Chapter 633

2009 EDITION

Grades, Standards and Labels for Feeds, Soil Enhancers 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633.005 [1961 c.314 §1; repealed by 1967 c.591 §1 (633.006 enacted in lieu of 633.005)]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, 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 that 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 identifying and distinguishing the commercial feed of a distributor from the feed of other distributors.

(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 State Department of Agriculture; or

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

(4) "Commercial feed" means any material that 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, that are made directly from the entire seed and are not used to manufacture wild bird feed.

(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 water.

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

(5) "Contract feeder" means an independent contractor or other person who feeds commercial feed to another person's animals pursuant to an oral or written agreement whereby the commercial feed is distributed to the contractor or other person by any distributor and whereby the contractor or other person's remuneration is determined all or in part by feed consumption, mortality, profits or amount or quality of animals produced. "Contract feeder" does not include a bona fide employee of a manufacturer or distributor of commercial feed.

(6) "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.

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

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

(9) "Distributor" means a person who distributes commercial feed.

(10) "Drug" means any substance:

(a) Intended or represented for the cure, mitigation, treatment or prevention of disease of animals;

(b) Intended to affect the structure of any function of the body of an animal; or

(c) So defined by rule of the department.

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

(12) "Final consumer" means a person that feeds animals that are under the control or ownership of that person.

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

(14) "Label" means a display of written, printed or graphic matter placed on or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.

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

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

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

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

(19) "Sell" or "sale" includes exchange.

(20) "Wild bird feed" means a commercial feed marketed for noncaptive undomesticated avians. [1967 c.591 §2 (enacted in lieu of 633.005); 1973 c.342 §2; 1979 c.116 §1; 1995 c.79 §322; 2001 c.137 §4; 2007 c.282 §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; rules; exemption; fee. (1) A person may not distribute a nonregistered commercial feed. Except as provided in subsections (2), (5) and (6) of this section, every brand, and each formula or formulation thereof, of commercial feeds manufactured, compounded, delivered or distributed in this state must be registered with the State Department of Agriculture. The distributor must submit an application for registration on forms furnished by the department. If the department so requests, the distributor must submit 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 distributor. All registrations expire on December 31 of each year or on such date as may be specified by department rule. The application must include the information required by ORS 633.026 (1)(a) to (f) and such other information as the department may require.

(2) A distributor is not required to register any brand of commercial feed that has been registered under ORS 633.006 to 633.089 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 if the application is not in compliance with the provisions of ORS 633.006 to 633.089. The department may cancel any registration subsequently found not to be in compliance with any provision of ORS 633.006 to 633.089. The department shall give the registrant reasonable opportunity to be heard before the department and to amend the application in order to comply with the requirements of ORS 633.006 to 633.089.

(5) Custom mixed feeds are exempt from registration.

(6) Wild bird feed consisting of unmixed seeds is exempt from registration.

(7) Each application for registration must 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; 2001 c.137 §5; 2007 c.71 §192; 2007 c.282 §2; 2007 c.768 §36]

633.020 [Repealed by 1961 c.314 §12]

633.025 [1961 c.314 §3; 1967 c.591 §3a; 1971 c.489 §2; 1979 c.116 §2; repealed by 2001 c.137 §9]

633.026 Labeling requirements for commercial feed; exemptions; rules. (1) Except as provided in subsection (3) of this section, commercial feed must have a label bearing the following information:

(a) The product name and the brand name, if any, under which the feed is distributed.

(b) The guaranteed analysis stated in such terms as the State Department of Agriculture, by rule, determines are required to advise the user of the composition of the feed or to support claims made in the labeling. The substances or elements of the feed must be determinable by laboratory methods approved by department rule. In approving laboratory methods, the department may consider methods listed in publications of AOAC International, formerly the Association of Official Analytical Chemists.

(c) The common or usual name of each ingredient used in the manufacture of the feed. The department, by rule, may permit the use of a collective term for a group of ingredients that perform a similar function. The department, by rule, may exempt a commercial feed or any group of feeds from the ingredient statement requirement if the department determines that a statement is not required to protect the interests of consumers.

(d) Adequate directions for use if the feed contains drugs or if the department, by rule, determines that directions are necessary for safe and effective use.

(e) Precautionary statements that the department, by rule, determines to be necessary for safe and effective use of the feed.

(f) The name and principal mailing address of the manufacturer or the distributor.

(g) A quantity statement.

(2) A person that distributes commercial feed in bags or other containers shall ensure that the label required by this section is placed on or affixed to the container. If the feed is distributed in bulk, the distributor shall ensure that the label accompanies the delivery and is furnished to the purchaser upon delivery.

(3) Subsections (1) and (2) of this section do not apply to:

(a) Custom mixed feed.

(b) Wild bird feed consisting of unmixed seeds.

(c) A commercial feed that does not contain a drug and is distributed by filling, in the presence of the purchaser, from retail bins or other retail bulk display containers that are labeled as required under this section. [2001 c.137 §2; 2007 c.282 §3]

633.027 [1967 c.591 §9; repealed by 2001 c.137 §9]

633.028 Information required to accompany custom mixed feed; rules; records. (1) A custom mixed feed delivered to a final consumer must be accompanied by at least one label, invoice, delivery slip or other shipping document that bears all of the following information:

(a) The name and principal mailing address of the manufacturer.

(b) The name and address of the final consumer.

(c) The date of delivery.

(d) The quantity delivered.

(e) Adequate directions for use if the custom mixed feed contains drugs or if the State Department of Agriculture, by rule, determines that directions are necessary for safe and effective use of the feed.

(2) If the custom mixed feed contains drugs, the label, invoice, delivery slip or other shipping document referred to in subsection (1) of this section must bear the following information in addition to the information required under subsection (1) of this section:

(a) A statement of the claimed purpose of the drugs;

(b) The established name of each active drug ingredient; and

(c) The level of each drug used in the final mixture.

(3) If a custom mixed feed is delivered to a final consumer in bags or other containers, each container must be labeled with the name of the final consumer or with the order number. If a custom mixed feed is delivered in bulk, the name of the final consumer or the order number must be printed on each delivery ticket or on a label attached to each delivery ticket.

(4) A person that distributes a custom mixed feed to a final consumer shall ensure that all labels, invoices, delivery tickets or other shipping documents required by this section accompany the custom mixed feed.

(5) Upon request, a distributor shall provide a final consumer with the information required by this section, including but not limited to the name and number of pounds of each ingredient or commercial feed used in the custom mixed feed. A seller shall maintain records adequate to derive the information required by this subsection for two years from the date of sale. The department may inspect records required under this subsection and any unsold quantities of custom mixed feed during the seller's regular business hours. [2001 c.137 §3]

633.029 License required for animal feed manufacturers and distributors; fee; exemption; rules. (1)(a) A person may not 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 mixed feed manufactured for that person, or repackage or relabel a commercial feed manufactured by another person without having first obtained a license from the State Department of Agriculture. Application for license must be on forms prescribed by the department and must be accompanied by a license fee established by the department, not to exceed $500. All licenses shall expire on December 31 of each year or on such date as may be specified by department rule.

(b) In accordance with the provisions of ORS chapter 183, 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 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 the feed. In the event drugs are so utilized, the contract feeder or other person utilizing the drugs is subject to the provisions of subsection (1) of this section.

(b) In accordance with the applicable provisions of ORS chapter 183, 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 the feed is to be made available. [1971 c.489 §7; 1973 c.342 §3; 1979 c.116 §3; 2001 c.137 §6; 2007 c.768 §37]

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 the person or contract feeder 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 State Department of Agriculture 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; rules. A person may not distribute an adulterated commercial feed. A commercial feed is adulterated:

(1) If any poisonous, deleterious or nonnutritive ingredient is present in the feed in sufficient amount to render the feed 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 from the feed or any less valuable substance substituted for a valuable constituent.

(3) If the composition or quality of the feed falls below or differs from the composition or quality purported or represented on the feed labeling.

(4) If the feed 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 the feed contains pesticide residues or other chemicals in excess of amounts that, by rule, the State Department of Agriculture declares safe for feeding purposes. In adopting rules under this subsection 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 the feed contains a drug other than those permitted by rules adopted by the department. In adopting rules under this subsection, 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.

(7) If the feed is wild bird feed and contains viable noxious weed seeds in excess of amounts established by the department by rule. [1961 c.314 §5; 1971 c.489 §3; 2007 c.282 §4]

633.050 [Repealed by 1961 c.314 §12]

633.055 Misbranding commercial feed prohibited; rules. A person may not distribute misbranded commercial feed. A commercial feed is 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 633.026 and by rules adopted pursuant to ORS 633.006 to 633.089.

(4) If it purports to be or is represented as a feed ingredient or as containing a feed ingredient, unless that feed ingredient conforms to the definition of identity, if any, prescribed by rule of the State Department of Agriculture. In adopting rules under this subsection, 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 or by rule 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; 2001 c.137 §7; 2007 c.71 §193]

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 State Department of Agriculture 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. 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 publica-

tions such as the Journal of the Association of Official Agricultural Chemists.

(b) The methods approved by the United States, other states and other recognized agencies 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 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) The department may take investigational samples that may be examined otherwise than by the official method required by this section. 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; 2001 c.104 §247; 2001 c.137 §8; 2007 c.71 §194]

633.067 Commercial feed law administration and enforcement; rules. The State Department of Agriculture 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 State Department of Agriculture 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 or for any other purpose that 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; 2007 c.71 §195]

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 State Department of Agriculture 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 State Department of Agriculture 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 or rules 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 rules 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 or rules promulgated thereunder, may be seized by the department in accordance with the provisions of ORS 561.605 to 561.620. [1971 c.489 §9; 2007 c.71 §196]

633.089 Disposition of moneys received by department. The State Department of Agriculture 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]

633.310 [Amended by 1955 c.235 §1; 1965 c.268 §1; 1977 c.799 §1; repealed by 2001 c.914 §30]

FERTILIZERS AND OTHER SOIL-ENHANCING PRODUCTS

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

(1) "Agricultural amendment":

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

(b) Does not mean any of the following:

(A) Fertilizer products.

(B) Agricultural mineral products.

(C) Lime products.

(D) Hays.

(E) Straws.

(F) Peat.

(G) Leaf mold.

(H) Sands.

(I) Expanded silicates.

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

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

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

(2) "Agricultural mineral":

(a) Means a mineral substance, mixture of mineral substances or mixture of mineral and organic substances containing less than five percent of total nitrogen (N), available phosphate (P_2O_5) or soluble potash (K_2O), singly, collectively or in combination, designed for use principally as a source of plant food, in inducing increased crop yields or plant growth or producing any physical, microbial or chemical change in the soil.

(b) Does not mean any of the following:

(A) Fertilizer products.

(B) Agricultural amendment products.

(C) Lime products.

(D) Sand.

(E) Soil.

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

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

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

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

(4) "Bulk" means a fertilizer, agricultural amendment, agricultural mineral or lime product, or a custom mix, that is distributed in unpackaged form, such as rail cars, closed or open tanks, closed or open trailers, spreader trucks or other types of containers, vehicles or conveyances as determined by the State Department of Agriculture by rule.

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

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

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

(8) "Director" means the Director of Agriculture.

(9) "Distribute" means to import, consign, sell, offer for sale, barter, exchange or otherwise facilitate the supplying of fertilizer, agricultural amendment, agricultural mineral or lime products.

(10) "Distributor" means a person who distributes fertilizer, agricultural amendment, agricultural mineral or lime products.

(11) "Fertilizer":

(a) Means any substance, or any combination or mixture of substances, that is designed for use primarily as a source of plant food, in inducing increased crop yields or plant growth, or producing any physical, microbial or chemical change in the soil, and that contains five percent or more of total nitrogen (N), available phosphate (P_2O_5) or soluble potash (K_2O), singly, collectively or in combination.

(b) Does not mean any of the following:

(A) Agricultural amendment products.

(B) Agricultural mineral products.

(C) Lime products.

(D) Hays.

(E) Straws.

(F) Peat.

(G) Leaf mold.

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

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

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

(12) "Grade" means the minimum percentage claimed for total nitrogen (N), available phosphate (P_2O_5) or soluble potash (K_2O) stated in the same terms, order and percentages as the guaranteed analysis.

(13) "Guaranteed analysis" means the minimum percentage of the following claimed to be present in a product:

(a) Primary nutrients;

(b) Secondary nutrients;

(c) Micronutrients;

(d) Neutralizing capacity; or

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

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

(15) "Labeling" means a printed or verbal representation used to promote the distribution of any fertilizer, agricultural amendment, agricultural mineral or lime product, including but not limited to a representation by means of:

(a) Brochures;

(b) Posters;

(c) Internet;

(d) Television; and

(e) Radio.

(16) "Lime" means any substance or mixture of substances having calcium or magnesium compounds capable of neutralizing soil acidity.

(17) "Lime score" means a numerical expression of the quality of lime, as determined by the department by rule.

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

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

(20) "Official sample" means any representative sample of product taken by the department or a representative of the department and designated as official.

(21) "Package" means any closed container, regardless of size, other than the receptacle of a bulk product.

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

(23) "Phosphate" means the amount of pentavalent phosphorus present in the material calculated as phosphorus pentoxide (P_2O_5) and expressed as available phosphate.

(24) "Primary nutrient" means total nitrogen (N), available phosphate (P_2O_5) or soluble potash (K_2O).

(25) "Product" means a readily distinguishable, individually labeled substance.

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

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

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

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

(30) "Waste-derived product":

(a) Means any of the following:

(A) Fertilizer, agricultural amendment, agricultural mineral or lime product derived in whole or in part from hazardous waste as

defined in ORS 466.005 or in rules adopted under ORS 466.015 and 466.020.

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

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

(b) Does not mean:

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

(B) Reclaimed water or treated effluent regulated under ORS 468B.010 and 468B.015 or rules adopted under ORS 468.020. [2001 c.914 §2; 2009 c.97 §1]

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

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

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

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

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

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

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

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

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

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

(5) Within 30 days, each license holder shall report any change to the department that results in the addition, removal or change of a location. [2001 c.914 §22; 2007 c.768 §38]

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

633.321 Label requirements for fertilizer, agricultural amendment, agricultural mineral and lime products; rules. (1) A person may not distribute fertilizer, agricultural amendment, agricultural mineral or lime products in packaged form unless there is a printed label attached or applied to the package. A person may not distribute fertilizer, agricultural amendment, agricultural mineral or lime products in bulk unless a label in the form of a separate document physically accompanies the shipment and is furnished to the user or purchaser when each separate delivery is made, or when the last delivery from the lot is made. The label must include the following:

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

(b) The net weight or volume.

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

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

(e) The product density, in pounds per gallon at 68 degrees Fahrenheit, if the product is distributed as a bulk liquid.

(f) A guaranteed analysis. The guaranteed analysis must immediately follow the statement, "GUARANTEED ANALYSIS." Guarantees must be based on a laboratory method of analysis approved by the State Department of Agriculture. The guaranteed analysis shall be stated on an "as is" basis at the time the fertilizer, agricultural amendment, agricultural mineral or lime product is distributed into or within this state. Primary nutrients, secondary nutrients and micronutrients that are claimed or advertised must be individually guaranteed.

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

ations, brand names, trademarks and trade names may not appear in the derivation statement, but may appear as part of the product name in an area of the label that is separate from the derivation statement.

(h) The identity and amount of ingredients other than primary nutrients, secondary nutrients and micronutrients that are claimed or advertised. The identity and amount must be guaranteed and determinable by laboratory methods approved by the department. The source of those ingredients shall be formatted on the label as follows:

ALSO CONTAINS NON-PLANT FOOD INGREDIENT(S):
_____% Humic Acids (Derived from _____)
_____% Other Determinable Non-Plant Food Ingredients

(i) A unique identifier for custom mixed products.

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

(A) For any product identified in an application for registration under ORS 633.362 as being waste-derived, the product name and the Standard Industrial Classification code or North American Industry Classification System code of each facility that generated the waste-derived product or any waste-derived ingredient of the product; and

(B) The types and levels of metals and other substances for which a statement is required under ORS 633.362 (10) or required by department rule to be stated in the application for registration of a product.

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

GUARANTEED ANALYSIS:
Total Nitrogen (N) _____%
_____% Ammoniacal Nitrogen
_____% Nitrate Nitrogen
_____% Urea Nitrogen
_____% Slowly Available Water Soluble Nitrogen
_____% Water Insoluble Nitrogen
_____% Other recognized and determinable forms of Nitrogen
Available Phosphate (P_2O_5) _____%
Soluble Potash (K_2O) _____%

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

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

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

Available Phosphate (P_2O_5) _____%

_____% Total Phosphate
_____% Insoluble Phosphate

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

Calcium (Ca)	1.0000%
Magnesium (Mg)	0.5000%
Sulfur (S)	1.0000%
Boron (B)	0.0200%
Chlorine (Cl)	0.1000%
Cobalt (Co)	0.0005%
Copper (Cu)	0.0500%
Iron (Fe)	0.1000%
Manganese (Mn)	0.0500%
Molybdenum (Mo)	0.0005%
Sodium (Na)	0.1000%
Zinc (Zn)	0.0500%

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(4) If a fertilizer, agricultural amendment, agricultural mineral or lime product has boron greater than 0.1 percent or

molybdenum greater than 0.001 percent, the product label must include a warning or cautionary statement that the product contains boron or molybdenum and is to be used only according to the manufacturer's recommendations or directions.

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

(A) A product expiration date;

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

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

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

(6) A product ingredient may not be listed, claimed or guaranteed on the label or labeling without prior approval by the department. [2001 c.914 §4; 2009 c.97 §2]

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

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

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

(2) The guaranteed analysis, stating the following:

(a) The percentage of calcium oxide (CaO) or calcium carbonate ($CaCO_3$).

(b) The percentage of magnesium oxide (MgO) or magnesium carbonate ($MgCO_3$).

(c) The total neutralizing capacity expressed in terms of calcium carbonate equivalent (CCE).

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

(e) The lime score.

(f) The maximum moisture content if the moisture content is more than two percent, expressed in whole numbers as follows: "Moisture content does not exceed _____ percent." [2001 c.914 §5; 2009 c.97 §3]

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

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

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

(2) The purpose of the product.

(3) Directions for application. [2001 c.914 §6; 2009 c.97 §4]

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

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

(1) The percentage of calcium sulfate, expressed as $CaSO_4 \bullet 2H_2O$ or $CaSO_4$, if the product is gypsum, landplaster or plaster or is an agricultural mineral in which calcium sulfate is the principal ingredient.

(2) The percentage of all ingredients contained in the product, in terms prescribed by the State Department of Agriculture, for all other agricultural minerals or mixtures of agricultural minerals with a principal ingredient other than calcium sulfate. [2001 c.914 §7; 2009 c.97 §5]

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

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

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

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

633.351 Distribution of animal byproducts. A person may not distribute for agronomic purposes any leather, hair, wool waste, hoof, horn, urea-formaldehyde condensation products or similar materials, either singly or in combination, unless the products or materials have been processed in a manner that makes the plant food content available in conformity with the standards established by the State Department of Agriculture, taking into consideration the standards of activity recommended by recognized experts in the field. [2001 c.914 §9; 2009 c.97 §6]

633.360 [Repealed by 1955 c.235 §13]

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

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

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

(a) Product name and grade;

(b) Product label;

(c) Name and physical address of the registrant;

(d) Mailing address of the registrant;

(e) Product laboratory analysis;

(f) Supplier or suppliers of ingredients;

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

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

(3) The application for registration shall be accompanied by a nonrefundable registration fee established by department rule, not to exceed $25 annually for each fertilizer, agricultural amendment, agricultural mineral or lime product. In addition, for a waste-derived product, the department shall charge an annual product evaluation fee. For a fertilizer, agricultural amendment, agricultural mineral or lime product, the department may charge a product evaluation fee if supplementary research and evaluation by the department is required in order to determine product compliance with ORS 633.311 to 633.479. The department shall establish product evaluation fees by rule, not to exceed $50. The department shall review the registration application form and product label for compliance with ORS 633.311 to 633.479. If the department finds that the application information and product label comply with ORS 633.311 to 633.479, the department shall issue a certificate of registration to the registrant.

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

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

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

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

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

(9) The registrant shall identify as "waste-derived" in the application for registration any fertilizer, agricultural amendment, agricultural mineral or lime product that is waste-derived and distributed as a single ingredient product or blended with other fertilizer, agricultural amendment, agricultural mineral or lime products. The application for registration must identify the

industry, the industry process or processes and the location of the facility that generated the waste and all ingredients of concern as identified by the department by rule.

(10) The initial application for registration of a fertilizer, agricultural amendment, agricultural mineral or lime product must include a statement of the levels of metals in the product, including but not limited to arsenic (As), cadmium (Cd), mercury (Hg), lead (Pb), nickel (Ni) or other metals or substances identified by the department by rule. The registrant must provide a laboratory analysis report, in accordance with acceptable methods required by the department, to verify the levels of metals or other substances in the product. Subsequent to initial product registration, the registrant shall provide a laboratory analysis report for the product to the department upon request. An initial or subsequent laboratory analysis must have been conducted no more than 18 months prior to submission of that analysis to the department.

(11) The department shall establish by rule the level of metals or other substances permitted in fertilizer, agricultural amendment, agricultural mineral and lime products registered with the department, including but not limited to the permitted levels of arsenic (As), cadmium (Cd), mercury (Hg), lead (Pb), nickel (Ni) or other metals or substances identified by the department by rule for the purpose of protecting humans, animals, water, aquatic life, soil or beneficial plant life. The department shall review the permitted level of metals or other substances in fertilizer, agricultural amendment, agricultural mineral and lime products a minimum of once every five years.

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

(13) The department may refuse to register any fertilizer, agricultural amendment, agricultural mineral or lime product if distribution of the product would violate a provision of ORS 633.311 to 633.479. The registration of each product is a distinct and separate registration. The refusal of the department to register or reregister any product does not affect the registration of any other product by the same person. [2001 c.914 §10; 2009 c.97 §7]

633.364 Confidentiality of certain information supplied in application for registration; permissible use of information. (1) Information required under ORS 633.362 (2)(f) and (g) and (6) is exempt from disclosure under ORS 192.410 to 192.505. The State Department of Agriculture may not divulge any information provided to the department in accordance with ORS 633.362 (2)(f) and (g) and (6).

(2) Notwithstanding subsection (1) of this section, the department may use the information required under ORS 633.311 to 633.479 for any administrative or enforcement action the department deems necessary. In addition, the department may:

(a) Accumulate and publish statistics from semiannual tonnage reports required by ORS 633.461 and 633.471 in a manner that does not divulge the business operations of the person submitting a report;

(b) Consult with the Department of Environmental Quality or other state or federal agencies in regard to information provided under ORS 633.362 (2)(f) and (g) to ensure compliance with applicable regulations; and

(c) Disclose data required under ORS 633.362 (6) to experts for the purpose of evaluating product data submitted in support of registration. [2001 c.914 §23; 2009 c.97 §8]

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

(a) Distribute mislabeled products;

(b) Register or attempt to register any product using fraudulent or deceptive practices to evade or attempt to evade the requirements of ORS 633.311 to 633.479 or rules adopted under ORS 633.311 to 633.479;

(c) Distribute adulterated products;

(d) Fail, refuse or neglect to deliver to a user or purchaser of a bulk fertilizer, agricultural amendment, agricultural mineral or lime product a printed label that complies with ORS 633.321 to 633.341;

(e) Distribute a fertilizer, agricultural amendment, agricultural mineral or lime product that is not registered with the State Department of Agriculture under ORS 633.362;

(f) Fail, refuse or neglect to keep or maintain records as required under ORS 633.461, 633.471 and 633.476 or refuse to make the records available under ORS 633.385 upon request by the department;

(g) Make false or fraudulent applications, records, invoices or reports;

(h) Fail, refuse or neglect to provide notification to the department as required by ORS 633.318 (5) or 633.362 (8);

(i) Fail, refuse or neglect to obtain a manufacturer-bulk distributor license required under ORS 633.318;

(j) Distribute, use or remove any product subjected to a stop sale, use or removal order

until the product has been released in accordance with ORS 633.445;

(k) Impede, obstruct, hinder or otherwise prevent or attempt to prevent the department from the performance of department duties under ORS 633.311 to 633.479;

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

(m) Fail, refuse or neglect to file a semiannual tonnage report with the department as required under ORS 633.461 or 633.471; or

(n) Fail, refuse or neglect to pay inspection fees required under ORS 633.461.

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

(a) Is false, misleading or deceptive;

(b) Does not accurately reflect the composition of the product;

(c) Requires warning statements or directions for use that may be necessary to protect humans, animals, water, aquatic life, soil or beneficial plant life and the warning statements or directions are not adequately stated on the label; or

(d) Does not comply with the requirements of ORS 633.321 to 633.341.

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

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

(b) Differs in composition from the composition claimed on the label;

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

(d) Contains unwanted crop seed or weed seed. [2001 c.914 §16; 2009 c.97 §9]

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

633.371 Disposition of revenues. The State Department of Agriculture shall deposit revenues received under ORS 633.311 to 633.479 and 633.994 in the Department of Agriculture Service Fund. The revenues deposited under this section are continuously appropriated to the department for the purpose of administering and enforcing ORS 633.311 to 633.479 and 633.994. [2001 c.914 §11; 2009 c.97 §10]

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

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

(2) The department may inspect the records, premises, materials or conveyances of the manufacturer, distributor or registrant and may take samples of any fertilizer, agricultural amendment, agricultural mineral or lime product or other substance manufactured, distributed or registered in this state, or samples of other substances, as the department deems necessary for the purpose of administering and enforcing ORS 633.311 to 633.479 and 633.994.

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

(4) The department may obtain a warrant or subpoena to allow the entry, inspection, sampling or other purposes related to the administration and enforcement of ORS 633.311 to 633.479 and 633.994. [2001 c.914 §13; 2009 c.97 §11]

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

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

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

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

633.410 [Repealed by 1969 c.131 §5]

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

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

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

633.441 Rules. In accordance with the applicable provisions of ORS chapter 183, the State Department of Agriculture may adopt

rules necessary to implement, administer and enforce ORS 633.311 to 633.479 and 633.994, including but not limited to rules for:

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

(a) Handling;

(b) Sampling;

(c) Storage;

(d) Labeling;

(e) Distribution;

(f) Definitions;

(g) Analysis;

(h) Records;

(i) Use;

(j) Minimum percentages;

(k) Investigational allowances; and

(L) Ingredients.

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

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

(2) In accordance with ORS 561.605 to 561.620, the department may seize any quantity or lot of product that the department determines does not comply with ORS 633.311 to 633.479. [2001 c.914 §14; 2009 c.97 §12]

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

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

633.461 Tonnage reports; fees; rules; records. (1) A person shall file a semiannual tonnage report with the State Department of Agriculture if the person:

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

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

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

(2) Except as provided in subsection (8) of this section, a person described in subsection (1) of this section shall pay the department an inspection fee in an amount established by rule:

(a) Not to exceed $0.45 for each ton of fertilizer, agricultural amendment or agricultural mineral products distributed, of which, after being advised by the Fertilizer Research Committee created in ORS 633.479, the department may expend an amount not to exceed $0.25 to fund grants for research and development related to the interaction of fertilizer, agricultural amendment or agricultural mineral products and ground water or surface water.

(b) Not to exceed $0.05 for each ton of gypsum, land plaster or an agricultural mineral with a principal ingredient of calcium sulfate ($CaSO_4 \bullet 2H_2O$ or $CaSO_4$) distributed.

(3) Each person shall file a semiannual tonnage report required by subsection (1) of this section with the department, on forms provided by the department, setting forth the total tonnage of each product distributed into or within this state during the reporting period. The reporting periods for each year are January 1 through June 30 and July 1 through December 31. Semiannual tonnage reports and inspection fees are due within 30 days after the end of the reporting period.

(4) Notwithstanding ORS 633.362, the department may suspend or deny registration of a product until the semiannual tonnage report is filed and the inspection fee is paid as required under this section.

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

(6) If a person required to file a semiannual tonnage report or pay an inspection fee does not file the report or pay the fee within 30 days of the due date established by the department:

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

(b) The department may withhold registration of the product until the report is filed and the fee is paid.

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

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

(9) ORS 561.450 applies to a person who refuses to pay inspection fees due to the department under this section.

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

(11) If the inspection fees due under a semiannual tonnage report are $5 or less, the person is not required to pay the inspection fees due under that report. However, a person exempted from paying inspection fees must still file the semiannual tonnage report. [2001 c.914 §18; 2009 c.97 §13]

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

633.471 Lime product tonnage reports; fee; records. (1) A person shall file a semiannual tonnage report with the State Department of Agriculture if the person:

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

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

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

(2) A semiannual tonnage report filed under this section shall set forth the total tonnage of lime product distributed into or within this state during the reporting period. The reporting periods for each year are January 1 through June 30 and July 1 through December 31. Semiannual tonnage reports are due within 30 days after the end of each reporting period.

(3) If a person described in subsection (1) of this section does not distribute lime products into or within this state during a reporting period, the person shall file a semiannual tonnage report declaring that no distribution occurred.

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

(5) A person required to file a semiannual tonnage report under this section shall maintain records and a bookkeeping system that accurately indicate the tonnage of lime product distributed into this state. The person shall maintain the records for three years. [2001 c.914 §20; 2009 c.97 §14]

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

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

(a) The name and address of the purchaser;

(b) The date of mixing;

(c) A unique identifier for each mixture;

(d) The guarantees and information required under ORS 633.321 to 633.341; and

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

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

(3) The person mixing or distributing the custom mix shall make the records required by this section available for inspection during normal business hours by the purchaser or the department. [2001 c.914 §21; 2009 c.97 §15]

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

(a) Two members of the public who have no involvement in the manufacture or dis-

tribution of fertilizer, agricultural amendment or agricultural mineral products;

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

(c) One member representing Oregon State University.

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

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

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

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

(6) The director may appoint an alternate committee member for each member of the committee. [2001 c.914 §19; 2009 c.97 §16]

633.480 [Repealed by 1965 c.268 §18]

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

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

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

633.510 [Repealed by 1955 c.379 §23]

SEEDS

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, as may be determined by the Director of Agriculture.

(2) "Certified," as applied to bulblets, tubers or horticultural plants or to agricultural, cereal grain, flower or vegetable 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) "Conditioner" means any person who cleans, blends, bags or stores seed.

(4) "Dean" means the dean of the College of Agricultural Sciences of Oregon State University, or agent.

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

(6) "Flower seed" means seeds of herbaceous plants grown for their blooms, ornamental foliage or other ornamental parts, and commonly known and sold in this state under the name of flower or wildflower seeds.

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

(8) "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.

(9) "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 or varieties of agricultural, flower or vegetable seed.

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

(11) "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.

(12) "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.

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

(14) "Pure seed" means the agricultural, flower 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, flower 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.

(15) "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.

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

(17) "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.

(18) "Weed seed" means any seed or bulblets other than agricultural, cereal grain, flower or vegetable.

(19) "Wholesaler" means any person who sells, offers or holds for sale, agricultural, flower or vegetable seed to retailers, distributors, brokers or other wholesalers for resale. [1955 c.379 §2; 1969 c.132 §1; 1977 c.625 §1; 1981 c.196 §1; 1995 c.79 §323; 1995 c.371 §1; 2003 c.14 §382; 2007 c.281 §1]

633.520 Labeling agricultural seed or bulk flower seed. Each container of agricultural seed, or of more than one pound of flower seed, sold, offered or exposed for sale, or transported within this state shall bear or have attached in a conspicuous place a legibly written or printed label or tag prepared from information developed from a seed test as prescribed by rule by the Director of Agriculture and that states in the English language:

(1) The commonly accepted name of the kind or the kind and variety of each agricultural or flower seed component constituting in excess of five percent of the whole and the percentage by weight of each. If any such component is one that 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 or flower 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 noxious weed seed restricted in Oregon, or the statement "No Noxious Found," or a similar statement, if the sample is free of all noxious weed seeds listed in the administrative rules.

(8) For each named agricultural or flower seed:

(a) The percentage of germination. If germination data is based on tests other than sprouting, that shall be so stated on the label.

(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 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.

(13) 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; 1995 c.371 §2; 2007 c.281 §2]

633.530 [Repealed by 1955 c.379 §23]

633.531 Labeling vegetable or flower seed weighing one pound or less. Each container of vegetable seed or flower 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 year for which the seed was packed for sale, or the percentage of germination and the date the test was completed.

(4) In the case of seed that has a percentage of germination less than the standard prescribed by the Director of Agriculture 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 boldfaced type.

(5) With the labeling data required by ORS 633.520 (12) and (13). [1955 c.379 §4; 1969 c.132 §3; 1995 c.371 §3; 2007 c.281 §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, or the statement "No Noxious Found," or a similar statement, if the sample is free of all noxious weed seeds listed in the administrative rules.

(4) The percentage of germination or, if the percentage of germination meets or exceeds the standard established by the Director of Agriculture 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 (12) and (13). [1955 c.379 §5; 1969 c.132 §4; 1995 c.371 §4]

633.545 Labeling bins and bulk displays. All bins and other bulk displays of agricultural, flower or vegetable seed, and mixtures of agricultural, flower or vegetable seed, or both, shall be labeled with the data required to be present on containers of agricultural, flower or vegetable seed prescribed in ORS 633.520, 633.531 and 633.541. [1955 c.379 §6; 2007 c.281 §4]

633.550 Exemptions from labeling provisions. (1) In the following cases agricultural, flower or vegetable seeds, or mixtures of agricultural, flower 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.

(d) When transported from field to conditioner and between conditioner and dealer. However, if labeled, the seed must be labeled accurately.

(2) Containers of agricultural, flower or vegetable seeds, or mixtures of agricultural, flower 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; 1995 c.371 §5; 2007 c.281 §5]

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 the list of restricted noxious weed seeds the director, with the concurrence of the dean, shall specify the number of such seeds per pound that may be present in agricultural, flower or vegetable seed. [1955 c.379 §15; 1981 c.196 §3; 2007 c.281 §6]

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, flower 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, flower 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; 2007 c.281 §7]

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 the 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 employees 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; fees; rules. (1) The certification of varieties of agricultural, cereal grain, flower 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, flower 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.

(5)(a) Notwithstanding any other provision of this section, the dean may enter into agreements with appropriate agricultural or educational agencies of the State of Idaho for the performance of seed certification, testing and analysis services for producers of hard seed in Malheur County.

(b) As used in this subsection "hard seed" means alfalfa, beans, clover, peas, soybean, trefoil, vetch, barley, oats, rye, triticale, wheat, buckwheat, lupine, rape, sunflower, sugar beets, vegetable seed, flower seed and corn.

(6) Notwithstanding any other provision of this section, and in addition to the authority granted by subsection (5) of this section, the dean may enter into agreements with appropriate public or private agencies to assist the Oregon State University seed testing laboratory in the testing and analysis of seed samples. [Amended by 1955 c.379 §10; 1995 c.181 §1; 1997 c.354 §1; 2007 c.281 §8]

633.630 Certification fund. (1) All moneys collected as fees or charges for inspection and certification of agricultural, cereal grain, flower 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 employees 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; 2007 c.281 §9]

633.640 Dean may employ assistants. For the purposes of performing the duties assigned to the dean, 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 the dean by those sections. [Amended by 2003 c.14 §383]

633.650 [Repealed by 1955 c.379 §23]

633.651 Prohibited acts. (1) A person may not sell, offer for sale, expose for sale or transport for use in planting in the State of Oregon any agricultural, flower 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 of Agriculture may, pursuant to the authority of ORS 633.680, establish by order a shorter period for kinds of seed that 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 that 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 State Department of Agriculture inspection the original or duplicate copy of the latest test made of such seeds that shows, 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) A person may not substitute uncertified for certified seed.

(3) A person may not 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, cereal grain, flower or vegetable 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, a person may not:

(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).

(5) A person may not alter or falsify any seed labels, seed tests, records or other documents pertaining to seed dealings. [1955 c.379 §12; 1957 c.407 §1; 1969 c.132 §5; 1981 c.196 §4; 1983 c.740 §236; 1995 c.371 §6; 2003 c.14 §384; 2007 c.281 §10]

633.655 When penalties not applicable. A person is not subject to the penalties of ORS 633.992 for having sold, offered for sale, exposed for sale or transported in this state any agricultural, flower or vegetable seed, that:

(1) Is incorrectly labeled or represented as to kind and variety or origin, if the seeds cannot be identified except by a field test, 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 ensure the identity of the seeds to be as stated.

(2) Does not conform to the label on the container, but is within the tolerances authorized by the director under ORS 633.680 (1). [1955 c.379 §21; 1971 c.489 §4; 2007 c.281 §11]

633.660 Enforcement and administration. The director shall enforce ORS 633.511 to 633.750 and 633.996. 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, flower 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; 2007 c.281 §12]

633.670 Inspection and sampling of seeds; seizure of seeds; report of inspection work. (1) In the enforcement of ORS 633.511 to 633.750 and 633.996, the Director of Agriculture, deputies of the director, 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, flower or vegetable seeds are being sold or offered for sale, stored, handled or transported.

(b) Either alone or in the presence of a representative or employee of the person whose premises are so entered, examine and inspect any agricultural, flower 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.

(d) Examine any records or documents pertaining to any seed being sold or offered for sale, or records pertaining to any seed that has previously been sold or any other records involved in seed dealings.

(2) Any sample so drawn may represent any lot, or portion of such lot, of such seed that 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, flower 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 State Department of Agriculture.

(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 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; 1995 c.371 §7; 2003 c.14 §385; 2007 c.281 §13]

633.680 Establishment of standards of germination; rules and regulations; fees and charges. (1) The Director of Agriculture 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 and 633.996, 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 regulations 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 types of records and the procedures for handling forms and records that must be kept by seed dealers and seed conditioners.

(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.

(m) The type of analysis tests that must be conducted to develop information used in preparing seed labels or tags.

(2) The director may adopt rules establishing standards for forms used in reporting analysis of seed.

(3) The director may establish fees and charges for official sampling, applied for by the owner, at an amount sufficient to cover the cost. The director 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, the director may make additional charges to avoid loss to this state. [Amended by 1955 c.379 §17; 1969 c.132 §6; 1995 c.371 §8]

633.690 Quarantine of seed entering state; disposition of nonconforming seed. (1) The director may place a quarantine on all agricultural, flower 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, are not 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; 2003 c.14 §386; 2007 c.281 §14]

633.700 Licenses required to sell seed; exemption; rules; fees. (1) A person may not sell, offer or expose for sale in this state any agricultural or vegetable seeds unless the person holds an unsuspended license issued by the State Department of Agriculture. A person selling, offering or exposing for sale only flower seeds at retail must hold an unsuspended license issued by the department. However, any person selling seeds of the person's own production exclusively, and persons selling only flower or 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, flower 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 the authorized agent of the applicant 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 department shall issue the license to the applicant. The license shall expire on June 30 next following the date of issuance or on such date as may be specified by department rule.

(3) The department shall establish annual license fees, not to exceed $40 for a retailer's license and not to exceed $400 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; 1985 c.353 §4; 1989 c.514 §1; 1991 c.288 §1; 1993 c.665 §1; 2003 c.14 §387; 2007 c.281 §15; 2007 c.768 §39]

633.710 [Repealed by 1989 c.1035 §3]

633.711 [1989 c.1035 §§2,6; 1991 c.734 §56; 1995 c.371 §9; renumbered 633.996 in 2001]

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, the director 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 the person 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 fees and charges paid under ORS 633.511 to 633.750. All fees paid to the State Department of Agriculture 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; 2003 c.14 §388]

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

633.994 Civil penalties for fertilizer law violations; rules; failure to pay penalty in full. (1) In addition to any other liability or penalty provided by law, the State Department of Agriculture may assess a civil penalty against a person that violates a provision of ORS 633.311 to 633.479 or rules adopted under ORS 633.311 to 633.479. The civil penalty may not be more than:

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

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

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

(2) The department shall adopt rules that determine guidelines for ensuring consistency in the assessment of civil penalties.

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

(4) Each violation of a provision of ORS 633.311 to 633.479 that results from an action is a separate and distinct violation. The department may deem each day of a continuing violation to be a separate and distinct violation.

(5) A civil penalty assessed under this section may be remitted or reduced upon terms and conditions that the Director of Agriculture considers proper and consistent with the public health and safety.

(6) If a civil penalty assessed under this section remains unpaid after the issuance of the final order, the department may, until the civil penalty is paid in full:

(a) Refuse to issue the recipient of the final order a certificate of registration under ORS 633.311 to 633.479 for a product; and

(b) Withhold from the recipient of the final order the issuance or renewal of a license under any program administered by the department. [2001 c.914 §17; 2009 c.97 §17]

633.996 Civil penalty for seed law violation. (1) Any person who violates any provision of ORS 633.511 to 633.750, a rule adopted pursuant thereto or the terms or

conditions of any order issued by the State Department of Agriculture under ORS 633.511 to 633.750 shall be subject to a civil penalty not to exceed $10,000 per violation.

(2) Each violation may be a separate and distinct offense, and in the case of a continuing violation, each day's continuance thereof may be deemed a separate and distinct offense.

(3) The department shall adopt a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation.

(4) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(5) Any civil penalty received by the State Treasurer under this section shall be deposited in the General Fund to the credit of the Department of Agriculture Account and is continuously appropriated to the department for the administration and enforcement of the laws and rules under which the penalty was assessed. [Formerly 633.711; 2003 c.14 §389]