b. Submit to the commissioner the inspection fee required by this section.
4. If a person fails to submit an inspection fee, at the time and in the manner required by this section, the commissioner may impose a penalty of ten dollars or ten percent of the amount due, whichever is greater. The requirements of subsection 3 apply only to the last licensed person to handle the same lot of a beneficial substance.
5. Each distributor shall keep records regarding purchases and sales for three years. The records may be examined by the commissioner upon request.
6. The commissioner shall forward all fees received under this section to the state treasurer for deposit in the environment and rangeland protection fund.

4.1-40.1-06. Exemptions.

1. When clearly and conspicuously identified on a label, soil amending materials under this subsection are exempt, which include:
 - a. Hay;
 - b. Straw;
 - c. Peat;
 - d. Leaf mold;
 - e. Sand;
 - f. Perlite;
 - g. Vermiculite;
 - h. Gypsum; and
 - i. Vermicompost.
2. Instead of a statement of composition as required in this chapter, the label of the following soil amendments when clearly and conspicuously identified on the label must include an ingredient statement, unless specific beneficial substance claims are made:
 - a. Compost;
 - b. Garden soil;
 - c. Landscaping soil or topsoil;
 - d. Mulch or wood products;
 - e. Planting mix;
 - f. Potting mix; and
 - g. Soilless growing media.
3. The commissioner may exempt soil amendments and other products under this chapter.

4.1-40.1-07. Cancellation of registration.

1. The commissioner may cancel the registration of any beneficial substance product or refuse to register any beneficial substance product as provided in this chapter due to:
 - a. An incomplete or insufficient registration application;
 - b. The misbranding or adulteration of a beneficial substance; or
 - c. A violation of this chapter or rules adopted under this chapter.
2. If the commissioner cancels or refuses to renew an existing registration due to the misbranding or adulteration of a beneficial substance or due to a violation of this

chapter or a rule adopted under this chapter, the registrant or applicant may request a hearing.

4.1-40.1-08. Inspection, sampling, and analysis.

1. The commissioner may act through an authorized agent to sample, inspect, make analyses of, and test beneficial substances distributed within the state when it is necessary to determine if a beneficial substance complies within the provisions of this chapter. The commissioner may enter into or upon any point of distribution during operating hours upon notice and open and sample any bulk material, bundle, package, or other container containing or thought to contain a beneficial substance, and to inspect labels or access records pertaining to the distribution of the beneficial substance.
2. The methods of analysis and sampling must be methods approved by the commissioner, including methods adopted by the journal of the association of agricultural chemists international.
3. A single package may constitute an official sample. In determining whether a beneficial substance is deficient, the commissioner may consider only the analysis of the official sample.
4. If the results of the commissioner's official analysis indicate a beneficial substance may be the subject of a penalty or other legal action, the commissioner shall forward the analysis to the registrant at least ten days before the report is submitted to the purchaser. If during the ten-day period, no adequate evidence to the contrary is made available to the commissioner by the registrant, the report becomes official.
5. The commissioner shall retain an official sample found to be deficient for thirty days following the issuance of the analytical report.
6. Upon request, the commissioner shall furnish to the registrant a portion of a sample found to be the subject of a penalty or other legal action.

4.1-40.1-09. Unlawful acts.

It is unlawful for a person to:

1. Distribute an unregistered beneficial substance, unless exempt from the registration requirements of this section;
2. Distribute a misbranded or adulterated beneficial substance;
3. Distribute a beneficial substance if the label does not reflect its composition;
4. Distribute a product as a beneficial substance if the sole function is to serve as a pesticide;
5. Fail to supply the commissioner with an analysis of a beneficial substance when requested by the commissioner or the commissioner's designee;
6. Fail to disclose on the label sources of potentially deleterious components;
7. Fail to cease distribution of any beneficial substance for which the commissioner has issued a stop sale order; or
8. Obstruct the commissioner in the performance of the duties under this chapter.

4.1-40.1-10. Misbranding of beneficial substance prohibited.

A person may not distribute a misbranded beneficial substance. A beneficial substance is deemed to be misbranded if the:

1. Labeling is false or misleading;
2. Beneficial substance is distributed under the name of another beneficial substance; and
3. Beneficial substance is not labeled as required by this chapter or in accordance with regulations prescribed under this chapter.

4.1-40.1-11. Adulteration of a beneficial substance prohibited.

A person may not distribute an adulterated beneficial substance. A beneficial substance is deemed to be adulterated if the beneficial substance:

1. Contains any deleterious or harmful substance in sufficient amount to render it injurious to beneficial plant life, animals, humans, aquatic life, soil, or water when applied in accordance with directions for use on the label;
2. Does not provide on the label of the substance adequate warning statements and directions for use, which may be necessary to protect plant life, animals, humans, aquatic life, soil, or water;
3. Composition falls below or differs from that which it is purported to possess by its label or any labeling which describes the composition of the beneficial substance; or
4. Contains unwanted crop or weed seed, or primary noxious or secondary noxious weed seed.

4.1-40.1-12. Stop sale order.

If the commissioner finds the beneficial substance product is being offered or exposed for sale in violation of this chapter, the commissioner may issue an order to stop the sale or use to the owner or custodian of any product containing beneficial substances. The order must remain in effect until the commissioner:

1. Determines the law has been complied with;
2. Gives written authorization for the disposal of the product; or
3. Gives written authorization for the product to be offered for sale.

4.1-40.1-13. Penalties.

1. Any person that knowingly violates this chapter is guilty of a class A misdemeanor.
2. When construing and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person must be deemed also to be the act, omission, or failure of the person or the employed person.
3. A person that violates this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed two thousand five hundred dollars per violation. The civil penalty may be imposed by a court in a civil proceeding or by the agriculture commissioner through a proceeding under chapter 28-32. The assessment of a civil penalty does not preclude the imposition of other sanctions authorized by law, this chapter, or rules adopted under this chapter.
4. After the hearing, the commissioner may deny, suspend, revoke, or modify the provision of a certification issued under this chapter, if the commissioner determines the applicant for certification or the holder of a certificate has violated this chapter or a rule adopted under this chapter.

4.1-40.1-14. Rules.

The commissioner may adopt rules under chapter 28-32 to to effectuate the provisions of this chapter.