Chapter 632

1991 EDITION

Grades, Standards and Labels for Agricultural and Horticultural Products

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632.020 [Amended by 1959 c.633 §4; repealed by 1965 c.582 §24]

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632.092 [1959 c.633 §8; repealed by 1965 c.582 §24]

632.095 [Repealed by 1965 c.582 §24]

632.097 [1961 c.655 §7; 1965 c.582 §19; renumbered 632.760]

632.098 [1961 c.655 §8; repealed by 1965 c.582 §24]

632.100 [Subsection (2) of 1961 Replacement Part enacted as 1961 c.655 §9; repealed by 1965 c.582 §24]

632.105 [Repealed by 1965 c.582 §24]

632.110 [Renumbered 632.815]

632.115 [Repealed by 1965 c.582 §24]

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ONIONS

632.205 [Repealed by 1955 c.363 §16]

632.206 Definitions for ORS 632.211 to 632.260. As used in ORS 632.211 to 632.260:

(1) "Culls" means onions which fail to meet the standard of any grade established by the department under ORS 632.211.

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

(3) "Sell" includes offer, consign or expose for sale.

(4) "Transport" includes load or deliver.

(5) "Unlabeled onions" means any onions not labeled as required by ORS 632.226. [1955 c.363 §1]

632.210 [Repealed by 1955 c.363 §16]

632.211 Establishment of grades and standards; grading and inspection fee. (1) The department shall, in accordance with the applicable provisions of ORS 632.900 to 632.935, establish grades and standards for onions which shall conform, in so far as practicable, to the official grades and standards prescribed by the United States Department of Agriculture.

(2) The grades and standards adopted by the department under ORS 632.205, 632.210, 632.215, 632.220, 632.225, 632.230, 632.235, 632.240, 632.245 and 632.250 (1953 Replacement Part) shall continue in force and effect and be applicable until superseded, changed or repealed by standards and grades adopted by the department under subsection (1) of this section.

(3) The department may fix and collect a fee for grading and inspecting of onions in accordance with ORS 632.940. [1955 c.363 §8]

632.215 [Repealed by 1955 c.363 §16]

632.216 Certificate of grade required before sale or transportation of onions; exceptions. (1) No person shall sell or transport onions without first obtaining a certificate of grade pursuant to ORS 632.940 to 632.965, unless the onions are:

(a) Sold or transported in quantities of less than one ton.

(b) Graded and inspected onions which have been reconditioned or re-sorted.

(c) Culls labeled as such and other onions which are exempted from labeling by ORS 632.231 and 632.236.

(2) For the purposes of subsection (1) of this section, if the container of onions is labeled in accordance with ORS 632.226, a certificate of grade of the United States Department of Agriculture or a shipping point inspection service recognized by the United States Department of Agriculture may be accepted in lieu of a certificate issued under ORS 632.965. [1955 c.363 §2]

632.220 [Repealed by 1955 c.363 §16]

632.221 Only one inspection of each load or lot. No more than one inspection under ORS 632.216 is required for any load or lot of onions, regardless of the fact that, after inspection, the load or lot inspected loses its specific identity because of division of, or addition of other inspected onions of the same grade to, the load or lot inspected, or because of reconditioning or re-sorting. [1955 c.363 §3]

632.225 [Repealed by 1955 c.363 §16]

632.226 Labeling. Except as otherwise provided in ORS 632.231 and 632.236, no person shall sell or transport onions, unless their container is labeled with:

(1) The name and address or brand name of the grower or packer.

(2) The net weight of its contents.

(3) The word "culls" in bold-face letters not less than two inches high if the onions in the container fail to meet the standards of any grade established for onions by the department. [1955 c.363 §4]

632.230 [Repealed by 1955 c.363 §16]

632.231 Sale of unlabeled onions. Unlabeled onions may be sold:

(1) By the grower at the field where grown.

(2) To a processing plant.

(3) At retail to consumers if the onions are displayed in open containers or bins and the onions were labeled and inspected for grade as required by ORS 632.216 to 632.226, at or prior to the time of purchase by the retailer.

(4) To a livestock feeder for feeding purposes. [1955 c.363 §5]

632.235 [Repealed by 1955 c.363 §16]

632.236 Transportation of unlabeled onions. (1) Unlabeled onions may be transported for a distance of less than 50 miles on a sale or delivery to:

(a) A warehouse or other facility for grading or storage.

(b) A livestock feeder for feeding purposes.

(2) Upon written permit of the department issued under ORS 632.241, unlabeled onions may be transported:

(a) To a processing plant.

(b) For distances of 50 miles or more to a livestock feeder for feeding purposes, or to a warehouse or other facility for grading or storage. [1955 c.363 §6]

632.240 [Repealed by 1955 c.363 §16]

632.241 Transportation permits. (1) Permits for transportation under ORS 632.236 (2) shall be issued by the department to any person upon request made prior to the date of transportation.

(2) Two copies of the permit shall be issued by the department. One copy shall be retained by the consignor. The second copy shall accompany the shipment at all times to be delivered to the consignee at the point of destination of the shipment. The department may issue and deliver additional copies of the permit on request as they are needed. Permits shall be retained by both the consignor and the consignee for one year from the date of issuance. Permits shall be presented to the department or its duly authorized representatives for inspection upon request.

(3) The department may collect from the person making the request for the permit a fee on a uniform basis in an amount reasonably necessary to defray the administrative costs of the department in issuing permits under this section, but not exceeding $2 for any permit. [1955 c.363 §7]

632.245 [Repealed by 1955 c.363 §16]

632.246 Seizing unlawful onions. The department may seize or detain any onions sold or transported in violation of any provision of ORS 632.216 or 632.226. [1955 c.363 §9]

632.250 [Repealed by 1955 c.363 §16]

632.251 Access to premises or vehicle for inspection purposes. The department or any of its duly authorized representatives shall have free access at any reasonable hours to any place or premises where onions are stored, processed or sold, and may stop or enter any vehicle or means of conveyance used to transport onions for the purpose of inspection or to determine whether any provisions of ORS 632.206 to 632.260 have been violated. [1955 c.363 §10]

632.255 [1955 c.363 §11; repealed by 1965 c.276 §2]

632.260 Defendant in prosecution to plead any exemption. In any criminal proceeding brought for violation of any of the provisions of ORS 632.216 or 632.226, exemption of the party accused from the requirements of ORS 632.216 or 632.226 shall be pleaded and alleged by the defendant as a matter of defense upon a plea of not guilty. [1955 c.363 §12]

REGISTRATION OF BRAND FOR, AND USE OF, CONTAINERS, EQUIPMENT AND SUPPLIES

632.275 Filing trademark for containers, equipment and supplies for fruit and vegetables. Any persons, firms, corporations or associations engaged in producing, packing, canning tree fruits, vegetables and small fruits who furnish or provide lug boxes or containers for any grower or other person, firm or corporation with the trademark of the grower, person, firm or corporation as defined by ORS 647.005, impressed or produced thereon, or whose equipment or supplies, owned by and used in the business of the grower, person, firm or corporation, bears a trademark impressed or produced thereon, and any corporations and associations whose members are so engaged and use such containers or have such equipment or supplies may file such trademark with the Secretary of State as provided in ORS chapter 647. [Formerly 616.605]

632.280 Unlawful use of, or traffic in, name or mark as presumptive evidence. Each of the following is presumptive evidence of unlawful use of or traffic in the containers, supplies or equipment described in ORS 632.275 if the description of the

name, mark or device has been filed and published as provided in ORS 632.275:

(1) The use, without the consent provided for in ORS 632.290, of such container, supplies or equipment by any person other than:

(a) The person, firm, corporation or association whose name, mark or device is upon the container, supplies or equipment; and

(b) The members of any corporation registering the name, mark or device.

(2) The having by any junk dealer, or any dealer in secondhand articles, of possession of any such containers, supplies or equipment. [Formerly 616.610]

632.285 Security for return not a sale. If the owner of containers marked or branded pursuant to ORS 632.275, or of equipment or supplies used in the business so marked or otherwise impressed, or others lawfully entitled to use the containers, equipment or supplies, requires the taking or accepting of money as a deposit for security for the safekeeping and return of the articles, it shall not constitute a sale of such property, either optional or otherwise, in any proceedings under ORS 632.275 to 632.290. [Formerly 616.615]

632.290 Acquiring of marked containers, supplies and equipment. Any person, firm, corporation or association, or any member of such corporation or association acquiring containers, supplies or equipment marked pursuant to ORS 632.275, by purchase or other lawful means, and having written consent, shall not be required to again file and publish the description, but shall as to the containers, supplies and equipment, describe any such written consent acquired as a part of the purchase and shall have all such benefits as the vendor has under ORS 632.275 to 632.290. [Formerly 616.620]

POTATOES

Note: 1955 c.711 §1 repealed 632.305, 632.310, 632.315, 632.320, 632.325, 632.330, 632.335, 632.340, 632.345, 632.350, 632.355 and 632.360 and enacted in lieu thereof 632.306, 632.311, 632.316, 632.321, 632.326, 632.331, 632.336, 632.341, 632.346, 632.351, 632.356 and 632.361.

632.305 [Repealed by 1955 c.711 §1]

632.306 Definitions for ORS 632.306 to 632.361. (1) As used in ORS 632.306 to 632.361, "department" means the State Department of Agriculture of the State of Oregon.

(2) The provisions of ORS 632.306 to 632.361 regarding the sale of potatoes include the exposure, offer, possession, holding and consignment of potatoes for sale, but the act of selling potatoes by a grower at the field or place of storage of the grower shall not become unlawful until such time as transportation takes place. The provisions of ORS 632.306 to 632.361 regarding the transportation of potatoes include the hauling and shipment of potatoes. [1955 c.711 §§2, 5; 1957 c.96 §1]

632.310 [Repealed by 1955 c.711 §1]

632.311 Establishment of standard grades. The department hereby is directed to establish standard grades for potatoes for the State of Oregon. The official grades shall conform, as far as practicable, to the official grades of the United States as prescribed and promulgated by the United States Department of Agriculture. The grades may be changed from time to time as may be necessary. The provisions of ORS 632.910 to 632.920 shall apply to the establishment of grades for potatoes under the provisions of ORS 632.306 to 632.361. [1955 c.711 §4]

632.315 [Repealed by 1955 c.711 §1]

632.316 Prohibition against advertising potatoes for sale without stating grade. No person shall advertise potatoes for sale without stating the grade of such potatoes. [1955 c.711 §13]

632.320 [Repealed by 1955 c.711 §1]

632.321 Labeling. No person shall sell or transport potatoes, or offer or submit potatoes for transportation, unless each bag, box, carton or other container is labeled with:

(1) The applicable Oregon grade or United States grade, as promulgated by the department for use in Oregon, of potatoes in the container; provided, however, if the potatoes fail to comply with any such grade their container shall be labeled with the word "culls" in bold face letters not less than two inches high.

(2) The name and address or the registered brand name of the grower or packer, providing such brand name is registered with the Secretary of State or the United States Government and is filed with the department.

(3) The name of the variety if the potatoes are not certified and are sold for seed.

(4) The net weight of the contents of the container. [1955 c.711 §6; 1957 c.96 §2]

632.325 [Repealed by 1955 c.711 §1]

632.326 Exemptions from labeling. ORS 632.321 shall not apply to:

(1) Potatoes which have been certified for seed as provided in ORS 633.620 and to which is attached an official certification tag.

(2) The casual sale by a grower of potatoes in quantities of 500 pounds or less, when such sales are made at the grower's field where grown or place where stored, to a consumer; and the transportation of such potatoes by the consumer to residence of the consumer for use in the private household of the consumer.

(3) The transportation of potatoes from the field where grown to a pit or warehouse for storage or grading.

(4) The sale and transportation of potatoes to a processing plant.

(5) The sale of potatoes to a livestock feeder and the transportation of potatoes to a livestock feeder for feeding purposes.

(6) The sale at retail of grade labeled potatoes when such potatoes are repacked into open containers or sold from bulk displays, if such potatoes are otherwise in compliance with the provisions of ORS 632.306 to 632.361.

(7) The sale or transportation of potatoes from the grower's place of storage to a warehouse or other storage facility for the purpose of grading. [1955 c.711 §7; 1957 c.96 §3]

632.330 [Repealed by 1955 c.711 §1]

632.331 Permit authorizing transportation of unlabeled potatoes. (1) The department shall by written permit authorize potatoes to be transported without being labeled as required by ORS 632.321:

(a) To a processing plant, when such transportation is for a distance of 50 miles or more.

(b) To a livestock feeder for feeding purposes, when such transportation is for a distance of 50 miles or more.

(c) From the field where grown or from the place where stored to a warehouse or other facilities for storage or grading, when the transportation is for a distance of 50 miles or more.

(2) A person wishing to transport potatoes to any of the places or for any of the purposes mentioned in this section under permit shall make a request therefor prior to any transportation. Two copies of the permit shall be issued by the department to the person requesting it. One copy of the permit shall be retained by the consignor, and the second copy shall accompany the shipment at all times and be delivered to the consignee at the destination of the shipment. The department may issue and deliver additional copies of the permits as they may be needed. The permits shall be held by the consignor and the consignee for one year from the date of issuance and shall be presented to the department for inspection at its request.

(3) No person shall transport potatoes to any of the places named in subsection (1) of this section without first obtaining a permit therefor.

(4) The department is authorized to collect a fee for the issuance of permits required by this section in an amount calculated by it to cover the expense of issuance of the permit, but such fee shall not exceed $2 for each permit. [1955 c.711 §8; 1957 c.96 §4]

632.335 [Repealed by 1955 c.711 §1]

632.336 Grade inspection by department. (1) No person shall sell or transport potatoes which have been labeled as required by ORS 632.321, or which are subject to the labeling provisions of that section, without first obtaining a grade inspection from the department as provided in ORS 632.940, including the payment of fees for such inspection. Such inspection shall be evidenced by a certificate as provided in ORS 632.965.

(2) The department may prescribe and approve exemptions from the requirements of the provisions of subsection (1) of this section, if:

(a) A person directly transports potatoes during regular hours of inspection to the nearest department inspection point.

(b) A person who desires to move or transport potatoes to a place or destination other than that provided for in paragraph (a) of this subsection, at least 24 hours in advance of such movement or transportation, notifies the department and thereafter directly moves or transports the potatoes to a place or destination approved by the department.

(c) The person authorized by the department to move or transport potatoes, as provided in paragraph (b) of this section, upon delivery to the approved place or destination notifies such receiver or purchaser that the potatoes are to be held for department inspection. It shall be unlawful for such receiver or purchaser to sell or transport the potatoes until an inspection has been made by the department.

(3) The department may refuse to permit further exemptions from the provisions of subsection (1) of this section if any person, as authorized by paragraph (a) or (b) of subsection (2) of this section, fails or refuses to follow or to comply with the directions or order of the department, the provisions of this subsection, or rules and regulations promulgated thereunder. [1955 c.711 §9; 1957 c.96 §5]

632.340 [Repealed by 1955 c.711 §1]

632.341 Exemption from grade inspection. (1) ORS 632.336 shall not apply to:

(a) Potatoes which are sold or transported in loads or quantities of less than one ton providing each bag, box, carton or other container of such potatoes are labeled as required by ORS 632.321.

(b) Inspected and graded potatoes which have been reconditioned or re-sorted.

(c) Potatoes which have been inspected by another state or the United States for grades comparable to those established by ORS 632.306 to 632.361.

(2) No more than one inspection shall be required pursuant to ORS 632.306 to 632.361 for any load or lot of potatoes subject to inspection, notwithstanding that after such inspection, the load or lot so inspected may lose its specific identity by reason of a division of the load or lot so inspected or addition to such load or lot of other inspected potatoes of the same grade, or by reason of reconditioning or re-sorting.

(3) Any interested party may obtain a reinspection of any load or lot of potatoes as provided in ORS 632.960. [1955 c.711 §10]

632.345 [Repealed by 1955 c.711 §1]

632.346 Seizing unlawful potatoes. The department may seize, embargo or detain any load or lot of potatoes, or any portion thereof, if such potatoes are being sold or transported in violation of ORS 632.306 to 632.361. [1955 c.711 §11]

632.350 [Repealed by 1955 c.711 §1]

632.351 Access to premises or vehicle for inspection purposes. The department or its duly authorized representatives shall have free access at all reasonable hours to any place or premises in which potatoes are stored, processed or sold or to stop or enter any vehicle being used to transport potatoes for the purpose of inspecting such place, premise or vehicle to determine if the provisions of ORS 632.306 to 632.361 are being violated. [1955 c.711 §12]

632.355 [Repealed by 1955 c.711 §1]

632.356 [1955 c.711 §14; repealed by 1965 c.276 §2]

632.360 [Repealed by 1955 c.711 §1]

632.361 Administration and enforcement. The administration and enforcement of ORS 632.306 to 632.361 is vested in the department. [1955 c.711 §3]

PRUNES

632.405 Definitions for ORS 632.405 to 632.440. As used in ORS 632.405 to 632.440, "department" means the State Department of Agriculture.

632.410 Establishing official grades and standards. (1) The department shall fix, establish and promulgate, after investigation and public hearing, official grades and standards for grading and classifying dried prunes.

(2) In establishing such grades and standards the department shall take into account and base them upon the following factors:

(a) Flavor, texture, size, appearance and moisture content.

(b) Freedom from disease.

(c) Freedom from or extent of damage or deterioration.

(d) Absence of foreign material, dirt, insect infestation or scorch.

(e) Extent of carmelization.

(f) Method of packing or packaging.

(g) Such other factors as may be indicative of or which may affect quality or condition and value or suitability for human consumption or for the commercial or other uses to which that product normally is put.

(3) In addition, the department shall take into account any grades, standards or classifications for dried prunes established by the United States Department of Agriculture, and also applicable state and federal food and drug laws. ORS 632.900 to 632.935 relating to grades and standards shall apply to ORS 632.405 to 632.440.

632.415 Application of factors to be considered; change of grade. (1) The factors to be considered in establishing any grades or standards for dried prunes, as provided by ORS 632.410, shall be applied in accordance with the extent to which and manner in which they relate to the quality, quantity and condition of that product and the value or suitability of it for human consumption or for the commercial or other uses to which it is normally put.

(2) Any such grades, standards or classifications established under ORS 632.405 to 632.440 may, from time to time, be changed by the department in order:

(a) To conform them more nearly to the requirements or interests of consumers or to commercial or trade requirements, practices or methods.

(b) To meet changed conditions.

(c) To comply with new and improved methods of handling, processing, packing, transporting, marketing or using dried prunes.

(d) To apply or make effective any new and improved method of test, analysis or examination of the quality or condition of that product or the value or suitability of it as stated in this section.

632.420 Sample kept of purchases according to grade; determination of dispute as to grade. (1) Any person who purchases in commercial quantity any dried prunes which are to be further processed before being sold or offered for sale for human consumption, the price or consideration for such being dependent upon the quality or quantity determined according to the number

of dried prunes to the pound, shall keep for a period of not less than 30 days, conveniently available to checking by the person from whom those dried prunes were purchased, the exact sample used in so determining their quality or quantity.

(2) In the event of dispute as to the accuracy of that determination of quality or quantity, the department, upon the request of either party to that sale and payment of the required fee, shall examine the sample. The determination by the department on the basis of such examination of the quality or quantity of those dried prunes shall be binding upon both parties.

632.425 Fees for inspecting and grading. The department shall fix, assess and collect fees for all inspections or grading of dried prunes made pursuant to ORS 632.405 to 632.440, on a uniform basis, in a reasonable amount, which the department shall determine to be sufficient to cover the cost of such inspection and grading.

632.430 Enforcement; inspection or grading certificate as evidence. (1) The department shall administer and enforce the provisions of ORS 632.405 to 632.440. It may employ such inspectors and deputies and enter such agreements with officers of the United States Department of Agriculture and make such reasonable rules and regulations as may be necessary to carry out such sections.

(2) In any court proceeding any inspection or grading certificate, issued pursuant to such sections, is prima facie evidence of the facts stated in it.

632.435 [Repealed by 1965 c.276 §2]

632.440 Injunction. Any circuit court has jurisdiction to restrain any violation or threatened violation of ORS 632.405 to 632.430, upon suit by the Attorney General.

PACKING AND LABELING OF HORTICULTURAL PRODUCTS

632.450 Definitions for ORS 632.450 to 632.485. As used in ORS 632.450 to 632.485:

(1) "Horticultural products" means all horticultural products excepting those that are canned, bottled, frozen, dried, candied or brined.

(2) "Container" means the box, crate, lug, chest, basket, carton, barrel, keg, drum, sack, hamper, bag, bin, tray, bucket or other receptacle, whether open or closed, used by any person in transporting horticultural products, or in which such products are offered for sale.

(3) "Stamp," "mark" or "label plainly" means placing the information required by ORS 632.450 to 632.485 on the container in legible letters or figures of not less than three-eighths inch in height and not less than three-sixteenths inch in width, by means of a rubber stamp, stencil, printing by machine, or by attaching to the package by means of glue or paste, a machine-printed label. Such marks, and the location thereof, shall conform to the rules and regulations established by the department when promulgating grades for horticultural products.

(4) "Deceptive pack" means any arrangement of horticultural products which has in the outer layer or any exposed surface horticultural products which are so superior in quality, size, condition or in any other respect to those in the interior of the lot or the unexposed portion as to materially misrepresent the contents of the lot. A deceptive pack also means a container slackly filled so as to deceive the purchaser in regard to the total contents, or a container which has had a portion of the original contents removed and then offered for sale as a full pack. [Formerly 616.505]

632.455 Labeling container of horticultural products. No person shall sell, offer for sale or transportation, or transport within Oregon, horticultural products unless each container or package of such products is plainly and conspicuously labeled with the name and post-office address of the grower, shipper or dealer, and the net contents of the container or package in terms of weight, measure or numerical count. This section does not apply to transportation from the owner's fields to a warehouse for storage or grading and packing, or to processing plants. [Formerly 616.510]

632.460 Establishment of grades, branding and packing requirements. (1) The department may establish by rule, as provided in ORS 183.310 to 183.550, grades for horticultural products and branding and packing requirements as are deemed necessary.

(2) Except as expressly provided in ORS 632.450 to 632.485, all grades and requirements relating to fruits and vegetables in effect on June 14, 1941, shall so remain unless changed under the authority conferred by ORS 632.450 to 632.485.

(3) The use of grade standards authorized to be established by this section is not mandatory unless otherwise specifically provided by law. However, the deceptive use or misuse of any grade standards is unlawful. [Formerly 616.515; 1979 c.91 §2]

632.465 Used packages or containers. It is unlawful to sell or offer for sale or to transport or offer for transportation, horticultural products in used packages or

containers unless such used packages or containers are first cleaned of all foreign matter and substances and are in all respects sanitary, and unless all previous markings, brands, grade markings, labels, trademarks, names and addresses are entirely removed or so defaced as to destroy their legibility, or by turning such container or package inside out. This section does not apply to transportation from the owner's fields to a warehouse for storage or grading and packing, or to processing plants. [Formerly 616.520]

632.470 False representations as to raising, production or packing. No person, by means of any false representation, either verbal, printed or written, shall represent or pretend that horticultural products were raised, produced or packed by any person, or in any locality other than by the person, and in the locality where the same were in fact raised, produced or packed. [Formerly 616.525]

632.475 Possession of unlabeled, falsely labeled or deceptively packed products. (1) No person shall have in possession for sale or transportation any horticultural products not labeled as required in ORS 632.450 to 632.485, or falsely marked or labeled, or deceptively packed contrary to the provisions of ORS 632.450 to 632.485.

(2) The possession for sale or transportation by such person of any such horticultural products so falsely marked, labeled or packed is prima facie evidence that such person has so falsely marked, labeled or packed such horticultural products.

(3) The provisions of ORS 632.450 to 632.485 do not apply to the transportation of horticultural products by common carrier, except when the common carrier is issued a written notice by the department that the lot of horticultural products offered for shipments has been seized by the department for not meeting the requirements of ORS 632.450 to 632.485 and the notice is accompanied with a copy of the seizure notice. [Formerly 616.530]

632.480 Shipment or sale of deceptive pack, load or display prohibited. No person shall prepare, deliver for shipment, ship, transport, offer for sale or sell a deceptive pack, or package, load, arrangement or display of horticultural products. [Formerly 616.535]

632.485 Enforcement; entry and inspection; seizure. (1) The director and all authorized agents of the department shall enforce ORS 632.450 to 632.485 and to that end may enter any place or conveyance within this state where any fruit, nuts or vegetables are produced, stored, packed, delivered for shipment, loaded, shipped, being transported, or sold, and inspect all such fruit, nuts or vegetables and the containers thereof and take for inspection such representative samples of the fruit, nuts or vegetables and such containers, as may be necessary, to determine whether or not ORS 632.450 to 632.485 have been violated.

(2) Whenever a duly authorized representative of the department finds, or has probable cause to believe, that any products are marked, labeled or packed in violation of ORS 632.450 to 632.485, the representative shall seize the products and proceed in the manner directed by law for the disposal of products seized by the department. [Formerly 616.540]

632.490 Labeling fruit or vegetables as Oregon grown or packed. All persons operating under their own private brand in Oregon in the business of packing or canning fruit or vegetables, either fresh, canned, evaporated or otherwise, shall plainly designate on such private brand that goods were Oregon grown or packed in Oregon. For the purpose of this section it is sufficient for the firms whose headquarters are in Oregon to either designate the local address of the cannery or to designate the location of their main office in Oregon. This section does not apply to sales to wholesalers, packers or others for reselling. [Formerly 616.545]

WALNUTS AND FILBERTS

632.505 Definitions for ORS 632.505 to 632.625. As used in ORS 632.505 to 632.625, "department" means the State Department of Agriculture.

632.510 [Repealed by 1955 c.239 §8]

632.515 [Repealed by 1955 c.239 §8]

632.516 Establishment of grades and standards. The department shall, in accordance with the applicable provisions of ORS 632.905 to 632.980, establish standards and grades for walnuts and filberts by rules or regulations enacted pursuant to ORS 183.310 to 183.550. The grades shall conform, as far as practicable or applicable in this state, to the official grades and standards prescribed by the United States Department of Agriculture. The grades may be changed from time to time as may be necessary. [1955 c.239 §2; 1971 c.734 §28]

632.520 [Repealed by 1955 c.239 §8]

632.521 Grades and standards established by repealed statute; continued in effect until superseded. Notwithstanding the powers and duties of the department under ORS 632.516, the statutory standards and grades in ORS 632.510, 632.515, 632.520, 632.525, 632.530, 632.535, 632.540, 632.545, 632.550, 632.555, 632.560, 632.565, 632.570, 632.575 and 632.580 prior to the repeal of those sections by section 8, chapter 239,

Oregon Laws 1955, shall continue in force and effect and be applicable as if adopted by the department until superseded or repealed by rules and regulations adopted by the department under ORS 632.516. [1955 c.239 §3]

632.525 [Repealed by 1955 c.239 §8]

632.530 [Repealed by 1955 c.239 §8]

632.535 [Repealed by 1955 c.239 §8]

632.540 [Repealed by 1955 c.239 §8]

632.545 [Repealed by 1955 c.239 §8]

632.550 [Repealed by 1955 c.239 §8]

632.555 [Repealed by 1955 c.239 §8]

632.560 [Repealed by 1955 c.239 §8]

632.565 [Repealed by 1955 c.239 §8]

632.570 [Repealed by 1955 c.239 §8]

632.575 [Repealed by 1955 c.239 §8]

632.580 [Repealed by 1955 c.239 §8]

632.585 Necessity of conformity to standards. All unshelled walnuts and unshelled filberts sold or offered for sale or shipment in this state shall conform to the standards established by the department for such walnuts and filberts. [Amended by 1955 c.239 §5]

632.590 Labeling. All unshelled walnuts and unshelled filberts sold, displayed or offered for sale or shipment in this state, shall have the containers, bins, display table or other bulk display labeled with a legible label containing:

(1) Name of the state in which such nuts were grown.

(2) Grade or registered brand and size of nuts in the container.

(3) Name and address of the grower, dealer or packer.

However, containers of five pounds or less capacity and bins and bulk tables shall be required to be labeled only with the name of the state where grown and the grade and size of such nuts. Such labeling shall not be required when nuts are being sold at retail from a properly labeled container or bulk display and packaged in the presence of the purchaser for the immediate purpose of the sale.

632.595 Containers. All containers of unshelled walnuts or unshelled filberts of the two highest grades established by the department, sold or offered for sale or shipment in this state, shall be uniform, new, sound and clean and otherwise conform to the standards approved by the department. Containers for lower grades shall be clean, fairly bright and sound. [Amended by 1955 c.239 §6]

632.600 Inspection districts; inspection, reinspection and fees. (1) The department may designate certain areas as inspection districts and certain cities as inspection points, as necessary for the enforcement of ORS 632.505 to 632.625 and the rules and regulations of the department.

(2) All unshelled walnuts and unshelled filberts shipped out of or into or received in such inspection districts or inspection points in lots of 250 pounds or more shall be inspected by the department in accordance with its rules and regulations. However, no inspection shall be required for such nuts in transit to a processing plant. Not more than one inspection shall be made by the department for any car or lot of unshelled walnuts, or unshelled filberts unless the buyer or seller of the car or lot applies for reinspection and advances the charges for it as provided by the department. Any shipper of unshelled walnuts or unshelled filberts who feels that the grade established on any lot of nuts by any inspector, agent or representative of the department is not a true grade of such lot of unshelled walnuts or unshelled filberts may appeal to the department for a reinspection. However, the department may inspect any lot of less than 250 pounds, if at any time it deems it necessary.

(3) The department may fix, assess and collect or cause to be collected fees for all inspections of unshelled walnuts and unshelled filberts, on a uniform basis, in an amount determined to be reasonable and to cover the cost of its inspections and the enforcement of ORS 632.505 to 632.625. [Amended by 1955 c.239 §7]

632.605 [Subsection (2) enacted as 1955 c.239 §4; repealed by 1965 c.276 §2]

632.610 Duty to notify department of availability for inspection. (1) Every operator or person in charge of any motor vehicle transporting on the streets or highways any unshelled walnuts or unshelled filberts, of which inspection is required by ORS 632.505 to 632.625, out of, into or through any inspection district, or any city which has been declared an inspection point, shall give notice by mail or in person to the nearest office or inspector of the department that such nuts are available for inspection as required by law.

(2) Any person, receiving any shipment, load or lot of such nuts, which has not been inspected, for the purpose of sale or storage in such quantities and in such places as would require inspection, shall give notice within 24 hours by mail or in person to the nearest office or inspector of the department that such nuts have been received and are being held for inspection.

632.615 Enforcement; inspection certificate as evidence. (1) The department shall enforce the provisions of ORS 632.505 to 632.625, and may make rules and regulations necessary or convenient for such enforcement. It may employ such inspectors,

agents and representatives as it finds necessary and enter into agreements with the United States Department of Agriculture, its authorized agents, officers and representatives as it deems necessary to carry out such sections, not contrary to the laws of this state.

(2) Upon complaint, properly filed, that unshelled walnuts or unshelled filberts are offered for sale or shipment in violation of ORS 632.505 to 632.625, the department shall make the necessary investigation. If the complaint is found true, the department shall report the facts to the district attorney of the county in which the violation occurred and the district attorney shall prosecute such offender.

(3) Certificates of inspection of unshelled walnuts and unshelled filberts issued by the department shall be prima facie evidence of the facts contained therein.

632.620 Jurisdiction. Justices of the peace and district courts have concurrent jurisdiction with the circuit court in all proceedings to enforce the provisions of ORS 632.505 to 632.625.

632.625 Violation of walnut and filbert law prohibited. No person shall sell or offer for sale or shipment any unshelled walnuts or unshelled filberts in violation of any of the provisions of ORS 632.505 to 632.625, or the rules or regulations established under such sections.

EGGS

632.705 Definitions for ORS 632.705 to 632.815. As used in ORS 632.705 to 632.815:

(1) "Adulterated" has the same meaning as set forth in ORS 616.235.

(2) "At retail" means a sale or transaction between a retailer and a consumer.

(3) "Bulk sale" means the sale of eggs in containers other than consumer containers.

(4) "Candling" means the examination of the interior of eggs by the use of transmitted light used in a partially dark room or place.

(5) "Consumer" means any person who purchases eggs at retail or any restaurant, hotel, boarding house, bakery, or institution or concern which purchases eggs for serving to guests or patrons thereof, or for its own use in cooking or baking.

(6) "Consumer container" means a container in which eggs are packed for sale to consumers.

(7) "Container" means any box, case, basket, carton, sack, bag or other receptacle.

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

(9) "Egg handler" means any person who contracts for or obtains possession or control of any eggs for:

(a) Sale to another egg handler or a retailer; or

(b) Processing and sale to another egg handler, a retailer or a consumer.

(10) "Egg products" means the white, yolk, or any part of eggs, in liquid, frozen, dried, or any other form, used, intended or held for use, in the preparation of, or to be a part of or mixed with, food or food products, for human consumption, excepting products which contain eggs only in a relatively small proportion or historically have not been in the judgment of the department considered by consumers as products of the egg industry.

(11) "Eggs" or "shell eggs" means eggs in the shell from chickens, turkeys, ducks, geese or any other species of fowl.

(12) "Federal Act" means the Federal Egg Products Inspection Act, 21 U.S.C. 1031 et seq., 84 Stat. 1620 et seq.

(13) "Labeling" has the same meaning as set forth in subsection (12) of ORS 616.205.

(14) "Lot" means an identifiable and certain quantity, group or shipment of one grade or size of eggs of a particular producer, egg handler or retailer. Such identification and certainty may be determined by the department by container labeling of codes, numbers or dates, or invoices containing such data.

(15) "Misbranded" has the same meaning as set forth in ORS 616.250.

(16) "Pasteurize" means the subjecting of each particle of egg products to heat or other treatments to destroy harmful viable microorganisms, by such processes as may be prescribed by the department.

(17) "Processing" means manufacturing egg products, including breaking eggs or filtering, mixing, blending, pasteurizing, stabilizing, cooling, freezing, drying, or packaging egg products.

(18) "Retailer" means any person who sells eggs to a consumer.

(19) "Sell" or "sale" means to sell, offer for sale, expose for sale, or have in possession for sale. [1965 c.582 §1; 1975 c.748 §1]

632.710 [Formerly 632.007; repealed by 1975 c.748 §19]

632.715 Egg handler's license. (1) Unless the holder of a permit issued under ORS 632.730, no person shall sell or distribute within this state any eggs to consumers or to retailers without having first obtained an egg handler's license from the department. The license shall not be required:

(a) Of a producer selling and delivering eggs of the producer's own production direct to an individual consumer; or

(b) For the sale of uncandled eggs to other than a consumer; or

(c) For the sale by a retailer to a consumer of eggs which previously have been candled and graded by an egg handler in compliance with ORS 632.705 to 632.815.

(2) Application for such license shall be made to the department, on forms prescribed by the department.

(3) Each egg handler's license shall expire on June 30 next following the date of issuance. Such license shall not be transferable to any person. The original of the license shall be conspicuously displayed in the main office of the licensee. A duplicate copy of the license shall be conspicuously displayed in each separate branch, store, sales outlet, office, warehouse or location operated or owned by the licensee in which eggs are candled or graded.

(4) The department, in accordance with ORS 183.310 to 183.550, may refuse to issue, or may suspend or revoke, an egg handler's license issued under this section, or a permit issued under ORS 632.730, if the applicant, the permit holder, or the licensee has or is violating the provisions of ORS 632.705 to 632.815 or rules promulgated pursuant thereto. [1965 c.582 §2; 1975 c.748 §2; 1982 s.s.1 c.4 §12]

632.720 Fee. There shall be paid to the department with each application for an egg handler's license an annual license fee of $25. [1965 c.582 §3; 1975 c.748 §3; 1991 c.632 §8]

632.725 [1965 c.582 §4; repealed by 1975 c.748 §19]

632.730 Commercial egg breaker's permit; fee. No person shall engage in the commercial breaking of eggs for the purpose of recovering therefrom, for human food, the whites, yolks or whole egg meats, or any part thereof, for resale as such, without first obtaining from the department a permit to do so. Such permit shall be issued to any person making written application for it and a proper showing of ability and intent to comply with the sanitary requirement specified by ORS 632.705 to 632.815, and payment to the department of an annual permit fee of $75. Such permit shall expire on June 30 next following its date of issuance, and may be renewed from year to year upon written application and payment of the annual permit fee. [Formerly 632.040; 1975 c.748 §4; 1982 s.s.1 c.4 §13]

632.735 [1965 c.582 §5; repealed by 1975 c.748 §19]

632.740 [1965 c.582 §6; repealed by 1975 c.748 §5 (632.741 enacted in lieu of 632.740)]

632.741 Additional fee; method of payment; exceptions. (1) In addition to the license fee prescribed in ORS 632.720, each egg handler shall pay to the department a fee prescribed by the department, not to exceed two and one-half mills per dozen eggs sold by such egg handler. Such fee shall be paid by remitting monthly payments, on dates prescribed by the department, accompanied by such reports concerning egg sales as the department may prescribe. The egg handler utilizing this method shall prepare and maintain adequate books and records evidencing the egg sales, and shall keep the same for at least two years. The department is authorized to inspect and audit such books and records as provided in ORS 561.265 and the egg handler shall pay to the department its costs for the same. The department shall assign such egg handler a permit number to be placed on egg containers in the manner prescribed by the department.

(2) The fees required to be paid under subsection (1) of this section and, except as otherwise provided therein, the labeling required by ORS 632.771 shall not apply to:

(a) Eggs sold and shipped outside of this state;

(b) Eggs sold to the United States Government;

(c) Bulk sales of eggs;

(d) Eggs sold to another egg handler for processing into egg products; or

(e) Eggs sold by a producer to consumers at the place of production. [1975 c.748 §6 (632.741 enacted in lieu of 632.740); 1991 c.632 §9]

632.745 When invoices required; exception; availability for inspection. (1) Each person who sells eggs in bulk shall furnish the purchaser with an invoice covering each such sale, showing the exact grade or quality and the size or weight of the eggs sold, according to the standards prescribed by the federal Act or the department, together with the name and address of the person by whom the eggs were sold. The invoices shall be available during business hours for inspection by the department. The invoices shall be kept for at least:

(a) One year by the seller, and

(b) 60 days by the purchaser.

(2) No invoice shall be required on eggs when sold to the United States Government or to an individual consumer.

(3) Any person or retailer selling eggs through its own stores or outlets may keep the records required by subsection (1) of this section, at its principal place of business within this state and is not required to keep the records at the stores or outlets. [1965 c.582 §7; 1975 c.748 §7]

632.750 [Formerly 632.085; repealed by 1975 c.748 §19]

632.755 [Formerly 632.060; repealed by 1975 c.748 §8 (632.756 enacted in lieu of 632.755)]

632.756 Maintenance of facilities and equipment; standards. The plant facilities and equipment utilized in processing eggs or egg products shall be constructed, maintained and utilized in accordance with the rules promulgated under the federal Act or promulgated by the department. [1975 c.748 §9 (enacted in lieu of 632.755)]

632.760 [Formerly 632.097; repealed by 1975 c.748 §10 (632.761 enacted in lieu of 632.760)]

632.761 Authority of department. The department is authorized to:

(1) Inspect at reasonable times plant premises, facilities, equipment, containers and vehicles and to inspect and sample eggs and egg products for the purpose of enforcing the provisions of ORS 632.705 to 632.815 or rules promulgated pursuant thereto.

(2) Seize, embargo or detain, in accordance with the provisions of ORS 561.605 to 561.630, any eggs or egg products determined to be in violation of the provisions of ORS 632.705 to 632.815 or rules promulgated pursuant thereto.

(3) Condemn, in accordance with the provisions of ORS 616.740, any plant premises, facilities, equipment, containers or vehicles determined to be in violation of the provisions of ORS 632.705 to 632.815 or rules promulgated pursuant thereto.

(4) Enter into cooperative and reciprocal agreements with any federal, state or other governmental agency in carrying out the provisions of ORS 632.705 to 632.815, and to receive and expend funds pursuant thereto. [1975 c.748 §11 (enacted in lieu of 632.760)]

632.765 [1965 c.582 §8; repealed by 1975 c.748 §19]

632.770 [1965 c.582 §9; repealed by 1975 c.748 §12 (632.771 enacted in lieu of 632.770)]

632.771 Information on container label; sale from bulk display; advertising. (1) The labeling of any container used by an egg handler shall include the information required by the federal Act or rules promulgated thereunder, or:

(a) The full, correct and unabbreviated designation of size and grade or quality of the eggs;

(b) The common or usual name, if any there be, of the egg product;

(c) The lot or production code, number or date;

(d) The net contents;

(e) The name and address of the egg handler or distributor, and in the case of a distributor shall include qualifying terms as "packed for," "distributed by" or "distributor"; and

(f) The Oregon state egg seal or the official number assigned to the egg handler by the department.

(2) The labeling information required by subsection (1) of this section shall be of a size and in a location prescribed by the department or by the rules promulgated under the federal Act.

(3) If eggs are sold by retailers to consumers from a bulk display, in lieu of the labeling information required by subsection (1) of this section, there shall be a clearly visible and legible placard prominently displayed immediately adjacent to such display containing the size and grade or quality of the eggs.

(4) Advertising of eggs or egg products shall conform to such provisions of subsection (1) of this section as the department may prescribe. [1975 c.748 §13 (enacted in lieu of 632.770)]

632.775 [1965 c.582 §10; repealed by 1975 c.748 §19]

632.780 [1965 c.582 §11; repealed by 1975 c.748 §19]

632.785 [1965 c.582 §12; repealed by 1975 c.748 §14 (632.786 enacted in lieu of 632.785)]

632.786 Prohibited acts. No person shall:

(1) Sell eggs for human consumption in previously used consumer containers bearing the brand, trademark or officially designated number of another egg handler, unless the same is removed or defaced;

(2) Fail to pay the fees or obtain the permit required by ORS 632.741;

(3) Fail to furnish the invoices required by ORS 632.745;

(4) As an egg handler, use any egg container unless it is labeled as required by ORS 632.771;

(5) As a retailer, sell eggs from a bulk display without the displaying of the placard required by ORS 632.771 (3);

(6) Deliver or sell eggs for human consumption that have been incubated or have been in either an artificial or natural incubator;

(7) Deliver or sell for human consumption ova from slaughtered birds of any specie;

(8) Sell any eggs or egg products that are adulterated or misbranded;

(9) Sell any eggs as fresh eggs unless they are of the quality or grade prescribed by the department or the federal Act for fresh eggs;

(10) Sell egg products for human consumption unless they have been pasteurized, nor as a food processor purchase egg products that have not been pasteurized;

(11) Advertise eggs or egg products in violation of the standards or requirements prescribed by the department;

(12) Otherwise violate any of the provisions of ORS 632.705 to 632.815; or

(13) Use containers in the bulk sale of eggs that bear the trade-mark of another egg handler without the consent of the registrant of such trade-mark. The provisions of ORS 632.275 to 632.290 shall apply to bulk sale containers of eggs in the same manner as they apply to containers for canning tree fruits, vegetables and small fruits. [1975 c.748 §15 (enacted in lieu of 632.785)]

632.790 [1965 c.582 §14; repealed by 1975 c.748 §19]

632.795 [1965 c.582 §15; repealed by 1975 c.748 §19]

632.800 [1965 c.582 §16; repealed by 1975 c.748 §19]

632.805 [1965 c.582 §17; repealed by 1975 c.748 §19]

632.807 [1967 c.250 §2; repealed by 1975 c.748 §19]

632.810 [1965 c.582 §18; 1967 c.250 §3; repealed by 1975 c.748 §16 (632.811 enacted in lieu of 632.810)]

632.811 Rules; considerations in promulgating rules. (1) In accordance with the provisions of ORS 183.310 to 183.550, the department may promulgate rules necessary to administer and enforce the provisions of ORS 632.705 to 632.815, including but not limited to:

(a) The establishment of fees under ORS 632.741, and the times and manner of payment thereof;

(b) The reports and records to be made or kept under ORS 632.741;

(c) The establishment of minimum grades or standards of quality and wholesomeness, size or weight of eggs or egg products;

(d) The establishment of minimum standards of construction, maintenance, sanitation and operation of facilities and equipment used in the grading, candling, breaking or processing of eggs or egg products; and

(e) The establishment of labeling and advertising standards or requirements for eggs and egg products.

(2) In promulgating such rules the department may consider:

(a) The provisions of the federal Act and rules promulgated pursuant thereto, and the laws and rules of other states;

(b) The necessary procedures required to prohibit the sale or consumption of unwholesome eggs or egg products; and

(c) The health and economic consequences to this state which might result from the processing, handling, sale or consumption of unwholesome eggs or egg products. [1975 c.748 §17 (enacted in lieu of 632.810)]

632.812 [1967 c.250 §1; repealed by 1975 c.748 §19]

632.815 Disposition of fees. All fees collected by the department under ORS 632.705 to 632.815 shall be paid to the State Treasurer by the department who shall deposit them in the Department of Agriculture Service Fund. Such funds are continuously appropriated to the department for the purposes of the administration and enforcement of such sections. [Formerly 632.110; 1975 c.748 §18; 1979 c.499 §28]

GRADES AND STANDARDS FOR, INSPECTION AND CLASSIFICATION OF, HORTICULTURAL AND AGRICULTURAL PRODUCTS

632.900 "Horticultural and agricultural products" defined. As used in ORS 632.900 to 632.940 and 632.955 to 632.980, "horticultural and agricultural products" includes articles of food, drinks, dairy products, livestock products, poultry products, nursery products and apiary products, grown or produced in this state, exclusive of bakery products and alcoholic liquors. [Formerly 616.405; 1983 c.730 §5]

632.905 Department of Agriculture to fix grades and standards for horticultural and agricultural products and containers. In order to promote, protect, further and develop the agricultural industry of this state the department may adopt by rule official standards for grading and classifying any or all horticultural and agricultural products and official standards for containers of such products and may change any of such grades and standards from time to time. The grades and standards adopted by the department shall be in conformance to any and all laws of this state providing special grades or standards for any of such products or containers. With respect to canned goods, the department is empowered to adopt only definitions and standards of identity, quality and fill of containers. Unless modified, altered or revoked, grades and standards in force on February 2, 1939, shall continue to be official as though adopted under ORS 632.900 to 632.940 and 632.955 to 632.980. [Formerly 616.410; 1979 c.91 §3]

632.910 Factors to be considered in establishing grades and standards. In establishing, under any law of this state, any grades, standards or classifications for any horticultural or agricultural products, the department, in addition to such other factors as may be specified by such law, shall take into account and base such grades, standards or classifications upon such of the following factors as are applicable to the product involved: Degree of maturity; size, measured by dimensions or weight; degree of freshness, as determined by physical examination or chemical test or analysis; moisture content;

uniformity; color; firmness; tenderness; freedom from injury; freedom from insect pests; diseases; appearance; freedom from mixture with other varieties; freedom from decay; conformation; soundness; varietal characteristics or type; number of specimens per pound; nature of pack; presence of dirt or other foreign material; condition as to temperature and extent to which the product is hot or heating or is in a sour condition; extent to which commodity is satisfactory for human or other consumption or use, as the case may be; extent to which the product has been affected by handling or treatment; extent to which the product has a commercially objectionable odor or flavor; and other factors indicative of quality or condition, and the value or suitability of the commodity involved for the commercial or other use to be made thereof. In addition, the department shall take into account any grades, standards or classifications for such product established by the United States Department of Agriculture and also applicable federal grades and standards laws. [Formerly 616.415]

632.915 Consideration of commercial or other use; change of grades, standards or classifications. The factors required to be considered by the department in establishing any grades, standards or classifications for any agricultural or horticultural product shall be applied in accordance with the extent to which and manner in which the same relate to the quality, quantity and condition of that product and the value and suitability thereof for the commercial or other use to which it normally is put. Any such grades, standards or classifications established pursuant to law by the department may, from time to time, be changed thereby in order to conform the same more nearly to commercial or trade requirements, practices or methods or to meet changed conditions or to comply with new and improved methods of handling, processing, packing, transporting, marketing or using the product involved, or in order to apply or make effective any new and improved method of test, analysis or examination of the quality or condition of that product or the value or suitability thereof for its normal use, and to comply with new methods of controlling insect pests and diseases. [Formerly 616.420]

632.920 Compliance with Administrative Procedures Act. The department shall comply with the requirements of ORS 183.310 to 183.550 in adopting standards under ORS 632.905 or any alterations or modifications to such standards. [Formerly 616.425; 1979 c.91 §4]

632.925 [Formerly 616.430; repealed by 1979 c.91 §6]

632.930 [Formerly 616.435; repealed by 1979 c.91 §6]

632.935 Adoption of United States standards; cooperation with United States. The department may establish as the official standard for this state for any horticultural or agricultural product or container, any standard which may have been promulgated or announced therefor under the authority of the Congress of the United States, and the department is authorized to cooperate with the United States, or any department thereof, in accomplishing the matters and things provided for in ORS 632.900 to 632.940 and 632.955 to 632.980. [Formerly 616.440; 1979 c.91 §5]

632.940 Inspection and classification of horticultural and agricultural products by department. Except as provided in ORS 632.945, the department may designate any competent employee or agent of the department to inspect or classify horticultural and agricultural products when such services are requested by persons having an interest in such products, and the department may ascertain and certify to such persons the grade, classification, quality, condition or amount thereof and any other pertinent facts relating to such products that the interested person may request. The department may fix, assess and collect, or cause to be collected, fees for such services when they are performed by employees or agents of the department. Such fees shall be on a uniform basis in an amount reasonably necessary to cover the cost of such inspection and administration of this section. The department shall so adjust the fees to be collected under this section as to meet the expenses necessary to carry out the provisions of this section, and may prescribe a different scale of fees for different localities. The department also may prescribe a reasonable charge for traveling expenses and services when such services involve unusual cost to the department in their performance. All fees received by the department under this section, ORS 632.211, 632.336, 632.425, 632.600 and 632.945 shall be deposited in the Department of Agriculture Service Fund, and are continuously appropriated to the department for the enforcement of such sections. [Formerly 616.445; 1979 c.499 §29]

632.945 Procedure for department inspection and classification; collection of costs. (1) Under such conditions as the department may prescribe by rule, the department, through any competent employee or agent, shall inspect or classify produce in accordance with standards specified in the written agreement between the grower and the handler for sale of the produce. The methods and procedures for inspection or classification of produce shall be in accordance with such rules as the department may prescribe.

(2) The department shall ascertain and certify to the parties to the written agree-

ment the grade, classification, quality, condition or amount of the produce and any other pertinent facts relating to such produce that a party to the written agreement may request.

(3) The department may fix, assess and collect or cause to be collected from the handler, fees for such services in the manner and to the extent provided by ORS 632.940. All such fees are continuously appropriated to the department for the enforcement of ORS 632.940 to 632.980.

(4) As used in this section:

(a) "Grower" means any person engaged in the business of growing or producing any produce in this state and includes any cooperative organization composed exclusively of growers and handling exclusively the produce of its own members and operating under and by virtue of the laws of this state or of any other state or of the United States.

(b) "Handler" means a person or the agent of the person who processes produce the person has purchased or otherwise acquired in this state from a grower.

(c) "Produce" means any fruit or vegetable grown or produced by a grower and of which total sales by growers to handlers for the previous growing season totaled more than $1 million. The department shall determine and verify the application of this defined term, and the total sales value herein specified, and for this purpose shall be authorized to inspect books and records and require reports. [1973 c.587 §3]

632.950 Termination of department inspection activities by grower vote; election procedure; costs. At any time before or after the department is conducting the inspection and classification of a particular fruit or vegetable at a particular plant of a handler, if 51 percent of the growers who produce 60 percent or more of that product vote against the department inspection and classification of that particular product, the department shall not inaugurate such inspection, or if already inspecting shall terminate such inspections. To have such an election 20 percent of the growers shipping that product to the handler shall petition the department. If the department finds the petition in order it shall conduct an election. The costs of the election and the method and time of voting shall be specified by the department and the petitioners for such election shall pay such costs prior to any vote. Once an election has been held to reject inspection no new election either to require inspection or to reject inspection shall be held in less than one year following the previous election. All subsequent elections shall require the same percentage of petitioners for the election and the same percentage vote of growers and volume of product as provided in this section. The costs of all elections shall be assessed to the petitioners for each election and shall be paid to the department prior to such election. [1973 c.587 §4]

632.955 Investigation of complaint of purchaser's misrepresentation of product; inspection and classification of products received by purchaser. Upon complaint of any person to the department that the grade, classification, quality, condition or amount of any horticultural or agricultural product is being misrepresented by the purchaser thereof, or that the grades are not being made by the purchaser in accordance with the purchase agreement, the department shall investigate such complaint and, when in its opinion such complaint is justified, shall order such purchaser so misrepresenting to cease and desist from such practices in addition to the other provisions of ORS 632.900 to 632.940 and 632.955 to 632.980. Upon failure of the purchaser to so cease and desist from such practices, the department shall designate its agent to inspect and classify all such products received by such purchaser, the cost of such service to be fixed, assessed and collected from such purchaser as provided in ORS 632.940. This section does not apply to a cooperative association nor to a person deriving the major livelihood of the person from a farm or orchard which the person operates either as owner or renter. [Formerly 616.450]

632.960 Appeal to department for classification. Whenever any quantity of any horticultural or agricultural product has been inspected under ORS 632.940 and 632.955 to 632.980 and a question arises as to whether the certificate issued therefor shows the true grade, classification, quality or condition of such product, any interested person, subject to such regulations as the department may prescribe, may appeal the question to the department. The department is authorized to cause such investigation to be made and such tests to be applied as it may deem necessary and to determine and issue a finding as to the true grade or classification of the product or the quality or condition thereof. Whenever any appeal is taken to the department under this section it shall charge and assess and collect, or cause to be collected, a reasonable fee, to be fixed by it, which shall be refunded if the appeal is sustained. [Formerly 616.455]

632.965 Certificate of grade, classification, quality or condition as prima facie evidence. A certificate, when not superseded by a finding on appeal, or a finding on appeal of the grade, classification, quality or condi-

tion of any horticultural or agricultural product, issued under ORS 632.900 to 632.940 and 632.955 to 632.980 and all certificates issued under authority of the Congress of the United States relating to the grade, classification, quality or condition of horticultural or agricultural products shall be accepted in any court of this state as prima facie evidence of the true grade, classification, condition or quality of the horticultural or agricultural products at the time of its inspection. [Formerly 616.460]

632.970 Misrepresentation of grades and standards for horticultural or agricultural products; improper use of insignia indicating grade. If any quantity of any horticultural or agricultural product has been inspected and a certificate issued under ORS 632.900 to 632.940 and 632.955 to 632.980 showing the grade, classification, quality or condition thereof, no person shall represent that the grade, classification, quality or condition of the product at the time and place of the inspection was other than as shown by the certificate. Whenever any standard for the grading or classification of any horticultural or agricultural product becomes effective under ORS 632.900 to 632.940 and 632.955 to 632.980, and any word or words, figure or letter, has been adopted by the department to indicate the grade or quality of the horticultural or agricultural product contained in any container or package, no person, firm or corporation shall use any of such words, letters or figures, in connection with any container or package, to represent the grade or quality of the horticultural or agricultural product contained therein, to be sold or offered for sale, if such product does not meet the requirements of the grade indicated by the marking. [Formerly 616.465]

632.975 Use of containers not conforming to standard. Whenever any standard for a container for any horticultural or agricultural product becomes effective under ORS 632.900 to 632.940 and 632.955 to 632.980, no person thereafter shall pack or place for sale, offer for sale, consign for sale or sell and deliver, in a container, any such horticultural or agricultural product to which the standard is applicable, unless the container conforms to the standard, subject to such variations therefrom as may be allowed by law or by rules and regulations made pursuant to law, unless such product is brought from outside the state and offered for sale, consigned for sale, or sold in the original package which is a standard package in the state of origin. This section does not apply to horticultural or agricultural products packed for and sold as gift packages, and shipped in containers, the specifications of which, or a sample of which, have been submitted to and approved by the department. [Formerly 616.470]

632.980 Improper grading and incorrect certificates prohibited. No person shall, under ORS 632.900 to 632.940 and 632.955 to 632.980, knowingly inspect, grade or classify improperly any horticultural or agricultural product or knowingly give any incorrect certificate of grade, classification, quality or condition. [Formerly 616.475]

632.985 Submitting hay, grain or potatoes to inspection. (1) No operator or person in charge of any motor vehicle shall transport on the streets or highways of this state, any hay, grain or potatoes, of which inspection is required by law, out of, into or through any inspection district, so designated by the department, or out of, into or through any city which has been declared an inspection point, unless the operator or person has given notice by mail or in person to the nearest office or inspector of the department, that such products or any thereof are available for inspection as required by law.

(2) Every person receiving any shipment, load or lot of such products, which has not been inspected, for the purpose of sale or storage in such quantities and in such places as would require inspection, shall give notice within 24 hours by mail or in person, to the nearest office or inspector of the department that the products have been received and are being held for inspection. [Formerly 616.480]

PENALTIES

632.990 Penalties. (1) Violation of any provision of ORS 632.705 to 632.815 is punishable, upon conviction, by a fine of not less than $10 nor more than $100 for the first offense, and for each subsequent offense by a fine of not less than $25 nor more than $200.

(2) Violation of ORS 632.216 or 632.226 is punishable, upon conviction, by a fine of not less than $10 nor more than $100 or by imprisonment in the county jail for not less than 10 nor more than 30 days, or both.

(3) Violation of any provision of ORS 632.306 to 632.361 is punishable, upon conviction, by a fine of not less than $50 nor more than $500, or by imprisonment in the county jail for not less than 10 nor more than 30 days or both.

(4) Violation of any provision of ORS 632.405 to 632.430 is punishable, upon conviction, by a fine of not less than $10 nor more than $100.

(5) Violation of ORS 632.625 is punishable, upon conviction, by a fine of not less than $10 nor more than $100, or by im-

prisonment in the county jail for not less than 10 nor more than 30 days, or both. [Amended by 1955 c.363 §13; 1955 c.711 §15; subsection (2) enacted as 1955 c.363 §15; subsection (3) enacted as 1955 c.711 §16; 1975 c.748 §18a]