

Enrolled
House Bill 2443

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for State Department of Agriculture)

CHAPTER

AN ACT

Relating to soil enhancing products; creating new provisions; amending ORS 561.144, 633.311, 633.321, 633.331, 633.341, 633.362, 633.364 and 633.366; and repealing ORS 633.351, 633.461 and 633.471.

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

SECTION 1. Sections 2 and 3 of this 2015 Act are added to and made a part of ORS 633.311 to 633.479.

SECTION 2. (1) A person shall file a semiannual tonnage report with the State Department of Agriculture if the person:

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

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

(c) Distributes into this state a fertilizer, agricultural amendment, agricultural mineral or lime product composed of ingredients not described under paragraph (a) or (b) of this subsection.

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

(3) A person shall file a semiannual tonnage report required under 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.

(4) Semiannual tonnage reports and inspection fees imposed under section 3 of this 2015 Act are due within 30 days after the end of the reporting period. If a person fails to file a semiannual tonnage report or pay an inspection fee on or before the due date:

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

(b) Notwithstanding ORS 633.362, the department may suspend or deny registration of the product until the report is filed and the fee is paid.

(5) ORS 561.450 applies to a person who refuses to pay inspection fees that are due under this section.

(6) A person required to file a semiannual tonnage report under this section shall maintain records and a bookkeeping system that accurately indicate the tonnage of fertilizer, agricultural amendment, agricultural mineral or lime product that is subject to inspection fees. The person shall maintain the records for a period of three years.

SECTION 3. (1) Except as provided in subsection (2) of this section, a person required to file a semiannual tonnage report under section 2 of this 2015 Act shall pay the State Department of Agriculture an inspection fee in an amount established by rule:

(a) Not to exceed \$0.45 for each ton of fertilizer, agricultural amendment or agricultural mineral product distributed, of which not more than \$0.25 may be expended for funding grants as provided in subsection (3) of this section.

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

(c) Not to exceed \$0.05 for each ton of lime product distributed, of which not more than \$0.025 may be expended for funding grants as provided in subsection (3) of this section.

(2) If the total amount that would be due from a person under subsection (1) of this section for inspection fees is less than \$15, the person shall pay \$15.

(3) After being advised by the Fertilizer Research Committee created in ORS 633.479, the department may use amounts made available under subsection (1)(a) and (c) of this section to fund grants for research and development related to the interaction of fertilizer, agricultural amendment, agricultural mineral or lime products and ground water or surface water.

(4) The department may not assess inspection fees on any fertilizer, agricultural amendment, agricultural mineral or lime product in commercial transit that is not intended for use or final distribution in this state.

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

SECTION 4. ORS 633.311 is amended to read:

633.311. As used in ORS 633.311 to 633.479:

(1) "Agricultural amendment":

(a) Means a mixed or unmixed synthetic chemical substance, a chemically or physically modified natural substance, a naturally occurring substance or a manufacturing by-product, or a combination of those substances or by-products, intended to induce crop yields or plant growth or to produce any physical, microbial or chemical change in the soil.

(b) Does not mean any of the following:

(A) Fertilizer products.

(B) Agricultural mineral products.

(C) Lime products.

[(D) *Hays.*]

[(E) *Straws.*]

[(F) *Peat.*]

[(G) *Leaf mold.*]

[(H) *Sands.*]

[(I) *Expanded silicates.*]

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

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

[(L)] (F) Reclaimed water or treated effluent regulated under ORS 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 total nitrogen (N), available phosphate (P_2O_5) 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.

(b) Does not mean any of the following:

(A) Fertilizer products.

(B) Agricultural amendment products.

(C) Lime products.

[(D) Sand.]

[(E) Soil.]

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

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

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

(G) Unpackaged animal manures from facilities required to have a permit issued under ORS 468B.050 and subject to State Department of Agriculture rules governing confined animal feeding operations.

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

(4) “Bulk” means a fertilizer, agricultural amendment, agricultural mineral or lime product, or a custom mix, that is distributed in unpackaged form, such as 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 distributed for the purpose of promoting or stimulating plant growth and to which no fertilizer, agricultural amendment, agricultural mineral or lime product is added other than to promote decomposition.

(6) “Custom medium” means a custom mix that consists of a horticultural growing medium prepared to the exact specifications of a horticultural grower that plants into the medium and delivers the resulting product to the end user without further distribution.

[(6)] (7) “Custom mix” means a mixture of fertilizer, 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)] (8) “Department” means the State Department of Agriculture.

[(8)] (9) “Director” means the Director of Agriculture.

[(9)] (10) “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.

[(10)] (11) “Distributor” means a person who distributes fertilizer, agricultural amendment, agricultural mineral or lime products.

[(11)] (12) “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 total nitrogen (N), available phosphate (P₂O₅) or soluble potash (K₂O), singly, collectively or in combination.

(b) Does not mean any of the following:

(A) Agricultural amendment products.

(B) Agricultural mineral products.

(C) Lime products.

[(D) Hays.]

[(E) Straws.]

[(F) *Peat.*]

[(G) *Leaf mold.*]

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

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

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

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

[(13)] (14) “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 capacity; or

(e) Substances claimed to induce crop yields or plant growth or to produce any physical, microbial or chemical change in the soil.

(15) **“Horticultural growing medium” means any substance or mix of substances that is promoted or intended to function as artificial soil for the managed growth of horticultural crops.**

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

[(15)] (17) “Labeling” means a printed or verbal representation used to promote the distribution of any fertilizer, 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.

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

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

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

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

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

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

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

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

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

[(25)] (27) “Product” means a readily distinguishable, individually labeled substance.

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

[27] (29) "Secondary nutrient" means calcium (Ca), magnesium (Mg) or sulfur (S).

[28] (30) "Soluble potash" means the portion of potash that is soluble in aqueous ammonium oxalate, aqueous ammonium citrate or water.

[29] (31) "Ton" means 2,000 pounds avoirdupois.

[30] (32) "Waste-derived product":

(a) Means any of the following:

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

(B) Solid waste as defined in ORS 459.005 or in rules adopted under ORS 459.045.

(C) Industrial waste as defined in ORS 468B.005 or in rules adopted under ORS 468B.035.

(b) Does not mean:

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

(B) Reclaimed water or treated effluent regulated under ORS 468B.010 and 468B.015 or rules adopted under ORS 468.020.

SECTION 5. ORS 633.321 is amended to read:

633.321. (1) 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. The label must include the following:

(a) The name under which the product is registered or 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.

(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 amendment, agricultural mineral or lime product is distributed into or within this state. Primary nutrients, secondary nutrients and micronutrients that are claimed or advertised must be individually guaranteed. **A guarantee of a zero percentage may not appear in the guaranteed analysis statement.**

(g) A derivation statement declaring the sources for all primary nutrients, secondary nutrients and micronutrients guaranteed. The statement must be listed immediately below the 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.

(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 those ingredients shall be formatted on the label as follows:

ALSO CONTAINS NON-PLANT

FOOD INGREDIENT(S):

_____% Humic Acids (Derived from _____)

_____% Other Determinable Non-Plant
Food Ingredients

(i) A unique identifier for custom mixed products.

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

GUARANTEED ANALYSIS:

Total Nitrogen (N) _____%

_____% Ammoniacal Nitrogen

_____% Nitrate Nitrogen

_____% Urea Nitrogen

_____% Slowly Available Water

Soluble Nitrogen

_____% **Other Water Soluble**

Nitrogen

_____% Water Insoluble Nitrogen

[_____% *Other recognized and*]

[*determinable forms of Nitrogen*]

Available Phosphate (P_2O_5) _____%

Soluble Potash (K_2O) _____%

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

[(b)] **(c)** [In addition to guarantees of available phosphate (P_2O_5) and soluble potash (K_2O), the percentage of phosphorus (P) and potassium (K) may be shown by indentation or as prescribed by the department.] Phosphorous acid (expressed as H_3PO_3 or PO_3) cannot be claimed as a source of available phosphate.

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

[_____]

Available Phosphate (P_2O_5) _____%

_____% *Total Phosphate*

_____% *Insoluble Phosphate*

[_____]

(3) The following secondary nutrients and micronutrients that are claimed or advertised must be guaranteed, be placed on the label in the same order as listed in this subsection and immediately follow the guaranteed analysis for any primary nutrients claimed. The guaranteed analysis of secondary nutrients and micronutrients *[shall]* **must** 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 **and shown by indentation. Zeroes are required before decimal points for amounts that are less than one percent.** Except for products *[defined by the department by rule,]* **identified in subsection (4) of this section,** 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%
Nickel (Ni)	0.0010%
Sodium (Na)	0.1000%
Zinc (Zn)	0.0500%

(4) **The minimum percentages set forth in subsection (3) of this section do not apply to the following as defined by department rule:**

- (a) **Guarantees for water soluble nutrients on labels for:**
 - (A) **Ready to use foliar fertilizers or agricultural minerals;**
 - (B) **Ready to use specialty liquid fertilizers or agricultural minerals; or**
 - (C) **Products used for hydroponic or continuous liquid feed programs.**
- (b) **Guarantees for soils and horticultural growing mediums.**

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

[(5)(a)] (6)(a) If a fertilizer, agricultural amendment, *[or]* agricultural mineral product **or lime 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[.];
- (D) **Storage conditions; and**
- (E) **For products containing organisms known to be human pathogens, a precautionary statement consistent with any department rules establishing statement requirements for the organisms or establishing the text of the statement.**

(b) If a fertilizer, 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)] (7) A product ingredient may not be listed, claimed or guaranteed on the label or labeling without prior approval by the department.

(8) The label information requirements established in subsections (1)(d) and (f), (2), (3) and (6)(b) of this section do not apply to the label of a custom medium for commercial production if the end user is provided with a statement of formulation that lists all of the materials in the custom medium and the amount of each material.

SECTION 6. ORS 633.331 is amended to read:

633.331. In addition to the 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*] **burnt lime, dolomite, ground limestone, lime sludge, shells, sugar lime** and waste lime.

(2) The guaranteed analysis, stating the following:

(a) The percentage of calcium oxide (CaO) or calcium carbonate (CaCO₃).

(b) The percentage of magnesium oxide (MgO) or magnesium carbonate (MgCO₃).

(c) The total neutralizing 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.

(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 7. ORS 633.341 is amended to read:

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

(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 is the principal ingredient.

(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 calcium sulfate.

SECTION 8. 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, must be registered with the State Department of Agriculture. A person may not distribute a fertilizer, agricultural amendment, agricultural mineral or lime product in this state unless the fertilizer, agricultural amendment, agricultural mineral or lime product is registered with the department.

(2) The application for registration must be made on a form or forms provided by the department. The application for registration 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~~] **\$50** annually for each fertilizer, agricultural amendment, agricultural mineral or lime product. In addition, for a waste-derived product, the department shall charge an annual product evaluation fee. For a fertilizer, 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. The department shall establish product evaluation fees by rule, not to exceed [~~\$50~~] **\$500**. The department shall review the registration application form and product label for compliance with ORS 633.311 to 633.479. If the department finds that the application information and product label comply with ORS 633.311 to 633.479, 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~~] **\$50** 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 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, 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 if distribution of the product would violate a provision of ORS 633.311 to 633.479. The registration of each product is a distinct and separate registration. 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 9. 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 for any administrative or enforcement action the department deems necessary. In addition, the department may:

(a) Accumulate and publish statistics from semiannual tonnage reports required by [ORS 633.461 and 633.471] **section 2 of this 2015 Act** 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 10. ORS 633.366 is amended to read:

633.366. (1) A person may not:

(a) 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 or rules adopted under ORS 633.311 to 633.479;

(c) 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) 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 **and section 2 of this 2015 Act** or refuse to make 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) 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;

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

(m) Fail, refuse or neglect to file a semiannual tonnage report with the department as required under [ORS 633.461 or 633.471] **section 2 of this 2015 Act**; or

(n) Fail, refuse or neglect to pay inspection fees required under [ORS 633.461] **sections 2 and 3 of this 2015 Act**.

(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 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 the composition claimed on the label;

(c) Differs in composition from the composition claimed in the information provided in accordance with ORS 633.362; or

(d) Contains unwanted crop seed or weed seed.

SECTION 11. ORS 561.144 is amended to read:

561.144. (1) The State Treasurer shall establish a Department of Agriculture Service Fund, which shall be a trust fund separate and distinct from the General Fund. The State Department of Agriculture shall deposit all license and service fees paid to it under the provisions of the statutes identified in subsection (3) of this section in the Department of Agriculture Service Fund. The State Treasurer is the custodian of this trust fund, which shall be deposited by the treasurer in such depositories as are authorized to receive deposits of the General Fund, and which may be invested by the treasurer in the same manner as authorized by ORS 293.701 to 293.857.

(2) Interest received on deposits credited to the Department of Agriculture Service Fund shall accrue to and become a part of the Department of Agriculture Service Fund.

(3) The license and service fees subject to this section are those described in ORS 561.400, 561.740, 570.710, 571.057, 571.063, 571.145, 571.305, 586.270, 596.030, 596.100, 596.311, 599.235, 599.269, 599.406, 599.610, 601.040, 602.090, 603.025, 603.075, 616.706, 618.115, 618.136, 619.031, 621.072, 621.166, 621.266, 621.297, 621.335, 621.730, 622.080, 625.180, 628.240, 632.211, 632.600, 632.720, 632.730, 632.741, 632.940, 632.945, 633.015, 633.029, 633.318, 633.362, [633.461, 633.471,] 633.680, 633.700, 633.720, 634.016, 634.116, 634.122, 634.126, 634.132, 634.136, 634.212 and 635.030 **and sections 2 and 3 of this 2015 Act**.

SECTION 12. ORS 633.351, 633.461 and 633.471 are repealed.

Passed by House June 2, 2015

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 10, 2015

.....
Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2015

Approved:

.....M,....., 2015

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2015

.....
Jeanne P. Atkins, Secretary of State