

Oregon Fertilizer Program Guide



**Oregon Department of Agriculture
Salem, Oregon**



A New Fertilizer Law for Oregon

The calendar year 2002 brought significant changes to Oregon's fertilizer law. Due to the number of changes to the law, potential registrants of fertilizer, agricultural mineral, agricultural amendment, and lime products in Oregon are advised to review this booklet thoroughly.

Background

In January 2000, representatives of the fertilizer industry, agricultural and special interest groups, state agencies, and other interested parties started the process to draft what would become House Bill (HB) 3815, the first comprehensive revision to Oregon's fertilizer law in nearly 50 years. The existing fertilizer law (Oregon Revised Statutes Chapter 633) was showing its age, having limited scope to address current issues and needs. A proactive approach to strengthen Oregon's law was needed to provide protection to agriculture, consumers, and the state's natural resources. On August 3, 2001, then Governor John Kitzhaber signed HB 3815 into law. Unless otherwise noted, the changes to Oregon's fertilizer law listed below took effect on January 1, 2002.

Changes in Product Registration

- Registration per product replaces registration by brand. Product registration fees are \$25.00 per product per year, and are non-refundable. **(Pages 20 & 28)**
- A late registration fee of \$25.00 per product may be assessed. **(Page 21)**
- An additional product evaluation fee of \$50.00 per product per year will be assessed for fertilizer, agricultural mineral, or agricultural amendment products that require supplemental research to evaluate labeling claims, and for all waste-derived products. **(Pages 20-21 & 29)**
- Registrants need to identify to the Department the industry, industrial process, Standard Industrial Classification (SIC) or North American Industry Classification System (NAICS) code, and location that generated any waste-derived ingredients in all products submitted for registration. **(Pages 17 & 20)**
- Registrants need to provide laboratory data to the Department on the levels of arsenic (As), cadmium (Cd), mercury (Hg), lead (Pb), and nickel (Ni), in all products submitted for registration. **(Pages 21 & 33-34)**

Changes in Product Labeling Requirements

- A statement that declares the sources of all guaranteed primary nutrients, secondary nutrients, micronutrients, and non-plant food ingredients is required on all labels. **(Page 17)**

- Ingredients other than primary nutrients, secondary nutrients, and micronutrients that are claimed or advertised must be guaranteed, determinable by lab analysis, and listed on the label as NON-PLANT FOOD INGREDIENT(S). (Page 17)
- An Internet address that leads to product specific information, such as levels of heavy metals, will be required on product labels by January 1, 2004. (Pages 17 & 29)

Changes in Enforcement

- The Department has the authority to access records, premises, materials and conveyances, and to sample fertilizer, agricultural amendment, agricultural mineral, and lime products. (Pages 23 & 26)
- Civil penalties of not to exceed \$500 for a first violation, not to exceed \$1,500 for a second violation, and not to exceed \$10,000 for subsequent violations are established. (Pages 27 & 31-33)
- A violation that is determined to result in substantial harm to human health or the environment and is deemed to have arisen from gross negligence or willful misconduct, may be subject to a \$10,000 civil penalty for the initial violation and each subsequent violation. (Page 27)

Changes in Inspection Fee (Tonnage Tax) Collection and Rates

- Payment of inspection fees (tonnage tax) has been shifted from the first Oregon purchaser to the first party that sells or distributes a product into the state, or within the state if the product is created in Oregon with products on which no inspection fee has already been paid. (Pages 13 & 24)
- Inspection fees have been reduced to 10¢ per ton for fertilizer, agricultural amendment, and agricultural mineral products except gypsum. Gypsum inspection fees remain at 3¢ per ton. (Pages 13, 25 & 28)
- An inspection fee of 5¢ per ton for 100% compost products has been established. (Pages 13 & 28)
- All lime products are now exempt from inspection fees. (Pages 13 & 25-26)
- Inspection fee payments and submission of tonnage reports are reduced from four to two times a year. (Pages 13 & 25)
- A late fee of 10% or \$25.00, whichever is greater, has been established on unpaid inspection fees. The Department may deny the registration of products until outstanding inspection fees are paid. (Page 25)

Establishment of a Fertilizer Research Committee

- A fertilizer research committee is established to advise the Director on the disbursement of inspection fees collected specifically to fund research on the interaction of fertilizer, agricultural mineral, or agricultural amendment products with ground or surface water. (Page 26)

Establishment of a Manufacturer-Bulk Distributor License

- A manufacturer-bulk distributor license is required for each out-of-state or in-state location that distributes in bulk, and/or each in-state location that manufactures any fertilizer, agricultural amendment, agricultural mineral, or lime product in Oregon. The license fee is \$50.00 for each business entity. (Pages 12, 16 & 29)

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Oregon Administrative Rules (OAR) 603-059-0020 through 603-059-0050 28

PRODUCT REGISTRATION

Fertilizer, Agricultural Mineral, Agricultural Amendment, and Lime Product Registration

In order to register your products for sale or distribution, you will need to:

1. Complete **both** sides of an application form for the product type(s) you wish to register.
2. Declare on the application if the product contains waste-derived ingredient(s).
3. Declare on the application the levels of arsenic (As), cadmium (Cd), mercury (Hg), lead (Pb), and nickel (Ni) contained in the product. Include the laboratory analysis report from which the product As, Cd, Hg, Pb, and Ni levels were obtained. If the As, Cd, Hg, Pb, and Ni levels of the product change for any reason, you must notify the Department within 30 days.
4. Declare on the application the source(s) of all ingredients. You must notify the Department within 30 days of any changes in ingredient sources. Multiple sources of an ingredient can be declared on a product registration form.
5. Enclose a current label copy for each product to be registered.
6. Enclose the proper registration fee for the number of products to be registered.

For payment by **check or money order**, send your completed forms, laboratory analysis reports, product labels, and registration fee(s) to:

**Oregon Department of Agriculture
P.O. Box 4395, Unit 16
Portland, Oregon 97208-4395**

For payment by **credit card**, send your completed forms, laboratory analysis reports, product labels, and registration fee(s) to:

**Oregon Department of Agriculture
635 Capitol Street NE
Salem, Oregon 97301-2532**

Questions?
Call (503) 986-4635
or visit

<http://www.oda.state.or.us/fertilizer>

One registration certificate will be issued for each license type with all registered products listed.

Incomplete forms, missing lab reports or product labels, or insufficient registration fee(s) can lead to significant delays in product registration. Distribution or sale of unregistered products is a prohibited act according to Oregon Revised Statutes (ORS) 633.366(1)(e).

Declaring Heavy Metals

The levels (in ppm) of arsenic (As), cadmium (Cd), mercury (Hg), lead (Pb), and nickel (Ni) must be declared for each product that will be registered in Oregon. The Department is not presently mandating specific laboratory methods to determine As, Cd, Hg, Pb, and Ni levels, but does require that the specific methods used be declared. Random field samples will be taken by the Department to verify reported product As, Cd, Hg, Pb, and Ni levels.

Non-detect (ND) or zero values are not permitted. If your laboratory analysis report indicates a non-detect, list the laboratory detection limit preceded by a “<” (example: < 0.5 ppm).

Laboratory analyses used to support product registration in Washington State can be used for Oregon product registration. However, unlike Washington State, only actual metal levels can be reported in Oregon.

Maximum levels of As, Cd, Hg, Pb, and Ni allowable in fertilizer, agricultural mineral, agricultural amendment, and lime products, along with any additional constituents of concern, were established in 2002 and regulated through Oregon Administrative Rule beginning January 1, 2003.

Waste-Derived Fertilizer, Agricultural Mineral, Agricultural Amendment and Lime Products: Where do They Come From?

Certain waste products produced by industry contain components, such as zinc, iron, copper, or calcium carbonate, which can be recovered and used for agronomic purposes. The Department recognizes the value of material recovery and recycling when conducted in a safe manner. However some wastes, along with their crop nutrient content, contain hazardous constituents that provide no agronomic value. The use of these wastes in fertilizer, agricultural mineral, agricultural amendment, or lime products can introduce hazardous constituents into the ecosystem. These constituents can be hazardous to handle by applicators, contribute to the contamination of water resources, or may be taken up in toxic amounts by crops used for food or feed.

Definition of a Waste-Derived Product

According to Oregon Revised Statute (ORS) 633.311 (28), a “Waste-Derived Product” means any fertilizer, agricultural mineral, agricultural amendment, or lime product derived in whole or in part from hazardous waste as defined in ORS 466.005 (7) or in rules adopted thereunder, solid waste as defined in ORS 459.005 (24) or in rules adopted thereunder, or industrial waste as defined in ORS 468B.005 (2) or in rules adopted thereunder. Under this definition, waste-derived products do not include:

1. Biosolids, biosolids-derived products, domestic septage and domestic wastewater treatment facility solids regulated under ORS chapters 468 and 468B; or
2. Reclaimed water or treated effluent regulated under ORS 468.020, 468B.010, and 468B.015.

What Does This Mean?

Waste-derived products are made entirely from, or include ingredients derived from, a wide variety of processes that produce byproducts regulated under the federal Resource Conservation and Recovery Act (RCRA). In Oregon, RCRA is administered by the Oregon Department of Environmental Quality (DEQ). RCRA and DEQ have specific limits of

“constituents of concern”, based on the industry process generating the waste. These limits determine if the byproduct must be classified as a “waste”, or if the byproduct may be recycled as a beneficial source of an element or to provide agronomic benefit in a fertilizer, agricultural amendment, agricultural mineral, or lime product.

All fertilizer, agricultural amendment, agricultural mineral, and lime products that contain such byproducts (in whole or in part), must be designated as “waste-derived”. Examples of some byproduct sources which would trigger a “waste-derived” designation are: electric arc furnace dust, brass foundry dust, tire ash, copper industry wastes, and paper processing waste products.

Examples of Waste-Derived Products

Paper mill sludge used as a lime product
Fertilizer product using electric arc furnace dust (KO61) as a source of zinc
Sulfur obtained from smoke stack scrubbing

Examples of Products Not Classified as Waste Derived

Compost
Bone Meal
Ammonium Sulfate (where the sulfur that was reacted with ammonium to produce the product was derived from smoke stack scrubbing)

When is a Product Considered a Fertilizer?

A product is considered a fertilizer in Oregon if it contains 5% or more of available nitrogen (N), available phosphate (P₂O₅), or soluble potash (K₂O), singly, collectively or in combination.

Required Elements of a Fertilizer Product Label

1 Name of the product.

2 Grade Statement.

3 Guaranteed Analysis statement. The Guaranteed Analysis must be stated on an "as-is" basis.

The guarantees for the forms of nitrogen must add up to the total nitrogen guarantee.

4 Derivation statement. No brand names, abbreviations, trade marks or trade names may appear in the derivation statement.

5 The identity and amount of ingredients other than primary, secondary or micronutrients that are claimed or advertised.

GRAND SLAM! Sports Turf Fertilizer

20-10-10

Guaranteed Analysis

Total Nitrogen (N)	20%
4.1% Ammoniacal Nitrogen	
3.6% Nitrate Nitrogen	
12.3% Urea Nitrogen	
Available Phosphate (P ₂ O ₅)	10%
Soluble Potash (K ₂ O)	10%
Calcium (Ca)	4.4%
Magnesium (Mg)	0.5%
0.5% Water Soluble Magnesium	
Sulfur (S)	6.0%
Boron (B)	0.2%
Molybdenum (Mo)	0.008%
Zinc (Zn)	0.05%
0.05% Chelated Zinc	

WARNING – Product contains boron and molybdenum. Do not apply to boron sensitive crops. Do not apply to crops that will be grazed by ruminant animals.

Derived from: Urea, calcium nitrate, ammonium sulfate, triple superphosphate, potassium sulfate, magnesium sulfate, sodium borate, sodium molybdate and zinc ethylenediaminetetraacetic acid.

Also Contains Non-Plant Food Ingredients:
 5% Humic Acids (Derived From Leonardite)
 500 propagules/gram *Glomus intraradices*
 Expires: 5/2002

Universal Exports
P.O. Box 7
Salem, Oregon 97007
Net Weight - 25 Lbs.

The guaranteed analysis of secondary or micronutrients must be made on an elemental basis. When chelated, water soluble or other forms are claimed or advertised, the form and percentage must be guaranteed separately.

9 Products with added boron over 0.1% or added molybdenum over 0.001% must include a warning or cautionary statement indicating that the product contains added boron or molybdenum and is to be used only according to the manufacturer's recommendations or directions.

8 Name and mailing address of registrant, distributor or manufacturer.

7 Net weight or volume.

6 If the product is intended to be used as a microbiological inoculum, include the following:

- A product expiration date;
- The number of each viable organism per milliliter for liquid products or per gram for dry products; and
- The identification of each viable organism expressed as genus and species, and if applicable, strain.

When is a Product Considered an Agricultural Mineral?

A product is considered an agricultural mineral in Oregon if it contains less than 5% of available nitrogen (N), available phosphate (P₂O₅) or soluble potash (K₂O), singly, collectively or in combination. Typical agricultural mineral products are those that contain secondary nutrients (calcium, magnesium, sulfur), and/or micronutrients (boron, copper, iron, manganese, molybdenum, zinc) as their primary ingredients.

Required Elements of an Agricultural Mineral Product Label

1 Name of the product.

2 Grade Statement (if primary nutrients are guaranteed).

3 Guaranteed Analysis statement. The Guaranteed Analysis must be stated on an "as-is" basis.

The guarantees for the forms of nitrogen must add up to the total nitrogen guarantee.

4 Derivation statement. No brand names, abbreviations, trade marks or trade names may appear in the derivation statement.

5 The identity and amount of ingredients other than primary, secondary or micronutrients that are claimed or advertised.

6 If the product is intended to be used as a microbiological inoculum, include the following:

- A product expiration date;
- The number of each viable organism per milliliter for liquid products or per gram for dry products; and
- The identification of each viable organism expressed as genus and species, and if applicable, strain.

7 Net weight or volume.

8 Name and mailing address of the registrant, distributor or manufacturer.

9 Products with added boron over 0.1% or added molybdenum over 0.001% must include a warning or cautionary statement indicating that the product contains added boron or molybdenum and is to be used only according to the manufacturer's recommendations or directions.

The guaranteed analysis of secondary or micronutrients must be made on an elemental basis. When chelated, water soluble or other forms are claimed or advertised, the form and percentage must be guaranteed separately.

Q's Micro Mix
1-0-2
Guaranteed Analysis

Total Nitrogen (N)	1%
1.0% Nitrate Nitrogen	
Soluble Potash (K ₂ O)	2%
Calcium (Ca)	2%
Magnesium (Mg)	2%
2% Water Soluble Magnesium	
Sulfur (S)	5.0%
Boron (B)	0.2%
Copper (Cu)	0.05%
Iron (Fe)	0.1%
Manganese (Mn)	0.05%
Molybdenum (Mo)	0.008%
Zinc (Zn)	2.0%
0.50% Chelated Zinc	

WARNING - Product contains boron and molybdenum. Do not apply to boron sensitive crops. Do not apply to crops that will be grazed by ruminant animals.

Derived from: Calcium nitrate, potassium sulfate, magnesium sulfate, calcium sulfate, sodium borate, copper sulfate, iron sulfate, manganese sulfate, sodium molybdate, zinc oxide and zinc ethylenediaminetetracetic acid.

Also Contains Non-Plant Food Ingredients:
5% Humic Acids (Derived From Leonardite)
500 propagules/gram *Glomus intraradices*
Expires: 5/2002

Universal Exports
P.O. Box 7
Salem, Oregon 97007
Net Weight - 50 Lbs.

When is a Product Considered a Lime?

A product is considered a lime in Oregon if its calcium and magnesium compounds are capable of neutralizing soil acidity.

Required Elements of a Lime Product Label

1 Name of the product.

2 Guaranteed Analysis statement. The Guaranteed Analysis must be stated on an "as-is" basis.

3 The minimum % of calcium oxide (CaO) or calcium carbonate (CaCO₃).

4 The minimum % of magnesium oxide (MgO) or magnesium carbonate (MgCO₃).

5 Lime score. Directions on how to calculate a product's lime score can be found in OSU Extension Publication FG 52 "Fertilizer and Lime Materials." This publication can be found on-line at <http://www.agcomm.ads.orst.edu/>

6 Derivation statement. No brand names, abbreviations, trade marks or trade names may appear in the derivation statement.

7 Net weight or volume.

8 Name and mailing address of registrant, distributor or manufacturer.

9 The name of the specific form of lime.

10 The maximum moisture content if the moisture content is more than 2%, expressed in whole numbers as "Moisture content does not exceed ____%."

11 The percentage of the product that will pass 100-mesh, 40-mesh, 20-mesh and 10-mesh U.S. standard sieves.

12 The minimum total neutralizing power expressed in terms of calcium carbonate equivalent (CCE).

Willamette Row Crop Lime

Guaranteed Analysis

Calcium Carbonate (CaCO ₃)	98%
Magnesium Carbonate (MgCO ₃)	1%
Calcium Carbonate Equivalent (CCE)	101%
Passing 100-Mesh Sieve	87%
Passing 40-Mesh Sieve	92%
Passing 20-Mesh Sieve	94%
Passing 10-Mesh Sieve	96%
Lime Score	92
Moisture Content Does Not Exceed	3%
Derived From: Ground Limestone	
<p>Universal Exports P.O. Box 7 Salem, Oregon 97007 Net Weight - 2,000 Lbs.</p>	

When is a Product Considered an Agricultural Amendment?

A product is considered an agricultural amendment in Oregon if it does not contain guaranteed amounts of primary nutrients (nitrogen, phosphorus, potassium), secondary nutrients (calcium, magnesium, sulfur), and/or micronutrients (boron, copper, iron, manganese, molybdenum, zinc), but may promote plant growth or produce physical or chemical changes in the soil. Typical agricultural amendments are biological inoculums, surfactants, wetting agents, and humic acid.

Required Elements of an Agricultural Amendment Product Label

1 Name of the product.

2 Guaranteed Analysis statement. The product's Guaranteed Analysis must be stated on an "as-is" basis.

3 Purpose of the product.

4 Net weight or volume.

5 Name and mailing address of registrant, distributor or manufacturer.

6 Directions for application.

7 The name and percentage of each substance intended to induce crop yields or plant growth or to produce any physical or chemical change in the soil, listed consecutively, followed by the percentage of other substances intended to be inert ingredients.

8 If the product is intended to be used as a microbiological inoculum, include the following:

- A product expiration date;
- The number of each viable organism per milliliter for liquid products or per gram for dry products; and
- The identification of each viable organism expressed as genus and species, and if applicable, strain.

MANUFACTURER-BULK DISTRIBUTOR LICENSE

Does My Business Need a Manufacturer-Bulk Distributor License?

You need to obtain a Manufacturer-Bulk Distributor License if:

1. Your business (located in Oregon or out-of-state) distributes fertilizer, agricultural amendment, agricultural mineral, or lime products in bulk[†] in Oregon; or
2. Your business (located in Oregon) manufactures any fertilizer, agricultural amendment, agricultural mineral, or lime products.

If your business meets either or both of these descriptions, then you need to obtain a Manufacturer-Bulk Distributor License. Cost of the license is \$50.00 per calendar year. Only one Manufacturer-Bulk Distributor License is needed per business, regardless of the number of locations involved; however, each location needs to be identified. Each location listed on the application form will receive a license certificate. Changes in business locations (closures, new locations, etc.) must be reported to the Department within 30 days. Failure to obtain a Manufacturer-Bulk Distributor License is a prohibited act according to Oregon Revised Statute (ORS) 633.366 (1)(i).

[†]**Bulk or bulk sale** is defined as the sale, offering for sale or delivery of a fertilizer, agricultural mineral, agricultural amendment or lime product or of a custom mix, in unpackaged form, such as in open containers, closed or open tote boxes, closed or open tanks, closed or open trailers, spreader trucks or other types of containers, vehicles or conveyances as determined by State Department of Agriculture rule. (ORS 633.311(4))

RECORD KEEPING

What About Record Keeping for Custom Mixes?

If your business mixes or sells custom mix[‡] fertilizer, agricultural amendment, agricultural mineral, or lime products, records (as outlined below) need to be kept for at least three years:

1. The name and address of the purchaser;
2. The date the product was mixed;
3. A unique identifier for each mixture;
4. All label information as required for fertilizer, agricultural mineral, agricultural amendment, or lime products, or a list of the registered ingredients showing the number of pounds and the grade of each ingredient in the mixture or batch. If a list of registered ingredients is kept, a copy of the product label provided to the purchaser must be kept as well.

These records must be available for inspection, by either the Department or the purchaser, during normal business hours.

Failure to keep records on custom mixes as outlined above and refusal to make such records available for inspection are prohibited acts according to Oregon Revised Statute (ORS) 633.366 (1)(f).

[‡]**Custom mix** means a mixture of fertilizer, agricultural mineral, agricultural amendment 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. (ORS 633.311(6))

INSPECTION FEES

Have Inspection Fees Changed?

Significant changes have been made to who is responsible for paying inspection fees, and to inspection fee rates. Payment of inspection fees on fertilizer, agricultural mineral, and agricultural amendment products is no longer the responsibility of the “first purchaser” in Oregon. Rather, inspection fees and tonnage reporting are now the responsibility of any business that:

1. Sells or distributes into Oregon, from foreign or domestic sources, a fertilizer, agricultural mineral or agricultural amendment product used as an ingredient in the Oregon manufacture of a fertilizer, agricultural mineral or agricultural amendment product; or
2. Sells or distributes into Oregon, from foreign or domestic sources, an end-use fertilizer, agricultural mineral or agricultural amendment product for use in Oregon; or
3. Sells or distributes into Oregon a fertilizer, agricultural mineral or agricultural amendment product that is composed of ingredients for which an inspection fee was not charged under 1 or 2 above.

Inspection fee payments and tonnage reporting are now required every six months instead of every three months. All lime products are exempt from inspection fees, but tonnage reports on lime product sales still need to be submitted every six months. Failure to pay inspection fees as required is a prohibited act according to Oregon Revised Statutes (ORS) 633.366 (1)(n). Failure to submit tonnage reports as required is a prohibited act according to ORS 633.366 (1)(m).

Inspection fees are as follows:

Fertilizer	-----	10¢ per ton (was 35¢ per ton)
Agricultural Minerals	-----	10¢ per ton (was 35¢ per ton)
Agricultural Amendments	-----	10¢ per ton (was 35¢ per ton)
Gypsum	-----	3¢ per ton (no change)
100% Compost	-----	5¢ per ton (new category)
Lime	-----	0¢ per ton (was 3¢ per ton)

Oregon Revised Statutes (ORS) 633.311 through 633.510, and 633.994**Fertilizer and Other Soil-Enhancing Products**

633.311 Definitions for ORS 633.311 to 633.479 and 633.994. As used in ORS 633.311 to 633.479 and 633.994:

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

- (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) Biosolids-derived products, compost and animal or vegetable manures that are not packaged and do not contain a grade statement or guaranteed analysis;
- (k) Biosolids, domestic septage and domestic wastewater treatment facility solids regulated under ORS chapters 468 and 468B; and
- (L) Reclaimed water or treated effluent regulated under ORS 468.020, 468B.010 and 468B.015.

(2) “Agricultural mineral” means a mineral substance, mixture of mineral substances or mixture of mineral and organic substances containing less than five percent of available nitrogen (N), available phosphate (P₂O₅) or soluble potash (K₂O), singly, collectively or in combination, designed for use principally as a source of plant food, in inducing increased crop yields or plant growth or producing any physical or chemical change in the soil. “Agricultural mineral” does not include:

- (a) Fertilizer products;
- (b) Agricultural amendment products;
- (c) Lime products;
- (d) Sand;
- (e) Soil;
- (f) Biosolids-derived products, compost and animal or vegetable manures that are not packaged and do not contain a grade statement or guaranteed analysis;
- (g) Biosolids, domestic septage and domestic wastewater treatment facility solids regulated under ORS chapters 468 and 468B; and
- (h) Reclaimed water or treated effluent regulated under ORS 468.020, 468B.010 and 468B.015.

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

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

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

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

- (7) “**Department**” means the State Department of Agriculture.
- (8) “**Director**” means the Director of Agriculture.
- (9) “**Distributor**” means a person who imports, consigns, sells or offers for sale, barter, exchanges or otherwise facilitates the supply of fertilizer, agricultural mineral, agricultural amendment or lime product.
- (10) “**Fertilizer**” 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 or chemical change in the soil, and that contains five percent or more of available nitrogen (N), available phosphate (P_2O_5) or soluble potash (K_2O), singly, collectively or in combination. “Fertilizer” does not include:
- (a) Agricultural mineral products;
 - (b) Agricultural amendment products;
 - (c) Lime products;
 - (d) Hays;
 - (e) Straws;
 - (f) Peat;
 - (g) Leaf mold;
 - (h) Biosolids-derived products, compost and unpackaged animal or vegetable manures that do not contain a grade statement or guaranteed analysis;
 - (i) Biosolids, domestic septage and domestic wastewater treatment facility solids regulated under ORS chapters 468 and 468B; and
 - (j) Reclaimed water and treated effluent regulated under ORS 468.020, 468B.010 and 468B.015.
- (11) “**Grade**” means the minimum percentage claimed for available nitrogen (N), available phosphate (P_2O_5) or soluble potash (K_2O) stated in the same terms, order and percentages as the guaranteed analysis.
- (12) “**Guaranteed analysis**” means the minimum percentage of the following claimed to be present in a product:
- (a) Primary nutrients;
 - (b) Secondary nutrients;
 - (c) Micronutrients;
 - (d) Neutralizing capability; or
 - (e) Substances claimed to induce crop yields or plant growth or to produce any physical or chemical change in the soil.
- (13) “**Label**” means all written, printed or graphic matter on the immediate container or on a statement or invoice accompanying any fertilizer, agricultural mineral, agricultural amendment or lime product.
- (14) “**Labeling**” means a printed or verbal representation used to promote the sale of any fertilizer, agricultural mineral, agricultural amendment or lime product, including but not limited to a representation by means of:
- (a) Brochures;
 - (b) Posters;
 - (c) Internet;
 - (d) Television; and
 - (e) Radio.
- (15) “**Lime**” means any substance or mixture of substances whose calcium and magnesium compounds are capable of neutralizing soil acidity.
- (16) “**Lime score**” means a numerical expression of the quality of lime, as determined by the department by rule.
- (17) “**Manufacture**” means to compound, produce, granulate, mix, blend, repackage or otherwise alter the composition of fertilizer, agricultural mineral, agricultural amendment or lime product.
- (18) “**Micronutrient**” means boron (B), chlorine (Cl), cobalt (Co), copper (Cu), iron (Fe), manganese (Mn), molybdenum (Mo), sodium (Na) or zinc (Zn).
- (19) “**Official sample**” means any representative sample of product taken by the department or a representative of the department and designated as official.

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

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

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

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

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

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

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

(27) **“Ton”** means 2,000 pounds avoirdupois.

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

(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 468.020, 468B.010 and 468B.015. [2001 c.914 §2]

633.315 Applicability of ORS 633.311 to 633.479 and 633.994. ORS 633.311 to 633.479 and 633.994 apply only to the extent that they are consistent with ORS chapter 634. The provisions of ORS 633.311 to 633.479 and 633.994 do not supersede the provisions of ORS chapter 634. [2001 c.914§3]

633.318 Licensing of manufacturers and bulk distributors; application; fee; change of location.

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

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

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

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

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

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

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

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

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

(5) Within 30 days, each license holder shall report any change to the department that results in the addition, removal or change of a location. [2001 c.914 §22]

633.320 [Amended by 1955 c.235 §2; 1959 c.78 §1; 1965 c.268 §2; 1977 c.799 §2; repealed by 2001 c.914 §30]

633.321 Labeling requirements for fertilizer, agricultural mineral, agricultural amendment and lime products.

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

- (a) The name under which the product is registered or sold.
- (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) A guaranteed analysis. The guaranteed analysis must follow the statement, "GUARANTEED ANALYSIS." Guarantees must be based on a laboratory method of analysis approved by the State Department of Agriculture. The guaranteed analysis shall be stated on an "as is" basis at the time the fertilizer, agricultural mineral, agricultural amendment or lime product is offered for sale or distributed into or within this state. Primary nutrients, secondary nutrients and micronutrients that are claimed or advertised must be individually guaranteed.
- (f) A derivation statement declaring the sources for all primary and secondary nutrients, micronutrients and non-plant food ingredients guaranteed. The statement must be listed below the completed guaranteed analysis. Abbreviations, brand names, trademarks and trade names may not appear in the derivation statement, but may appear as part of the product name in an area of the label that is separate from the derivation statement.
- (g) The identity and amount of ingredients other than primary nutrients, secondary nutrients and micronutrients that are claimed or advertised. The identity and amount must be guaranteed and determinable by laboratory methods approved by the department. The source of such ingredients shall be placed on the label as follows:

ALSO CONTAINS NON-PLANT FOOD INGREDIENT(S):

___% Humic Acids (Derived from___)

___% Other Determinable Non-Plant Food Ingredients

- (h) A unique identifier for custom mixed products.
- (i) 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, accessible by product name, ingredient or reportable substance, shall include, at a minimum:
 - (A) The name of any product identified as waste-derived in an application for registration as provided in ORS 633.362 (9);
 - (B) The Standard Industrial Classification code of the facility that generated each waste-derived product or waste-derived ingredient of a product identified in subparagraph (A) of this paragraph; and
 - (C) The type and level of metals and other substances required by the department by rule to be reported for registration of any product as provided in ORS 633.362 (10).

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

GUARANTEED ANALYSIS:

Total Nitrogen (N) _____%

____% Ammoniacal Nitrogen

____% Nitrate Nitrogen

____% Water Soluble Organic Nitrogen or other recognized and determinable forms of Nitrogen

____% Water Insoluble Organic Nitrogen or Water Insoluble Nitrogen

Available Phosphate (P₂O₅) _____%

Soluble Potash (K₂O) _____%

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

(b) In addition to guarantees of available phosphate (P₂O₅) and soluble potash (K₂O), the percentage of phosphorus (P) and potassium (K) may be shown by indentation and subscript as prescribed by the department. Phosphorous acid (expressed as H₃PO₃ or PO₃) cannot be claimed as a source of available phosphate.

(c) Unacidulated mineral phosphatic materials, bone, tankage or other phosphatic materials shall be guaranteed on the label as follows:

Available Phosphate (P₂O₅) _____%

____% Total Phosphate

____% Insoluble Phosphate

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

Calcium (Ca) 1.0000%

Magnesium (Mg) 0.5000%

Sulfur (S) 1.0000%

Boron (B) 0.0200%

Chlorine (Cl) 0.1000%

Cobalt (Co) 0.0005%

Copper (Cu) 0.0500%

Iron (Fe) 0.1000%

Manganese (Mn) 0.0500%

Molybdenum (Mo) 0.0005%

Sodium (Na) 0.1000%

Zinc (Zn) 0.0500%

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

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

(A) A product expiration date;

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

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

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

(6) A product ingredient may not be listed, claimed or guaranteed on the label or labeling without prior approval by the department. [2001 c.914 §4]

Note: Section 29, chapter 914, Oregon Laws 2001, provides: Sec. 29. Sections 4 (1)(i) [633.321 (1)(i)] and 10 (11) [633.362 (11)] of this 2001 Act become operative January 1, 2003. [2001 c.914 §29]

633.330 [Amended by 1955 c.235 §3; 1965 c.268 §3; repealed by 2001 c.914 §30]

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

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

(2) The guaranteed analysis, stating:

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

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

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

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

(e) The lime score; and

(f) The maximum moisture content if the moisture content is more than two percent, expressed in whole numbers as follows, "Moisture content does not exceed _____ percent." [2001 c.914 §5]

633.335 [1977 c.799 §18; repealed by 2001 c.914 §30]

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

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

(2) The purpose of the product.

(3) Directions for application. [2001 c.914 §6]

633.340 [Amended by 1955 c.235 §4; 1965 c.268 §4; 1997 c.249 §191; repealed by 2001 c.914 §30]

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

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

(2) The percentage of calcium sulfate, if the product is gypsum, landplaster or plaster or is an agricultural mineral in which calcium sulfate ($\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$) is the principal ingredient.

(3) The percentage of all ingredients contained in the product, in terms prescribed by the State Department of Agriculture, for all other agricultural minerals or mixtures of agricultural minerals with a principal ingredient other than sulfur or calcium sulfate. [2001 c.914 §7]

633.343 [1965 c.268 §6; repealed by 2001 c.914 §30]

633.344 Label guarantees of additional plant nutrients. In addition to the guarantees of plant nutrients required by ORS 633.321, label guarantees of other plant nutrients may be made from a list approved by the State Department of Agriculture. [2001 c.914 §8]

633.345 [1965 c.268 §5; repealed by 2001 c.914 §30]

633.350 [Amended by 1965 c.268 §9; repealed by 2001 c.914 §30]

633.351 Sale of animal byproducts. A person may not sell or offer for sale for agronomic purposes any leather, hair, wool waste, hoof, horn, urea-formaldehyde condensation products or similar materials, either singly or in combination, unless the products or materials have been processed in such manner as to make the plant food content available in conformity with the standards established by the State Department of Agriculture, taking into consideration the standards of activity recommended by recognized experts in the field. [2001 c.914 §9]

633.360 [Repealed by 1955 c.235 §13]

633.361 [1955 c.235 §12; 1965 c.268 §10; 1977 c.799 §3; repealed by 2001 c.914 §30]

633.362 Registration of fertilizer, agricultural amendment, agricultural mineral and lime products; application; fee; expiration; product contents. (1) Each separately identifiable fertilizer, agricultural amendment, agricultural mineral or lime product, whether in package or in bulk, shall be registered with the State Department of Agriculture. A person may not sell, offer for sale or distribute a fertilizer, agricultural amendment, agricultural mineral or lime product in this state until the fertilizer, agricultural amendment, agricultural mineral or lime product is registered with the department.

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

(a) Product name and grade;

(b) Product label;

(c) Name and physical address of the registrant;

(d) Mailing address of the registrant;

(e) Product laboratory analysis;

(f) Supplier or suppliers of ingredients;

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

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

(3) The application for registration shall be accompanied by a nonrefundable registration fee established by department rule, not to exceed \$25 annually for each fertilizer, agricultural amendment, agricultural mineral or lime product. For a waste derived product, the department shall also charge an annual product evaluation fee. For a fertilizer, agricultural mineral or agricultural amendment product, the department may charge a product evaluation fee if supplementary research and evaluation by the department is required in order to determine product compliance with ORS 633.311 to 633.479 and

633.994. The department shall establish product evaluation fees by rule, not to exceed \$50. The department shall review the registration application form and product label for compliance with ORS 633.311 to 633.479 and 633.994. If the department finds that the application information and product label comply with ORS 633.311 to 633.479 and 633.994, the department shall issue a certificate of registration to the registrant.

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

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

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

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

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

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

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

(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 every five years.

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

(13) The department may refuse to register any fertilizer, agricultural amendment, agricultural mineral or lime product the sale, offering for sale or distribution of which would violate any of the provisions of ORS 633.311 to 633.479 and 633.994. The registration of each product is a distinct and separate registration, and the refusal to register or reregister any product does not affect the registration of any other product by the same person. [2001 c.914 §10]

Note: See note under 633.321.

633.364 Confidentiality of certain information supplied in application for registration. (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 information required under ORS 633.311 to 633.479 and 633.994 may be used by the department for any administrative or enforcement action the department deems necessary. In addition, the department may:

- (a)** Accumulate and publish statistics from statements required by ORS 633.461 and 633.471 in a manner that does not divulge the business operations of the person submitting a report;
- (b)** Consult with the Department of Environmental Quality or other state or federal agencies in regard to information provided under ORS 633.362 (2)(f) and (g) to ensure compliance with applicable regulations; and
- (c)** Disclose data required under ORS 633.362 (6) to experts for the purpose of evaluating product data submitted in support of registration. [2001 c.914 §23]

633.366 Prohibitions; mislabeled products; adulterated products. (1) A person may not:

- (a)** Sell, offer for sale or distribute mislabeled products;
- (b)** Register or attempt to register any product using fraudulent or deceptive practices to evade or attempt to evade the requirements of ORS 633.311 to 633.479 and 633.994 or rules adopted thereunder;
- (c)** Sell, offer for sale or distribute adulterated products;
- (d)** Fail, refuse or neglect to deliver to a purchaser of a bulk fertilizer, agricultural amendment, agricultural mineral or lime product a printed label that complies with ORS 633.321 to 633.341;
- (e)** Sell, offer for sale or distribute a fertilizer, agricultural amendment, agricultural mineral or lime product that is not registered with the State Department of Agriculture under ORS 633.362;
- (f)** Fail, refuse or neglect to keep or maintain records as required under ORS 633.461, 633.471 and 633.476 or refuse to make available such records pursuant to ORS 633.385 upon request by the department;
- (g)** Make false or fraudulent applications, records, invoices or reports;
- (h)** Fail, refuse or neglect to provide notification to the department as required by ORS 633.318 (5) or 633.362 (8);
- (i)** Fail, refuse or neglect to obtain a manufacturer-bulk distributor license required under ORS 633.318;
- (j)** Sell, use or remove any product subjected to a stop sale, use or removal order until the product has been released in accordance with ORS 633.445;
- (k)** Impede, obstruct, hinder or otherwise prevent or attempt to prevent the department from the performance of department duties under ORS 633.311 to 633.479 and 633.994;
- (L)** Knowingly or intentionally make any false or misleading representations in connection with the sale, offer for sale or distribution of fertilizer, agricultural amendment, agricultural mineral or lime products;
- (m)** Fail, refuse or neglect to file a semiannual statement with the department as required under ORS 633.461 or 633.471; or
- (n)** Fail, refuse or neglect to pay inspection fees required under ORS 633.461.

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

- (a) Is false, misleading or deceptive;
- (b) Does not accurately reflect the composition of the product;
- (c) Requires warning statements or directions for use that may be necessary to protect humans, animals, water, aquatic life, soil or beneficial plant life and such warning statements or directions are not adequately stated on the label; or
- (d) Does not comply with the requirements of ORS 633.321 to 633.341.

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

- (a) Contains any deleterious or harmful ingredient in an amount that is injurious to humans, animals, water, aquatic life, soil or beneficial plant life when used in accordance with instructions for product use on the label;
- (b) Differs in composition from that which is claimed on the label;
- (c) Differs in composition from that which is claimed in the information provided in accordance with ORS 633.362; or
- (d) Contains unwanted crop seed or weed seed. [2001 c.914 §16]

633.370 [Amended by 1977 c.799 §4; 1979 c.499 §31; repealed by 2001 c.914 §30]

633.371 Disposition of revenues. The State Department of Agriculture shall deposit revenues received under ORS 633.311 to 633.479 and 633.994 in the Department of Agriculture Service Fund. The revenues shall be continuously appropriated to the department for the purpose of administering and enforcing ORS 633.311 to 633.479 and 633.994. [2001 c.914 §11]

633.380 [Amended by 1965 c.268 §11; 1977 c.799 §5; repealed by 2001 c.914 §30]

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

(2) The department may take samples of any fertilizer, agricultural amendment, agricultural mineral or lime product or other substance sold, offered for sale or distributed into or within this state at times the department deems necessary for the purpose of determining compliance with ORS 633.311 to 633.479 and 633.994.

(3) All sampling and analyses of fertilizer, agricultural amendment, agricultural mineral and lime products shall be made according to methods approved by the department. [2001 c.914 §13]

633.388 Reports of official sample. (1) A report of official sample, signed and acknowledged by a chemist employed by the State Department of Agriculture, other state agency or laboratory facility designated by the department, relating to the analysis of any fertilizer, agricultural amendment, agricultural mineral or lime product is prima facie evidence that the sample identified in the report of official sample was properly analyzed and that the substance analyzed contained the constituent parts stated in the report of official sample.

(2) A report of official sample, signed and acknowledged by the department, relating to the sampling of any product is prima facie evidence that the sample identified was taken from parcels, containers or lots identified in the official request for analysis. [2001 c.914 §12]

633.390 [Amended by 1955 c.235 §5; 1965 c.268 §12; 1977 c.799 §6; repealed by 2001 c.914 §30]

633.400 [Amended by 1955 c.235 §6; 1965 c.268 §13; repealed by 1977 c.799 §7]

633.410 [Repealed by 1969 c.131 §5]

633.420 [Amended by 1955 c.235 §7; 1977 c.799 §8; repealed by 2001 c.914 §30]

633.430 [Amended by 1955 c.235 §8; 1961 c.425 §18; 1977 c.799 §9; repealed by 2001 c.914 §30]

633.440 [Amended by 1965 c.268 §14; 1975 c.129 §1; 1977 c.799 §10; 1989 c.833 §64; repealed by 2001 c.914 §30]

633.441 Department authority to adopt rules. In accordance with the applicable provisions of ORS 183.310 to 183.550, the State Department of Agriculture may adopt rules necessary to implement, administer and enforce ORS 633.311 to 633.479 and 633.994, including but not limited to rules for:

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

- (a) Handling;
- (b) Sampling;
- (c) Storage;
- (d) Labeling;
- (e) Distribution;
- (f) Definitions;
- (g) Analysis;
- (h) Records;
- (i) Use;
- (j) Minimum percentages;
- (k) Investigational allowances; and
- (L) Ingredients.

(2) Public access to product information of any fertilizer, agricultural amendment, agricultural mineral or lime product. [2001 c.914 §15]

633.445 Orders preventing sale or other disposition of product; seizure; hearing. (1) When the State Department of Agriculture has reasonable cause to believe any quantity or lot of fertilizer, agricultural amendment, agricultural mineral or lime product is sold, offered for sale, stored, used or distributed in violation of ORS 633.311 to 633.479 and 633.994 or rules adopted thereunder, the department may, in accordance with ORS 561.605 to 561.620, issue and enforce a stop sale, use or removal order prohibiting the disposal, distribution, use or removal of the quantity or lot of product in any manner. The department may enforce the order until all actions against the order, including any contested case, are resolved or until the department gives written permission releasing the product for disposal, distribution, use or removal. The department shall give written permission releasing the product when ORS 633.311 to 633.479 and 633.994 are complied with.

(2) In accordance with ORS 561.605 to 561.620, the department may seize any quantity or lot of product that the department determines does not comply with ORS 633.311 to 633.479 and 633.994. [2001 c.914 §14]

633.450 [Amended by 1955 c.235 §9; 1977 c.799 §11; repealed by 2001 c.914 §30]

633.460 [Amended by 1955 c.235 §10; 1959 c.78 §2; 1965 c.268 §15; 1977 c.799 §12; 1989 c.833 §65; 1997 c.249 §192; repealed by 2001 c.914 §30]

633.461 Inspection fees; statement of distributions; failure to pay inspection fee; collection fee; record keeping. (1) An inspection fee in the amount set forth under subsection (2) of this section shall be paid to the State Department of Agriculture by any person who:

- (a) Sells or distributes into this state, from foreign or domestic sources, a fertilizer, agricultural mineral or agricultural amendment product used as an ingredient in the in-state manufacture of a fertilizer, agricultural mineral or agricultural amendment product;
- (b) Sells or distributes into this state, from foreign or domestic sources, an end-use fertilizer, agricultural mineral or agricultural amendment product for use within this state; or
- (c) Sells or distributes into this state a fertilizer, agricultural mineral or agricultural amendment product to the extent the product is composed of ingredients for which an inspection fee was not charged under paragraph (a) or (b) of this subsection.

- (2) A person described in subsection (1) of this section shall pay the department an inspection fee in an amount established by rule:
- (a) Not to exceed \$0.45 for each ton of fertilizer, agricultural mineral or agricultural amendment products sold or distributed, of which an amount not to exceed \$0.25 must be continuously appropriated to the department for the sole purpose of funding grants for research and development related to the interaction of fertilizer, agricultural mineral or agricultural amendment products and ground water or surface water as described in ORS 633.479 (1).
 - (b) Not to exceed \$0.05 for each ton of gypsum, land plaster and each agricultural mineral with a principal ingredient of calcium sulfate ($\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$) sold or distributed.
- (3) Each person responsible for paying an inspection fee shall file a semiannual statement with the department, on forms provided by the department, setting forth the total tonnage of each product distributed into or within the state during each reporting period. There will be two six-month reporting periods, January 1 through June 30 and July 1 through December 31 of each year. Semiannual statements and inspection fees are due within 30 days after the end of each reporting period.
- (4) Notwithstanding ORS 633.362, the department may suspend or deny registration of a product until the statement is filed and the inspection fee is paid as required under this section.
- (5) If a person required to file a semiannual statement under subsection (3) of this section does not sell or distribute any fertilizer, agricultural amendment or agricultural mineral product during a reporting period, the person shall file a statement declaring that no sales or distribution occurred.
- (6) If a person required to file a semiannual statement or pay an inspection fee does not file the statement or pay the fee within 30 days of the due date established by the department, the department may assess a collection fee of 10 percent of the amount due or \$25, whichever is greater, and the department may withhold registration of the product until the report is filed and the fee is paid.
- (7) A person required to file a semiannual statement under subsection (3) of this section shall maintain records and a bookkeeping system that accurately indicate the tonnage of fertilizer, agricultural mineral or agricultural amendment product that is subject to annual inspection fees. Such records shall be maintained for a period of three years. The department may examine such records to verify the reported annual inspection fees related to the amounts of product sold or distributed in this state.
- (8) Inspection fees may not be assessed on any fertilizer, agricultural mineral or agricultural amendment product in commercial transit that is not intended for use or final distribution in this state.
- (9) The provisions of ORS 561.450 apply to a person who refuses to pay inspection fees due to the department under this section.
- (10) In the case of duplicate inspection fee payments, an application for refund must be made on forms provided by the department and submitted to the department within 180 days of the alleged overpayment. [2001 c.914 §18]

633.470 [Amended by 1963 c.43 §1; 1965 c.268 §16; 1977 c.799 §13; repealed by 2001 c.914 §30]

633.471 Report of lime product sales and distributions; collection fee. (1) A semiannual statement shall be filed with the State Department of Agriculture by any person who:

- (a) Sells or distributes into this state, from foreign or domestic sources, lime products used as an ingredient in the in-state manufacture of a fertilizer, agricultural amendment, agricultural mineral or lime product;
- (b) Sells or distributes into this state, from foreign or domestic sources, end-use lime products for use within this state; or
- (c) Sells or distributes into this state a lime product composed of ingredients not described under paragraph (a) or (b) of this subsection.

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

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

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

(5) A person required to file a semiannual statement under this section shall maintain records and a bookkeeping system that accurately indicate the tonnage of lime product sold or distributed into this state. Such records shall be maintained for a period of three years. [2001 c.914 §20]

633.475 [1965 c.268 §7; repealed by 2001 c.914 §30]

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

(a) The name and address of the purchaser;

(b) The date of mixing;

(c) A unique identifier for each mixture;

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

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

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

(3) The records required by this section shall be available for inspection during normal business hours by either the purchaser or the department. [2001 c.914 §21]

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

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

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

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

(d) One member representing Oregon State University.

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

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

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

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

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

[2001 c.914 §19]

633.480 [Repealed by 1965 c.268 §18]

633.485 [1965 c.268 §17; 1977 c.799 §14; repealed by 2001 c.914 §30]

633.495 [1965 c.268 §8; 1977 c.799 §15; 1979 c.29 §1; repealed by 2001 c.914 §30]

633.500 [1977 c.799 §17; repealed by 2001 c.914 §30]

633.510 [Repealed by 1955 c.379 §23]

633.994 Civil penalties for fertilizer law violations. (1) In addition to any other liability or penalty provided by law, a person that violates a provision of ORS 633.311 to 633.479 and 633.994 or rules adopted thereunder may be subject to a civil penalty of not more than:

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

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

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

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

(5) A civil penalty imposed under ORS 633.311 to 633.479 and 633.994 may be remitted or reduced upon such terms and conditions as the Director of Agriculture considers proper and consistent with the public health and safety. [2001 c.914 §17]

PLEASE NOTE - This text of Oregon Revised Statutes 633 was produced from material provided by the Legislative Counsel Committee of the Oregon Legislative Assembly. The official record copy is the printed published copy of the Oregon Revised Statutes. The text represented here is not the official text of Oregon law. Although efforts have been made to match this text to the official legal text it represents, substantive errors or differences may remain. It is the user's responsibility to verify the legal accuracy of all legal text. The State of Oregon and the Oregon Department of Agriculture are not liable for any loss or damage resulting from errors introduced into the materials supplied by the Legislative Counsel Committee, by a user or any third party, or resulting from any defect in or misuse of any search software, drivers or other equipment.

OREGON DEPARTMENT OF AGRICULTURE

OREGON ADMINISTRATIVE RULES

DIVISION 59

FERTILIZERS, AGRICULTURAL MINERALS, AND LIMES

603-059-0020 Inspection Fees

(1) The inspection fees authorized to be established by ORS 633 and payable under ORS 633 are as follows:

- (a) Ten cents (\$0.10) for each ton of fertilizer;
- (b) Ten cents (\$0.10) for each ton of agricultural mineral;
- (c) Ten cents (\$0.10) for each ton of agricultural amendment;
- (d) Five cents (\$0.05) for each ton of fertilizer, agricultural mineral, or agricultural amendment containing 100% "compost" as defined in ORS 633.310.
- (e) Three cents (\$0.03) for each ton of gypsum.

(2) A portion of the inspection fees paid to the department for fertilizers, minerals and amendments shall be continuously appropriated for the purpose of funding grants for research and development related to the interaction of fertilizer, agricultural mineral or agricultural amendment products and ground water or surface water as described in ORS 633. The portion of fees so appropriated shall be zero (\$0.00) for each ton of fertilizers, minerals and amendments.

(3) The inspection fees specified in section (1) of this rule shall be in effect commencing January 1, 2002.

Stat. Auth.: ORS 561.190 & ORS 633 as amended by Chapter 914 Oregon Laws 2001.

Stats. Implemented: ORS 561.190 & ORS 633

603-059-0025 Declaration of Lime Score

(1) In addition to the labeling requirements of ORS 633.330, the lime invoice or label shall also state the guarantee for "Lime Score (Oregon)" which is defined as a numerical expression of the quality of lime.

(2) The "Lime Score (Oregon)" shall be determined in accordance with the equations and calculations set forth in the Oregon State University Fertilizer Guide for Fertilizer and Lime Materials, FG52, as revised June 1990.

Stat. Auth.: ORS 561.190 & ORS 633

Stats. Implemented: ORS 633.330

603-059-0030 Registration Fees

(1) The registration fee authorized to be established by ORS 633 for each fertilizer, agricultural mineral, agricultural amendment or lime product is as follows:

Twenty Five dollars (\$25.00) per year for each product registered;

(2) The registration fee specified in section (1) of this rule shall be in effect commencing January 1, 2002.

Stat. Auth.: ORS 561.190 & ORS 633 as amended by Chapter 914 Oregon Laws 2001.

603-059-0040 Manufacturer/Bulk Distributor License Fee

- (1) The license fee authorized to be established by ORS 633 for each manufacturer/bulk distributor license is as follows: Fifty dollars (\$50.00) per year for each business licensed;
- (2) The license fee specified in section (1) of this rule shall be issued to a primary qualifying business entity. A separate and distinct license is not required for each facility location, however, all locations will be required to be identified on the license application.
- (3) The license fee specified in section (1) of this rule shall be in effect commencing January 1, 2002.

Stat. Auth.: ORS 561.190 & ORS 633 as amended by Chapter 914 Oregon Laws 2001.

603-059-0050 Product Evaluation Fee

- (1) The product evaluation fee authorized to be established by ORS 633 is as follows:
- (a) Fifty dollars (\$50.00) upon initial product registration;
 - (b) Fifty dollars (\$50.00) upon product re-registration or reevaluation of product registration if regulations, label claims or supporting documentation has changed.
- (2) The fee specified in section (1) of this rule shall be in effect commencing January 1, 2002.

Stat. Auth.: ORS 561.190 & ORS 633 as amended by Chapter 914 Oregon Laws 2001.

OAR 603-059-0055 Labeling Requirements

(1) Any fertilizer, agricultural mineral, agricultural amendment or lime product distributed in this state must have the following information included as part of the product label required by ORS 633.321 to 633.341:

(a) At a minimum, one of the following labeling statements:

(i) "Information regarding the contents and levels of metals in this product is available on the internet at <http://www.regulatory-info-xx.com>". Each registrant must substitute a unique alpha numeric identifier for "xx". This statement may be used only if the registrant establishes and maintains the internet site and the internet site meets the following criteria:

(A) There is no advertising or company-specific information on the site:

(B) There is a clearly visible, direct hyperlink to the department's internet site specified in (a)(ii) of this subsection (1); and

(C) Any other criteria adopted by the director by rule.

(ii) "Information regarding the contents and levels of metals in this product is available at the Oregon Dept of Agriculture internet site: <http://oda.state.or.us/fertilizer>"

(iii) "Information regarding the contents and levels of metals in this product is available on the internet at..."The Association of American Plant Food Control Officials' hosted website developed to provide a uniform label internet address to access product content information is to be inserted to complete the above sentence. This specific address is the only AAPFCO web address that will be allowed for this product labeling purpose.

(2) At a minimum, the following product information will be maintained by the Department on the internet:

(a) Product name including brand name;

(b) Registrant name;

(c) Guaranteed primary, secondary and micronutrients;

(d) Lime Score for lime products;

(e) Levels of arsenic, cadmium, lead, mercury, and nickel; and,

(f) State registration status.

(3) Any fertilizer, agricultural mineral, agricultural amendment, or lime product sold, offered for sale, or distributed in this state must be labeled in accordance to 603-059-0055(1) by January 1, 2004.

(4) Failure to label a fertilizer, agricultural mineral, agricultural amendment, or lime product pursuant to 603-059-0055(1) which is sold, offered for sale, or distributed in this state on or after January 1, 2004 shall be considered mislabeled. Mislabeled of any fertilizer, agricultural mineral, agricultural amendment or lime product in this manner is a violation of ORS 633.366(1)(a) as a Category III violation.

Stat. Auth.: ORS 561.190 & ORS 633 as amended by Chapter 914 Oregon Laws 2001.

Stats. Implemented: ORS 633 as amended by Chapter 914 Oregon Laws 2001.

OAR 603-059-0070 Investigational Allowances, Minimum Detection Limits

(1) Investigational allowance means an allowance for variations inherent in the taking, preparation and analysis of an official sample. The following investigational allowances provide enforcement consistency in determining deficiencies in products addressed in the administration of ORS 633.311 to 633.479 and 633.994. Products will be deemed deficient if the analysis of any nutrient, or Lime Score calculation, is below the guarantee by an amount exceeding the following values:

(a) Investigational allowances for primary nutrients are as follows:

% Guarantee	N	P ₂ O ₅	K ₂ O
4% or Less	0.49	0.67	0.41
5%	0.51	0.67	0.43
6%	0.52	0.67	0.47
7%	0.54	0.68	0.53
8%	0.55	0.68	0.60
9%	0.57	0.68	0.65
10%	0.58	0.69	0.70
12%	0.61	0.69	0.79
14%	0.63	0.70	0.87
16%	0.67	0.70	0.94
18%	0.70	0.71	1.01
20%	0.73	0.72	1.08
22%	0.75	0.72	1.15
24%	0.78	0.73	1.21
26%	0.81	0.73	1.27
28%	0.83	0.74	1.33
30%	0.86	0.75	1.39
32% or More	0.88	0.76	1.44

For Diammonium Phosphate and Monoammonium Phosphate, the investigational allowance for P₂O₅ shall be 0.70. For guarantees not listed, calculate the appropriate value by interpolation.

(b) Investigational allowances for secondary nutrients and micronutrients are as follows:

Element	Investigational Allowance
Ca	0.2 Unit + 5% of Guarantee
Mg	0.2 Unit + 5% of Guarantee
S	0.2 Unit + 5% of Guarantee
B	0.003 Unit + 15% of Guarantee
Co	0.0001 Unit + 30% of Guarantee
Cl	0.005 Unit + 10% of Guarantee
Cu	0.005 Unit + 10% of Guarantee
Fe	0.005 Unit + 10% of Guarantee
Mn	0.005 Unit + 10% of Guarantee
Mo	0.0001 Unit + 30% of Guarantee
Na	0.005 Unit + 10% of Guarantee
Zn	0.005 Unit + 10% of Guarantee

"UNIT" is twenty (20) pounds of plant food or one percent (1%) of a ton. The maximum allowance when calculated in accordance to the above shall be 1 unit (1%).

(c) Investigational allowances for lime products are as follows:

(A) When the Lime Score is found to be more than 5% deficient from the stated Lime Score.

(B) When the amount of calcium carbonate, calcium oxide, magnesium carbonate or magnesium oxide content is found to be more than 10% below the guarantee.

(2) Minimum detection limits for laboratory analysis reports of metal levels required by the department in accordance with ORS 633.362 must be declared at, or below, the following:

Arsenic	10.0 ppm
Cadmium	5.0 ppm
Lead	5.0 ppm
Mercury	0.20 ppm
Nickel	5.0 ppm

Stat. Auth.: ORS 561.190 & ORS 633 as amended by Chapter 914 Oregon Laws 2001.

Stats. Implemented: ORS 633 as amended by Chapter 914 Oregon Laws 2001.

OAR 603-059-0080 Enforcement Guidelines

(1) In addition to any other penalty provided by law, the Director may assess civil penalties for prohibited acts identified in ORS 633.366. Civil penalties will be issued in accordance to the magnitude of the violation. The department is not precluded from utilizing other enforcement alternatives. Enforcement alternatives may include, but are not limited to, letter of advisement, notice of violation, stop sale, use or removal order, and license/registration revocation, suspension or denial. Commission of each prohibited act is a violation of ORS Chapter 633 and subject to a civil penalty. Prohibited acts are categorized as to the magnitude of violation as follows:

(a) Category I (Major): The Department will issue a civil penalty for initial Category I violations in addition to any alternative enforcement action deemed necessary to protect the public interests. Category I violations include:

(A) ORS 633.366(1)(b) Register or attempt to register any product using fraudulent or deceptive practices to evade or attempt to evade the requirements of ORS 633.311 to 633.479 and 633.994 or rules adopted thereunder;

(B) ORS 633.366(1)(g) Make false or fraudulent applications, records, invoices or reports;

- (C) ORS 633.366(1)(j) Sell, 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;
- (D) ORS 633.366(1)(k) Impede, obstruct, hinder or otherwise prevent or attempt to prevent the department from the performance of department duties under ORS 633.311 to 633.479 and 633.994.

(b) Category II (Moderate): The Department will take initial alternative enforcement action and may allow a specified amount of time to take corrective action prior to issuance of a civil penalty for a Category II violation. Failure to complete the required corrective action within the specified time period, or repeat violations, will result in the immediate issuance of a civil penalty.

Category II violations include:

- (A) Sell, offer for sale, or distribute adulterated products (ORS 633.366(1)(c));
- (B) Fail, refuse, or neglect to keep or maintain records as required under ORS 633.461, 633.471 and 633.476 or refuse to make available such records pursuant to ORS 633.385 upon request by the department (ORS 633.366(1)(f));
- (C) Knowingly or intentionally make any false or misleading representations in connection with the sale, offer for sale, or distribution of fertilizer, agricultural amendment, agricultural mineral, or lime products (ORS 633.366(1)(L)).

(c) Category III (Minor): The Department will take initial alternative enforcement action in writing and will allow a specified amount of time to take corrective action prior to the issuance of a civil penalty for a Category III violation. Failure to complete the corrective action within the specified time period, or repeat violations, may result in the immediate issuance of a civil penalty.

Category III violations include:

- (A) Sell, offer for sale, or distribute mislabeled products (ORS 633.366(1)(a)), including, but not limited to, when the product is:
 - (i) Deemed deficient as defined in 603-059-0070(1)(a-c);
 - (ii) Not labeled pursuant to 603-059-0055(1).
- (B) Fail, refuse, or neglect to deliver to a purchaser of a bulk fertilizer, agricultural amendment, agricultural mineral or lime product a printed label that complies with ORS 633.321 to 633.341 (ORS 633.366(1)(d));
- (C) Sell, offer for sale, or distribute a fertilizer, agricultural amendment, agricultural mineral or lime product that is not registered with the State Department of Agriculture under ORS 633.362 (ORS 633.366(1)(e));
- (D) Fail, refuse, or neglect to provide notification to the department as required by ORS 633.318(5) or 633.362(8) (ORS 633.366(1)(h));
- (E) Fail, refuse, or neglect to obtain a manufacturer-bulk distributor license required under ORS 633.318 (ORS 633.366(1)(i));
- (F) Fail, refuse, or neglect to file a semiannual statement with the department as required under ORS 633.461 or ORS 633.471 (ORS 633.366(1)(m));
- (G) Fail, refuse, or neglect to pay inspection fees required under ORS 633.461 (ORS 633.366(1)(n)).

(d) To "refuse", in the context of these prohibited acts, constitutes a willful misconduct violation and is subject to a civil penalty of not more than \$10,000 for the initial violation or any subsequent violation.

(3) Maximum civil penalties are not to exceed the following:

	1st Violation	2nd Violation	3rd +
Category I (Major)	\$500	\$1,500	\$10,000
Category II (Moderate)	\$250	\$750	\$5,000
Category III (Minor)	\$125	\$375	\$2,500

(4) As authorized by ORS 633.994(5) A civil penalty imposed under ORS 633.311 to 633.479 and 633.994 may be remitted or reduced upon such terms and conditions as the Director of Agriculture considers proper and consistent with the public health and safety.

(5) As authorized by ORS 633.994(3), any violation that arises from gross negligence or willful misconduct and results in substantial harm to human health or the environment may be subject to a civil penalty of not more than \$10,000 for the initial violation or any subsequent violation.

Stat. Auth.: ORS 561.190 & ORS 633 as amended by Chapter 914 Oregon Laws 2001.

Stats. Implemented: ORS 633 as amended by Chapter 914 Oregon Laws 2001.

OAR 603-059-0100 Limits of Non Nutritive Constituents

(1) Fertilizer, agricultural amendment, agricultural mineral and lime products sold or distributed in the state and required to be registered with the Department shall be limited in the level of the metals arsenic (As), cadmium (Cd), mercury (Hg), lead (Pb), and nickel (Ni), contained therein, specifically:

(a) When the product has a guaranteed analysis of available phosphate (P_2O_5), for each percent of P_2O_5 guaranteed, the maximum allowed level of a metal, expressed in parts per million (ppm), must not exceed: 9 ppm arsenic, 7.5 ppm cadmium, 43 ppm lead, 0.7 ppm mercury, 175 ppm nickel.

(A) To determine the maximum allowed concentration of each metal in a product, multiply the percent guaranteed P_2O_5 for the product by the maximum allowed level of the metal.

(B) For the purpose of calculating the maximum allowed concentration of a metal in a product with a guaranteed analysis of less than six percent P_2O_5 , the minimum percent of P_2O_5 utilized as a multiplier shall be 6.0.

(b) When the product has no guaranteed analysis of available phosphate (P_2O_5) but does have a guaranteed analysis of one micronutrient, for each percent of the micronutrient guaranteed, the maximum allowed level of a metal, expressed in parts per million (ppm), must not exceed: 76 ppm arsenic, 61 ppm cadmium, 340 ppm lead, 4.5 ppm mercury, 1330 ppm nickel.

(A) To determine the maximum allowed concentration of each metal in a product, multiply the percent of the micronutrient guaranteed for the product by the maximum allowed level of the metal.

(B) For the purpose of calculating the maximum allowed concentration of a metal in a product with less than one percent micronutrient guaranteed, the minimum percent of micronutrient utilized as a multiplier shall be 1.0.

(c) When the product has no guaranteed analysis of available phosphate (P_2O_5) but does have a guaranteed analysis of two or more micronutrients, for each percent of the micronutrient in the greatest concentration, the product shall not contain more than 76 parts per million (ppm) arsenic, 61 ppm cadmium, 340 ppm lead, 4.5 ppm mercury, 1330 ppm nickel.

(A) To determine the maximum allowed concentration of each metal in a product, multiply the percent of the micronutrient guaranteed for the product in the greatest concentration by the maximum allowed level of each metal.

(B) For the purpose of calculating the maximum allowed concentration of a metal in a product with less than one percent micronutrient guaranteed, the minimum percent of micronutrient utilized as a multiplier shall be 1.0.

(d) When the product has a guaranteed analysis of available phosphate (P_2O_5) and has a guaranteed analysis of one micronutrient, the product shall not contain more of any metal than the higher of the two resulting values as calculated in (a) or (b) above, specifically:

(A) To determine the maximum allowed concentration of a metal in a product, multiply the percent guaranteed P_2O_5 for the product by the maximum allowed level of the metal as stated in (a) above. Then multiply the percent of the micronutrient guaranteed for the product by the maximum allowed level of the metal as stated in (b) above. Utilize the higher of the two resulting values as the maximum allowable metal concentration.

(e) When the product has a guaranteed analysis of available phosphate (P_2O_5) and has a guaranteed analysis of two or more micronutrients, the product shall not contain more of any metal than the higher of the resulting values as calculated in (a) or (c) above.

(A) To determine the maximum allowed concentration of each metal in a product, multiply the percent guaranteed P_2O_5 for the product by the maximum allowed level of the metal as stated in (a) above. Then multiply the highest percent of a micronutrient guaranteed for the product by the maximum allowed level of the metal as stated in (c) above. Utilize the higher of the resulting values as the maximum allowable metal concentration.

(f) When the product has no guaranteed analysis of available phosphate (P_2O_5) and no guaranteed analysis of a micronutrient, the product shall not contain more than: 54 parts per million (ppm) arsenic, 45 ppm cadmium, 258 ppm lead, 4.2 ppm mercury, 1050 ppm nickel.

(2) Any fertilizer, agricultural amendment, agricultural mineral or lime product which is made from zinc recycled hazardous wastes as regulated under the Resource Conservation and Recovery Act (RCRA) must comply with the existing, applicable land disposal restriction (LDR) treatment standards for the hazardous wastes the products contain or comply with the conditions for excluding hazardous secondary materials as established in the Federal Register/Vol.67, No. 142/Wednesday, July 24, 2002/ Pages 48393-48415.

(3) The department will review the permitted levels of metals or other substances in fertilizer, agricultural amendment, agricultural mineral and lime products every three years as authorized by ORS 633.362(11).

(4) Registration of a fertilizer, agricultural amendment, agricultural mineral or lime product with the department does not entitle the user of such product to violate regulations administered by any other authority with jurisdiction, including Water Quality Standards administered by the Department of Environmental Quality.

Stat. Auth.: ORS 561.190 & ORS 633 as amended by Chapter 914 Oregon Laws 2001.

Stats. Implemented: ORS 633 as amended by Chapter 914 Oregon Laws 2001.

PLEASE NOTE - The official copy of an Oregon Administrative Rule is contained in the Administrative Order filed at the Archives Division, 800 Summer St. NE, Salem, Oregon 97310. Any discrepancies with this version are satisfied in favor of the Administrative Order.