

B-Engrossed House Bill 3815

Ordered by the House June 19
Including House Amendments dated May 1 and June 19

Sponsored by Representative KROPF (at the request of Oregonians for Food and Shelter)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Regulates sale, offering for sale and distribution of fertilizer, agricultural amendment, agricultural mineral, lime product and custom mix. Creates Fertilizer Research Committee to advise Director of Agriculture.

Imposes civil penalty of at least \$500 for violation.

Limits biennial expenditures from fees, moneys or other revenues, including Miscellaneous Receipts, excluding lottery funds and federal funds, collected or received by State Department of Agriculture for specified purposes.

A BILL FOR AN ACT

1
2 Relating to agriculture; creating new provisions; amending ORS 468B.150, 468B.165, 480.200 and
3 561.144; repealing ORS 633.310, 633.320, 633.330, 633.335, 633.340, 633.343, 633.345, 633.350,
4 633.361, 633.370, 633.380, 633.390, 633.420, 633.430, 633.440, 633.450, 633.460, 633.470, 633.475,
5 633.485, 633.495 and 633.500; appropriating money; and limiting expenditures.

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

7 **SECTION 1. Sections 2 to 23 of this 2001 Act are added to and made a part of ORS**
8 **chapter 633.**

9 **SECTION 2. As used in sections 2 to 23 of this 2001 Act:**

10 **(1) "Agricultural amendment" means a mixed or unmixed synthetic organic chemical**
11 **substance, a chemically or physically modified natural substance, a naturally occurring sub-**
12 **stance or a manufacturing by-product, or combination thereof, intended as a source of plant**
13 **food, to induce crop yields or plant growth or to produce any physical or chemical change in**
14 **the soil. "Agricultural amendment" does not include:**

15 **(a) Fertilizer products;**

16 **(b) Agricultural mineral products;**

17 **(c) Lime products;**

18 **(d) Hays;**

19 **(e) Straws;**

20 **(f) Peat;**

21 **(g) Leaf mold;**

22 **(h) Sands;**

23 **(i) Expanded silicates;**

24 **(j) Biosolids-derived products, compost and animal or vegetable manures that are not**
25 **packaged and do not contain a grade statement or guaranteed analysis;**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 **(k) Biosolids, domestic septage and domestic wastewater treatment facility solids regu-**
2 **lated under ORS chapters 468 and 468B; and**

3 **(L) Reclaimed water or treated effluent regulated under ORS 468.020, 468B.010 and**
4 **468B.015.**

5 **(2) “Agricultural mineral” means a mineral substance, mixture of mineral substances or**
6 **mixture of mineral and organic substances containing less than five percent of available ni-**
7 **trogen (N), available phosphate (P₂O₅) or soluble potash (K₂O), singly, collectively or in com-**
8 **bination, designed for use principally as a source of plant food, in inducing increased crop**
9 **yields or plant growth or producing any physical or chemical change in the soil. “Agricul-**
10 **tural mineral” does not include:**

11 **(a) Fertilizer products;**

12 **(b) Agricultural amendment products;**

13 **(c) Lime products;**

14 **(d) Sand;**

15 **(e) Soil;**

16 **(f) Biosolids-derived products, compost and animal or vegetable manures that are not**
17 **packaged and do not contain a grade statement or guaranteed analysis;**

18 **(g) Biosolids, domestic septage and domestic wastewater treatment facility solids regu-**
19 **lated under ORS chapters 468 and 468B; and**

20 **(h) Reclaimed water or treated effluent regulated under ORS 468.020, 468B.010 and**
21 **468B.015.**

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

24 **(4) “Bulk” or “bulk sale” is the sale, offering for sale or delivery of a fertilizer, agricul-**
25 **tural mineral, agricultural amendment or lime product or of a custom mix, in unpackaged**
26 **form, such as in open containers, closed or open tote boxes, closed or open tanks, closed or**
27 **open trailers, spreader trucks or other types of containers, vehicles or conveyances as de-**
28 **termined by State Department of Agriculture rule.**

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

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

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

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

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

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

- 1 **(a) Agricultural mineral products;**
2 **(b) Agricultural amendment products;**
3 **(c) Lime products;**
4 **(d) Hays;**
5 **(e) Straws;**
6 **(f) Peat;**
7 **(g) Leaf mold;**
8 **(h) Biosolids-derived products, compost and unpackaged animal or vegetable manures**
9 **that do not contain a grade statement or guaranteed analysis;**
10 **(i) Biosolids, domestic septage and domestic wastewater treatment facility solids regu-**
11 **lated under ORS chapters 468 and 468B; and**
12 **(j) Reclaimed water and treated effluent regulated under ORS 468.020, 468B.010 and**
13 **468B.015.**
14 **(11) “Grade” means the minimum percentage claimed for available nitrogen (N), available**
15 **phosphate (P₂O₅) or soluble potash (K₂O) stated in the same terms, order and percentages**
16 **as the guaranteed analysis.**
17 **(12) “Guaranteed analysis” means the minimum percentage of the following claimed to**
18 **be present in a product:**
19 **(a) Primary nutrients;**
20 **(b) Secondary nutrients;**
21 **(c) Micronutrients;**
22 **(d) Neutralizing capability; or**
23 **(e) Substances claimed to induce crop yields or plant growth or to produce any physical**
24 **or chemical change in the soil.**
25 **(13) “Label” means all written, printed or graphic matter on the immediate container or**
26 **on a statement or invoice accompanying any fertilizer, agricultural mineral, agricultural**
27 **amendment or lime product.**
28 **(14) “Labeling” means a printed or verbal representation used to promote the sale of any**
29 **fertilizer, agricultural mineral, agricultural amendment or lime product, including but not**
30 **limited to a representation by means of:**
31 **(a) Brochures;**
32 **(b) Posters;**
33 **(c) Internet;**
34 **(d) Television; and**
35 **(e) Radio.**
36 **(15) “Lime” means any substance or mixture of substances whose calcium and**
37 **magnesium compounds are capable of neutralizing soil acidity.**
38 **(16) “Lime score” means a numerical expression of the quality of lime, as determined by**
39 **the department by rule.**
40 **(17) “Manufacture” means to compound, produce, granulate, mix, blend, repackage or**
41 **otherwise alter the composition of fertilizer, agricultural mineral, agricultural amendment**
42 **or lime product.**
43 **(18) “Micronutrient” means boron (B), chlorine (Cl), cobalt (Co), copper (Cu), iron (Fe),**
44 **manganese (Mn), molybdenum (Mo), sodium (Na) or zinc (Zn).**
45 **(19) “Official sample” means any representative sample of product taken by the depart-**

1 **ment or a representative of the department and designated as official.**

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

4 **(21) "Percent" or "percentage" means percentage by weight.**

5 **(22) "Phosphate" means the amount of pentavalent phosphorus present in the material**
6 **calculated as phosphorus pentoxide (P₂O₅) and expressed as available phosphate.**

7 **(23) "Primary nutrient" means nitrogen (N), available phosphate (P₂O₅) or soluble**
8 **potash (K₂O).**

9 **(24) "Product" means a readily distinguishable, individually labeled substance containing**
10 **fertilizer, agricultural mineral, agricultural amendment or lime.**

11 **(25) "Registrant" means the person who registers a fertilizer, agricultural mineral, agri-**
12 **cultural amendment or lime product under section 10 of this 2001 Act.**

13 **(26) "Secondary nutrient" means calcium (Ca), magnesium (Mg) or sulfur (S).**

14 **(27) "Ton" means 2,000 pounds avoirdupois.**

15 **(28) "Waste-derived product" means any fertilizer, agricultural mineral, agricultural**
16 **amendment or lime product derived in whole or in part from hazardous waste as defined in**
17 **ORS 466.005 (7) or in rules adopted thereunder, solid waste as defined in ORS 459.005 (24) or**
18 **in rules adopted thereunder, or industrial waste as defined in ORS 468B.005 (2) or in rules**
19 **adopted thereunder. "Waste-derived product" does not include:**

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

22 **(b) Reclaimed water or treated effluent regulated under ORS 468.020, 468B.010 and**
23 **468B.015.**

24 **SECTION 3. Sections 2 to 23 of this 2001 Act apply only to the extent that they are con-**
25 **sistent with ORS chapter 634. The provisions of sections 2 to 23 of this 2001 Act do not su-**
26 **perse the provisions of ORS chapter 634.**

27 **SECTION 4. (1) A person may not sell, offer for sale or distribute fertilizer, agricultural**
28 **mineral, agricultural amendment or lime product, in package or in bulk, unless there is a**
29 **printed label attached or applied to the package, or, in the case of bulk sale, a separate**
30 **document that physically accompanies the shipment and is furnished to the user or pur-**
31 **chaser when each separate delivery is made, or when the last delivery is made of the entire**
32 **lot or sale thereof. The printed label must include the following:**

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

34 **(b) The net weight or volume.**

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

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

37 **(e) A guaranteed analysis. The guaranteed analysis must follow the statement, "GUAR-**
38 **ANTEED ANALYSIS." Guarantees must be based on a laboratory method of analysis ap-**
39 **proved by the State Department of Agriculture. The guaranteed analysis shall be stated on**
40 **an "as is" basis at the time the fertilizer, agricultural mineral, agricultural amendment or**
41 **lime product is offered for sale or distributed into or within this state. Primary nutrients,**
42 **secondary nutrients and micronutrients that are claimed or advertised must be individually**
43 **guaranteed.**

44 **(f) A derivation statement declaring the sources for all primary and secondary nutrients,**
45 **micronutrients and non-plant food ingredients guaranteed. The statement must be listed**

1 below the completed guaranteed analysis. Abbreviations, brand names, trademarks and trade
2 names may not appear in the derivation statement, but may appear as part of the product
3 name in an area of the label that is separate from the derivation statement.

4 (g) The identity and amount of ingredients other than primary nutrients, secondary nu-
5 trients and micronutrients that are claimed or advertised. The identity and amount must be
6 guaranteed and determinable by laboratory methods approved by the department. The source
7 of such ingredients shall be placed on the label as follows:

8
9 **ALSO CONTAINS NON-PLANT FOOD INGREDIENT(S):**

10 _____% Humic Acids (Derived from _____)

11 _____% Other Determinable Non-Plant Food Ingredients

12
13
14 (h) A unique identifier for custom mixed products.

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

20 (A) The name of any product identified as waste-derived in an application for registration
21 as provided in section 10 (9) of this 2001 Act;

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

25 (C) The type and level of metals and other substances required by the department by rule
26 to be reported for registration of any product as provided in section 10 (10) of this 2001 Act.

27 (2)(a)(A) Primary nutrients that are claimed or advertised must be guaranteed and placed
28 on the label as follows:

29
30 **GUARANTEED ANALYSIS:**

31 **Total Nitrogen (N)** _____%

32 _____% Ammoniacal Nitrogen

33 _____% Nitrate Nitrogen

34 _____% Water Soluble Organic Nitrogen or other recognized and determinable
35 forms of Nitrogen

36 _____% Water Insoluble Organic Nitrogen or Water Insoluble Nitrogen

37 Available Phosphate (P_2O_5) _____%

38 Soluble Potash (K_2O) _____%

39
40 (B) The guarantees for the forms of nitrogen must add up to the total nitrogen guarantee
41 and may be shown by subscript. The forms of nitrogen may be listed in an order other than
42 the order listed in this subsection.

43 (b) In addition to guarantees of available phosphate (P_2O_5) and soluble potash (K_2O), the
44 percentage of phosphorus (P) and potassium (K) may be shown by indentation and subscript
45 as prescribed by the department. Phosphorous acid (expressed as H_3PO_3 or PO_3) cannot be

1 **claimed as a source of available phosphate.**

2 **(c) Unacidulated mineral phosphatic materials, bone, tankage or other phosphatic mate-**
3 **rials shall be guaranteed on the label as follows:**

Available Phosphate (P₂O₅)	_____%
_____% Total Phosphate	
_____% Insoluble Phosphate	

9
10 **(3) The following secondary nutrients and micronutrients that are claimed or advertised**
11 **must be guaranteed, must be placed on the label in the same order as listed in this sub-**
12 **section and must immediately follow the guaranteed analysis. The guaranteed analysis of**
13 **secondary nutrients and micronutrients shall be made on the elemental basis. When a**
14 **chelated, water soluble or other form of plant nutrient is claimed or advertised in addition**
15 **to the elemental form of the same secondary nutrient or micronutrient, the form and per-**
16 **centage must be guaranteed separately. Except for products defined by the department by**
17 **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%

32 **(4) The label for any fertilizer, agricultural amendment, agricultural mineral or lime**
33 **product with added boron greater than 0.1 percent or added molybdenum greater than 0.001**
34 **percent must include a warning or cautionary statement that the product contains added**
35 **boron or molybdenum and is to be used only according to the manufacturer’s recommen-**
36 **dations or directions.**

37
38 **(5)(a) If a fertilizer, agricultural mineral or agricultural amendment product is intended**
39 **to be microbiological inoculum, the label must include:**

- 40 **(A) A product expiration date;**
- 41 **(B) The number of each viable organism per milliliter for liquid products or per gram for**
42 **dry products; and**
- 43 **(C) The identification of each viable organism expressed as genus and species, and, if**
44 **applicable, strain.**

45 **(b) If a fertilizer, agricultural mineral or agricultural amendment product is derived from**
a microbiological process or culture but is not intended to be a microbiological inoculum, the

1 product label must include a statement that the product is not a viable culture.

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

4 **SECTION 5.** In addition to the labeling requirements under section 4 of this 2001 Act, the
5 label for a lime product must include the following:

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

9 (2) The guaranteed analysis, stating:

10 (a) The minimum percentage of calcium oxide (CaO) or calcium carbonate (CaCO₃);

11 (b) The minimum percentage of magnesium oxide (MgO) or magnesium carbonate
12 (MgCO₃);

13 (c) The minimum total neutralizing power expressed in terms of calcium carbonate
14 equivalent (CCE);

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

19 (e) The lime score; and

20 (f) The maximum moisture content if the moisture content is more than two percent,
21 expressed in whole numbers as follows, "Moisture content does not exceed _____
22 percent."

23 **SECTION 6.** In addition to the labeling requirements under section 4 of this 2001 Act, the
24 label for an agricultural amendment must include the following:

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

29 (2) The purpose of the product.

30 (3) Directions for application.

31 **SECTION 7.** In addition to the labeling requirements under section 4 of this 2001 Act, the
32 label for an agricultural mineral must include the following:

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

35 (2) The percentage of calcium sulfate, if the product is gypsum, landplaster or plaster or
36 is an agricultural mineral in which calcium sulfate (CaSO₄•2H₂O) is the principal ingredient.

37 (3) The percentage of all ingredients contained in the product, in terms prescribed by the
38 State Department of Agriculture, for all other agricultural minerals or mixtures of agricul-
39 tural minerals with a principal ingredient other than sulfur or calcium sulfate.

40 **SECTION 8.** In addition to the guarantees of plant nutrients required by section 4 of this
41 2001 Act, label guarantees of other plant nutrients may be made from a list approved by the
42 State Department of Agriculture.

43 **SECTION 9.** A person may not sell or offer for sale for agronomic purposes any leather,
44 hair, wool waste, hoof, horn, urea-formaldehyde condensation products or similar materials,
45 either singly or in combination, unless the products or materials have been processed in such

1 manner as to make the plant food content available in conformity with the standards estab-
2 lished by the State Department of Agriculture, taking into consideration the standards of
3 activity recommended by recognized experts in the field.

4 **SECTION 10. (1) Each separately identifiable fertilizer, agricultural amendment, agricul-**
5 **tural mineral or lime product, whether in package or in bulk, shall be registered with the**
6 **State Department of Agriculture. A person may not sell, offer for sale or distribute a**
7 **fertilizer, agricultural amendment, agricultural mineral or lime product in this state until**
8 **the fertilizer, agricultural amendment, agricultural mineral or lime product is registered**
9 **with the department.**

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

12 (a) Product name and grade;

13 (b) Product label;

14 (c) Name and physical address of the registrant;

15 (d) Mailing address of the registrant;

16 (e) Product laboratory analysis;

17 (f) Supplier or suppliers of ingredients;

18 (g) Identification of the industry, industry process or industry processes and location of
19 the facility that generated any waste-derived ingredient or ingredients; and

20 (h) Other information required by the department by rule.

21 (3) The application for registration shall be accompanied by a nonrefundable registration
22 fee established by department rule, not to exceed \$25 annually for each fertilizer, agricultural
23 amendment, agricultural mineral or lime product. For a waste-derived product, the depart-
24 ment shall also charge an annual product evaluation fee. For a fertilizer, agricultural mineral
25 or agricultural amendment product, the department may charge a product evaluation fee if
26 supplementary research and evaluation by the department is required in order to determine
27 product compliance with sections 2 to 23 of this 2001 Act. The department shall establish
28 product evaluation fees by rule, not to exceed \$50. The department shall review the regis-
29 tration application form and product label for compliance with sections 2 to 23 of this 2001
30 Act. If the department finds that the application information and product label comply with
31 sections 2 to 23 of this 2001 Act, the department shall issue a certificate of registration to
32 the registrant.

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

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

42 (6) The department may require proof of label or labeling statements or claims of the
43 efficacy and usefulness of an ingredient prior to issuing a certificate of registration or at any
44 time deemed necessary by the department. As proof, the department may request data from
45 the registrant to support the label or labeling claims. The department may also rely on other

1 experimental data, data from agricultural experiment stations, product review evaluations
2 and advice from other authoritative sources. The data must be from recognized, statistically
3 designed and analyzed trials conducted by recognized experts in the field. All supporting data
4 shall be representative of the soil, crops and climatic conditions found in the northwestern
5 United States.

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

12 (8) Each registrant shall notify the department of any change that results in a laboratory
13 analysis that differs from the laboratory analysis submitted in support of the related appli-
14 cation for registration or any change in sources of product ingredients declared on the ap-
15 plication form. The registrant must notify the department within 30 days following the
16 change.

17 (9) The registrant shall identify as “waste-derived” in the application for registration any
18 fertilizer, agricultural amendment, agricultural mineral or lime product that is waste-derived
19 and distributed as a single ingredient product or blended with other fertilizer, agricultural
20 amendment, agricultural mineral or lime products. The application for registration must
21 identify the industry, the industry process or processes and the location of the facility that
22 generated the waste and all ingredients of concern as identified and adopted by rule.

23 (10) The initial application for registration of a fertilizer, agricultural amendment, agri-
24 cultural mineral or lime product must include a statement of the levels of metals in the
25 product, including but not limited to arsenic (As), cadmium (Cd), mercury (Hg), lead (Pb),
26 nickel (Ni) or other metals or substances identified by the department by rule. The registrant
27 must provide a laboratory analysis report, in accordance with acceptable methods required
28 by the department, to verify the levels of metals or other substances in the product. Subse-
29 quent to initial product registration, such analysis shall be provided upon request by the
30 department.

31 (11) The department shall establish by rule the level of metals or other substances per-
32 mitted in fertilizer, agricultural amendment, agricultural mineral and lime products regis-
33 tered with the department, including but not limited to the permitted levels of arsenic (As),
34 cadmium (Cd), mercury (Hg), lead (Pb), nickel (Ni) or other metals or substances identified
35 by the department by rule for the purpose of protecting humans, animals, water, aquatic life,
36 soil or beneficial plant life. The department shall review the permitted level of metals or
37 other substances in fertilizer, agricultural amendment, agricultural mineral and lime pro-
38 ducts a minimum of every five years.

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

42 (13) The department may refuse to register any fertilizer, agricultural amendment, agri-
43 cultural mineral or lime product the sale, offering for sale or distribution of which would
44 violate any of the provisions of sections 2 to 23 of this 2001 Act. The registration of each
45 product is a distinct and separate registration, and the refusal to register or reregister any

1 product does not affect the registration of any other product by the same person.

2 **SECTION 11.** The State Department of Agriculture shall deposit revenues received under
3 sections 2 to 23 of this 2001 Act in the Department of Agriculture Service Fund. The reven-
4 ues shall be continuously appropriated to the department for the purpose of administering
5 and enforcing sections 2 to 23 of this 2001 Act.

6 **SECTION 12.** (1) A report of official sample, signed and acknowledged by a chemist em-
7 ployed by the State Department of Agriculture, other state agency or laboratory facility
8 designated by the department, relating to the analysis of any fertilizer, agricultural amend-
9 ment, agricultural mineral or lime product is prima facie evidence that the sample identified
10 in the report of official sample was properly analyzed and that the substance analyzed con-
11 tained the constituent parts stated in the report of official sample.

12 (2) A report of official sample, signed and acknowledged by the department, relating to
13 the sampling of any product is prima facie evidence that the sample identified was taken
14 from parcels, containers or lots identified in the official request for analysis.

15 **SECTION 13.** (1) The State Department of Agriculture shall have access at reasonable
16 times to records, premises, materials or conveyances as necessary for the purpose of im-
17 plementing sections 2 to 23 of this 2001 Act.

18 (2) The department may take samples of any fertilizer, agricultural amendment, agricul-
19 tural mineral or lime product or other substance sold, offered for sale or distributed into or
20 within this state at times the department deems necessary for the purpose of determining
21 compliance with sections 2 to 23 of this 2001 Act.

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

24 **SECTION 14.** (1) When the State Department of Agriculture has reasonable cause to be-
25 lieve any quantity or lot of fertilizer, agricultural amendment, agricultural mineral or lime
26 product is sold, offered for sale, stored, used or distributed in violation of sections 2 to 23
27 of this 2001 Act or rules adopted thereunder, the department may, in accordance with ORS
28 561.605 to 561.620, issue and enforce a stop sale, use or removal order prohibiting the dis-
29 posal, distribution, use or removal of the quantity or lot of product in any manner. The de-
30 partment may enforce the order until all actions against the order, including any contested
31 case, are resolved or until the department gives written permission releasing the product for
32 disposal, distribution, use or removal. The department shall given written permission re-
33 leasing the product when sections 2 to 23 of this 2001 Act are complied with.

34 (2) In accordance with ORS 561.605 to 561.620, the department may seize any quantity or
35 lot of product that the department determines does not comply with sections 2 to 23 of this
36 2001 Act.

37 **SECTION 15.** In accordance with the applicable provisions of ORS 183.310 to 183.550, the
38 State Department of Agriculture may adopt rules necessary to implement, administer and
39 enforce sections 2 to 23 of this 2001 Act, including but not limited to rules for:

40 (1) Fertilizer, agricultural amendment, agricultural mineral and lime product:

41 (a) Handling;

42 (b) Sampling;

43 (c) Storage;

44 (d) Labeling;

45 (e) Distribution;

- 1 **(f) Definitions;**
- 2 **(g) Analysis;**
- 3 **(h) Records;**
- 4 **(i) Use;**
- 5 **(j) Minimum percentages;**
- 6 **(k) Investigational allowances; and**
- 7 **(L) Ingredients.**
- 8 **(2) Public access to product information of any fertilizer, agricultural amendment, agri-**
- 9 **cultural mineral or lime product.**
- 10 **SECTION 16. (1) A person may not:**
- 11 **(a) Sell, offer for sale or distribute mislabeled products;**
- 12 **(b) Register or attempt to register any product using fraudulent or deceptive practices**
- 13 **to evade or attempt to evade the requirements of sections 2 to 23 of this 2001 Act or rules**
- 14 **adopted thereunder;**
- 15 **(c) Sell, offer for sale or distribute adulterated products;**
- 16 **(d) Fail, refuse or neglect to deliver to a purchaser of a bulk fertilizer, agricultural**
- 17 **amendment, agricultural mineral or lime product a printed label that complies with sections**
- 18 **4 to 7 of this 2001 Act;**
- 19 **(e) Sell, offer for sale or distribute a fertilizer, agricultural amendment, agricultural**
- 20 **mineral or lime product that is not registered with the State Department of Agriculture**
- 21 **under section 10 of this 2001 Act;**
- 22 **(f) Fail, refuse or neglect to keep or maintain records as required under sections 18, 20**
- 23 **and 21 of this 2001 Act or refuse to make available such records pursuant to section 13 of**
- 24 **this 2001 Act upon request by the department;**
- 25 **(g) Make false or fraudulent applications, records, invoices or reports;**
- 26 **(h) Fail, refuse or neglect to provide notification to the department as required by section**
- 27 **10 (8) or 22 (5) of this 2001 Act;**
- 28 **(i) Fail, refuse or neglect to obtain a manufacturer-bulk distributor license required un-**
- 29 **der section 22 of this 2001 Act;**
- 30 **(j) Sell, use or remove any product subjected to a stop sale, use or removal order until**
- 31 **the product has been released in accordance with section 14 of this 2001 Act;**
- 32 **(k) Impede, obstruct, hinder or otherwise prevent or attempt to prevent the department**
- 33 **from the performance of department duties under sections 2 to 23 of this 2001 Act;**
- 34 **(L) Knowingly or intentionally make any false or misleading representations in con-**
- 35 **nection with the sale, offer for sale or distribution of fertilizer, agricultural amendment,**
- 36 **agricultural mineral or lime products;**
- 37 **(m) Fail, refuse or neglect to file a semiannual statement with the department as re-**
- 38 **quired under section 18 or 20 of this 2001 Act; or**
- 39 **(n) Fail, refuse or neglect to pay inspection fees required under section 18 of this 2001**
- 40 **Act.**
- 41 **(2) A fertilizer, agricultural amendment, agricultural mineral or lime product may be**
- 42 **considered mislabeled if the label or labeling:**
- 43 **(a) Is false, misleading or deceptive;**
- 44 **(b) Does not accurately reflect the composition of the product;**
- 45 **(c) Requires warning statements or directions for use that may be necessary to protect**

1 humans, animals, water, aquatic life, soil or beneficial plant life and such warning state-
2 ments or directions are not adequately stated on the label; or

3 (d) Does not comply with the requirements of sections 4 to 7 of this 2001 Act.

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

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

9 (b) Differs in composition from that which is claimed on the label;

10 (c) Differs in composition from that which is claimed in the information provided in ac-
11 cordance with section 10 of this 2001 Act; or

12 (d) Contains unwanted crop seed or weed seed.

13 **SECTION 17.** (1) In addition to any other liability or penalty provided by law, a person
14 that violates a provision of sections 2 to 23 of this 2001 Act or rules adopted thereunder may
15 be subject to a civil penalty of not more than:

16 (a) \$500 for the first violation within a three-year period;

17 (b) \$1,500 for the second violation within a three-year period; and

18 (c) \$10,000 for each subsequent violation within a three-year period.

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

21 (3) Notwithstanding subsection (1) of this section, any violation that arises from gross
22 negligence or willful misconduct and results in substantial harm to human health or the
23 environment may be subject to a civil penalty of not more than \$10,000 for the initial vio-
24 lation or any subsequent violation.

25 (4) Each violation of a provision of sections 2 to 23 of this 2001 Act that results from an
26 action is a separate and distinct violation. A continuing violation may be deemed a separate
27 and distinct violation for each day's continued violation.

28 (5) A civil penalty imposed under sections 2 to 23 of this 2001 Act may be remitted or
29 reduced upon such terms and conditions as the Director of Agriculture considers proper and
30 consistent with the public health and safety.

31 **SECTION 18.** (1) An inspection fee in the amount set forth under subsection (2) of this
32 section shall be paid to the State Department of Agriculture by any person who:

33 (a) Sells or distributes into this state, from foreign or domestic sources, a fertilizer, ag-
34 ricultural mineral or agricultural amendment product used as an ingredient in the in-state
35 manufacture of a fertilizer, agricultural mineral or agricultural amendment product;

36 (b) Sells or distributes into this state, from foreign or domestic sources, an end-use
37 fertilizer, agricultural mineral or agricultural amendment product for use within this state;
38 or

39 (c) Sells or distributes into this state a fertilizer, agricultural mineral or agricultural
40 amendment product to the extent the product is composed of ingredients for which an in-
41 spection fee was not charged under paragraph (a) or (b) of this subsection.

42 (2) A person described in subsection (1) of this section shall pay the department an in-
43 spection fee in an amount established by rule:

44 (a) Not to exceed \$0.45 for each ton of fertilizer, agricultural mineral or agricultural
45 amendment products sold or distributed, of which an amount not to exceed \$0.25 must be

1 continuously appropriated to the department for the sole purpose of funding grants for re-
2 search and development related to the interaction of fertilizer, agricultural mineral or agri-
3 cultural amendment products and ground water or surface water as described in section 19
4 (1) of this 2001 Act.

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

7 (3) Each person responsible for paying an inspection fee shall file a semiannual statement
8 with the department, on forms provided by the department, setting forth the total tonnage
9 of each product distributed into or within the state during each reporting period. There will
10 be two six-month reporting periods, January 1 through June 30 and July 1 through December
11 31 of each year. Semiannual statements and inspection fees are due within 30 days after the
12 end of each reporting period.

13 (4) Notwithstanding section 10 of this 2001 Act, the department may suspend or deny
14 registration of a product until the statement is filed and the inspection fee is paid as required
15 under this section.

16 (5) If a person required to file a semiannual statement under subsection (3) of this sec-
17 tion does not sell or distribute any fertilizer, agricultural amendment or agricultural mineral
18 product during a reporting period, the person shall file a statement declaring that no sales
19 or distribution occurred.

20 (6) If a person required to file a semiannual statement or pay an inspection fee does not
21 file the statement or pay the fee within 30 days of the due date established by the depart-
22 ment, the department may assess a collection fee of 10 percent of the amount due or \$25,
23 whichever is greater, and the department may withhold registration of the product until the
24 report is filed and the fee is paid.

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

31 (8) Inspection fees may not be assessed on any fertilizer, agricultural mineral or agri-
32 cultural amendment product in commercial transit that is not intended for use or final dis-
33 tribution in this state.

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

36 (10) In the case of duplicate inspection fee payments, an application for refund must be
37 made on forms provided by the department and submitted to the department within 180 days
38 of the alleged overpayment.

39 SECTION 19. (1) There is created the Fertilizer Research Committee to advise the Di-
40 rector of Agriculture on the funding of grants for research and development related to the
41 interaction of fertilizer, agricultural mineral and agricultural amendment products and
42 ground water or surface water. The committee shall consist of seven members appointed by
43 the director as follows:

44 (a) The Director of Agriculture or the director's designee;

45 (b) Two members of the public who have no involvement in the manufacture, distribution

1 or sale of fertilizer, agricultural mineral or agricultural amendment products;

2 (c) Three members representing the fertilizer, agricultural mineral or agricultural
3 amendment industry; and

4 (d) One member representing Oregon State University.

5 (2) The term of each member is two years, but a member serves at the pleasure of the
6 director. Before the expiration of the term of a member, the director shall appoint a suc-
7 cessor whose term begins on January 1 next following. A member is eligible for reappoint-
8 ment. If there is a vacancy for any cause, the director shall make an appointment to become
9 immediately effective for the unexpired term.

10 (3) The committee shall select one of its members as chairperson and another as vice
11 chairperson, for such terms and with duties and powers necessary for the performance of
12 the functions of such offices as the committee determines.

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

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

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

19 **SECTION 20.** (1) A semiannual statement shall be filed with the State Department of
20 Agriculture by any person who:

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

24 (b) Sells or distributes into this state, from foreign or domestic sources, end-use lime
25 products for use within this state; or

26 (c) Sells or distributes into this state a lime product composed of ingredients not de-
27 scribed under paragraph (a) or (b) of this subsection.

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

33 (3) If a person required to file a semiannual statement under subsection (1) of this sec-
34 tion does not sell or distribute lime products during a reporting period, the person shall file
35 a statement declaring that no sales or distribution occurred.

36 (4) If a person does not file a semiannual report required under this section, the depart-
37 ment may assess a collection fee of \$25.

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

41 **SECTION 21.** (1) A person mixing or selling a custom mix of fertilizer, agricultural
42 amendment, agricultural mineral or lime products shall keep for a period of at least three
43 years after mixing a record showing:

44 (a) The name and address of the purchaser;

45 (b) The date of mixing;

1 (c) A unique identifier for each mixture;

2 (d) The guarantees and information required under sections 4 to 7 of this 2001 Act or a
3 list of the registered ingredients showing the number of pounds and the grade of each in-
4 gredient in the mixture or batch; and

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

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

8 (3) The records required by this section shall be available for inspection during normal
9 business hours by either the purchaser or the department.

10 **SECTION 22.** (1) A manufacturer-bulk distributor license issued by the State Department
11 of Agriculture is required for manufacturers or bulk distributors of registered or custom
12 mixed fertilizer, agricultural amendment, agricultural mineral or lime products. A license is
13 required for any business entity described by either or both of the following conditions:

14 (a) Each out-of-state or in-state business entity that distributes fertilizer, agricultural
15 amendment, agricultural mineral or lime in bulk.

16 (b) Each in-state business entity that manufactures any fertilizer, agricultural amend-
17 ment, agricultural mineral or lime product in this state.

18 (2) An application for a manufacturer-bulk distributor license must be filed on forms
19 provided by the department and must be accompanied by a nonrefundable license fee to be
20 determined by rule, not to exceed \$50 for each business entity per year.

21 (3) An application for a license must include but not be limited to:

22 (a) The name, physical address and mailing address of the business entity main office and
23 primary contact;

24 (b) A list of locations that are in operation for more than 90 days during a license period;
25 and

26 (c) Other information as required by the department to clarify the manufacturer's or
27 bulk distributor's activities or location.

28 (4) A manufacturer-bulk distributor license will expire on December 31 of each year. A
29 late fee of \$25 may be assessed by the department on or after the 30th day following the ex-
30 piration of a license if the license fee has not been paid by the applicant. The late fee shall
31 be added to the required license fee and must be paid by the applicant before the department
32 may issue a license to the applicant.

33 (5) Within 30 days, each license holder shall report any change to the department that
34 results in the addition, removal or change of a location.

35 **SECTION 23.** (1) Information required under section 10 (2)(f) and (g) and (6) of this 2001
36 Act is exempt from disclosure under ORS 192.410 to 192.505. The State Department of Agri-
37 culture may not divulge any information provided to the department in accordance with
38 section 10 (2)(f) and (g) and (6) of this 2001 Act.

39 (2) Notwithstanding subsection (1) of this section, the information required under
40 sections 2 to 23 of this 2001 Act may be used by the department for any administrative or
41 enforcement action the department deems necessary. In addition, the department may:

42 (a) Accumulate and publish statistics from statements required by sections 18 and 20 of
43 this 2001 Act in a manner that does not divulge the business operations of the person sub-
44 mitting a report;

45 (b) Consult with the Department of Environmental Quality or other state or federal

1 **agencies in regard to information provided under section 10 (2)(f) and (g) of this 2001 Act to**
2 **ensure compliance with applicable regulations; and**

3 **(c) Disclose data required under section 10 (6) of this 2001 Act to experts for the purpose**
4 **of evaluating product data submitted in support of registration.**

5 **SECTION 24.** ORS 468B.150 is amended to read:

6 468B.150. As used in ORS 448.268, 448.271 and 468B.150 to 468B.190:

7 (1) "Area of ground water concern" means an area of the state subject to a declaration by the
8 Department of Environmental Quality under ORS 468B.175 or the Health Division under ORS
9 448.268.

10 (2) "Contaminant" means any chemical, ion, radionuclide, synthetic organic compound,
11 microorganism, waste or other substance that does not occur naturally in ground water or that oc-
12 curs naturally but at a lower concentration.

13 (3) "Ground water management area" means an area in which contaminants in the ground water
14 have exceeded the levels established under ORS 468B.165, and the affected area is subject to a
15 declaration under ORS 468B.180.

16 (4) "Fertilizer" has the meaning given that term in [*ORS 633.310*] **section 2 of this 2001 Act.**

17 (5) "Pesticide" has the meaning given that term in ORS 634.006.

18 **SECTION 25.** ORS 468B.165 is amended to read:

19 468B.165. (1) Within 90 days after receiving the recommendations of the technical advisory
20 committee under ORS 468B.166, the Environmental Quality Commission shall begin rulemaking to
21 first adopt final rules establishing maximum measurable levels for contaminants in ground water.
22 The commission shall adopt the final rules not later than 180 days after the commission provides
23 notice under ORS 183.335.

24 (2) The adoption or failure to adopt a rule establishing a maximum measurable level for a con-
25 taminant under subsection (1) of this section shall not alone be construed to require the imposition
26 of restrictions on the use of fertilizers under [*ORS 633.310 to 633.495*] **sections 2 to 23 of this 2001**
27 **Act** or the use of pesticides under ORS chapter 634.

28 **SECTION 26.** ORS 480.200 is amended to read:

29 480.200. As used in ORS 480.200 to 480.290 unless the context requires otherwise:

30 (1) "Certificate of possession" means a certificate issued under ORS 480.235 by the State Fire
31 Marshal to applicants who have met the requirements of ORS 480.200 to 480.290.

32 (2) "Certificate of registration" means a certificate of registration issued under ORS 480.244 by
33 the State Fire Marshal for an explosives magazine.

34 (3) "Explosive" means a chemical compound, mixture or device, the primary or common purpose
35 of which is to function by explosion. The term includes, but is not limited to, dynamite, pellet pow-
36 der, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord and igniters,
37 but excludes fireworks, as defined in ORS 480.110 (1), black powder, smokeless powder, small arms
38 ammunition, small arms ammunition primers and fertilizer, as defined in [*ORS 633.310*] **section 2**
39 **of this 2001 Act.**

40 (4) "Issuing authority" means the State Fire Marshal or an assistant appointed by the State Fire
41 Marshal under ORS 480.280 (2).

42 (5) "Magazine" means an approved facility for the storage of explosives.

43 (6) "Small arms ammunition" means a shotgun, rifle, pistol or revolver cartridge.

44 (7) "Small arms ammunition primers" means small percussion-sensitive explosive charges en-
45 cased in a cup and used to ignite propellant powder.

1 **SECTION 27.** ORS 561.144 is amended to read:

2 561.144. (1) The State Treasurer shall establish a Department of Agriculture Service Fund which
3 shall be a trust fund separate from the General Fund and included under ORS 293.115 (6), and which
4 shall not be subject to ORS 293.105 and 293.110. The State Department of Agriculture shall deposit
5 all license and service fees paid to it under the provisions of the statutes identified in subsection (3)
6 of this section in the Department of Agriculture Service Fund. The State Treasurer is the custodian
7 of this trust fund which shall be deposited by the treasurer in such depositories as are authorized
8 to receive deposits of the General Fund, and which may be invested by the treasurer in the same
9 manner as authorized by ORS 293.701 to 293.820.

10 (2) Notwithstanding ORS 293.140, interest received on deposits credited to the Department of
11 Agriculture Service Fund shall accrue to and become a part of the Department of Agriculture Ser-
12 vice Fund.

13 (3) The license and service fees subject to this section are those described in ORS 561.400,
14 570.710, 571.057, 571.063, 571.145, 583.004, 583.046, 583.445, 583.510, 583.610, 585.050, 586.270, 586.580,
15 586.650, 596.030, 596.311, 599.235, 599.269, 599.406, 599.610, 600.030, 601.040, 602.090, 603.025, 603.075,
16 616.706, 618.115, 618.136, 619.031, 621.072, 621.166, 621.266, 621.297, 621.335, 621.730, 622.080, 625.180,
17 628.240, 632.211, 632.425, 632.600, 632.720, 632.730, 632.741, 632.940, 632.945, 633.015, 633.029, [633.361,
18 633.460] 633.680, 633.700, 633.720, 634.016, 634.116, 634.122, 634.126, 634.132, 634.136, 634.212 and
19 635.030 **and sections 10, 18, 20 and 22 of this 2001 Act.**

20 **SECTION 28.** Notwithstanding the term of office specified by section 19 of this 2001 Act,
21 **of the members first appointed to the Fertilizer Research Committee:**

22 **(1) Two shall serve for terms ending January 1, 2004.**

23 **(2) Two shall serve for terms ending January 1, 2005.**

24 **(3) Three shall serve for terms ending January 1, 2006.**

25 **SECTION 29.** Sections 4 (1)(i) and 10 (11) of this 2001 Act become operative January 1,
26 **2003.**

27 **SECTION 30.** ORS 633.310, 633.320, 633.330, 633.335, 633.340, 633.343, 633.345, 633.350,
28 633.361, 633.370, 633.380, 633.390, 633.420, 633.430, 633.440, 633.450, 633.460, 633.470, 633.475,
29 633.485, 633.495 and 633.500 are repealed.

30 **SECTION 31.** Notwithstanding any other law, the amount of \$394,057 is established for
31 the biennium beginning July 1, 2001, as the maximum limit for payment of expenses from
32 fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds
33 and federal funds, collected or received by the State Department of Agriculture for purposes
34 of carrying out sections 2 to 23 of this 2001 Act.