Chapter 633

1983 REPLACEMENT PART

Grades, Standards and Labels for Feeds, Fertilizers and Seeds

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COMMERCIAL ANIMAL FEEDS

633.005 [1961 c.314 §1; repealed by 1967 c.591 §1 (633.006 enacted in lieu of 633.005)]

633.006 Definitions for ORS 633.006 to 633.089. As used in ORS 633.006 to 633.089 and 633.992, unless the context requires otherwise:

(1) "Animal feed manufacturing plant" means:

(a) Any business, establishment, building, plant or place where commercial feed for animals is manufactured, mixed, processed or packed.

(b) Vehicles used in transporting commercial feed or components or ingredients thereof, machinery, equipment, utensils, implements, or other items, articles or materials used in the business or operation.

(c) The ground upon which the operation or business is carried out and other ground not adjacent thereto which is a part of the business or operation under the same entity or ownership.

(2) "Brand" means any word, name, symbol or device or any combination thereof adopted or used by a person to identify commercial feeds manufactured, compounded, delivered, distributed, sold, offered for or exposed for sale in this state and to distinguish them from commercial feeds manufactured, distributed, offered for sale or sold by others.

(3) "Bulk" is the sale, offering or exposing for sale or delivery of commercial feeds, in:

(a) Open containers, closed or open tote boxes, closed or open tanks, closed or open trailers, all of which may be further described or defined by the department, or

(b) Other types of containers, vehicles or conveyances defined or recognized by the department.

(4) "Commercial feed" means any material which is distributed for use as feed, or as a feed ingredient for mixing in feed for animals, or any feed additive concentrate, feed additive supplement, feed additive premix, or premix, except:

(a) Unmixed seeds, whole or processed, made directly from the entire seed.

(b) Hay, straw, stover, cobs, husks, screenings and hulls, when unground or unmixed with other materials.

(c) Feed for dogs, cats, birds or fish maintained as household pets.

(d) Silage, or materials containing at least 60 percent of water.

(e) Individual chemical compounds when not mixed with other materials. This exemption, however, does not cover or extend to phosphate, urea or ammonium compounds which are recommended for animal feeding purposes.

(5) "Contract feeder" means an independent contractor, or any other person who feeds commercial feed to animals pursuant to an oral or written agreement whereby such commercial feed is supplied, furnished or otherwise provided to such person by any distributor and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product. It does not include a bona fide employe of a manufacturer or distributor of commercial feed.

(6) "Customer-formula feed," "custom mix" or "custom mixed feed" means any mixture of materials, substances or ingredients described or set forth under the definition of commercial feed, each lot of which is mixed according to the specific instructions of, or prescribed for the specific use of, the final consumer or feeder. For the purpose of this subsection "final consumer" means a person who owns or who contracts for the feeding of animals under the control or ownership of that person.

(7) "Department" means the State Department of Agriculture.

(8) "Distribute" means to offer for sale, sell or barter, commercial feed or customer-formula feed; or to supply, furnish or otherwise provide commercial or customer-formula feed as a contract feeder.

(9) "Distributor" means any person who distributes.

(10) "Drug" or "drugs" means any substance intended or represented for the cure, mitigation, treatment or prevention of disease of animals, or intended to affect the structure of any function of the body of an animal or as prescribed by the department.

(11) "Feed ingredient" means each of the constituent materials making up a commercial feed.

(12) "Ground" means a condition resulting from crushing, rolling, chopping or grinding.

(13) "Label" means a display of written, printed, or graphic matter upon or affixed to the container, or immediate container, in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed or customer-formula feed is distributed.

(14) "Manufacture" means to grind, chop, crush, roll, cube, flake, extrude, cook, pelletize, mix or otherwise process feed ingredients.

(15) "Mineral feed" means a substance or mixture of substances designed or intended to supply primarily mineral elements or inorganic nutrients.

(16) "Official sample" means any sample of feed taken by the department and designated as "official" by it.

(17) "Percent" or "percentage" means percentage by weight.

(18) "Sell" or "sale" includes exchange. [1967 c.591 §2 (enacted in lieu of 633.005); 1973 c.342 §2; 1979 c.116 §1]

633.010 [Repealed by 1961 c.314 §12]

633.011 [1967 c.591 §10; repealed by 1971 c.489 §11]

633.015 Registration of commercial feed required; fee. (1) No person shall distribute a nonregistered commercial feed. Every brand, and each formula or formulation thereof, of commercial feeds manufactured, compounded, delivered, distributed, sold, offered or exposed for sale in this state shall be registered with the department. Application for registration shall be submitted on forms furnished by the department, and, if the department so requests, shall be accompanied by the label or a facsimile of the label and other printed matter describing the product. Upon approval by the department, a certificate of registration shall be furnished to the applicant. All registrations expire on December 31 of each year. The application shall include the information required by ORS 633.025 (1)(b), (c), (d) and (e) and such other information as the department may require.

(2) A distributor shall not be required to register any brand of commercial feed which has been registered under ORS 633.006 to 633.089 and 633.992 by another person.

(3) Changes in the guarantee of either chemical or ingredient composition of a registered commercial feed may be permitted, if there is satisfactory evidence that such changes would not result in a lowering of the feeding value of the product for the purpose for which designed.

(4) The department may refuse registration of any commercial feed when the application is not in compliance with the provisions of ORS 633.006 to 633.089 and 633.992 and may cancel any registration subsequently found not to be in compliance with any provision of ORS 633.006 to 633.089 and 633.992, after the registrant has been given reasonable opportunity to be heard before the department and to amend his application in order to comply with the requirements of ORS 633.006 to 633.089 and 633.992.

(5) Customer-formula feeds are exempt from registration.

(6) Each application for registration shall be accompanied by a fee to be established by the department not to exceed $20 for each formula or formulation of commercial feed under each brand. [1961 c.314 §2; 1967 c.591 §3; 1971 c.489 §1]

633.020 [Repealed by 1961 c.314 §12]

633.025 Labeling requirements. (1) Any commercial feed distributed in this state shall be accompanied by a legible label bearing the following information:

(a) The net weight.

(b) The name or brand under which the commercial feed is sold.

(c) The guaranteed analysis of the commercial feed, listing the minimum percentage of crude protein and crude fat, and the maximum percentage of crude fiber. For mineral feeds the list shall include the following specifications as to minerals present, expressed as herein indicated: Minimum and maximum percentages of calcium (Ca), minimum percentage of phosphorus (P), minimum percentage of iodine (I), and minimum and maximum percentages of salt (NaCl). Other substances or elements, determinable by laboratory methods, may be guaranteed by permission of the department. When other substances or elements are guaranteed, they shall be subject to inspection and analysis in accordance with methods and regulations prescribed by the department. Products sold solely as mineral or vitamin supplements, or both, need not show guarantees for protein, fat or fiber.

(d) The common or usual name of each ingredient used in the manufacture of the commercial feed, except as the department may, by regulation, permit the use of a collective term for a group of ingredients all of which perform the same function or, by regulation, permit the use of a statement of alternative ingredients of comparable feeding value. In lieu of the common or usual name of each ingredient used, or a collective term for a group of ingredients, or a statement of alternative ingredients, a statement may be made that the ingredients used in the manufacture of the commercial feed are in accordance with the registration with the department, and such list of ingredients shall be made available to the purchaser upon request to the manufacturer or the department.

(e) The name and principal business address of the person responsible for distributing the commercial feed.

(2) When a commercial feed is distributed in this state in bags or other containers, the label

shall be placed on or affixed to the container; when a commercial feed is distributed in bulk the label shall accompany delivery and be furnished to the purchaser at time of delivery. Containers of commercial feed not containing a drug are exempt from the labeling provisions of this section when such containers are filled in the presence of the purchaser from retail bins or other retail bulk display containers if such bins or bulk display containers are labeled with the information otherwise required to be present on individual packages of such feed.

(3) If a commercial feed contains a drug, the department shall require the label to show the purpose, amount present, directions for use, and any necessary warning against misuse of the feed. In registering any commercial feed containing substances referred to in this subsection, the department shall adopt, in so far as practicable, and shall be in conformity with the rules, regulations and restrictions established by the Federal Government relating to such substances. [1961 c.314 §3; 1967 c.591 §3a; 1971 c.489 §2; 1979 c.116 §2]

633.027 Custom mixed feed labeling requirements. (1) A custom mixed feed shall be labeled by invoice. In addition to other information deemed necessary by the department, the invoice shall show:

(a) Name and address of the mixer.

(b) Name and address of the purchaser.

(c) Date of sale.

(d) The product name and brand name, if any, and the number of pounds or other recognized units of measurement of each registered commercial feed used in the mixing or mixture and the name and number of pounds of each other feed ingredient added.

(2) If a custom mixed feed contains a nonnutritive substance which is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or which is intended to affect the structure of any function of the animal body, the department may require the label and the invoice to show:

(a) The amount of the substance present.

(b) The directions for use and warnings against misuse of the feed.

(3) The invoice or information prescribed in this section shall be furnished by the seller to the user or purchaser at the time the custom mixed feed is delivered. The records of the seller from which the invoice and information is derived shall be maintained by the seller for a period of at least two years. Such records and any undelivered quantities of the custom mixed feed held by the seller mixed for the purchaser, may be inspected by the department during business hours. [1967 c.591 §9]

633.029 Registration required for animal feed manufacturers and sellers; exemption for persons not using drugs in feeds. (1)(a) No person shall operate an animal feed manufacturing plant, distribute commercial feeds other than at retail, be furnished a certificate of registration of a brand in this state, distribute a custom-formula feed manufactured for that person, or repackage or relabel a commercial feed manufactured by another person without having first obtained a license from the department. Application for license shall be on forms prescribed by the department and shall be accompanied by a license fee to be established by the department not to exceed $500. All licenses shall expire December 31 of each year.

(b) In accordance with the provisions of ORS 183.310 to 183.550, the department may promulgate rules designating different license fees for various categories of persons described in paragraph (a) of this subsection, so as to recognize differences in types of activities or volumes of business.

(2)(a) A person who is a contract feeder is not subject to the provisions of subsection (1) of this section, provided no drugs in any form are utilized in the manufacturing, mixing or processing of such feed. In the event drugs are so utilized, the contract feeder or person using the same shall be subject to the provisions of subsection (1) of this section.

(b) In accordance with the applicable provisions of ORS 183.310 to 183.550, the department shall promulgate rules designating the types or categories of persons described in paragraph (a) of this subsection to whom this section applies. In promulgating such rules, the department shall consider:

(A) The methods of manufacture, mixing or processing of feed used;

(B) The quantities and kinds of drugs used; and

(C) The number, ages and kinds of animals to which such feed is to be made available. [1971 c.489 §7; 1973 c.342 §3; 1979 c.116 §3]

633.030 [Repealed by 1961 c.314 §12]

633.031 [1967 c.591 §§6, 13(2); repealed by 1971 c.489 §11]

633.035 [1961 c.314 §4; repealed by 1967 c.591 §14]

633.037 Records required of licensees; records inspection by department. A person or contract feeder who manufactures,

mixes or processes feeds in which drugs have been used so that he is not exempt from the provisions of ORS 633.029, shall maintain an accurate record for at least one year from the date the drugs were so used showing the name or identity of each drug so used and its level of usage. The department is authorized to inspect the records of such persons to insure compliance with ORS 633.029 and this section. [1967 c.591 §6a; 1973 c.342 §1]

633.040 [Repealed by 1961 c.314 §12]

633.045 Adulterated commercial feeds prohibited. No person shall distribute an adulterated commercial feed. A commercial feed shall be deemed to be adulterated:

(1) If any poisonous, deleterious or nonnutritive ingredient is therein present in sufficient amount to render it injurious to health when fed in accordance with directions for use shown on the label.

(2) If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor.

(3) If its composition or quality falls below or differs from that which by its labeling it is purported or represented to possess.

(4) If it contains added hulls, screenings, refuse screenings, straw, cobs or other high fiber material, unless the name of each material is stated on the label.

(5) If it contains pesticide residues or other chemicals in excess of amounts which, by regulation, the department declares safe for feeding purposes. In adopting such regulations the department may take into consideration the commonly permitted amounts of chemicals authorized by:

(a) The United States and other states.

(b) Other recognized agencies or organizations experienced in the chemical field.

(6) If it contains a drug other than those permitted by regulations promulgated by the department. In promulgating such regulations the department shall consider the current good manufacturing practice regulations for medicated feed premixes and for medicated feeds established under authority of the Federal Food, Drug and Cosmetic Act. [1961 c.314 §5; 1971 c.489 §3]

633.050 [Repealed by 1961 c.314 §12]

633.055 Misbranding commercial feed prohibited. No person shall distribute misbranded commercial feed. A commercial feed shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular.

(2) If it is distributed under the name of another feed.

(3) If it is not labeled as required by ORS 633.025 and by regulations adopted pursuant to ORS 633.006 to 633.089 and 633.992.

(4) If it purports to be or is represented as a feed ingredient or as containing a feed ingredient, unless such feed ingredient conforms to the definition of identity, if any, prescribed by regulation of the department. In adopting such regulations the department may take into consideration the commonly accepted definitions approved or authorized by:

(a) The United States and other states.

(b) Other recognized agencies or organizations experienced in such matters, such as the Association of American Feed Control Officials.

(5) If any word, statement, or other information required by ORS 633.006 to 633.089 and 633.992 or by regulation of the department to appear on the label is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. [1961 c.314 §6]

633.060 [Amended by 1961 c.425 §17; repealed by 1961 c.314 §12]

633.065 Department to test commercial feeds. (1) It shall be the duty of the department to sample, inspect, make analyses of, and test commercial feeds distributed within this state, at such times and places and to such an extent as may be necessary to determine whether or not such feeds are in compliance with the provisions of ORS 633.006 to 633.089 and 633.992. The department is authorized to enter upon any public or private premises, including any vehicle of transport, during regular business hours, in order to have access to commercial feeds and to records relating to their distribution.

(2) The methods of sampling and analysis shall be those adopted by the department. In adopting such methods, the department may take into consideration:

(a) The methods scientifically developed and described in recognized official publications such as the Journal of the Association of Official Agricultural Chemists.

(b) The methods approved by the United States, other states and other recognized agen-

cies or organizations experienced in such matters.

(3) In determining for administrative purposes whether or not a commercial feed is deficient in any component, the department shall be guided solely by the official sample as defined in ORS 633.006 (15) and obtained and analyzed as provided by subsection (2) of this section.

(4) When inspection and analysis of an official sample indicate that a commercial feed has been adulterated or misbranded, the results of analysis shall be forwarded by the department to the registrant. Upon request, within 30 days, the department shall furnish to the registrant a portion of the sample analyzed.

(5) Investigational samples which may be examined otherwise than by the official method required by this section may be taken by the department. For administrative purposes, only samples taken as directed by subsection (3) of this section may be used. [1961 c.314 §7; 1967 c.591 §4]

633.067 Rulemaking authority for commercial feed law administration and enforcement. The department may promulgate such rules and regulations for commercial feeds as are necessary for the administration and enforcement of ORS 633.006 to 633.089 and 633.992, including but not limited to additional definitions, licensing requirements, registration and license fee requirements, labeling requirements, inspection and enforcement procedures, testing and analysis procedures, and enforcement of federal commercial feed programs under agreement with federal agencies. [1971 c.489 §6]

633.070 [Repealed by 1961 c.314 §12]

633.075 [1961 c.314 §§8, 9; part renumbered 633.081; subsection (2) enacted as part of 1967 c.591 §13; repealed by 1971 c.489 §11]

633.077 Testing and analysis of bulk commercial feed and custom mixed feed; disclosure of test or analysis results. (1) The department shall establish and maintain a procedure, plan and system whereby a farmer, contract feeder or other person actually feeding bulk commercial feed or custom mixed feed to animals may request the department to sample and provide special official testing and analysis of such feeds. It is the purpose and intent of this section that the department desires to make its personnel, facilities and laboratories available to such persons and to determine if such feeds are in compliance with the provisions of ORS 633.006 to 633.089 and 633.992 or for any other purpose which the department may determine is reasonable and necessary.

(2) The department may provide for the obtaining, handling and testing of samples of bulk commercial feed and custom mixed feed as provided in subsection (1) of this section, including split sampling thereof with portions of each sample being made available to the seller and to the contract feeder or person feeding the feed to animals. Copies of the final results of the tests or analysis, which shall not be a public record, shall be made available only to the seller and to the contract feeder or person feeding the feed to animals. [1967 c.591 §8]

633.080 [Repealed by 1961 c.314 §12]

633.081 [Formerly part of 633.075; repealed by 1969 c.131 §5]

633.083 Cooperation with governmental units. The department may cooperate with and enter into contracts and agreements with governmental agencies of this state, other states, the Federal Government, county governments of this state or municipalities in this state, in connection with the administration of ORS 633.006 to 633.089 and 633.992 and of the provisions of federal laws or regulations relating to the operation of animal feed manufacturing plants in Oregon. [1971 c.489 §8]

633.085 [1963 c.212 §2; repealed by 1967 c.591 §12]

633.087 [1967 c.591 §11; repealed by 1971 c.489 §11]

633.088 Withdrawal from distribution of feeds sold or distributed in violation of law; seizure of noncomplying feeds. (1) When the department has reasonable cause to believe any quantity or lot of commercial feed is being sold or distributed in violation of ORS 633.006 to 633.089 and 633.992 or regulations promulgated thereunder, it may, in accordance with ORS 561.605 and 561.620, issue and enforce a written "withdrawal from distribution" order, directing the distributor thereof not to dispose of the quantity or lot of commercial feed in any manner until written permission is first given by the department. The department shall release the quantity or lot of commercial feed so withdrawn when said law and regulations have been complied with.

(2) Any quantity or lot of commercial feed found by the department not to be in compliance with ORS 633.006 to 633.089 and 633.992 or regulations promulgated thereunder, may be seized by the department in accordance with the provisions of ORS 561.605 to 561.620. [1971 c.489 §9]

633.089 Disposition of moneys received by department. The department shall deposit all fees paid to it under the provisions of

ORS 633.006 to 633.089 in the Department of Agriculture Service Fund. Such fees are continuously appropriated to the department for the purpose of administering and enforcing such sections. [1967 c.591 §7; 1979 c.499 §30]

633.090 [Repealed by 1961 c.314 §12]

633.100 [Repealed by 1961 c.314 §12]

633.110 [Repealed by 1961 c.314 §12]

633.120 [Repealed by 1961 c.314 §12]

633.130 [Repealed by 1961 c.314 §12]

633.140 [Repealed by 1961 c.314 §12]

633.210 [Repealed by 1961 c.314 §12]

633.220 [Repealed by 1961 c.314 §12]

633.230 [Repealed by 1961 c.314 §12]

633.240 [Repealed by 1961 c.314 §12]

633.250 [Repealed by 1961 c.314 §12]

633.260 [Repealed by 1961 c.314 §12]

FERTILIZERS

633.310 Definitions for ORS 633.310 to 633.495. As used in ORS 633.310 to 633.495:

(1) "Agricultural amendment" means one or more of the following, either mixed or unmixed: Synthetic organic chemical substance, a chemically or physically modified natural substance, a naturally occurring substance, or a manufacturing by-product, intended as a source of plant food, or to induce crop yields or plant growth, or to produce any physical or chemical change in the soil, but does not mean a fertilizer, an agricultural mineral, lime or a pesticide as defined in ORS 634.006 (8), and does not include hays, straws, peat, leaf mold, unfortified animal manures, sand and expanded silicates.

(2) "Agricultural minerals" means mineral substances, mixtures of mineral substances, and mixtures of mineral and organic substances, except animal manures, containing less than five percent in available form of nitrogen, phosphorus pentoxide (phosphoric acid) or potassium oxide (potash), 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, except lime, sand and soil.

(3) "Brand" means a term, design or trademark used in connection with the distribution and sale of one or more grades of fertilizer, agricultural minerals, agricultural amendment or lime.

(4) "Bulk" or "bulk sale" is the sale, offering or exposing for sale or delivery, of fertilizer, agricultural minerals, agricultural amendment, lime or custom mix, in:

(a) Open containers, closed or open tote boxes, closed or open tanks, closed or open trailers or spreader trucks, all of which may be further described and defined by the department; or

(b) Other types of containers, vehicles or conveyances recognized by the department.

(5) "Fertilizer" means any substance, or any combination or mixture of substances, 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 and shall contain five percent or more of available nitrogen, phosphorus pentoxide (phosphoric acid) or potassium oxide (potash), singly, collectively or in combination, except hays, straws, peat and leaf mold, and unfortified animal manures.

(6) "Custom mix" means a mixture of fertilizer, agricultural minerals, agricultural amendment and lime, or any mixture of two or more such products, each lot or batch of which is mixed according to the specific instructions of, or prescribed for the special use of, the final purchaser.

(7) "Department" means the State Department of Agriculture.

(8) "Grade" means the chemical analysis required to be stated on the label.

(9) "Lime" means any substance or mixture of substances the principal constituent of which is calcium carbonate, calcium hydroxide or calcium oxide, either singly or mixed with each other. "Lime" includes dolomite.

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

(11) "Percent" or "percentage" means percentage by weight. [Amended by 1955 c.235 §1; 1965 c.268 §1; 1977 c.799 §1]

633.320 Labeling fertilizers. (1) No fertilizer, in package or in bulk, shall be sold, offered or exposed for sale, or delivered unless there is a printed label attached or applied to the package, or, in the case of bulk sale a separate invoice as prescribed in ORS 633.345, is furnished to the user or purchaser. Such label or invoice shall state:

(a) The brand under which the product is sold.

(b) The number of net pounds, or liquid measure, of fertilizer contained therein.

(c) The name and address of the manufacturer, importer or dealer.

(d) The grade of the product stated in the form and order prescribed by subsection (3) of this section.

(2) Except as otherwise provided in subsection (4) of this section, in stating the grade of the fertilizer, only the minimum percentages of nitrogen, phosphoric acid (phosphorus pentoxide), and potash (potassium oxide) shall be stated, in whole numbers only.

(3)(a) Except as otherwise provided in subsections (4) and (5) of this section, the label shall state the grade guaranteed in the following form and order:

Total nitrogen (N) _____ percent (whole numbers only).

Available phosphoric acid (P_2O_5) _____ percent (whole numbers only).

Available potash (K_2O) _____ percent (whole numbers only).

(b) In addition to the total guarantees for nitrogen (N), specified in paragraph (a) of this subsection, there may be shown on the label or invoice, by indentation and subscript in small letters, or as otherwise prescribed by the department, guarantees showing forms of nitrogen such as:

TOTAL NITROGEN (N)	10%
Organic (or water insoluble)	5%
Ammoniacal	3%
Nitrate	2%

(c) In addition to guarantees of available phosphoric pentoxide (P_2O_5) and available potassium oxide (K_2 the percentage of phosphorus (P) and potassium (K), respectively, may be shown by indentation and subscript as prescribed by the department.

(4) The grade guaranteed may be stated in fractional rather than in whole numbers for fertilizers which have not been physically combined or mixed.

(5) If the fertilizer consists entirely of bone, or tankage, or natural organic phosphates, in which all the phosphoric acid is not shown by laboratory methods to be available, the phosphoric acid content (P_2O_5) may be guaranteed on the label, or invoice, as "total phosphoric acid," but in no case shall both the total and available phosphoric acid be guaranteed on the same label or invoice. [Amended by 1955 c.235 §2; 1959 c.78 §1; 1965 c.268 §2; 1977 c.799 §2]

633.330 Labeling lime. (1) No lime shall be sold, offered or exposed for sale, or delivered to a user for agricultural purposes, in package form without a plainly printed label on or attached to each package containing such lime; or, if sold, offered or exposed for sale, or delivered in bulk, an invoice as prescribed in ORS 633.345, shall be delivered to the purchaser or user of such lime. The invoice or label shall contain the following plainly printed information:

(a) The brand under which the material is sold.

(b) The number of pounds in each package or bulk lot.

(c) The name of the particular form of the lime, such as ground limestone, shells, burnt lime, lime hydrate, sugar lime, residue lime, dolomitic lime.

(d) The name and principal address of the manufacturer or other person responsible for placing the material on the market in this state.

(e) The grade guarantee stating the minimum percentage of calcium oxide or carbonate contained therein, the percentage of magnesium oxide or carbonate contained, the minimum total neutralizing power expressed in terms of calcium carbonate and the percentage of material 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 material that will pass additional mesh sizes, but in every case the mesh sizes specified in this paragraph shall be included in the mesh size declaration.

(f) If over two percent, the maximum moisture content shall be shown as follows: "Moisture content does not exceed —— percent (whole numbers only)."

(2) No other form of label or invoice nor any other chemical term shall be used than those specified in this section, nor shall any misleading brand be used in designating the material.

(3) The provisions of this section do not apply to:

(a) A manufacturer or person who permits a user or farmer to haul or remove lime from his premises and does not sell such lime; or a manufacturer or person who hauls or deposits residue lime, without selling the same, to a location other than his premises, for use by farmers, or for placing such lime at the disposal or distribution of persons who thereafter will further dis-

pose or distribute such lime to farmers or users thereof.

(b) A state agency, county, city, district organized on a nonprofit basis for public purpose, political subdivision or municipal, quasi-municipal or public corporation, distributing or dispensing residue lime which is not sold but for which only a small service charge is made to the farmer or user. [Amended by 1955 c.235 §3; 1965 c.268 §3]

633.335 Labeling agricultural amendments. (1) No agricultural amendment packaged or in bulk shall be sold, offered or exposed for sale or delivered unless there is a printed label attached or applied to the package or, in the case of bulk sale a separate invoice as prescribed in ORS 633.345 is furnished to the user or purchaser. Such label or invoice shall state:

(a) The brand name;

(b) Guaranteed analysis: Name and percent, by weight, of each active ingredient listed consecutively followed by percent of inert ingredients;

(c) Purpose of product;

(d) Direction for application;

(e) Name and address of manufacturer or distributor; and

(f) The net contents.

(2) No ingredient may be listed or guaranteed on the labeling of agricultural amendments without first obtaining approval of the department. [1977 c.799 §18]

Note: 633.335 was enacted into law by the Legislative Assembly and was added to and made a part of ORS chapter 633 but was not added to or made a part of any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

633.340 Labeling agricultural minerals. No agricultural minerals shall be sold, offered or exposed for sale, or delivered to a user without a plainly printed label on or attached to each package containing such agricultural minerals, or if sold or delivered in bulk, an invoice as prescribed in ORS 633.345, shall be delivered to the user. The invoice or label shall contain the following plainly printed information:

(1) The brand under which the material is sold.

(2) The number of pounds or liquid measure in each package or bulk lot.

(3) The name and principal address of the manufacturer or other person responsible for placing the material on the market in this state.

(4) The grade, which shall state:

(a) In case of sulphur, brimstone and every agricultural mineral the principal ingredient of which is sulphur, the percentage of sulphur therein.

(b) In case of gypsum, land plaster, plaster and every agricultural mineral the principal constituent of which is calcium sulphate, the percentage of calcium sulphate therein ($CaSO_4 \cdot 2H_2O$).

(c) In case of phosphate rock and every other agricultural mineral the principal constituent of which is calcium phosphate, the percentage of both the available and the total phosphoric acid in terms of phosphorus pentoxide.

(d) In case of any agricultural mineral not specifically mentioned in this section, the percentage of all constituents claimed to be therein in terms of equivalents prescribed by the department.

(e) In case of any mixture of two or more agricultural minerals, the percentage of each principal constituent as prescribed in this section. [Amended by 1955 c.235 §4; 1965 c.268 §4]

633.343 Determination of additional guarantees of plant nutrients. In addition to the guarantees of plant nutrients required by ORS 633.320 to 633.340, guarantees may be made of other plant nutrients from a list approved by the department. Such list shall be established by the department after considering the statutes and regulations of the United States, and of other states, as well as the recommendations of Oregon State University and other recognized experts in this field. [1965 c.268 §6]

Note: 633.343 and 633.345 were enacted into law by the Legislative Assembly but were not added to or made a part of 633.310 to 633.480 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

633.345 When invoices to be furnished. The invoices required in ORS 633.320 (1), 633.330 (1) and in ORS 633.340, shall be furnished to the user or purchaser at the time:

(1) Each separate delivery is made; or

(2) The last delivery is made of the entire lot or sale thereof. If only one such invoice is delivered, then prior thereto a delivery ticket, as prescribed by the department, shall be furnished with each separate delivery by truck or other means. In addition to other information, the delivery ticket shall show the proper lot number to identify the product with the subsequent final invoice. [1965 c.268 §5]

Note: See note under 633.343.

633.350 Sale of animal by-products. No person shall sell, offer or expose for sale for fertilizer purposes any leather, hair, wool waste, hoof, horn, urea-formaldehyde condensation products, or similar materials, either as such or mixed, unless they have been processed in such manner as to make their plant food content available in conformity with the standards established by the department, taking into consideration the standards of activity recommended by the Association of Official Agricultural Chemists of North America, and other recognized experts in applicable fields. [Amended by 1965 c.268 §9]

633.360 [Repealed by 1955 c.235 §13]

633.361 Registration of brand and grade; sale only under applicable brand and grade. (1) Except as otherwise provided by law, each brand and grade of fertilizer, agricultural minerals, agricultural amendment or lime, whether in package or in bulk, shall be registered with the department by the manufacturer of such product or his agent as defined and prescribed by the department. No person shall sell, offer or expose for sale, or deliver to a user fertilizer, agricultural minerals, agricultural amendment or lime except under a registered brand and grade.

(2) The application for registration of a brand of fertilizer, agricultural minerals, agricultural amendment or lime shall be made on forms provided by the department. The application for registration of a brand of fertilizer, agricultural minerals, agricultural amendment or a combination of registered brands or grades as required by subsection (7) of this section, shall be accompanied by an annual registration fee of $25, and the application for registration of a brand of lime shall be accompanied by an annual registration fee of $10. The application for brand registration shall be made annually during the month of December, and shall be accompanied by a list of the various grades of fertilizer, agricultural minerals, agricultural amendment or lime the applicant expects to market during the ensuing calendar year. The grades included on such list shall be considered the grades to be registered for use during the ensuing calendar year.

(3) The registration of a new brand of fertilizer, agricultural minerals, agricultural amendment or lime, or a combination of registered brands as required by subsection (7) of this section, may be made at any time during any calendar year upon application and payment of a registration fee for the balance of the calendar year of $25 if the brand is of fertilizer, agricultural minerals, or agricultural amendment or $10 if the brand is of lime. The application for registration of a new brand shall be accompanied by a list of the various new grades of fertilizer, agricultural minerals, agricultural amendment or lime that the applicant expects to market during the balance of the calendar year under the new brand. The grades included on such list shall be considered the grades to be registered for use during the balance of the calendar year.

(4) The registration of a new grade within a registered brand may be made any time during any calendar year upon application listing the new grade to be registered and the registered brand under which the new grade is to be used.

(5) No fee shall be charged for the registration of a grade to be used under a registered brand.

(6) Each manufacturer, importer or person who has complied with ORS 633.310 to 633.495 shall receive from the department a certificate indicating the brands and grades registered by him.

(7) Registration of a brand and grade of fertilizer, agricultural minerals, agricultural amendments or lime under ORS 633.310 to 633.495 relieves all retailers or other persons from the necessity of registering such material, except that whenever registered brands or grades representing two different sources of manufacture, not a custom mix, are combined in one receptacle, for sale, or offered for sale, or delivery in bulk, the person authorizing or responsible for such mixture shall be deemed a manufacturer and shall register the combination as a new brand or grade.

(8) A custom mix is not required to be registered under this section. [1955 c.235 §12; 1965 c.268 §10; 1977 c.799 §3]

633.370 Disposition of fees. The department shall deposit all fees received pursuant to ORS 633.310 to 633.500 in the Department of Agriculture Service Fund and such fees are continuously appropriated to the department for the purpose of administering and enforcing such sections. [Amended by 1977 c.799 §4; 1979 c.499 §31]

633.380 Methods of sampling and analyzing. All sampling and analyses of fertilizers, agricultural minerals, agricultural amendments and lime under ORS 633.310 to 633.495 shall be made according to methods approved by the department taking into consideration the methods agreed upon by the Association of Official Agricultural Chemists of North America and the advice and opinions of other qualified experts in applicable fields. [Amended by 1965 c.268 §11; 1977 c.799 §5]

633.390 Sampling and analysis. (1) The department shall cause its authorized officers, employes and deputies to take samples of fertilizers, agricultural minerals, agricultural amendments and lime, the brands and grades of which have been filed with the department, and cause analyses to be made thereof in accordance with ORS 633.380. The analyses may include such other determinations as the department may, at any time, deem advisable. This section also applies to all such products in bulk and custom mixed.

(2) In addition to such sampling, any authorized officer, employe or deputy of the department may, for the purpose of determining whether ORS 633.310 to 633.495 are being complied with, take samples of any fertilizer, agricultural minerals, agricultural amendments or lime, sold, offered or exposed for sale, or delivered in Oregon, at such times and in such manner as he deems desirable.

(3) Every person in possession of any fertilizer, agricultural minerals, agricultural amendments or lime shall grant free access thereto, for the purpose of sampling, to any authorized officer, employe or deputy of the department. [Amended by 1955 c.235 §5; 1965 c.268 §12; 1977 c.799 §6]

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 False or misleading representations; ingredients listed if usefulness substantiated. (1) No person shall make any false or misleading representation in regard to any fertilizer, agricultural minerals, agricultural amendment or lime shipped, sold, offered or exposed for sale by him in this state, either as principal or agent. No person shall use any misleading or deceptive brand or grade in connection therewith.

(2) The department may allow an ingredient to be listed or guaranteed on the label or labeling if satisfactory supportive data is provided to the department to substantiate the value and usefulness of the ingredient. The department may require such supportive data be submitted in order to verify any ingredient statement or guarantee. [Amended by 1955 c.235 §7; 1977 c.799 §8]

633.430 Refusal and cancellation of registration. The department may refuse registration, or cancel the registration, of any brand or grade of fertilizer, agricultural minerals, agricultural amendment or lime, the sale of which would violate any of the provisions of ORS 633.310 to 633.495. The provisions of ORS 183.310 to 183.550 relating to the refusal and revocation of licenses by the department shall apply to the refusal to register, or cancellation of the registration, of any brand or grade of fertilizer, agricultural minerals, agricultural amendment or lime under ORS 633.310 to 633.495. However, the registration of each grade shall be considered as being in the nature of a distinct and separate license and the refusal to register, or cancellation of the registration of any grade registered or offered for registration by any person, shall not affect the registration of any other grade by the same person. [Amended by 1955 c.235 §8; 1961 c.425 §18; 1977 c.799 §9]

633.440 Administration and enforcement of ORS 633.310 to 633.495; withdrawal from distribution order; seizure of products. (1) The department shall administer and enforce ORS 633.310 to 633.495, and for that purpose may make rules and regulations not inconsistent with law.

(2) The department shall prosecute any violations of those sections.

(3) When the department has reasonable cause to believe any quantity or lot of fertilizer, agricultural mineral, agricultural amendment or lime is being sold or distributed in violation of ORS 633.310 to 633.495 or rules promulgated thereunder it may, in accordance with ORS 561.605 to 561.620, issue and enforce a written "withdrawal from distribution" order directing the distributor thereof not to dispose of the quantity or lot of fertilizer, agricultural minerals, agricultural amendments or lime in any manner until written permission is first given by the department. The department shall release the quantity or lot of fertilizer, agricultural minerals, agricultural amendments or lime so withdrawn when said law or rules have been complied with.

(4) Any quantity or lot of fertilizer, agricultural minerals, agricultural amendments or lime found by the department not to be in compliance with ORS 633.310 to 633.495 or rules promulgated thereunder may be seized by the department in accordance with the provisions of ORS 561.605 to 561.620. [Amended by 1965 c.268 §14; 1975 c.129 §1; 1977 c.799 §10]

633.450 Certificates relating to sample and analysis as prima facie evidence. In any suit or action, civil or criminal, in any court of this state:

(1) A certificate, signed and acknowledged by a chemist in the employment of the department, relating to the analysis of any fertilizer, agricultural minerals, agricultural amendment or lime shall be prima facie evidence of the fact that the samples mentioned in the certificate were

properly analyzed as provided by ORS 633.380, and that the substances analyzed contained the component parts stated in such certificate of analysis.

(2) A certificate, signed and acknowledged by an authorized officer, employe or deputy of the department, relating to the sampling of any fertilizer, agricultural minerals, agricultural amendment or lime shall be prima facie evidence of the fact that the samples mentioned in the certificate were taken as provided by those sections, and that the samples were taken from parcels, containers or lots mentioned or described in the certificate. [Amended by 1955 c.235 §9; 1977 c.799 §11]

633.460 Inspection fees. (1) Each person who as set forth in subsection (3) of this section is a first purchaser of fertilizers, agricultural minerals, agricultural amendments or lime in this state shall pay to the department an inspection fee established by the department by rule of:

(a) Not to exceed 20 cents for each ton of fertilizer, agricultural minerals, or agricultural amendments purchased by such person during each calendar year.

(b) Not to exceed five cents for each ton of gypsum, land plaster and every agricultural mineral the principal constituent of which is calcium sulphate ($CaSO_4 . 2H_2O$), purchased by such person during each calendar year.

(c) Not to exceed five cents for each ton of lime purchased by such first purchaser during each calendar year.

(2) In computing the tonnage on which the inspection fee must be paid as required in subsection (1) of this section, sales or purchases of fertilizers, agricultural minerals, agricultural amendments and lime in individual packages weighing five pounds net or less, and sales of fertilizers, agricultural minerals, agricultural amendments and lime for shipment to points outside this state, may be excluded.

(3) "First purchaser" or "purchased" for the purpose of this section, except as otherwise prescribed by the department, means the first person in Oregon who buys or purchases, or who takes title to, or who handles, receives or obtains possession of, fertilizer, agricultural minerals, agricultural amendments or lime. The department after public hearing and as authorized under ORS 183.310 to 183.550, may further define and may prescribe "first purchaser" for practical and reasonable rules necessary to effectuate the provisions of this section.

(4) The provisions of ORS 561.450 also apply to any person who refuses to pay inspection fees due the department. [Amended by 1955 c.235 §10; 1959 c.78 §2; 1965 c.268 §15; 1977 c.799 §12]

633.470 Report of amounts sold; collection of unpaid inspection fees. (1) Each person made responsible by ORS 633.460 and this section for the payment of inspection fees for fertilizers, agricultural minerals, agricultural amendments or lime sold in this state shall file a report with the department on October 1, January 1, April 1 and July 1 of each fiscal year of the number of tons of such materials sold during the three calendar months immediately preceding the date the report is due. The proper tonnage fee shall be remitted with the report. The person required to file the report and pay the fee shall have a 30-day period of grace, immediately following the day the report and payment are due, to file the report and pay the fee.

(2) The report required by this section shall not be a public record. No person shall divulge any information given in such report which would reveal the business operation of the person making the report. However, nothing contained in this subsection shall be construed to prevent or make unlawful the use of information concerning the business operation of a person in any action, suit or proceeding instituted under the authority of ORS 633.310 to 633.495, including any civil action for collection of unpaid inspection fees, which action hereby is authorized and which shall be as an action at law in the name of the director of the department. [Amended by 1963 c.43 §1; 1965 c.268 §16; 1977 c.799 §13]

633.475 Required records on custom mixes; registration not required; availability of records for inspection. (1) Each person mixing or selling a custom mix shall keep for a period of at least one year after mixing thereof, a record showing:

(a) The name and address of the purchaser, the date of mixing, the identifying code number of each mixture and any other information prescribed by the department.

(b) The guarantees and information set forth in ORS 633.320, 633.330 or 633.340, as the case may be, or a list of the registered ingredients showing the number of pounds and the grade of each ingredient in each mixture and batch.

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

(3) Custom mixes are not required to be registered with the department.

(4) The records required by this section shall be available for inspection during business hours by either the purchaser or the department. [1965 c.268 §7]

633.480 [Repealed by 1965 c.268 §18]

633.485 Required reports on fertilizers, minerals, amendments and lime. (1) Each registrant, manufacturer or other person importing fertilizer, agricultural minerals, agricultural amendment or lime, shall file a confidential report with the department on October 1, January 1, April 1 and July 1 of each fiscal year, of the number of tons and such other information as may be deemed necessary relating thereto by the department, of such materials sold or delivered into Oregon during the three calendar months immediately preceding the date the report is due. The person required to file the report shall have a 30-day period of grace, immediately following the day the report is due.

(2) The report required by this section, except as herein provided, shall not be a public record. The department may accumulate and publish statistics and such other information from such reports, as may be of interest and benefit to the entire fertilizer, agricultural mineral and lime industry, but in such manner as not to divulge the operation of any person. [1965 c.268 §17; 1977 c.799 §14]

633.495 Use of pesticides in fertilizers, minerals, amendments and lime subject to ORS chapter 634. In a fertilizer, agricultural minerals, agricultural amendment or lime mix in which a pesticide is contained, all applicable provisions of ORS chapter 634 must be complied with; and nothing in ORS 633.310 to 633.495 is intended to supersede provisions of ORS chapter 634. [1965 c.268 §8; 1977 c 799 §15; 1979 c.29 §1]

633.500 Voluntary analysis of fertilizer, minerals, amendments or lime; test results not public record. (1) The department shall establish and maintain a system whereby any person using fertilizer, agricultural minerals, agricultural amendments or lime or custom-mixed fertilizer, agricultural minerals, agricultural amendments or lime may request the department to sample and provide special testing analysis of such fertilizer, agricultural minerals, agricultural amendments or lime, in order to determine if such fertilizer, agricultural minerals, agricultural amendments or lime is in compliance with the provisions of ORS 633.310 to 633.495.

(2) The department may obtain and test samples of bulk fertilizer, agricultural minerals, agricultural amendments or lime or custom-mixed fertilizer, agricultural minerals, agricultural amendments or lime as provided in subsection (1) of this section, including split sampling thereof with portions of each sample being made available to the seller and to the user. Copies of the final test or analysis results, which shall not be a public record, shall be made available only to the seller and to the user of the fertilizer, agricultural minerals, agricultural amendments or lime. [1977 c.799 §17]

SEEDS

633.510 [Repealed by 1955 c.379 §23]

633.511 Definitions for ORS 633.511 to 633.750. As used in ORS 633.511 to 633.750:

(1) "Agricultural seed" means fiber, forage and grass crop seed and any other kind of seed or bulblet commonly recognized in this state as agricultural seed or as lawn or turf seed, and mixtures of any of such seeds.

(2) "Certified," as applied to bulblets, tubers or horticultural plants or to agricultural, vegetable or cereal grain seed, means inspected and labeled by and in accordance with the standards and rules and regulations adopted by the dean under ORS 633.620 or in accordance with similar standards established by some similar regularly constituted authority in another state or country.

(3) "Dean" means the dean of the school of agriculture of Oregon State University, or agent.

(4) "Director" means the Director of Agriculture, or agent.

(5) "Inert matter" includes stones, dirt, leafage, stems, badly broken seed, other similar matter and masses of spores.

(6) "Labeling" includes all labels and other printed, written or graphic representations in any form on the container of any seeds or accompanying or pertaining to any seeds, whether in bulk or in containers, and includes representations on invoices.

(7) "Mixed seed" and "mixture" mean any lot of seed that contains in excess of five percent by weight of each of two or more kinds of agricultural or vegetable seed.

(8) "Other crop seed" means that part of any lot or sample of seed that consists of the seed of cereal grain and agricultural and vegetable seeds other than those named on the label.

(9) "Percentage of germination" means the percentage of pure seed of a lot or sample that

produces satisfactory sprouts before the close of a standard germination test as prescribed pursuant to ORS 633.580.

(10) "Percentage of hard seed" means the percentage of pure seed of any lot or sample that remains in its normal hard condition at the close of a standard germination test as prescribed pursuant to ORS 633.580.

(11) "Prohibited noxious weed seed" means the seed of perennial weeds which when established are highly destructive, competitive and difficult to control by ordinary good cultural practice.

(12) "Pure seed" means the agricultural or vegetable seed of which there is the largest percentage by weight in any unmixed lot or sample and, in the case of mixtures, includes any agricultural or vegetable seed consisting of not less than five percent by weight of the kind or kinds of seed under consideration, as distinguished from other crop seed, weed seed and inert matter.

(13) "Restricted noxious weed seed" means the seed of such weeds as are very objectionable in fields, lawns and gardens but can be controlled by good cultural practice.

(14) "Retailer" means any person who sells, offers or holds for sale, agricultural or vegetable seed to ultimate consumers or users for planting purposes.

(15) "Wholesaler" means any person who sells, offers or holds for sale, agricultural or vegetable seed to retailers, distributors, brokers or other wholesalers for resale.

(16) "Vegetable seed" means the seed of those crops usually grown in Oregon in gardens or on truck farms or for canning and freezing purposes and generally known and sold under the name of vegetable seed.

(17) "Weed seed" means any seed or bulblets other than agricultural, vegetable or cereal grain seed. [1955 c.379 §2; 1969 c.132 §1; 1977 c.625 §1; 1981 c.196 §1]

633.520 Labeling agricultural seed. Each container of agricultural seed sold, offered or exposed for sale, or transported within this state shall bear thereon or have attached thereto in a conspicuous place a legibly written or printed label or tag stating in the English language:

(1) The commonly accepted name of the kind or the kind and variety of each agricultural seed component constituting five percent or more of the whole and the percentage by weight of each. If any such component is one which the director, pursuant to ORS 633.680, has determined is generally labeled as to variety, the label or tag shall bear, in addition to the name of the kind, either the name of such variety or the statement "Variety Not Stated." If more than one agricultural seed is named, the word "mixture" or the words "mixed seed" shall appear conspicuously on the label or tag.

(2) The country or state where grown. If unknown, the fact that the country or state where grown is unknown shall be stated.

(3) The lot number or other lot identification.

(4) The total percentage, by weight, of other crop seed.

(5) The total percentage, by weight, of weed seed.

(6) The total percentage, by weight, of inert matter.

(7) The name and number per pound of each kind of restricted noxious weed seed.

(8) For each named agricultural seed:

(a) The percentage of germination.

(b) The percentage of hard seed, if more than one percent.

(9) The month and year the test to determine the data required by this section was completed.

(10) The name and address of the person who labeled the seed or who sells, offers or exposes such seed for sale within the state.

(11) The year and month beyond which an inoculant, if shown in the labeling, is no longer claimed to be effective.

(12) If such seed or mixture is intended for lawn or turf purposes, the words "fine-textured grasses" and "coarse kinds" as applicable.

(13) If such seed or mixture is intended for seeding purposes and has been treated, the following:

(a) A statement that the seeds have been treated.

(b) The commonly accepted chemical or abbreviated chemical name of any substance used in such treatment.

(c) A descriptive statement, approved by the director as adequate for the protection of the public, of any process used in such treatment.

(d) If the substances used in such treatment in the amount remaining with the seeds is harmful to humans or other vertebrate animals, an appropriate warning statement, approved by the director as adequate for the protection of the public.

(14) A statement of the net quantity of the contents of each container in terms of the net weight of such container. [Amended by 1955 c.379 §3; 1969 c 132 §2]

633.530 [Repealed by 1955 c.379 §23]

633.531 Labeling vegetable seed weighing one pound or less. Each container of vegetable seed that is sold, offered for sale, exposed for sale or transported within this state and that has a net weight of one pound or less shall be legibly labeled:

(1) With the commonly accepted name of the kind or the kind and variety of the seed.

(2) With the name and address of the person who labeled the seed or who sells, offers or exposes such seed for sale within this state.

(3) With the name and number per pound of each kind of restricted noxious weed seed.

(4) In the case of seed which has a percentage of germination less than the standard prescribed by the director under authority of ORS 633.680, with:

(a) The percentage of germination.

(b) The percentage of hard seed, if more than one percent.

(c) The month and year the test to determine the data required by this section was completed.

(d) The words "substandard germination" in not less than eight point bold face type.

(5) With the labeling data required by ORS 633.520 (13) and (14). [1955 c.379 §4; 1969 c 132 §3]

633.540 [Repealed by 1955 c.379 §23]

633.541 Labeling vegetable seed weighing more than one pound. Each container of vegetable seed weighing more than one pound net weight shall be labeled with:

(1) The name of the kind and variety of the contents.

(2) The lot number or other lot identification.

(3) The name and number per pound of each kind of restricted noxious weed seed.

(4) The percentage of germination or, if the percentage of germination meets or exceeds the standard established by the director pursuant to ORS 633.680, at the option of the person for whom the container is labeled, the words "Oregon Standard Germination."

(5) The percentage of hard seed, if more than one percent.

(6) The month and year the test to determine the data required by this section was completed.

(7) The name and address of the person who labeled such seed or who sells, offers or exposes such seed for sale within this state.

(8) The labeling data required by ORS 633.520 (13) and (14). [1955 c.379 §5; 1969 c.132 §4]

633.545 Labeling bins and bulk displays. All bins and other bulk displays of agricultural or vegetable seed, and mixtures of agricultural or vegetable seed, or both, shall be labeled with the data required to be present on containers of agricultural or vegetable seed prescribed in ORS 633.520, 633.531 and 633.541. [1955 c.379 §6]

633.550 Exemptions from labeling provisions. (1) In the following cases agricultural or vegetable seeds, or mixtures of agricultural or vegetable seeds, or both, are exempt from the labeling provisions of ORS 633.520, 633.531 and 633.541, except that any labeling or other representation that is made with respect to such seed shall conform to those sections:

(a) When sold to be recleaned before being sold, offered or exposed for sale for seeding purposes.

(b) When held in storage or consigned to a seed handling establishment for conditioning.

(c) When held, sold or exposed for sale for milling, food or feeding purposes only.

(2) Containers of agricultural or vegetable seeds, or mixtures of agricultural or vegetable seeds, or both, are exempt from the labeling provisions of ORS 633.520, 633.531 and 633.541 when such containers are filled in the presence of the purchaser from bins or other bulk display containers if such bins or bulk display containers are labeled with the information otherwise required to be present on individual packages of such seed. [Amended by 1955 c.379 §7; 1981 c.196 §2]

633.560 [Repealed by 1955 c.379 §23]

633.561 Preparation of list of prohibited noxious weed seeds and restricted noxious weed seeds. The director shall prepare a list of prohibited noxious weed seeds, and a list of restricted noxious weed seeds, on which latter list the director, with the concurrence of the dean, shall specify the number of such seeds per pound that may be present in agricultural or vegetable seed. [1955 c.379 §15; 1981 c.196 §3]

633.570 [Repealed by 1955 c.379 §23]

633.571 Changes in lists; publication of changes. (1) The director, with the concurrence of the dean, may make the following changes in the list of prohibited noxious weed seeds or in the list of restricted noxious weed seeds:

(a) The addition to either list of the name of the seed of any weed.

(b) The removal from either list of the name of the seed of any weed.

(c) A change in the list of restricted noxious weed seeds of the number of such seeds per pound that may be present in agricultural or vegetable seed.

(2) In determining whether the name of the seed of any weed should be added to or removed from either list, or whether a change should be made in the number of any restricted noxious weed seed that may be present in agricultural or vegetable seed, the director and the dean shall consider the following factors:

(a) The prevalence of such weed in the state.

(b) The potential effect upon the seed industry and agriculture generally.

(c) Means of effective control or eradication.

(d) Toxicity to animals, including humans.

(e) Methods of separation from other seeds.

(f) Any other factor that may in the judgment of the director and the dean be a reasonable ground for making such change.

(3) The director shall cause all changes made pursuant to this section to be given to the press and printed in pamphlet form available for distribution. [1955 c.379 §16; 1983 c.740 §235]

633.580 Seed testing laboratory; cooperative agreements with federal agency. (1) The dean shall maintain and operate a properly equipped seed testing laboratory in connection with the agricultural experiment station at Oregon State University and shall make all tests, including germination tests, on regulatory samples agreed upon as necessary by the director and the dean and in accordance with rules and regulations, promulgated after agreement, by the director.

(2) The dean may enter into cooperative arrangements with the United States Department of Agriculture for research work in seed testing and for such portion of the regulatory and general seed testing work as may be mutually agreeable. [Amended by 1955 c.379 §8]

633.590 [Repealed by 1955 c.379 §23]

633.600 Fees for seed tests; rules and regulations. (1) The dean may authorize the seed testing laboratory to make seed tests for certification purposes and commercial tests for the use of any person.

(2) The dean may fix and determine the fee or charge for seed testing work so as to cover the cost.

(3) The dean may make reasonable rules and regulations covering any phase of seed testing, require the payment of the fees and charges and refuse further seed testing to any person failing to pay promptly the charges for his seed testing. [Amended by 1955 c.379 §9]

633.610 Seed testing fund. All moneys collected as fees or charges for seed testing work shall be deposited in a special fund to be known as the seed testing fund. The fund shall be maintained by the dean, who may expend such funds, in the manner usually employed by the experiment station in disbursement of receipts, for:

(1) Salaries, wages and necessary expenses of employes while on official duty.

(2) The purchase of necessary equipment, materials and supplies.

(3) Other expenses necessary to the carrying out of seed testing work.

633.620 Certification of seeds, tubers and plants. (1) The certification of varieties of agricultural, cereal grain or vegetable seeds, or of tubers or horticultural plants, for planting purposes as certified seeds, tubers or plants shall be conducted in this state by the dean.

(2) The varieties eligible for certification, the rules and regulations and standards for such certification that will provide for seed of high quality and the official seals and tags shall be determined upon and adopted by the dean.

(3) The dean may establish field inspection fees and charges for inspection and certification in an amount sufficient to cover the cost of such work. The dean may also charge the approximate cost price for tags, ties and seals and make charges covering the cost of field, threshed-seed or bin inspections when such inspections are called for at such times and places as to involve a total expense in excess of the income from the established fees or charges. In all cases the fees and charges shall be fixed at a rate that will cover the approximate cost of the work.

(4) The dean may authorize the inspection and certification of tubers and agricultural, cereal grain and vegetable seeds without the collection of fees when grown in areas not in excess of one acre by members of 4-H Clubs and

of the Future Farmers of America. [Amended by 1955 c.379 §10]

633.630 Certification fund. (1) All moneys collected as fees or charges for inspection and certification of agricultural, cereal grain and vegetable seeds, and of tubers and horticultural plants, shall be receipted for and deposited in a special fund to be known as the certification fund. The fund shall be maintained by the dean, who may expend such funds for no other purposes than the following:

(a) Salaries, wages and necessary travel and other expenses of employes while on official duty.

(b) The purchase of necessary equipment, materials and supplies.

(c) Other expenses necessary to the carrying out of such inspection and certification.

(2) The expenditures shall be made in accordance with the usual disbursement of receipts of the cooperative agricultural extension service. [Amended by 1955 c.379 §11]

633.640 Dean may employ assistants. For the purposes of performing the duties assigned to him, in carrying out ORS 633.511 to 633.750, the dean may employ necessary assistance and delegate to such assistants, analysts and inspectors so employed the duties assigned to him by those sections.

633.650 [Repealed by 1955 c.379 §23]

633.651 Prohibited acts. (1) No person shall sell, offer for sale, expose for sale or transport for use in planting in the State of Oregon any agricultural or vegetable seed:

(a) That except as provided in ORS 633.550, has not been labeled as required by ORS 633.520, 633.531 and 633.541;

(b) That bears a label that is false or misleading;

(c) That contains any prohibited noxious weed seeds;

(d) That contains restricted noxious weed seeds in excess of the permissible numbers per pound established under ORS 633.561 or 633.571 (2);

(e) That has not been tested within the 18 months next preceding such sale, offering for sale, exposure for sale or transportation, not including the calendar month in which the test was completed, to determine the percentage of germination for the labeling requirements of ORS 633.520, 633.531 and 633.541. The director may, pursuant to the authority of ORS 633.680, establish by order a shorter period for kinds of seed which the director finds under ordinary conditions of handling will not maintain a germination within the established limits of tolerance during an 18-month period, or longer period for kinds of such seed which are packaged in such container materials and under such conditions as the director may determine will, during such longer period, maintain the viability of the seed under ordinary conditions of handling. Any person in possession of seeds shall keep on file available for department inspection the original or duplicate copy of the latest test made of such seeds which shall show, in addition to the information required by the provisions of this section, the date and the name of the person making such test; or

(f) That, if it is a variety for which a certificate of plant variety protection under the federal Plant Variety Protection Act specifies sale only as a class of certified seed, is sold or exposed for sale by variety name but has not been so certified by any official seed certifying agency. However, seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the written approval of, the owner of the variety.

(2) No person shall substitute uncertified for certified seed.

(3) No person shall use tags or seals indicating certification other than as prescribed by a certification agency, as authorized by ORS 633.620 or 633.511 (2).

(4) Unless the tuber, horticultural plant or agricultural, vegetable or cereal grain seed has been produced, tested, examined and labeled in accordance with ORS 633.511 to 633.750 and the rules and regulations of this state or the official certification agency of another state, territory or country, no person shall:

(a) Sell, offer for sale, expose for sale, advertise or transport any such tuber, plant or seed representing it to be certified; or

(b) Use in connection with such tuber, plant or seed any tags or seals similar to those used in official certification, as established pursuant to ORS 633.620 or 633.511 (2). [1955 c.379 §12; 1957 c.407 §1; 1969 c.132 §5; 1981 c.196 §4; 1983 c.740 §236]

633.655 When penalties not applicable. No person shall be subject to the penalties of ORS 633.992 for having sold, offered for sale, exposed for sale or transported in this state any agricultural or vegetable seed, that:

(1) Is incorrectly labeled or represented as to kind and variety or origin, which seeds cannot be identified except by a field test thereof, when such person:

(a) Obtains an invoice or grower's declaration stating the kind, or kind and variety, and origin, if required;

(b) Takes such invoice or grower's declaration in good faith; and

(c) Takes such other precautions as are reasonable to insure the identity of the seeds to be as stated.

(2) Does not conform to the label on the container thereof, but is within the tolerances authorized by the director under ORS 633.680 (1). [1955 c.379 §21; 1971 c.489 §4]

633.660 Enforcement and administration. The director shall enforce ORS 633.511 to 633.750. However, the enforcement of certification regulations and the work of testing seeds and sampling, inspecting, sealing and certification labeling of tubers and horticultural plants and of agricultural, cereal grain and vegetable seeds for certification, as provided by ORS 633.600 to 633.640, shall be done by the dean. [Amended by 1955 c.379 §13]

633.670 Inspection and sampling of seeds; seizure of seeds; report of test. (1) In the enforcement of ORS 633.511 to 633.750, the director, his deputies, inspectors or samplers may:

(a) Enter during regular business hours any store, warehouse, mill, cleaning or storage place, depot or other structure, freight car or other vehicle, in which agricultural or vegetable seeds are being stored, handled or transported.

(b) Either alone or in the presence of a representative or employe of the person whose premises are so entered, examine and inspect any agricultural or vegetable seeds being possessed, sold, offered or exposed for sale for planting purposes, in this state, for their compliance with those sections.

(c) Draw or cause to be drawn a representative sample of any lot of such seed for official testing and analysis or, in the case of individually packaged seeds, select a number of such packages as a representative sample.

(2) Any sample so drawn may represent any lot, or portion of such lot, of such seed which shall be divided, at the request of the owner or person in charge, into two approximately duplicate samples, each of which shall be properly identified, labeled and sealed in accordance with the rules and regulations adopted under ORS 633.680. One of the samples shall be transmitted to the agricultural experiment station seed laboratory at Oregon State University for official testing for regulatory purposes. The other sample shall be tendered to the representative of the organization from whose structure or vehicle the sample was taken.

(3) The director may seize any container of agricultural or vegetable seed possessed, sold, offered or exposed for sale for planting purposes in this state that appears to be in violation of any of the provisions of ORS 633.511 to 633.750, and proceed in the manner directed by law for the disposal of products seized by the department.

(4) Any sample taken under those sections, and the report showing the results of the official test made on any such sample, shall be prima facie evidence in any court in this state of the true condition of the entire lot, in the examination of which the sample was taken.

(5) A copy of the result of any such test shall be mailed to the person or his authorized representative, if known, owning, possessing or holding the seed from which the sample was drawn.

(6) The director may cause to be published in the official paper or bulletin of the department a report of all seed inspection work done for regulatory purposes and shall indicate in the report:

(a) The name and address of each person whose seed was inspected.

(b) The total number of such inspections.

(c) The number and kind of seeds of which samples were inspected and tested.

(d) The number or a list of samples complying with ORS 633.511 to 633.750.

(e) A detailed list showing kinds of seed and the nature of violations of any of the provisions of those sections as found in the inspection and testing of any such seeds belonging to any such person. [Amended by 1955 c.379 §14]

633.680 Establishment of standards of germination; rules, regulations; fees and charges. (1) The director shall establish standards of germination for vegetable seed, and shall make reasonable rules and regulations necessary to effectuate the purpose of ORS 633.511 to 633.750, covering:

(a) Licensing, suspension, reinstatement and revocation of licenses, which rules and regulations shall conform to the law governing suspension, refusal or revocation of licenses by the State Department of Agriculture.

(b) Regulatory and official sampling.

(c) Labeling of seeds, including such additional information as may be required in order to maintain uniformity with the laws and regula-

tions of the Federal Government or of other states.

(d) Quarantining, which rules and regulations shall conform to the law for establishment of quarantines by the State Department of Agriculture.

(e) Seizure, treatment and disposition of seeds from outside this state.

(f) Seizure of seeds.

(g) Changes in the list of prohibited noxious weed seeds and in the list of restricted noxious weed seeds.

(h) Tolerances for differences between the contents of a container of agricultural or vegetable seed and the label thereon.

(i) The identity of fine-textured grasses.

(j) The identity of varieties of agricultural seed required by ORS 633.520.

(k) The variations in time provided for in ORS 633.651.

(L) The use and labeling of hermetically sealed or other types of containers or conveyances involving seeds.

(2) The director may establish fees and charges for official sampling, applied for by the owner, at an amount sufficient to cover the cost. He may also establish reasonable charges covering issuance of permits, and the treatment and disposition of seeds seized and held under quarantine. However, in any case where the service involved is in such location or under such circumstances that the usual fees or charges are insufficient to cover the expense, he may make additional charges to avoid loss to this state. [Amended by 1955 c.379 §17; 1969 c.132 §6]

633.690 Quarantine of seed entering state; disposition of nonconforming seed. (1) The director may place a quarantine on all agricultural or vegetable seed entering this state from any outside source. However, seed labeled in accordance with ORS 633.520, 633.531 and 633.541 shipped into the state by any person holding an Oregon license in full force shall not necessarily be quarantined; and any such seeds in tight containers in transit directly through this state, to points outside this state, shall not be subject to quarantine. Any such seeds from outside this state, that are destined to points in this state for conditioning purposes, for later use in this state, or for shipment from this state, shall be held under quarantine until such seeds comply with ORS 633.511 to 633.750.

(2) The director may draw necessary samples of such seed and hold such seed until the necessary tests are completed and arrangements for the disposition of the seed are consummated. If the seed is found to be in compliance with those sections it shall be immediately released. If the seed is found to be in violation of any part of those sections, the director shall so notify the shipper and, unless the director is instructed to return such seed within 30 days or unless such seed is put in condition to comply with the provisions of those sections and all costs covering such inspection and seizure are paid, the director shall cause the seed to be destroyed. [Amended by 1955 c.379 §18; 1981 c.196 §5]

633.700 Licenses to sell seed; fees. (1) No person may sell, offer or expose for sale in this state any agricultural or vegetable seeds unless he holds an unsuspended license, in full force, secured from the director for the current calendar year. However, any person selling seeds of his own production exclusively, and persons selling only vegetable seeds at retail, in packages weighing not in excess of one-half pound, as prepared for such trade by other seed companies, if the seed company preparing such packaged seed for sale, has a license in force for the sale of such seed in this state, is not required to secure such license. For the purposes of this section, persons operating more than one branch, plant or warehouse where seeds are sold, offered or exposed for sale shall secure a separate license for each such branch, plant or warehouse.

(2) Any person desiring to sell, offer or expose for sale in this state any agricultural or vegetable seeds, for planting purposes, except as provided in this section, shall make application to the director for a license for this purpose. The application shall be signed by the applicant or his authorized agent and shall be in a form approved by the director. Upon presentation of such signed application for a license and the tendering of the license fee established by the department pursuant to subsection (3) of this section, the director shall issue the license to the applicant. It shall be in force during the calendar year or so long as the licensee complies with those sections and the rules and regulations adopted from time to time by the director.

(3) The department shall establish annual license fees, not to exceed $5 for a retailer's license and not to exceed $50 for a wholesaler's license. Only one license shall be required for one person's operation at one location. [Amended by 1955 c.379 §19; 1957 c.407 §2; 1977 c.625 §2]

633.710 Department action on violations by licensee. (1) When the department finds that any licensee fails to label seed properly, or the results of regulatory tests show that the

labeling is not in accord with the results of tests on officially drawn samples, or otherwise violates the terms of this agreement and the provisions of ORS 633.511 to 633.750, the department shall issue a written warning, stating the violation. If the licensee continues to violate those sections, the department may suspend his license in the same manner as provided by law for the suspension of licenses by the State Department of Agriculture. The licensee shall have the same right to a hearing and appeal to the courts as provided by law in such cases.

(2) After hearing, the department may reinstate the license if the violation is clearly accidental, reinstate the license for a probationary period of not more than six months or revoke it permanently. A summary of all pertinent facts and findings in such cases shall be published in the official publication of the State Department of Agriculture.

633.720 Sampling and testing on request of owner of seed. On application of any person owning or controlling any lot of seed, the director may draw an official sample of any lot of such seed for official testing purposes. After dividing the sample into two approximately equal portions and properly identifying, labeling and sealing them, he shall tender one portion to the applicant and shall send the other portion directly to the agricultural experiment station for testing. The experiment station shall report the results of such tests to the person for whom such sample was drawn, and he shall pay for such sampling at rates established by the director, in accordance with ORS 633.680, and for the seed testing at commercial rates as established by the dean in accordance with ORS 633.600.

633.730 [Amended by 1955 c.379 §20; 1957 c.407 §3; repealed by 1959 c.31 §1]

633.740 [Repealed by 1959 c.31 §1]

633.750 Disposition of fines, fees and charges under ORS 633.511 to 633.750. All fees paid to the department pursuant to ORS 633.511 to 633.750, other than the fees and charges specified in ORS 633.610 and 633.630, shall be deposited in the Department of Agriculture Service Fund. All such moneys are continuously appropriated to the department for the purpose of carrying out those sections. [Amended by 1979 c.499 §32]

PENALTIES

633.990 [Amended by 1955 c.379 §22; 1961 c.314 §10; subsection (1) enacted as 1961 c.314 §11; repealed by 1971 c.489 §11]

633.992 Penalties. Violation of any of the provisions of this chapter or regulations promulgated thereunder is a misdemeanor. [1971 c.489 §10]