

Enrolled House Bill 2211

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CHAPTER

AN ACT

Relating to soil enhancing products; creating new provisions; and amending ORS 633.311, 633.321, 633.331, 633.336, 633.341, 633.351, 633.362, 633.364, 633.366, 633.371, 633.385, 633.445, 633.461, 633.471, 633.476, 633.479 and 633.994.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 633.311 is amended to read:

633.311. As used in ORS 633.311 to 633.479 [and 633.994]:

(1) "Agricultural amendment":

(a) Means a mixed or unmixed synthetic [organic] chemical substance, a chemically or physically modified natural substance, a naturally occurring substance or a manufacturing by-product, or [combination thereof] a **combination of those substances or by-products**, intended [as a source of plant food,] to induce crop yields or plant growth or to produce any physical, **microbial** or chemical change in the soil. ["Agricultural amendment" does not include:]

(b) **Does not mean any of the following:**

[(a)] (A) Fertilizer products.[];

[(b)] (B) Agricultural mineral products.[];

[(c)] (C) Lime products.[];

[(d)] (D) Hays.[];

[(e)] (E) Straws.[];

[(f)] (F) Peat.[];

[(g)] (G) Leaf mold.[];

[(h)] (H) Sands.[];

[(i)] (I) Expanded silicates.[];

[(j)] (J) Biosolids-derived products, compost and animal or vegetable manures that are not packaged and do not contain a grade statement or guaranteed analysis.[];

[(k)] (K) Biosolids, domestic septage and domestic wastewater treatment facility solids regulated under ORS chapters 468 and 468B.[]; and]

(L) Reclaimed water or treated effluent regulated under ORS [468.020,] 468B.010 and 468B.015 **or rules adopted under ORS 468.020.**

(2) "Agricultural mineral":

(a) Means a mineral substance, mixture of mineral substances or mixture of mineral and organic substances containing less than five percent of [available] **total** nitrogen (N), available phosphate (P₂O₅) or soluble potash (K₂O), singly, collectively or in combination, designed for use principally

as a source of plant food, in inducing increased crop yields or plant growth or producing any physical, **microbial** or chemical change in the soil. [*“Agricultural mineral” does not include:*]

(b) Does not mean any of the following:

[(a)] (A) Fertilizer products.[:]

[(b)] (B) Agricultural amendment products.[:]

[(c)] (C) Lime products.[:]

[(d)] (D) Sand.[:]

[(e)] (E) Soil.[:]

[(f)] (F) Biosolids-derived products, compost and animal or vegetable manures that are not packaged and do not contain a grade statement or guaranteed analysis.[:]

[(g)] (G) Biosolids, domestic septage and domestic wastewater treatment facility solids regulated under ORS chapters 468 and 468B.[: and]

[(h)] (H) Reclaimed water or treated effluent regulated under ORS [468.020,] 468B.010 and 468B.015 **or rules adopted under ORS 468.020.**

(3) “Available phosphate” means the sum of the water soluble and citrate soluble phosphate.

(4) “Bulk” [or *“bulk sale” is the sale, offering for sale or delivery of*] **means** a fertilizer, agricultural [*mineral, agricultural*] amendment, **agricultural mineral** or lime product, or [of] a custom mix, **that is distributed** in unpackaged form, such as [*in open containers, closed or open tote boxes,*] **rail cars**, closed or open tanks, closed or open trailers, spreader trucks or other types of containers, vehicles or conveyances as determined by **the State Department of Agriculture by rule.**

(5) “Compost” means a substance derived primarily or entirely from the decomposition of vegetative or animal organic material that is [*sold or offered for sale*] **distributed** for the purpose of promoting or stimulating plant growth and to which no fertilizer, agricultural [*mineral, agricultural*] amendment, **agricultural mineral** or lime product is added other than to promote decomposition.

(6) “Custom mix” means a mixture of fertilizer, agricultural [*mineral, agricultural*] amendment, **agricultural mineral** or lime product, each lot or batch of which is mixed according to the specific instructions of or is prescribed for the special use of the final purchaser.

(7) “Department” means the State Department of Agriculture.

(8) “Director” means the Director of Agriculture.

(9) **“Distribute” means to import, consign, sell, offer for sale, barter, exchange or otherwise facilitate the supplying of fertilizer, agricultural amendment, agricultural mineral or lime products.**

[(9)] (10) “Distributor” means a person who [*imports, consigns, sells or offers for sale, barter, exchanges or otherwise facilitates the supply of*] **distributes** fertilizer, agricultural [*mineral, agricultural*] amendment, **agricultural mineral** or lime [*product*] **products.**

[(10)] (11) “Fertilizer”:

(a) Means any substance, or any combination or mixture of substances, that is designed for use primarily as a source of plant food, in inducing increased crop yields or plant growth, or producing any physical, **microbial** or chemical change in the soil, and that contains five percent or more of [*available*] **total** nitrogen (N), available phosphate (P₂O₅) or soluble potash (K₂O), singly, collectively or in combination. [*“Fertilizer” does not include:*]

(b) Does not mean any of the following:

[(a)] (A) Agricultural [*mineral*] **amendment** products.[:]

[(b)] (B) Agricultural [*amendment*] **mineral** products.[:]

[(c)] (C) Lime products.[:]

[(d)] (D) Hays.[:]

[(e)] (E) Straws.[:]

[(f)] (F) Peat.[:]

[(g)] (G) Leaf mold.[:]

[(h)] (H) Biosolids-derived products, compost and [*unpackaged*] animal or vegetable manures that **are not packaged and** do not contain a grade statement or guaranteed analysis.[:]

[(i)] **(I)** Biosolids, domestic septage and domestic wastewater treatment facility solids regulated under ORS chapters 468 and 468B.[]; *and*]

[(j)] **(J)** Reclaimed water [*and*] **or** treated effluent regulated under ORS [468.020,] 468B.010 and 468B.015 **or rules adopted under ORS 468.020.**

[(11)] **(12)** “Grade” means the minimum percentage claimed for [*available*] **total** nitrogen (N), available phosphate (P₂O₅) or soluble potash (K₂O) stated in the same terms, order and percentages as the guaranteed analysis.

[(12)] **(13)** “Guaranteed analysis” means the minimum percentage of the following claimed to be present in a product:

- (a) Primary nutrients;
- (b) Secondary nutrients;
- (c) Micronutrients;
- (d) Neutralizing [*capability*] **capacity**; or
- (e) Substances claimed to induce crop yields or plant growth or to produce any physical, **microbial** or chemical change in the soil.

[(13)] **(14)** “Label” means all written, printed or graphic matter on the immediate container or on a [*statement or invoice*] **separate document** accompanying any fertilizer, agricultural [*mineral, agricultural*] amendment, **agricultural mineral** or lime product.

[(14)] **(15)** “Labeling” means a printed or verbal representation used to promote the [*sale*] **distribution** of any fertilizer, agricultural [*mineral, agricultural*] amendment, **agricultural mineral** or lime product, including but not limited to a representation by means of:

- (a) Brochures;
- (b) Posters;
- (c) Internet;
- (d) Television; and
- (e) Radio.

[(15)] **(16)** “Lime” means any substance or mixture of substances [*whose*] **having** calcium [*and*] **or** magnesium compounds [*are*] capable of neutralizing soil acidity.

[(16)] **(17)** “Lime score” means a numerical expression of the quality of lime, as determined by the department by rule.

[(17)] **(18)** “Manufacture” means to compound, produce, granulate, mix, blend, repackage or otherwise alter the composition of fertilizer, agricultural [*mineral, agricultural*] amendment, **agricultural mineral** or lime product.

[(18)] **(19)** “Micronutrient” means boron (B), chlorine (Cl), cobalt (Co), copper (Cu), iron (Fe), manganese (Mn), molybdenum (Mo), sodium (Na) or zinc (Zn).

[(19)] **(20)** “Official sample” means any representative sample of product taken by the department or a representative of the department and designated as official.

[(20)] “*Package*” means any closed container, regardless of size, but does not mean the receptacle in which bulk product is sold, offered for sale or delivered.]

(21) “Package” means any closed container, regardless of size, other than the receptacle of a bulk product.

[(21)] **(22)** “Percent” or “percentage” means percentage by weight.

[(22)] **(23)** “Phosphate” means the amount of pentavalent phosphorus present in the material calculated as phosphorus pentoxide (P₂O₅) and expressed as available phosphate.

[(23)] **(24)** “Primary nutrient” means **total** nitrogen (N), available phosphate (P₂O₅) or soluble potash (K₂O).

[(24)] **(25)** “Product” means a readily distinguishable, individually labeled substance [*containing fertilizer, agricultural mineral, agricultural amendment or lime*].

[(25)] **(26)** “Registrant” means the person who registers a fertilizer, agricultural [*mineral, agricultural*] amendment, **agricultural mineral** or lime product under ORS 633.362.

[(26)] **(27)** “Secondary nutrient” means calcium (Ca), magnesium (Mg) or sulfur (S).

(28) **“Soluble potash” means the portion of potash that is soluble in aqueous ammonium oxalate, aqueous ammonium citrate or water.**

[(27)] (29) “Ton” means 2,000 pounds avoirdupois.

[(28)] (30) “Waste-derived product”:

(a) Means any **of the following**:

(A) Fertilizer, agricultural [*mineral, agricultural*] amendment, **agricultural mineral** or lime product derived in whole or in part from hazardous waste as defined in ORS 466.005 [(7)] or in rules adopted [*thereunder,*] **under ORS 466.015 and 466.020.**

(B) Solid waste as defined in ORS 459.005 [(24)] or in rules adopted [*thereunder, or*] **under ORS 459.045.**

(C) Industrial waste as defined in ORS 468B.005 [(2)] or in rules adopted [*thereunder.* “Waste-derived product” *does not include:*] **under ORS 468B.035.**

(b) **Does not mean:**

[(a)] (A) Biosolids, biosolids-derived products, domestic septage and domestic wastewater treatment facility solids regulated under ORS chapters 468 and 468B; or

[(b)] (B) Reclaimed water or treated effluent regulated under ORS [468.020,] 468B.010 and 468B.015 **or rules adopted under ORS 468.020.**

SECTION 2. ORS 633.321 is amended to read:

633.321. (1) [A person may not sell, offer for sale or distribute fertilizer, agricultural mineral, agricultural amendment or lime product, in package or in bulk, unless there is a printed label attached or applied to the package, or, in the case of bulk sale, a separate document that] **A person may not distribute fertilizer, agricultural amendment, agricultural mineral or lime products in packaged form unless there is a printed label attached or applied to the package. A person may not distribute fertilizer, agricultural amendment, agricultural mineral or lime products in bulk unless a label in the form of a separate document** physically accompanies the shipment and is furnished to the user or purchaser when each separate delivery is made, or when the last delivery **from the lot** is made [*of the entire lot or sale thereof*]. The [*printed*] label must include the following:

(a) The name under which the product is registered or [*sold*] **distributed.**

(b) The net weight or volume.

(c) The name and mailing address of the manufacturer, distributor or registrant.

(d) The product grade if primary nutrients are claimed.

(e) **The product density, in pounds per gallon at 68 degrees Fahrenheit, if the product is distributed as a bulk liquid.**

[(e)] (f) A guaranteed analysis. The guaranteed analysis must **immediately** follow the statement, “GUARANTEED ANALYSIS.” Guarantees must be based on a laboratory method of analysis approved by the State Department of Agriculture. The guaranteed analysis shall be stated on an “as is” basis at the time the fertilizer, agricultural [*mineral, agricultural*] amendment, **agricultural mineral** or lime product is [*offered for sale or*] distributed into or within this state. Primary nutrients, secondary nutrients and micronutrients that are claimed or advertised must be individually guaranteed.

[(f)] (g) A derivation statement declaring the sources for all primary [*and*] **nutrients**, secondary nutrients[,], **and** micronutrients [*and non-plant food ingredients*] guaranteed. The statement must be listed **immediately** below the [*completed*] guaranteed analysis. Abbreviations, brand names, trademarks and trade names may not appear in the derivation statement, but may appear as part of the product name in an area of the label that is separate from the derivation statement.

[(g)] (h) The identity and amount of ingredients other than primary nutrients, secondary nutrients and micronutrients that are claimed or advertised. The identity and amount must be guaranteed and determinable by laboratory methods approved by the department. The source of [*such*] **those** ingredients shall be [*placed*] **formatted** on the label as follows:

ALSO CONTAINS NON-PLANT

FOOD INGREDIENT(S):

____% Humic Acids (Derived from _____)

____% Other Determinable Non-Plant

Food Ingredients

[(h)] (i) A unique identifier for custom mixed products.

[(i)] (j) An Internet address that leads to a department website that is accessible to the public and contains product-specific information. The department shall adopt rules establishing the date for label compliance and the nature of product information that must be available through the website. The information[,] **must be** accessible by product name, ingredient or reportable substance[,] **and** shall include, at a minimum:

[(A) *The name of any product identified as waste-derived in an application for registration as provided in ORS 633.362 (9);*]

[(B) *The Standard Industrial Classification code of the facility that generated each waste-derived product or waste-derived ingredient of a product identified in subparagraph (A) of this paragraph; and*]

[(C) *The type and level of metals and other substances required by the department by rule to be reported for registration of any product as provided in ORS 633.362 (10).*]

(A) For any product identified in an application for registration under ORS 633.362 as being waste-derived, the product name and the Standard Industrial Classification code or North American Industry Classification System code of each facility that generated the waste-derived product or any waste-derived ingredient of the product; and

(B) The types and levels of metals and other substances for which a statement is required under ORS 633.362 (10) or required by department rule to be stated in the application for registration of a product.

(2)(a)(A) Primary nutrients that are claimed or advertised must be guaranteed and [placed] **formatted** on the label as follows:

GUARANTEED ANALYSIS:

Total Nitrogen (N) _____%

____% Ammoniacal Nitrogen

____% Nitrate Nitrogen

____% **Urea Nitrogen**

____% **Slowly Available Water Soluble Nitrogen**

____% **Water Insoluble Nitrogen**

____% [Water Soluble Organic Nitrogen or]

Other recognized and determinable forms of Nitrogen

[____% Water Insoluble Organic Nitrogen or]

[Water Insoluble Nitrogen]

Available Phosphate (P₂O₅) _____%

Soluble Potash (K₂O) _____%

(B) The guarantees for the forms of nitrogen must add up to the total nitrogen guarantee and may be shown by [subscript] **indentation**. The forms of nitrogen may be listed in an order other than the order listed in this subsection.

(b) In addition to guarantees of available phosphate (P₂O₅) and soluble potash (K₂O), the percentage of phosphorus (P) and potassium (K) may be shown by indentation [and subscript] **or** as

prescribed by the department. Phosphorous acid (expressed as H₃PO₃ or PO₃) cannot be claimed as a source of available phosphate.

(c) Unacidulated mineral phosphatic materials, bone[*tankage*] or other phosphatic materials [shall] **may** be guaranteed **and formatted** on the label as follows:

Available Phosphate (P₂O₅) _____%

_____ % Total Phosphate

_____ % Insoluble Phosphate

(3) The following secondary nutrients and micronutrients that are claimed or advertised must be guaranteed, [must] be placed on the label in the same order as listed in this subsection and [must] immediately follow the guaranteed analysis **for any primary nutrients claimed**. The guaranteed analysis of secondary nutrients and micronutrients shall be made on the elemental basis. When a chelated, water soluble or other form of plant nutrient is claimed or advertised in addition to the elemental form of the same secondary nutrient or micronutrient, the form and percentage must be guaranteed separately. Except for products defined by the department by rule, the minimum percentages that may be accepted for registration are as follows:

Calcium (Ca).....	1.0000%
Magnesium (Mg).....	0.5000%
Sulfur (S).....	1.0000%
Boron (B).....	0.0200%
Chlorine (Cl).....	0.1000%
Cobalt (Co).....	0.0005%
Copper (Cu).....	0.0500%
Iron (Fe).....	0.1000%
Manganese (Mn).....	0.0500%
Molybdenum (Mo).....	0.0005%
Sodium (Na).....	0.1000%
Zinc (Zn).....	0.0500%

(4) [The label for any] **If a** fertilizer, agricultural amendment, agricultural mineral or lime product [with added] **has** boron greater than 0.1 percent or [added] molybdenum greater than 0.001 percent, **the product label** must include a warning or cautionary statement that the product contains [added] boron or molybdenum and is to be used only according to the manufacturer's recommendations or directions.

(5)(a) If a fertilizer, agricultural [mineral or agricultural] amendment **or agricultural mineral** product is intended to be microbiological inoculum, the label must include:

(A) A product expiration date;

(B) The number of each viable organism per milliliter for liquid products or per gram for dry products; and

(C) The identification of each viable organism expressed as genus and species, and, if applicable, strain.

(b) If a fertilizer, agricultural [mineral or agricultural] amendment **or agricultural mineral** product is derived from a microbiological process or culture but is not intended to be a microbiological inoculum, the product label must include a statement that the product is not a viable culture.

(6) A product ingredient may not be listed, claimed or guaranteed on the label or labeling without prior approval by the department.

SECTION 3. ORS 633.331 is amended to read:

633.331. In addition to the [labeling] **label** requirements under ORS 633.321, the label for a lime product must include the following:

(1) The name of the particular form of lime. Forms of lime may include, but are not limited to, ground limestone, shells, burnt lime, lime hydrate, sugar lime, residue lime, dolomitic lime, lime sludge and waste lime.

(2) The guaranteed analysis, stating **the following**:

(a) The [minimum] percentage of calcium oxide (CaO) or calcium carbonate (CaCO₃).[;]

(b) The [minimum] percentage of magnesium oxide (MgO) or magnesium carbonate (MgCO₃).[;]

(c) The [minimum] total neutralizing [power] **capacity** expressed in terms of calcium carbonate equivalent (CCE).[;]

(d) The percentage of product that will pass, respectively, a 100-mesh, 40-mesh, 20-mesh and 10-mesh sieve. The mesh size declaration may include a declaration of the percentage of product that will pass additional mesh sizes, but the mesh sizes specified in this paragraph must be included in the mesh size declaration.[;]

(e) The lime score.[; and]

(f) The maximum moisture content if the moisture content is more than two percent, expressed in whole numbers as follows:[;] “Moisture content does not exceed _____ percent.”

SECTION 4. ORS 633.336 is amended to read:

633.336. In addition to the [labeling] **label** requirements under ORS 633.321, the label for an agricultural amendment must include the following:

(1) A guaranteed analysis that contains the name and percentage of each substance intended [to be used as a source of plant food,] to induce crop yields or plant growth or to produce any physical, **microbial** or chemical change in the soil, listed consecutively, followed by the percentage of [other substances intended to be] inert ingredients.

(2) The purpose of the product.

(3) Directions for application.

SECTION 5. ORS 633.341 is amended to read:

633.341. In addition to the [labeling] **label** requirements under ORS 633.321, the label for an agricultural mineral must include the following:

[(1) The percentage of sulfur contained in the product if the principal ingredient of the agricultural mineral is sulfur.]

[(2)] (1) The percentage of calcium sulfate, **expressed as CaSO₄•2H₂O or CaSO₄**, if the product is gypsum, landplaster or plaster or is an agricultural mineral in which calcium sulfate [(CaSO₄•2H₂O)] is the principal ingredient.

[(3)] (2) The percentage of all ingredients contained in the product, in terms prescribed by the State Department of Agriculture, for all other agricultural minerals or mixtures of agricultural minerals with a principal ingredient other than [sulfur or] calcium sulfate.

SECTION 6. ORS 633.351 is amended to read:

633.351. A person may not [sell or offer for sale] **distribute** for agronomic purposes any leather, hair, wool waste, hoof, horn, urea-formaldehyde condensation products or similar materials, either singly or in combination, unless the products or materials have been processed in [such manner as to make] **a manner that makes** the plant food content available in conformity with the standards established by the State Department of Agriculture, taking into consideration the standards of activity recommended by recognized experts in the field.

SECTION 7. ORS 633.362 is amended to read:

633.362. (1) Each separately identifiable fertilizer, agricultural amendment, agricultural mineral or lime product, whether in package or in bulk, [shall] **must** be registered with the State Department of Agriculture. A person may not [sell, offer for sale or] distribute a fertilizer, agricultural

amendment, agricultural mineral or lime product in this state [until] **unless** the fertilizer, agricultural amendment, agricultural mineral or lime product is registered with the department.

(2) The application for registration [shall] **must** be made on a form or forms provided by the department. The application for registration [shall] **must** include the following information:

- (a) Product name and grade;
- (b) Product label;
- (c) Name and physical address of the registrant;
- (d) Mailing address of the registrant;
- (e) Product laboratory analysis;
- (f) Supplier or suppliers of ingredients;
- (g) Identification of the industry, industry process or industry processes and location of the facility that generated any waste-derived ingredient or ingredients; and
- (h) Other information required by the department by rule.

(3) The application for registration shall be accompanied by a nonrefundable registration fee established by department rule, not to exceed \$25 annually for each fertilizer, agricultural amendment, agricultural mineral or lime product. **In addition**, for a waste-derived product, the department shall [also] charge an annual product evaluation fee. For a fertilizer, agricultural [mineral or agricultural] amendment, **agricultural mineral or lime** product, the department may charge a product evaluation fee if supplementary research and evaluation by the department is required in order to determine product compliance with ORS 633.311 to 633.479 [and 633.994]. The department shall establish product evaluation fees by rule, not to exceed \$50. The department shall review the registration application form and product label for compliance with ORS 633.311 to 633.479 [and 633.994]. If the department finds that the application information and product label comply with ORS 633.311 to 633.479 [and 633.994], the department shall issue a certificate of registration to the registrant.

(4) Certificates of registration shall expire on December 31 of each year, except that the department may grant a certificate of registration for two years. Certificates of registration for two years shall expire on December 31 of the last year in the two-year period.

(5) The department may assess a \$25 late registration fee for a product if the registrant has not paid the registration fee prior to the 30th day following the expiration of the certificate of registration. A late registration fee assessed by the department under this subsection shall be added to the registration fee required under subsection (3) of this section and must be paid by the registrant before the department may issue a certificate of registration.

(6) The department may require proof of label or labeling statements or claims of the efficacy and usefulness of an ingredient prior to issuing a certificate of registration or at any time deemed necessary by the department. As proof, the department may request data from the registrant to support the label or labeling claims. The department may also rely on other experimental data, data from agricultural experiment stations, product review evaluations and advice from other authoritative sources. The data must be from recognized, statistically designed and analyzed trials conducted by recognized experts in the field. All supporting data shall be representative of the soil, crops and climatic conditions found in the northwestern United States.

(7) In evaluating a label or labeling statement, claim or guarantee, the department may require the submission of a written statement describing the methodology of the laboratory analysis used, the source of the ingredient material and any reference material relied on to support the label or labeling statement, claim or guarantee. Laboratory analyses submitted in support of an application for registration must comply with laboratory methods of analysis approved by the department.

(8) Each registrant shall notify the department of any change that results in a laboratory analysis that differs from the laboratory analysis submitted in support of the related application for registration or any change in sources of product ingredients declared on the application form. The registrant must notify the department within 30 days following the change.

(9) The registrant shall identify as "waste-derived" in the application for registration any fertilizer, agricultural amendment, agricultural mineral or lime product that is waste-derived and

distributed as a single ingredient product or blended with other fertilizer, agricultural amendment, agricultural mineral or lime products. The application for registration must identify the industry, the industry process or processes and the location of the facility that generated the waste and all ingredients of concern as identified *[and adopted]* **by the department** by rule.

(10) The initial application for registration of a fertilizer, agricultural amendment, agricultural mineral or lime product must include a statement of the levels of metals in the product, including but not limited to arsenic (As), cadmium (Cd), mercury (Hg), lead (Pb), nickel (Ni) or other metals or substances identified by the department by rule. The registrant must provide a laboratory analysis report, in accordance with acceptable methods required by the department, to verify the levels of metals or other substances in the product. Subsequent to initial product registration, *[such analysis shall be provided upon request by the department.]* **the registrant shall provide a laboratory analysis report for the product to the department upon request. An initial or subsequent laboratory analysis must have been conducted no more than 18 months prior to submission of that analysis to the department.**

(11) The department shall establish by rule the level of metals or other substances permitted in fertilizer, agricultural amendment, agricultural mineral and lime products registered with the department, including but not limited to the permitted levels of arsenic (As), cadmium (Cd), mercury (Hg), lead (Pb), nickel (Ni) or other metals or substances identified by the department by rule for the purpose of protecting humans, animals, water, aquatic life, soil or beneficial plant life. The department shall review the permitted level of metals or other substances in fertilizer, agricultural amendment, agricultural mineral and lime products a minimum of **once** every five years.

(12) Notwithstanding subsection (1) of this section, a custom mix is not required to be registered if all of the fertilizer, agricultural amendment, agricultural mineral or lime products contained in the final product are registered in accordance with this section.

(13) The department may refuse to register any fertilizer, agricultural amendment, agricultural mineral or lime product *[the sale, offering for sale or distribution of which would violate any of the provisions]* **if distribution of the product would violate a provision** of ORS 633.311 to 633.479 *[and 633.994]*. The registration of each product is a distinct and separate registration.*[, and]* The refusal **of the department** to register or reregister any product does not affect the registration of any other product by the same person.

SECTION 8. ORS 633.364 is amended to read:

633.364. (1) Information required under ORS 633.362 (2)(f) and (g) and (6) is exempt from disclosure under ORS 192.410 to 192.505. The State Department of Agriculture may not divulge any information provided to the department in accordance with ORS 633.362 (2)(f) and (g) and (6).

(2) Notwithstanding subsection (1) of this section, **the department may use** the information required under ORS 633.311 to 633.479 *[and 633.994 may be used by the department]* for any administrative or enforcement action the department deems necessary. In addition, the department may:

(a) Accumulate and publish statistics from *[statements]* **semiannual tonnage reports** required by ORS 633.461 and 633.471 in a manner that does not divulge the business operations of the person submitting a report;

(b) Consult with the Department of Environmental Quality or other state or federal agencies in regard to information provided under ORS 633.362 (2)(f) and (g) to ensure compliance with applicable regulations; and

(c) Disclose data required under ORS 633.362 (6) to experts for the purpose of evaluating product data submitted in support of registration.

SECTION 9. ORS 633.366 is amended to read:

633.366. (1) A person may not:

(a) *[Sell, offer for sale or]* Distribute mislabeled products;

(b) Register or attempt to register any product using fraudulent or deceptive practices to evade or attempt to evade the requirements of ORS 633.311 to 633.479 *[and 633.994]* or rules adopted *[thereunder]* **under ORS 633.311 to 633.479;**

(c) *[Sell, offer for sale or]* Distribute adulterated products;

(d) Fail, refuse or neglect to deliver to a **user or purchaser** of a bulk fertilizer, agricultural amendment, agricultural mineral or lime product a printed label that complies with ORS 633.321 to 633.341;

(e) [*Sell, offer for sale or*] Distribute a fertilizer, agricultural amendment, agricultural mineral or lime product that is not registered with the State Department of Agriculture under ORS 633.362;

(f) Fail, refuse or neglect to keep or maintain records as required under ORS 633.461, 633.471 and 633.476 or refuse to make [*available such records pursuant to*] **the records available under ORS 633.385** upon request by the department;

(g) Make false or fraudulent applications, records, invoices or reports;

(h) Fail, refuse or neglect to provide notification to the department as required by ORS 633.318 (5) or 633.362 (8);

(i) Fail, refuse or neglect to obtain a manufacturer-bulk distributor license required under ORS 633.318;

(j) [*Sell,*] **Distribute**, use or remove any product subjected to a stop sale, use or removal order until the product has been released in accordance with ORS 633.445;

(k) Impede, obstruct, hinder or otherwise prevent or attempt to prevent the department from the performance of department duties under ORS 633.311 to 633.479 [*and 633.994*];

(L) Knowingly or intentionally make any false or misleading representations in connection with the [*sale, offer for sale or*] distribution of fertilizer, agricultural amendment, agricultural mineral or lime products;

(m) Fail, refuse or neglect to file a semiannual [*statement*] **tonnage report** with the department as required under ORS 633.461 or 633.471; or

(n) Fail, refuse or neglect to pay inspection fees required under ORS 633.461.

(2) A fertilizer, agricultural amendment, agricultural mineral or lime product may be considered mislabeled if the label or labeling:

(a) Is false, misleading or deceptive;

(b) Does not accurately reflect the composition of the product;

(c) Requires warning statements or directions for use that may be necessary to protect humans, animals, water, aquatic life, soil or beneficial plant life and [*such*] **the** warning statements or directions are not adequately stated on the label; or

(d) Does not comply with the requirements of ORS 633.321 to 633.341.

(3) A fertilizer, agricultural amendment, agricultural mineral or lime product may be considered adulterated if the product:

(a) Contains any deleterious or harmful ingredient in an amount that is injurious to humans, animals, water, aquatic life, soil or beneficial plant life when used in accordance with instructions for product use on the label;

(b) Differs in composition from [*that which is*] **the composition** claimed on the label;

(c) Differs in composition from [*that which is*] **the composition** claimed in the information provided in accordance with ORS 633.362; or

(d) Contains unwanted crop seed or weed seed.

SECTION 10. ORS 633.371 is amended to read:

633.371. The State Department of Agriculture shall deposit revenues received under ORS 633.311 to 633.479 and 633.994 in the Department of Agriculture Service Fund. The revenues [*shall be*] **deposited under this section are** continuously appropriated to the department for the purpose of administering and enforcing ORS 633.311 to 633.479 and 633.994.

SECTION 11. ORS 633.385 is amended to read:

633.385. (1) The State Department of Agriculture shall have access at reasonable times to records, premises, materials or conveyances as necessary for the purpose of [*implementing*] **administering and enforcing** ORS 633.311 to 633.479 and 633.994.

(2) The department may **inspect the records, premises, materials or conveyances of the manufacturer, distributor or registrant and may** take samples of any fertilizer, agricultural amendment, agricultural mineral or lime product or other substance [*sold, offered for sale or*] **man-**

ufactured, distributed [into or within] or registered in this state [at times], or samples of other substances, as the department deems necessary for the purpose of [determining compliance with] administering and enforcing ORS 633.311 to 633.479 and 633.994.

(3) All sampling and analyses of fertilizer, agricultural amendment, agricultural mineral and lime products, **or of other substances**, shall be made according to methods approved by the department.

(4) **The department may obtain a warrant or subpoena to allow the entry, inspection, sampling or other purposes related to the administration and enforcement of ORS 633.311 to 633.479 and 633.994.**

SECTION 12. ORS 633.445 is amended to read:

633.445. (1) When the State Department of Agriculture has reasonable cause to believe any quantity or lot of fertilizer, agricultural amendment, agricultural mineral or lime product is [sold, offered for sale,] stored, used or distributed in violation of ORS 633.311 to 633.479 [and 633.994] or rules adopted [thereunder] **under ORS 633.311 to 633.479**, the department may, in accordance with ORS 561.605 to 561.620, issue and enforce a stop sale, use or removal order prohibiting the disposal, distribution, use or removal of the quantity or lot of product in any manner. **The distributor must immediately remove from locations readily visible or accessible to the public any product in packaged form that the department places under a stop sale, use or removal order.** The department may enforce the order until all actions against the order, including any contested case, are resolved or until the department gives written permission releasing the product for disposal, distribution, use or removal. The department shall [given] **give** written permission releasing the product when ORS 633.311 to 633.479 [and 633.994] **and the rules adopted under ORS 633.311 to 633.479** are complied with.

(2) In accordance with ORS 561.605 to 561.620, the department may seize any quantity or lot of product that the department determines does not comply with ORS 633.311 to 633.479 [and 633.994].

SECTION 13. ORS 633.461 is amended to read:

633.461. (1) [An inspection fee in the amount set forth under subsection (2) of this section shall be paid to] **A person shall file a semiannual tonnage report with** the State Department of Agriculture [by any person who] **if the person:**

(a) [Sells or] Distributes into this state, from foreign or domestic sources, a fertilizer, agricultural [mineral or agricultural] amendment **or agricultural mineral** product used as an ingredient in the in-state manufacture of a fertilizer, agricultural [mineral or agricultural] amendment **or agricultural mineral** product;

(b) [Sells or] Distributes into this state, from foreign or domestic sources, an end-use fertilizer, agricultural [mineral or agricultural] amendment **or agricultural mineral** product for use within this state; or

(c) [Sells or] Distributes into this state a fertilizer, agricultural [mineral or agricultural] amendment **or agricultural mineral** product [to the extent the product is] composed of ingredients [for which an inspection fee was not charged] **not described** under paragraph (a) or (b) of this subsection.

(2) **Except as provided in subsection (8) of this section**, a person described in subsection (1) of this section shall pay the department an inspection fee in an amount established by rule:

(a) Not to exceed \$0.45 for each ton of fertilizer, agricultural [mineral or agricultural] amendment **or agricultural mineral** products [sold or] distributed, of which, **after being advised by the Fertilizer Research Committee created in ORS 633.479, the department may expend** an amount not to exceed \$0.25 [must be continuously appropriated to the department for the sole purpose of funding] **to fund** grants for research and development related to the interaction of fertilizer, agricultural [mineral or agricultural] amendment **or agricultural mineral** products and ground water or surface water [as described in ORS 633.479 (1)].

(b) Not to exceed \$0.05 for each ton of gypsum, land plaster [and each] **or an** agricultural mineral with a principal ingredient of calcium sulfate ($\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$ **or** CaSO_4) [sold or] distributed.

[3) Each person responsible for paying an inspection fee shall file a semiannual statement with the department, on forms provided by the department, setting forth the total tonnage of each product dis-

tributed into or within the state during each reporting period. There will be two six-month reporting periods, January 1 through June 30 and July 1 through December 31 of each year. Semiannual statements and inspection fees are due within 30 days after the end of each reporting period.]

(3) Each person shall file a semiannual tonnage report required by subsection (1) of this section with the department, on forms provided by the department, setting forth the total tonnage of each product distributed into or within this state during the reporting period. The reporting periods for each year are January 1 through June 30 and July 1 through December 31. Semiannual tonnage reports and inspection fees are due within 30 days after the end of the reporting period.

(4) Notwithstanding ORS 633.362, the department may suspend or deny registration of a product until the [statement] **semiannual tonnage report** is filed and the inspection fee is paid as required under this section.

[*(5) If a person required to file a semiannual statement under subsection (3) of this section does not sell or distribute any fertilizer, agricultural amendment or agricultural mineral product during a reporting period, the person shall file a statement declaring that no sales or distribution occurred.*]

(5) If a person described in subsection (1) of this section does not distribute any fertilizer, agricultural amendment or agricultural mineral product into or within this state during a reporting period, the person shall file a semiannual tonnage report declaring that no distribution occurred.

(6) If a person required to file a semiannual [statement] **tonnage report** or pay an inspection fee does not file the [statement] **report** or pay the fee within 30 days of the due date established by the department:[,]

(a) The department may assess a collection fee of 10 percent of the amount due or \$25, whichever is greater;[,] and

(b) The department may withhold registration of the product until the report is filed and the fee is paid.

(7) A person required to file a semiannual [statement] **tonnage report** under [subsection (3) of] this section shall maintain records and a bookkeeping system that accurately indicate the tonnage of fertilizer, agricultural [mineral or agricultural] amendment **or agricultural mineral** product that is subject to [annual] inspection fees. [Such records shall be maintained for a period of three years. The department may examine such records to verify the reported annual inspection fees related to the amounts of product sold or distributed in this state.] **The person shall maintain the records for a period of three years.**

(8) **The department may not assess** inspection fees [may not be assessed] on any fertilizer, agricultural [mineral or agricultural] amendment **or agricultural mineral** product in commercial transit that is not intended for use or final distribution in this state.

(9) [The provisions of] ORS 561.450 [apply] **applies** to a person who refuses to pay inspection fees due to the department under this section.

(10) [In the case of] **If there are** duplicate inspection fee payments, an application **made** for a refund must be [made] on forms provided by the department and submitted to the department within 180 days of the alleged overpayment.

(11) If the inspection fees due under a semiannual tonnage report are \$5 or less, the person is not required to pay the inspection fees due under that report. However, a person exempted from paying inspection fees must still file the semiannual tonnage report.

SECTION 14. ORS 633.471 is amended to read:

633.471. (1) A **person shall file a** semiannual [statement shall be filed] **tonnage report** with the State Department of Agriculture [by any person who] **if the person:**

(a) [Sells or] Distributes into this state, from foreign or domestic sources, lime products used as an ingredient in the in-state manufacture of a fertilizer, agricultural amendment, agricultural mineral or lime product;

(b) [Sells or] Distributes into this state, from foreign or domestic sources, end-use lime products for use within this state; or

(c) [*Sells or*] Distributes into this state a lime product composed of ingredients not described under paragraph (a) or (b) of this subsection.

[*(2) Each person required to file a statement under this section shall file a semiannual statement with the department. The statement shall set forth the total tonnage of lime product sold or distributed into this state during the filing period. There will be two six-month reporting periods, January 1 through June 30 and July 1 through December 31 of each year. Semiannual statements are due within 30 days after the end of each reporting period.*]

[*(3) If a person required to file a semiannual statement under subsection (1) of this section does not sell or distribute lime products during a reporting period, the person shall file a statement declaring that no sales or distribution occurred.*]

(2) A semiannual tonnage report filed under this section shall set forth the total tonnage of lime product distributed into or within this state during the reporting period. The reporting periods for each year are January 1 through June 30 and July 1 through December 31. Semiannual tonnage reports are due within 30 days after the end of each reporting period.

(3) If a person described in subsection (1) of this section does not distribute lime products into or within this state during a reporting period, the person shall file a semiannual tonnage report declaring that no distribution occurred.

(4) If a person does not file a semiannual **tonnage** report required under this section, the department may assess a collection fee of \$25.

(5) A person required to file a semiannual [*statement*] **tonnage report** under this section shall maintain records and a bookkeeping system that accurately indicate the tonnage of lime product [*sold or*] distributed into this state. [*Such records shall be maintained for a period of*] **The person shall maintain the records for three years.**

SECTION 15. ORS 633.476 is amended to read:

633.476. (1) A person mixing or [*selling*] **distributing** a custom mix of fertilizer, agricultural amendment, agricultural mineral or lime products shall keep for a period of at least three years after mixing a record showing:

(a) The name and address of the purchaser;

(b) The date of mixing;

(c) A unique identifier for each mixture;

(d) The guarantees and information required under ORS 633.321 to 633.341 [*or a list of the registered ingredients showing the number of pounds and the grade of each ingredient in the mixture or batch*]; and

(e) Any other information required by the State Department of Agriculture.

(2) [*Undelivered*] **Undistributed** parts of a custom mixture or batch shall at all times be identified with the purchaser's [*name and*] unique identifier.

(3) The **person mixing or distributing the custom mix shall make the** records required by this section [*shall be*] available for inspection during normal business hours by [*either*] the purchaser or the department.

SECTION 16. ORS 633.479 is amended to read:

633.479. (1) There is created the Fertilizer Research Committee to advise the Director of Agriculture on the funding of grants for research and development related to the interaction of fertilizer, agricultural [*mineral and agricultural*] amendment **or agricultural mineral** products and ground water or surface water. The committee shall consist of [*seven*] **the director or the director's designee and six** members appointed by the director as follows:

[*(a) The Director of Agriculture or the director's designee;*]

[*(b)*] **(a)** Two members of the public who have no involvement in the manufacture[,] **or** distribution [*or sale*] of fertilizer, agricultural [*mineral or agricultural*] amendment **or agricultural mineral** products;

[*(c)*] **(b)** Three members representing the fertilizer, agricultural [*mineral or agricultural*] amendment **or agricultural mineral** industry; and

[*(d)*] **(c)** One member representing Oregon State University.

(2) The term of each **appointed** member is two years, but a member serves at the pleasure of the director. Before the expiration of the term of a member, the director shall appoint a successor whose term begins on January 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the director shall make an appointment to become immediately effective for the unexpired term.

(3) The committee shall select one of its members as chairperson and another as vice chairperson, for such terms and with duties and powers **the committee determines to be** necessary for the performance of the functions of *[such] those* offices *[as the committee determines]*.

(4) A majority of the members of the committee constitutes a quorum for the transaction of business.

(5) The committee shall meet at times and places specified by the call of the chairperson or of a majority of the members of the committee.

(6) The director may appoint an alternate committee member for each member of the committee.

SECTION 17. ORS 633.994 is amended to read:

633.994. (1) In addition to any other liability or penalty provided by law, **the State Department of Agriculture may assess a civil penalty against** a person that violates a provision of ORS 633.311 to 633.479 *[and 633.994 or rules adopted thereunder may be subject to a civil penalty of not]* **or rules adopted under ORS 633.311 to 633.479. The civil penalty may not be** more than:

- (a) \$500 for the first violation within a three-year period;
- (b) \$1,500 for the second violation within a three-year period; and
- (c) \$10,000 for each subsequent violation within a three-year period.

[(2) Enforcement guidance for civil penalty implementation consistency will be determined by rule.]

(2) The department shall adopt rules that determine guidelines for ensuring consistency in the assessment of civil penalties.

(3) Notwithstanding subsection (1) of this section, *[any]* **for** a violation that arises from gross negligence or willful misconduct, *[and]* **or that** results in substantial harm to human health or the environment, *[may be subject to]* **the department may assess** a civil penalty of not more than \$10,000 for the initial violation or any subsequent violation.

(4) Each violation of a provision of ORS 633.311 to 633.479 *[and 633.994]* that results from an action is a separate and distinct violation. *[A continuing violation may be deemed a separate and distinct violation for each day's continued violation.]* **The department may deem each day of a continuing violation to be a separate and distinct violation.**

(5) A civil penalty *[imposed under ORS 633.311 to 633.479 and 633.994]* **assessed under this section** may be remitted or reduced upon *[such]* terms and conditions *[as]* **that** the Director of Agriculture considers proper and consistent with the public health and safety.

(6) If a civil penalty assessed under this section remains unpaid after the issuance of the final order, the department may, until the civil penalty is paid in full:

(a) **Refuse to issue the recipient of the final order a certificate of registration under ORS 633.311 to 633.479 for a product; and**

(b) **Withhold from the recipient of the final order the issuance or renewal of a license under any program administered by the department.**

SECTION 18. (1) The amendments to ORS 633.311, 633.321, 633.331, 633.336, 633.341 and 633.351 by sections 1 to 6 of this 2009 Act apply to fertilizer, agricultural amendment, agricultural mineral and lime products manufactured or distributed on or after the effective date of this 2009 Act.

(2) The amendments to ORS 633.362 and 633.364 by sections 7 and 8 of this 2009 Act apply to fertilizer, agricultural amendment, agricultural mineral and lime products that are distributed in this state on or after the effective date of this 2009 Act or for which an application for registration is filed on or after the effective date of this 2009 Act.

(3) The amendments to ORS 633.445 by section 12 of this 2009 Act apply to orders of the State Department of Agriculture issued on or after the effective date of this 2009 Act.

(4) The amendments to ORS 633.461 and 633.471 by sections 13 and 14 of this 2009 Act apply to reports due for filing with the State Department of Agriculture on or after the effective date of this 2009 Act.

(5) The amendments to ORS 633.994 by section 17 of this 2009 Act apply to civil penalties assessed under final orders issued on or after the effective date of this 2009 Act.

Passed by House April 1, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate May 7, 2009

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President of Senate

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State