

TITLE XL

AGRICULTURE, HORTICULTURE AND ANIMAL HUSBANDRY

CHAPTER 433

SEEDS, PLANTS AND NURSERY STOCK

New Hampshire Seed Law

Section 433:1

433:1 Definitions. – In this subdivision:

I. "Advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this subdivision.

II. "Agricultural seed" includes grass, forage, cereal, oil, fiber, and other kinds of crop seeds commonly recognized within this state as agricultural seeds, lawn seeds, and combinations of such seeds, and may include noxious weed seeds when the commissioner determines that such seed is being used as agricultural seed.

III. "Blend" means seed consisting of more than one variety of a kind, each in excess of 5 percent by weight of the whole.

IV. "Brand" means a word, name, symbol, number, or design used to identify seed of one person to distinguish it from seed of another person.

V. "Certifying agency" means an agency:

(a) Authorized under the laws of a state, territory or possession to officially certify seed and which has standards and procedures approved by the U.S. Secretary of Agriculture to assure the genetic purity and identity of the seed certified; or

(b) Of a foreign country determined by the U.S. Secretary of Agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under subparagraph (a).

VI. "Commissioner" means the commissioner of agriculture, markets, and food.

VII. "Complete record" means any and all information which relates to the origin, treatment, germination, purity, kind and variety of each lot of agricultural seed sold in this state, or which relates to the treatment, germination, kind and variety of each lot of vegetable seed sold in this state. Such information includes seed samples and records of declarations, labels, purchases, sales, conditioning, bulking, treatment, handling, storage, analyses, tests and examinations.

VIII. "Conditioning" means drying, cleaning, scarifying, and other operations which could change the purity of germination of the seed and require the seed lot to be retested to determine the label information.

IX. "Dormant" means viable seed, excluding hard seed, which fail to germinate when provided the specified germination conditions for the kind of seed in question.

X. "Flower seeds" includes seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts, and commonly known and sold under the name of flower seeds in this state.

XI. "Genuine grower's declaration" means a statement signed by the grower which gives for each lot of seed the lot number; kind; variety, if known; origin; weight; year of production; date of shipment; and to whom the shipment was made.

XII. "Germination" means the emergence and development from the seed embryo of those essential structures which, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions.

XIII. "Hard seeds" means seeds which remain hard at the end of the prescribed test period because they have not absorbed water due to an impermeable seed coat.

XIV. "Hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining (a) 2 or more inbred lines; (b) one inbred or a single cross with an open pollinated variety; or (c) 2 varieties or species, except open-pollinated varieties of corn (*Zea mays*). The second generation or subsequent

generations from such crosses shall not be regarded as hybrids. Hybrid designations shall be treated as variety names.

XV. "Inert matter" means all matter not seed, which includes broken seeds, sterile florets, chaff, fungus bodies and stones as determined by methods defined by rules adopted by the commissioner.

XV-a. "Introduced wildflower" means kinds, type, and varieties derived from those kinds that are not indigenous to North America.

XVI. "Kind" means one or more related species or subspecies which singly or collectively are known by one common name, including, but not limited to, corn, oats, alfalfa, and timothy.

XVII. "Labeling" means a tag or other device attached to or written, stamped, or printed on any container or accompanying any lot of bulk seeds purporting to set forth the information required on the seed label by this subdivision. Labeling may include any other information relating to the labeled seed.

XVIII. "Lot" means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform within recognized tolerances for the factors which appear in the labeling.

XIX. "Mixture," "mix," or "mixed" means seed consisting of more than one kind, each in excess of 5 percent by weight of the whole.

XIX-a. "Mulch" means a protective covering of any suitable substance placed with seed which acts to retain sufficient moisture to support seed germination and sustain early seedling growth and aid in the prevention of the evaporation of soil moisture, the control of weeds, and the prevention of erosion.

XIX-b. "Native wildflower" means kinds or the types and varieties derived from those kinds that are indigenous to North America.

XX. "Off-type" means any seed or plant not a part of the variety in that it deviates in one or more characteristics from the variety as described and may include: a seed or plant of another variety, a seed or plant not necessarily any variety, a seed or plant resulting from cross-pollination by another kind or variety, a seed or plant resulting from uncontrolled self-pollination during production of hybrid seed, or segregates from any of the above.

XXI. "Other crop seed" means seed of plants grown as crops, other than the kind or variety included in the pure seed.

XXII. "Origin," for an indigenous stand of trees, is the area on which the trees are growing; for a non-indigenous stand, it is the place from which the seeds or plants were originally introduced.

XXIII. "Person" means an individual, partnership, corporation, company, association, receiver, trustee or agent.

XXIV. "Prohibited noxious weed seeds" means those weed seeds which are prohibited from being present in agricultural, vegetable, flower, tree, or shrub seed. They are the seeds of weeds which are highly destructive and difficult to control by good cultural practices and the use of herbicides.

XXV. "Pure live seed" means the product of the percent of germination plus hard or dormant seed multiplied by the percent of pure seed divided by 100. The result is expressed as a whole number.

XXVI. "Pure seed" means seed exclusive of inert matter and all other seeds not of the seed being considered, as determined by methods defined by rules adopted by the commissioner.

XXVII. "Restricted noxious weed seeds" means those weed seeds which are objectionable in agricultural crops, lawns, and gardens of this state and which can be controlled by good cultural practices or the use of herbicides.

XXVIII. "Seizure" means a legal process carried out by court order against a definite amount of seed.

XXIX. "Stop sale order" means an administrative order provided by law, restraining the sale, use, disposition, and movement of a definite amount of seed.

XXX. "Treated" means that the seed has received an application of a substance, or that it has been subjected to a process for which a claim is made.

XXXI. "Tree and shrub seeds" includes seeds of woody plants commonly known and sold as tree and shrub seeds in this state.

XXXII. "Tree seed collector's declaration" means a statement signed by a grower or person having knowledge of the place of collection giving, for a lot of seed, the lot number; common or scientific name of the species; subspecies, if appropriate; origin; elevation; and quantity of tree and shrub seed.

XXXIII. "Type" means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.

XXXIII-a. "Undesirable grass seeds" (UGS) means seeds of grass species declared to be "restricted noxious weed" seed when found in lawn and turf seed.

XXXIV. "Variant" means any seed or plant which:

(a) Is distinct within the variety but occurs naturally in the variety;

(b) Is stable and predictable with a degree of reliability comparable to other varieties of the same kind, within

recognized tolerances, when the variety is reproduced or reconstituted; and

(c) Was originally a part of the variety as released.

A variant is not an off-type.

XXXV. "Variety" means a subdivision of a kind which is distinct, uniform, and stable; "distinct" in the sense that the variety can be differentiated by one or more identifiable morphological, physiological or other characteristics from all other varieties of public knowledge; "uniform" in the sense that variations in essential and distinctive characteristics are describable, and "stable" in the sense that the variety will remain unchanged in its essential and distinctive characteristics and in its uniformity when reproduced or reconstituted as required by the different categories of varieties.

XXXVI. "Vegetable seeds" includes the seeds of those crops which are grown in gardens and on truck farms and are generally known and sold under the name of vegetable or herb seeds in this state.

XXXVII. "Weed seed" means the seeds of all plants generally recognized as weeds within this state, and includes prohibited and restricted noxious weed seeds.

Source. 1990, 126:2. 1995, 130:5, eff. July 23, 1995. 2003, 106:1-3, eff. Jan. 1, 2004.

Section 433:2

433:2 Label Requirements for Agricultural, Vegetable and Flower Seeds. – Each container of agricultural, vegetable, and flower seeds which is sold, offered for sale, or exposed for sale, or transported within this state for sowing purposes shall bear on it or have attached to it in a conspicuous place a plainly written or printed label or tag in the English language, giving the following information, which statement shall not be modified or denied in the labeling or on another label attached to the container:

I. For all treated agricultural, vegetable, and flower seeds, for which a separate label may be used:

(a) A word or statement indicating that the seed has been treated.

(b) The commonly accepted coined, chemical or abbreviated chemical (generic) name of the applied substance or description of the process used.

(c) If the substance in the amount present with the seed is harmful to human or other vertebrate animals, a caution statement such as "Do not use for food, feed, or oil purposes." The caution for mercurials and similarly toxic substances shall be a poison statement or symbol.

(d) If the seed is treated with an inoculant, the date beyond which the inoculant is not to be considered effective (date of expiration).

II. For agricultural seeds, except for cool season lawn and turf grass seed mixtures as provided in paragraph III; for seed sold on a pure live seed basis as provided in paragraph IX; and for hybrids which contain less than 95 percent hybrid seed as provided in paragraph X:

(a) The name of the kind and variety for each agricultural seed component present in excess of 5 percent of the whole and the percentage by weight of each, provided that, if the variety of those kinds generally labeled as to variety as designated in rules adopted by the commissioner is not stated, the label shall show the name of the kind and the words, "Variety Not Stated." Hybrids shall be labeled as hybrids.

(b) Lot number or other lot identification.

(c) State or country of origin, if known, of alfalfa, red clover and field corn, except hybrid corn. If the origin is unknown, the fact shall be stated.

(d) Percentage by weight of all weed seeds.

(e) The name and rate of occurrence per pound of each kind of restricted noxious weed seed present.

(f) Percentage by weight of agricultural seeds, which may be designated as "crop seeds," other than those required to be named on the label.

(g) Percentage by weight of inert matter.

(h) For each named agricultural seed:

(1) Percentage of germination, exclusive of hard seed.

(2) Percentage of hard seeds, if present.

(3) The calendar month and year the test was completed to determine such percentages.

Following (1) and (2) the "total germination and hard seed" may be stated as such, if desired.

(i) Name and address of the person who labeled the seed, or who sells, offers or exposes the seed for sale within this state.

III. For cool season lawn and turf grasses including Kentucky bluegrass, red fescue, chewing fescue, hard fescue,

tall fescue, perennial ryegrass, intermediate ryegrass, annual ryegrass, colonial bentgrass, creeping bentgrass, and mixtures thereof:

- (a) For single kinds, the name of the kind or kind and variety.
 - (b) For mixtures:
 - (1) The word "mix," "mixed," "mixture," or "blend" shall be stated with the name of the mixture.
 - (2) The heading "Pure Seed" and "Germination" or "Germ" shall be used in the proper places.
 - (3) Commonly accepted name of kind or kind and variety of each agricultural seed component in excess of 5 percent of the whole, and the percentage by weight of pure seed in order of its predominance and in columnar form.
 - (c) Percentage by weight of each agricultural seed component in excess of 5 percent of the whole, and the percentage by weight of pure seed in order of its predominance and in columnar form.
 - (d) The percentage by weight of inert matter for lawn and turf grass not to exceed 10 percent, except that 15 percent inert matter is permitted in Kentucky bluegrass labeled without a variety name. Foreign material, other than material used for coating or pelleting, as provided in paragraph IV or combination products, as provided in paragraph XI, to enhance the planting value, not common to grass seed, may not be added.
 - (e) Percentage by weight of all weed seeds. Maximum weed seed content not to exceed 1/2 of one percent by weight.
 - (f) Noxious weeds and undesirable grass seed that are required to be labeled will be listed under the heading "Noxious Weed Seeds" or "Undesirable Grass Seeds". Undesirable grass seeds may not exceed 1/2 of one percent by weight.
 - (g) For each agricultural seed name under subparagraphs (a) or (b):
 - (1) Percentage of germination, exclusive of hard seed;
 - (2) Percentage of hard seed, if present;
 - (3) Calendar month and year the test was completed to determine such percentages. Oldest test date shall be used.
 - (4) The statement "Sell by _____" which may be no more than 15 months from the date of test exclusive of the month of the test.
 - (h) Name and address of the person who labeled said seed, or who sells, offers, or exposes said seed for sale within the state.
- IV. For agricultural seeds that are coated:
- (a) Percentage by weight of pure seeds with coating material removed.
 - (b) Percentage by weight of coating material.
 - (c) Percentage by weight of inert material, exclusive of coating material.
 - (d) Percentage of germination shall be determined on 400 pellets with or without seeds.
 - (e) In addition to the requirements of this paragraph, labeling of coated seed shall comply with the requirements of paragraphs I, II, and III.
- V. For vegetable seeds in packets as prepared for use in home gardens or household plantings or vegetable seeds in preplanted containers, mats, tapes, or other planting devices:
- (a) Name of kind and variety of seed.
 - (b) Lot number or other identification.
 - (c) The calendar month and year the germination test was completed and the statement "Sell by _____," which may be no more than 12 months from the date of test exclusive of the month or test or the percentage germination and the calendar month and year the test was completed to determine such percentage provided that the germination test must have been completed within 12 months exclusive of the month of test.
 - (d) Name and address of the person who labeled the seed or who sells, offers, or exposes the seed for sale within this state.
 - (e) For seeds which germinate less than the standard last established by the commissioner under this subdivision:
 - (1) Percentage of germination, exclusive of hard seed.
 - (2) Percentage of hard seed, if present.
 - (3) The words "below standard" in not less than 8-point type.
 - (f) For seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape or device, a statement to indicate the minimum number of seeds in the container.
- VI. For vegetable seeds in containers other than packets prepared for use in home gardens or household plantings

and other than preplanted containers, mats, tapes, or other planting devices:

(a) The name of each kind and variety present in excess of 5 percent and the percentage by weight of each in order of its predominance.

(b) Lot number or other lot identification.

(c) For each named vegetable seed:

(1) Percentage of germination, exclusive of hard seed.

(2) Percentage of hard seed, if present.

(3) The calendar month and year the test was completed to determine such percentages.

Following (1) and (2) the "total germination and hard seed" may be stated as such, if desired.

(d) Name and address of the person who labeled the seed, or who sells, offers or exposes the seed for sale within this state.

(e) The labeling requirements for vegetable seeds in containers of more than one pound shall be deemed to have been met if the seed is weighed from a properly labeled container in the presence of the purchaser.

VII. For flower seeds in packets prepared for use in home gardens or household plantings or flower seeds in preplanted containers, mats, tapes, or other planting devices:

(a) For all kinds of flower seeds:

(1) The name of the kind and variety or a statement of type and performance characteristics as prescribed in the rules adopted by the commissioner under this subdivision.

(2) The calendar month and year the germination test was completed and the statement "Sell by _____," which may be no more than 12 months from the date of test exclusive of the month of test or the percentage of germination and the calendar month and year the test was completed to determine such percentage provided that the germination test must have been completed within 12 months exclusive of the month of test.

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

(b) For seeds of those kinds for which standard testing procedures are prescribed and which germinate less than the germination standard last established under the provisions of this subdivision:

(1) Percentage of germination, exclusive of hard seed.

(2) The words "below standard" in not less than 8-point type.

(c) For seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape, or device, a statement to indicate the minimum number of seeds in the container.

VIII. For flower seeds in containers other than packets and other than pre-planted containers, mats, tapes, or other planting devices and not prepared for use in home flower gardens or household plantings:

(a) The name of the kind and variety or a statement of type and performance characteristics as prescribed in rules adopted by commissioner under this subdivision and for wildflowers, the genus and species and subspecies, if appropriate.

(b) The lot number or other lot identification.

(c) For wildflower seed only with a pure seed percentage of less than 90 percent:

(1) The percentage by weight of each component listed in order of their predominance;

(2) The percentage by weight of weed seed if present; and

(3) The percentage by weight of inert matter.

(d) For those kinds of seed for which standard testing procedures are prescribed:

(1) Percentage germination exclusive of hard or dormant seed;

(2) Percentage of hard or dormant seed, if present; and

(3) The calendar month and year that the test was completed to determine such percentages.

(e) For those kinds of seed for which standard testing procedures are not available, the year of production or collection.

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

IX. For agricultural seeds sold on a pure live seed basis, if in accordance with rules adopted by the commissioner, each container shall bear a label containing the information required by paragraph II except:

(a) The label need not show:

(1) The percentage by weight of each agricultural seed component as required by subparagraph II(a); or

(2) The percentage by weight of inert matter as required by subparagraph II(g).

(b) The label shall show for each named agricultural seed, instead of the information required by subparagraph

II(h):

(1) The percentage of pure live seed.

(2) The calendar month and year in which the test determining the percentage of pure live seed was completed.

X. For agricultural and vegetable hybrid seed which contain less than 95 percent hybrid seed:

(a) Kind or variety shall be labeled as "hybrid."

(b) The percent which is hybrid shall be labeled parenthetically following in direct association the named variety; i.e., Comet (85 percent hybrid).

(c) Varieties in which the pure seed contain less than 75 percent hybrid seed shall not be labeled hybrids.

XI. For combination mulch, seed, and fertilizer products:

(a) The word "combination" followed by the words "mulch," "seed," or "fertilizer," as appropriate, must appear on the upper 30 percent of the principal display panel. The word "combination" shall be the largest and most conspicuous print on the container, equal to or larger than the product name. The words "mulch," "seed," or "fertilizer," shall be no smaller than 1/2 the size of the word "combination" and in close proximity to the word "combination." These products shall contain a minimum of 70 percent mulch.

(b) Agricultural, lawn, and turf seeds placed in a germination medium, mat, tape, or other device or mixed with mulch shall be labeled as follows:

(1) Product name.

(2) Lot number.

(3) Percentage by weight of pure seed of each kind and variety named which may be less than 5 percent.

(4) Percentage by weight of other crop seed.

(5) Percentage by weight of inert matter which shall not be less than 70 percent.

(6) Percentage by weight of weed seeds.

(7) Name and number of noxious weed seeds per pound, if present.

(8) Percentage of germination, and hard seed if appropriate, of each kind or kind and variety named and date of test.

(9) Name and address of labeler.

Source. 1990, 126:2, eff. June 18, 1990. 2003, 106:4-10, eff. Jan. 1, 2004.

Section 433:3

433:3 Label Requirements for Tree and Shrub Seeds. – Each container of tree and shrub seed which is sold, offered for sale, exposed for sale, or transported within this state for sowing purposes shall bear on it or have attached to it in a conspicuous place a plainly written or printed label or tag in the English language, giving the following information, which statement shall not be modified or denied in the labeling or on another label attached to the container, provided that labeling of seed supplied under a contractual agreement may be done by invoice accompanying the shipment or by an analysis tag attached to the invoice if each bag or other container is clearly identified by a lot number stenciled on the container or if the seed is in bulk. Each bag or container that is not so identified shall carry complete labeling. Labeling requirements shall be as follows:

I. For all treated tree and shrub seeds, for which a separate label may be used:

(a) A word or statement indicating that the seed has been treated.

(b) The commonly accepted coined, chemical or abbreviated chemical (generic) name of the applied substance or description of the process used.

(c) If the substance in the amount present with the seed is harmful to human or other vertebrate animals, a caution statement such as "Do not use for food or feed or oil purposes." The caution for mercurials and similarly toxic substances shall be a poison statement and symbol.

(d) If the seed has been treated with an inoculant, the date beyond which the inoculant is not to be considered effective, that is, the date of expiration.

II. For all tree and shrub seeds subject to this subdivision:

(a) Common name of the species of seed and, if appropriate, subspecies.

(b) The scientific name of the genus and species, and, if appropriate, subspecies.

(c) Lot number or other lot identification.

(d) Origin:

(1) For seed collected from a predominantly indigenous stand, the area of collection given by latitude and

longitude, or geographic description, or political subdivision such as state or county.

(2) For seed collected from other than a predominantly indigenous stand, the area of collection and the origin of the stand or the words ""Origin not Indigenous."

(e) The elevation or the upper and lower limits of elevations within which the seed was collected.

(f) Purity as a percentage of pure seed by weight.

(g) For those species for which standard germination testing procedures are prescribed in rules adopted by the commissioner, the following:

(1) Percentage of germination, exclusive of hard seed.

(2) Percentage of hard seed, if present.

(3) The calendar month and year the test was completed to determine such percentages.

(h) In lieu of subparagraph (g)(1)-(3), the seed may be labeled ""Test is in process; results will be supplied upon request."

(i) For those species for which standard germination testing procedures have not been prescribed in rules adopted by the commissioner, the calendar year in which the seed was collected.

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

Source. 1990, 126:2, eff. June 18, 1990.

Section 433:4

433:4 Prohibitions. – It is unlawful for any person:

I. To sell, offer for sale, expose for sale, or transport for sale any agricultural, vegetable, flower, or tree and shrub seeds within this state:

(a) If subject to the germination requirements of RSA 433:2, unless otherwise provided in RSA 433:2, and unless the test to determine the percentage of germination required by RSA 433:2 shall have been completed within a 9-month period exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale, or offering for sale or transportation. This prohibition shall not apply to tree and shrub seeds or to agricultural or vegetable seeds in hermetically-sealed containers. Agricultural or vegetable seeds packaged in hermetically-sealed containers under the conditions defined in rules adopted under the provisions of this subdivision may be sold, exposed for sale or offered for sale or transportation for a period of 36 months after the last day of the month that the seeds were tested for germination prior to packaging. If seeds in hermetically-sealed containers are sold, exposed for sale, or offered for sale or transportation more than 36 months after the last day of the month in which they were tested prior to packaging, they shall have been retested within a 9-month period, exclusive of the calendar month in which the retest was completed, immediately prior to sale, exposure for sale, or offering for sale or transportation.

(b) Not labeled in accordance with the provisions of this subdivision or having false or misleading labeling.

(c) Pertaining to which there has been false or misleading advertisement.

(d) Consisting of or containing prohibited noxious weed seeds, subject to recognized tolerances.

(e) Consisting of or containing restricted noxious weed seeds per pound in excess of the number prescribed in rules adopted under this subdivision, or in excess of the number declared or in excess of the maximum percentage allowed for undesirable grass seed under RSA 433:2, III(f) on the label attached to the container of the seed or associated with the seed.

(f) Containing more than 2 1/2 percent by weight of all weed seeds.

(g) If any labeling, advertising, or other representation subject to this subdivision represents the seed to be certified seed or any class thereof unless:

(1) It has been determined by a seed certifying agency that such seed conformed to standards of purity and identity as to kind; species; subspecies, if appropriate; or variety, and also that tree seed was found to be of the origin and elevation claimed, in compliance with the rules or regulations of such agency pertaining to such seed; and,

(2) The seed bears an official label issued for such seed by a seed certifying agency certifying that the seed is of a specified class and a specified kind; species; subspecies, if appropriate; or variety.

(h) Labeled with a variety name but not certified by an official seed certifying agency when it is a variety for which a United States certificate of plant variety protection under the Plant Variety Protection Act (7 U.S.C. § 2321 et seq.) specifies sale only as a class of certified seed, provided that seed from a certified lot may be labeled as to

variety name when used in a mixture by, or with the approval of, the owner of the variety.

II. Within the state:

(a) To detach, alter, deface, or destroy any label provided for in this subdivision or in the rules adopted under this subdivision, or to alter or substitute seed in a manner that may defeat the purpose of this subdivision.

(b) To disseminate any false or misleading advertisements concerning seeds subject to this subdivision.

(c) To hinder or obstruct any authorized person in the performance of his duties under this subdivision.

(d) To fail to comply with a stop sale order or to move or otherwise handle or dispose of any lot of seed held under a stop sale order or tags attached to it, except with express permission of the enforcing officer and for the purpose specified by such officer.

(e) To use the word ""trace" as a substitute for any statement which is required.

(f) To use the word ""type" in any labeling in connection with the name of any agricultural seed variety.

(g) To use relabeling stickers without having both the calendar month and year the germination test was completed, the sell by date, as stated in RSA 433:2, III(g), RSA 433:2, V(c), and RSA 433:2, VII(a), and the lot number that matches the existing, original lot number. Relabeling shall not occur more than once.

(h) To alter or falsify any seed label, seed test, laboratory report, record, or other document to create a misleading impression as to kind, kind and variety, history, quality, or origin of seed.

Source. 1990, 126:2, eff. June 18, 1990. 2003, 106:11-13, eff. Jan. 1, 2004.

Section 433:5

433:5 Records. – Each person whose name appears on the label as handling agricultural, vegetable, flower, or tree and shrub seeds subject to this subdivision shall keep for a period of at least 2 years complete records of each lot of agricultural, vegetable, flower, or tree and shrub seed handled and shall keep for at least one year a file sample of each lot of seed after final disposition of such lot. All such records and samples pertaining to the shipment or shipments involved shall be accessible for inspection by the commissioner or his agent during customary business hours.

Source. 1990, 126:2, eff. June 18, 1990.

Section 433:6

433:6 Exemptions. –

I. The provisions of RSA 433:2, 3 and 4 shall not apply to:

(a) Seed or grain not intended for sowing purposes.

(b) Seed in storage in, or being transported to or consigned to a cleaning or processing establishment for cleaning or processing, provided that the invoice or labeling accompanying any shipment of such seed bears the statement ""seeds for processing"; and provided that any labeling or other representation which may be made with respect to the uncleaned or unprocessed seed shall be subject to this subdivision.

(c) Any carrier with respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier, provided that such carrier is not engaged in producing, processing, or marketing seeds subject to the provisions of this subdivision.

II. No person shall be subject to a penalty under this subdivision for having sold or offered for sale seeds subject to provisions of this subdivision which were incorrectly labeled or represented as to kind; species; subspecies, if appropriate; variety; type; origin; elevation; or year of collection, if required, when the seeds cannot be identified by examination of them, unless he has failed to obtain an invoice, genuine grower's or tree seed collector's declaration or other labeling information and to take such other precautions as may be reasonable to insure the identity to be that stated. A genuine grower's declaration of variety shall affirm that the grower holds records of proof concerning parent seed, such as invoice and labels.

III. The provisions of RSA 433:3 and 4 shall not apply to tree seed produced by the consumer.

Source. 1990, 126:2, eff. June 18, 1990.

Section 433:7

433:7 Duties and Authority of Commissioner; Rulemaking. –

I. The commissioner of agriculture, markets, and food shall administer and enforce this subdivision. The commissioner, through his authorized agents, shall:

(a) Sample, inspect, make analysis of, and test seeds subject to the provisions of this subdivision that are transported, sold or offered or exposed for sale within the state for sowing purposes, at such time and place and to such extent as he may deem necessary to determine whether the seeds are in compliance with this subdivision, and to notify promptly the person who sold, offered or exposed the seed for sale and, if appropriate, the person who labeled or transported the seed, of any violation, stop sale order or seizure.

(b) Cooperate with the United States Department of Agriculture and other agencies in seed law enforcement.

II. The commissioner, individually or through his authorized agents, may:

(a) Enter upon any public or private premises during regular business hours in order to have access to seeds and the records connected with the seeds subject to this subdivision, and any truck or other conveyor by land, water, or air at any time when the conveyor is accessible, for the same purpose.

(b) Issue and enforce a written or printed stop sale order to the owner or custodian of any lot of seed subject to the provisions of this subdivision which the commissioner finds is in violation of this subdivision or rules adopted under it, which order shall prohibit further sale, processing and movement of such seed, except on approval of the enforcing officer, until such officer has evidence that the law has been complied with, and he has issued a release from the stop sale order of such seed. In respect to seed which has been denied sale, processing and movement as provided in this subparagraph, the owner or custodian of such seed shall have the right to appeal from said order to a court of competent jurisdiction in the locality in which the seeds are found, requesting a judgment as to the justification of such order and for the discharge of such seeds from the order prohibiting the sale, processing and movement in accordance with the findings of the court, provided that the provisions of this subparagraph shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other provisions of this subdivision.

(c) Establish and maintain or make provisions for seed testing services, employ qualified persons, and incur such expenses as may be necessary to comply with these provisions.

(d) Make or provide for making purity and germination tests of seed for farmers and dealers on request, and to fix and collect charges for the tests made.

III. The commissioner shall adopt rules, under RSA 541-A, relative to:

(a) Governing the method of sampling, inspecting, analyzing, testing and examining seeds subject to this subdivision and the tolerances to be used.

(b) A prohibited and restricted noxious weed seed list, and the allowable number of such seeds per pound, in accordance with RSA 433:4, I(e).

(c) Reasonable standards of germination for vegetable seeds and flower seeds.

(d) Labeling flower seeds in respect to kind and variety or type and performance characteristics as required by RSA 433:2.

(e) A list of the kinds of flower seeds subject to the flower seed germination labeling requirements of RSA 433:2.

(f) A list of tree and shrub seed species subject to germination labeling requirements of RSA 433:3, II(g).

(g) Methods of determining what constitutes inert matter.

(h) Methods of determining what constitutes pure seed.

(i) The kinds of agricultural seeds generally labeled as to variety, as provided in RSA 433:2, II(a).

(j) The conditions under which agricultural or vegetable seeds shall be packaged, as provided in RSA 433:4, I.

(k) Purity and germination tests of seeds for farmers and dealers on request.

(l) Seed labeling license standards and procedures, including, but not limited to, application forms and fees.

(m) The enforcement of this subdivision.

Source. 1990, 126:2. 1995, 130:5, eff. July 23, 1995.

Section 433:8

433:8 Seizure. – Any lot of seed not in compliance with the provisions of this subdivision shall be subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the locality in which the seed is located. If the court finds the seed to be in violation of this subdivision and orders the condemnation of said seed, it shall be denatured, processed, destroyed, relabeled, or otherwise disposed of in compliance with the laws of this

state, provided that in no instance shall the court order such disposition of said seed without first having given the claimant an opportunity to apply to the court for the release of said seed or permission to process or relabel it to meet the requirements of this subdivision.

Source. 1990, 126:2, eff. June 18, 1990.

Section 433:9

433:9 Injunction. – When, in the performance of his duties, the commissioner applies to any court for a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this subdivision or any rules adopted under this subdivision, the injunction shall be issued without bond.

Source. 1990, 126:2, eff. June 18, 1990.

Section 433:9-a

433:9-a Licensing Requirements. – No person shall label agricultural, vegetable, flower, and tree and shrub seeds for planting purposes for distribution or sale in this state without first having obtained a seed labeling license. The license application shall be submitted on forms furnished by the commissioner and shall be accompanied by the license fee as prescribed by the commissioner.

Source. 1990, 126:3, eff. June 18, 1990.

Section 433:9-b

433:9-b Penalties. –

I. Any person who, by himself or by his servant or agent, violates any provision of this subdivision or rule adopted under this subdivision shall be guilty of a misdemeanor. For any subsequent offense, a person shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

II. Any person who violates any provision of this subdivision or any rule adopted or order issued under this subdivision shall, in addition, be liable for a civil forfeiture not to exceed \$5,000 for each violation, for each day of a continuing violation, which may be collected in a civil action or in connection with an action for injunctive relief brought by the attorney general.

III. Any person who violates any provision of this subdivision or any rule or order of the commissioner, shall be subject to the imposition of an administrative fine levied by the commissioner, not to exceed \$1,000 for each violation.

Source. 1990, 126:3, eff. June 18, 1990

Certification

Section 433:10

433:10 Definition. – The term ""certified plants" and the term ""certified seeds" used in this subdivision shall mean any variety of horticultural or agronomic plants or seeds that have been inspected by the commissioner of agriculture, markets, and food or his authorized agent and found to be reasonably free from disease and true to name as specified in rules adopted by the commissioner of agriculture, markets, and food under the provisions of this subdivision.

Source. 1985, 72:1. 1995, 130:5, eff. July 23, 1995.

Section 433:11

433:11 Application for Inspection. – Any grower of plants or seeds approved by the commissioner of agriculture, markets, and food may make application to the commissioner for inspection and certification of his plant or seed crop under such rules as the commissioner may adopt under RSA 541-A. The commissioner of agriculture, markets, and food or his authorized agent shall issue such certificates of inspection and designate or provide such official tags for marking certified plants or certified seeds and establish such standards of grade and quality as are necessary to safeguard the privileges and services provided for in this subdivision.

Source. 1985, 72:1. 1995, 130:5, eff. July 23, 1995.

Section 433:12

433:12 Acceptance for Certification. – Any variety of plant or seed entered for certification must first be approved by a plant and seed certification board, appointed by the commissioner of agriculture, markets, and food with the approval of the advisory board of the department.

Source. 1985, 72:1. 1995, 130:5, eff. July 23, 1995.

Section 433:13

433:13 Prohibitions. – No person in connection with the sale of plants or seeds shall use the term ""certified"" or any similar term which may tend to convey that the same have been certified under RSA 433:11, either orally or on tags, containers or labels or in advertising unless said plants or seeds have been inspected and certified under RSA 433:11.

Source. 1985, 72:1, eff. July 1, 1985.

Section 433:14

433:14 Rulemaking. – The commissioner of agriculture, markets, and food is hereby authorized to adopt all necessary rules and to establish such fees as are necessary to carry out the provisions of this subdivision.

Source. 1985, 72:1. 1995, 130:5, eff. July 23, 1995.

Section 433:15

433:15 Penalties. – Any person, partnership, association or corporation, and any officer, agent, servant or employee thereof violating any of the provisions of this subdivision shall be guilty of a misdemeanor for each offense. If any such person, partnership, association or corporation shall be twice convicted of a violation of this subdivision, the commissioner of agriculture, markets, and food may prohibit him from marketing certified plants or seeds for a period of not less than 2 nor more than 4 years after such prohibition.

Source. 1985, 72:1. 1995, 130:5, eff. July 23, 1995.

Certification of Seed Potatoes

Section 433:16

433:16 Definition. – The term ""certified seed potatoes"" as used in this subdivision shall include potatoes (*Solanum tuberosum*) that have been inspected and tested by the commissioner of agriculture, markets, and food or his authorized agents and found to be reasonably free from disease and other defects, as specified in the rules adopted by the commissioner of agriculture, markets, and food under the provisions of this subdivision.

Source. 1985, 72:1. 1995, 130:5, eff. July 23, 1995.

Section 433:17

433:17 Application for Inspection. – Any grower of potatoes in New Hampshire may make application to the commissioner of agriculture, markets, and food for inspection and certification of his potato crop for seed purposes, under such rules as the commissioner may adopt. The commissioner of agriculture, markets, and food or his authorized agents shall issue such certificates of inspection, and designate or provide such official tags for marking containers of certified seed and establish such standards of grade and quality as are necessary to safeguard the privileges and service provided for in this subdivision.

Source. 1985, 72:1. 1995, 130:5, eff. July 23, 1995.

Section 433:18

433:18 Prohibitions. – No person, in connection with the sale of seed potatoes, shall use the term ""certified" or any similar term which may tend to convey that the same has been certified under this subdivision, either orally or on tags, containers, or labels or in advertising unless said seed potatoes have been inspected and certified under this subdivision.

Source. 1985, 72:1, eff. July 1, 1985.

Section 433:19

433:19 Rulemaking. – The commissioner of agriculture, markets, and food is hereby authorized to adopt all necessary rules to carry out the provisions of this subdivision.

Source. 1985, 72:1. 1995, 130:5, eff. July 23, 1995.

Section 433:20

433:20 Penalties. – Any person, partnership, association or corporation, and any officer, agency, servant or employee thereof, violating any of the provisions of this subdivision shall be guilty of a misdemeanor for each offense. If any such person, partnership, association, or corporation shall be twice convicted of a violation of this subdivision, the commissioner of agriculture, markets, and food may prohibit him from marketing certified seed potatoes for a period of not less than 2 nor more than 4 years after such prohibition.

Source. 1985, 72:1. 1995, 130:5, eff. July 23, 1995.

Nurseries and Nursery Stock

Section 433:21

433:21 Definitions. – In this subdivision:

I. ""Certificate" means a document indicating that plant stock has been inspected and found to be apparently free from dangerous insects and plant diseases.

II. ""Certified stock" means nursery stock derived from a licensed nursery or certified by a nursery inspector.

III. ""Collected plants" means plants and plant parts defined as nursery stock, which are dug or otherwise removed from fields, woodlots, or forested lands for sale or distribution, which have not been grown under cultivation in a nursery for a year.

IV. ""Commissioner" means the commissioner of the New Hampshire department of agriculture, markets, and food.

V. ""Department" means the New Hampshire department of agriculture, markets, and food.

VI. ""Director" means the state entomologist, qualified by scientific training and practical experience, directly answerable to the commissioner, in charge of and responsible for the activities of the division of plant industry.

VII. "'Division" means the division of plant industry of the New Hampshire department of agriculture, markets, and food.

VIII. "'Eradication" means the elimination or removal of a pest from any defined geographic area.

IX. "'Greenhouse" means a structure covered with glass, plastic, fiberglass, or other material in which plants are cultivated in a controlled environment.

X. "'Horticultural services" means any arborist, landscape architect, or gardening consultant whose function is that of providing services relative to horticulture.

XI. "'License" means an authorization from the director to sell plant stock.

XII. "'Nursery" means a place or greenhouse where nursery stock is propagated, grown, stored, cultivated, or offered for sale.

XIII. "'Nursery inspectors" means persons either full-time employees of the division or knowledgeable individuals hired on a part-time basis to conduct the work of the division.

XIV. "'Nurseryman" means a person who owns, leases, manages, or is in charge of a nursery. All persons engaged in operating a nursery are farming within the meaning of RSA 21:34-a.

XV. "'Nursery stock" means woody plants, including ornamental and fruiting trees, shrubs, vines, and all viable parts of these plants; herbaceous plants, including florist stock plants, annuals, perennials, vegetable plants, herbs, potted plants, and all viable parts of these plants; and any other plant or plant part designated by the commissioner. Nursery stock does not include cut Christmas trees, wreaths, seeds, dried herbs, vegetables, cut flowers, or such plant products.

XVI. "'Plant dealer" means any person, firm, partnership, association, or corporation not a grower or an original producer of nursery stock in New Hampshire who buys or acquires, or receives on consignment nursery stock for the purposes of re-selling, transporting, or otherwise disposing of the stock.

XVII. "'Plant diseases" means fungi, bacteria, nematodes, viruses, and plant parasites injurious to plants and plant products.

XVIII. "'Plant pests" means any organism, including other plants, causing or capable of causing injury or damage to plants or plant products.

XIX. "'Public nuisance" means a plant pest determined by the department to be dangerous or destructive to the agriculture or horticulture of New Hampshire.

XX. "'Quarantine" means a legal action intended to prevent or delay the establishment of a pest of plants or crops.

XXI. "'Soil" means the medium designated for plant propagation.

XXII. "'Stop sale order" means a written notice issued by an inspector to the owner or custodian of any plant or plant products, which prohibits the sale or movement of plants or plant products.

Source. 1985, 33:1. 1995, 130:4, eff. July 23, 1995. 2002, 7:1, March 12, 2002.

Section 433:22

433:22 Rulemaking Authority. – The commissioner shall adopt rules under RSA 541-A relative to:

- I. The issuing of orders under the provisions of this subdivision.
- II. The issuing of licenses as may be necessary.
- III. Establishing fees for certificates and licenses issued under this subdivision, as well as any publications printed for distribution to the general public.
- IV. The collection of fees under this subdivision.
- V. The printing, publishing, posting and distribution of reports made available to the public.
- VI. Quarantine measures that may be taken when pests are found in any geographic area.
- VII. Reasonable rules as may be needed to carry out and enforce the provisions of this subdivision.

Source. 1985, 33:1, eff. July 1, 1985. 2002, 7:2, eff. March 12, 2002.

Section 433:23

433:23 Certified Stock. – All nursery stock shipped into New Hampshire shall bear on each consignment or package a valid license or certificate number indicating that the contents of that consignment or package have been

inspected by a duly authorized inspecting officer, and that the contents are apparently free from all dangerous insects and plant diseases, and are therefore certified stock.

Source. 1985, 33:1, eff. July 1, 1985. 2002, 7:3, eff. March 12, 2002.

Section 433:24

433:24 Cooperative Agreements; Grants-in-Aid. – The department is authorized to cooperate, receive grants-in-aid, and enter into agreements with any individual, organization, or county, state or federal agency for the purpose of implementing the provisions of this subdivision. The department may also enforce any federal quarantine or regulation promulgated under federal quarantine within the state of New Hampshire.

Source. 1985, 33:1, eff. July 1, 1985.

Section 433:25

433:25 Fees. – The commissioner may establish reasonable fees pursuant to RSA 433:22, III.

Source. 1985, 33:1, eff. July 1, 1985.

Section 433:26

433:26 Director. – The director may hire such nursery inspectors as he may deem necessary within his budgetary limitations.

Source. 1985, 33:1, eff. July 1, 1985.

Section 433:27

433:27 Regulation of Horticultural Services. – Any person engaged in horticultural services shall be subject to regulation by the commissioner under this subdivision.

Source. 1985, 33:1, eff. July 1, 1985. 2002, 7:4, eff. March 12, 2002.

Section 433:28

433:28 Nursery Stock Requirements. –

I. Woody-stemmed deciduous nursery stock shall have moist green cambium tissue in the stem or stems and branches, and shall have viable buds or normal green, rigid growth. Growth shall be sufficient to permit the stock to live and grow in a form characteristic of the species when planted and given reasonable care. Nursery stock which does not meet those standards shall not be sold or offered for sale.

II. Hardy herbaceous biennials or perennials, when in a wilted, rotted, or other such condition indicative of subnormal vitality, shall not be sold or offered for sale.

III. Any bare-rooted or prepackaged woody-stemmed nursery stock having more than 2 inches of etiolated (nongreen) growth from individual buds shall not be sold or offered for sale.

IV. Balled and burlapped or containerized nursery stock in a weakened condition as evidenced by die-back or dryness of foliage shall not be sold or offered for sale.

V. Nursery stock infected with plant diseases or infested with plant pests shall not be offered for sale or given away.

Source. 1985, 33:1, eff. July 1, 1985. 2002, 7:5, eff. March 12, 2002.

Section 433:29

433:29 Nursery Inspection. – A nursery inspector shall inspect any nursery as determined necessary by the director. Nurseries shall be accessible at reasonable times for inspection. Nursery inspectors shall verify that nursery stock requirements are in compliance with RSA 433:28.

Source. 1985, 33:1, eff. July 1, 1985. 2002, 7:6, eff. March 12, 2002.

Section 433:29-a

433:29-a License Required. – A person, firm, or corporation may not engage in or continue in the business of selling nursery stock without first obtaining a license to conduct such business in the state. Licenses are non-transferable and each business shall possess a valid license for each business location.

Source. 2002, 7:7, eff. March 12, 2002.

Section 433:30

433:30 Diseased, Infested Stock; Stop Sale, Destruction. –

I. Only sound, healthy nursery stock, which will maintain its vigor, shall be offered for sale. The offering for sale of stock which is infected with diseases or infested with plant pests is a violation of this subdivision. Whenever the director has reason to believe that any nursery or plant dealer in the state has introduced or is offering for sale diseased or infested stock, the director or a nursery inspector shall inspect that stock. If, upon inspection, the director or a nursery inspector finds any such stock, the inspector may order the plants, either individually or in blocks, to be:

- (a) Made subject to a stop sale order.
- (b) Treated by the nurseryman.
- (c) Destroyed according to the nursery inspector's instructions.

II. Plants ordered destroyed or subject to a stop sale order must be clearly separable from noninfested stock. Any order must be confirmed in writing within 7 days or clearly marked on the inspection report. The order shall include the reason for action, a description of the nursery stock affected, and any recommended treatment. Destruction of condemned stock shall be at the expense of the owner. Stop sale tags may not be removed except by written permission of the director or upon suitable disposal of the infested plants.

III. A person issued any order under paragraph I may appeal that order by letter to the commissioner within 15 days after receiving the order. The letter shall state any grounds for appealing and designate the plants affected.

IV. A nursery inspector shall reinspect a nursery or plant dealer as determined necessary by the director. If the nursery or plant dealer is still in violation of the requirements and despite the inspector's efforts, a stop sale shall be implemented and the nursery or plant dealer license revoked. After further inspection, the director may reinstate the nursery or plant dealer license.

Source. 1985, 33:1, eff. July 1, 1985. 2002, 7:8, eff. March 12, 2002.

Section 433:31

433:31 Lack of Certificate. – If nursery stock is brought into the state without a certificate of inspection, or notification of licensure, the consignee shall return it to the consignor at the expense of the consignor, or shall call the director to inspect the nursery stock.

Source. 1985, 33:1, eff. July 1, 1985. 2002, 7:9, eff. March 12, 2002.

Section 433:32

433:32 Prohibitions; Penalties. –

I. The following actions are prohibited:

- (a) Selling, distributing, receiving, or delivering nursery stock which has not been licensed or certified.
- (b) Using a nursery or plant dealer license after it has been revoked or suspended or has expired.

(c) Offering any hindrance or resistance to the carrying out of the provisions of this subdivision.

(d) Knowingly permitting any plant pest declared a public nuisance to exist on his or her premises or selling, offering for sale, giving away or moving any plants, plant products, or other material capable of harboring the pest.

II. Any person or employee or agent of that person, who violates any provision of this subdivision or rule adopted under this subdivision, shall be guilty of a violation. For any subsequent offense, a person shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

III. Any person who violates any provision of this subdivision or any rule adopted or order issued under this subdivision shall, in addition, be liable for a civil forfeiture not to exceed \$5,000 for each violation, which may be collected in a civil action or in connection with an action for injunctive relief brought by the attorney general.

IV. Any person who violates any provision of this subdivision or any rule or order of the commissioner shall be subject to the imposition of an administrative fine levied by the commissioner, not to exceed \$1,000 for each violation.

Source. 1985, 33:1, eff. July 1, 1985. 2002, 7:10, eff. March 12, 2002.

Section 433:33

433:33 Right of Entry. – The commissioner, director, and nursery inspectors shall at all times have the right to enter any public or private grounds in the performance of any duty under this subdivision.

Source. 1985, 33:1, eff. July 1, 1985.

Section 433:34

433:34 Quarantine. – The commissioner may establish quarantines as specified in the law or under the rules to prevent dissemination of plant pests within the state. When any pests that have the potential to cause serious damage to agriculture are found in any geographic area, that area and any adjacent areas shall be quarantined. After a quarantine is established, the commissioner shall adopt any rules necessary to prevent or reduce the movement of that pest from the quarantined area and may implement any limitation or treatment measures necessary for the containment or eradication of that pest.

Source. 1985, 33:1, eff. July 1, 1985. 2002, 7:11, eff. March 12, 2002.

Section 433:35

433:35 Suspension of License. – The director may at any time suspend a license issued under the provisions of RSA 433:29-a if dangerous insect or plant disease pests are found upon the premises, either on the plants or in the soil, and shall not reinstate the license until such time as such pests have been suppressed or eradicated.

Source. 1985, 33:1, eff. July 1, 1985. 2002, 7:12, eff. March 12, 2002.

Section 433:36

433:36 Prosecution. – Any person violating the provisions of this subdivision shall be prosecuted by the office of the attorney general.

Source. 1985, 33:1, eff. July 1, 1985.