Chapter 621

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GENERAL PROVISIONS

621.003 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Container" means milk and cream cans, farm milk tanks, milk tank trucks, milk storage tanks, pasteurizing vats, cheese vats, butter churns, butter tubs, cheese hoops and any other receptacle designed for use or used to hold fluid milk, milk or dairy products.

(2) "Cream" means that portion of milk consisting of milk fat.

(3) "Dairy products" means:

(a) Butter.

(b) All varieties of cheese, frozen desserts and frozen dessert mixes containing milk, cream or nonfat milk solids.

(c) Evaporated, condensed, concentrated, powdered, dried or fermented milk, whey, cream and skimmed milk.

(4) "Dairy products plant" means:

(a) An establishment where milk is received, processed or used in manufacturing dairy products for human consumption.

(b) A place or premises where milk is received or collected.

(c) A bulk tank truck or other mobile equipment used by a milk hauler or other person in the transportation of milk, fluid milk or milk products.

(d) A location operated by a nonprocessing cooperative, corporation, association or person serving as a marketing agent for producers.

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

(6) "Disease-free herd" means a herd of cows, sheep or goats that is not an infected herd. As used in this subsection, "infected herd" means a herd of cows, sheep or goats in which one or more reactor animals have been discovered by any test authorized by law and that has not regained its disease-free status following the slaughter of the reactor animals and retesting of the herd as prescribed by the department.

(7) "Distributor" means a person who purchases only unpasteurized milk and pasteurizes or otherwise processes that milk, then bottles and distributes the milk for human consumption.

(8) "Fluid milk" means milk and any other product made by the addition of a substance to milk or to a liquid form of milk product if the milk or other product is produced, processed, distributed, sold or offered or exposed for sale for human consumption. Fluid milk includes sterilized fluid milk products and the fluid milk products for which a standard of identity has been established by the department.

(9) "Frozen dessert" means a food product that is defined and standardized by rule under ORS 621.311.

(10) "Frozen dessert mix" means the unfrozen, blended ingredients, in liquid or powdered form, from which frozen desserts are made by freezing the mix ingredients to a solid or semisolid consistency.

(11) "Frozen dessert retailer" means a person who freezes or makes frozen desserts for direct sale to or use by a consumer.

(12) "Frozen dessert wholesaler" means a person, other than a frozen dessert retailer, engaged in the business of freezing or making frozen desserts for sale. "Frozen dessert wholesaler" does not include interstate carriers, health care facilities as defined in ORS 442.015, domiciliary care facilities as defined in ORS 443.205, schools, institutions or fraternal, social or religious organizations or persons engaging in occasional or incidental sales as defined by department rule.

(13) "Imitation milk product" means:

(a) A compound of milk and edible oil or fat, other than natural milk fat, with or without other ingredients.

(b) A compound or product that is not a fluid milk product, that is made to have or has the appearance, taste or texture of a fluid milk product or a general composition similar to that of a fluid milk product, for which a standard of identity has been established by the department, and that may reasonably be mistaken for a fluid milk product.

(14) "Milk" means the lacteal secretion of cows, sheep and goats.

(15) "Milk hauler" means a person who, in the course of employment, accepts bulk fluid milk and transports that commodity to a dairy products plant or a physical facility of a distributor or producer-distributor.

(16) "Nonprocessing distributor" means a person who sells fluid milk in consumer-sized units under the person's own brand or trade name after the milk has been processed and packaged by a distributor or producer-distributor.

(17) "Pasteurize" means the process established by the department pursuant to ORS 621.261 by which each particle of milk, cream or any other dairy product is treated, usually by heat, for the purpose of destroying or rendering harmless bacterial organisms, including pathogenic organisms and viruses.

(18) "Producer" means a person who engages in the production of unpasteurized milk on a dairy farm and does not bottle the milk on the premises where production oc-

curs, in pasteurized or unpasteurized form and for human consumption.

(19) "Producer-distributor" means:

(a) A person who bottles milk on the premises where production occurs, in pasteurized or unpasteurized form and for human consumption.

(b) A person who purchases milk from a producer, pasteurizes that milk, then bottles it for distribution. [1999 c.197 §2]

621.005 [Amended by 1979 c.320 §15; 1982 s.s.1 c.4 §16; repealed by 1999 c.197 §61]

621.010 Restraining violations. (1) If the State Department of Agriculture believes that any person is engaged in or is about to engage in any act or practice that is a violation of ORS 621.056, 621.057, 621.062, 621.070, 621.072, 621.076, 621.084, 621.088, 621.117, 621.122, 621.124, 621.161, 621.166, 621.183, 621.198, 621.226 or 621.259 or any rule or standard adopted under ORS 621.060, 621.083, 621.096, 621.224 or 621.261, the department may apply for a temporary restraining order or permanent injunction pursuant to ORCP 79 or ORS 561.280 prohibiting the person from engaging in that act or practice. The application for the order or injunction may be made to the circuit court of any county in which the person is engaged in or is about to engage in the unlawful act or practice. Notwithstanding ORCP 82, no security shall be required of the department to obtain the restraining order or injunction. The remedy provided the department by this section is in addition to all other remedies, civil and criminal.

(2) In a proceeding for an injunction under subsection (1) of this section, an applicant or licensee may not, as a defense, litigate collaterally any matter concerning the refusal to grant or the revocation or suspension of a license required by or issued under ORS 621.070, 621.072, 621.161, 621.171 or 621.266 if the applicant or licensee was heard or might have been heard on that matter directly in an administrative hearing under ORS 183.413 to 183.470, or on an appeal from such a hearing. [1955 c.714 §1; 1961 c.425 §13; 1999 c.197 §6]

621.012 Exception for small-scale on-farm sales. The provisions of ORS 621.062, 621.070, 621.072, 621.076, 621.084, 621.088, 621.116, 621.117 and 621.259 and standards developed under ORS 621.060, 621.083 or 621.224 do not apply to a person owning not more than three dairy cows that have calved at least once, nine sheep that have lactated at least once or nine goats that have lactated at least once, but such person may sell the fluid milk from those animals for human or other consumption without complying with the provisions of ORS 621.062, 621.070, 621.072, 621.076, 621.084, 621.116, 621.117 or 621.259 or standards developed under ORS 621.060, 621.083 or 621.224 only if:

(1) The person does not advertise the milk for sale;

(2) The milk is sold directly to the consumer at the premises where produced; and

(3) No more than two producing dairy cows, nine producing sheep or nine producing goats are located on the premises where the milk is produced. [Formerly 621.089]

621.015 Disposition of license fees; appropriation. The State Department of Agriculture shall deposit all fees paid to it under this chapter in the Department of Agriculture Service Fund. All such fees are continuously appropriated to the department for the purpose of administering and enforcing this chapter. [1963 c.48 §2; 1979 c.499 §23]

621.018 Entry and use of fluid milk produced outside state; reciprocal agreements. (1) The State Department of Agriculture may permit the entry and use in this state of fluid milk produced in other governmental units subject to the conditions set forth in this section. For the purposes of this section, the term "governmental unit" means any state, territory of the United States or political subdivision thereof.

(2) The department shall investigate and survey the system of regulation of the fluid milk industry in effect in the governmental unit in which the fluid milk is produced. The investigation shall be made into all the factors relating to the quality of fluid milk as prescribed in ORS 621.060. Upon a determination by the department that the system of fluid milk regulation in effect in a governmental unit is of a nature that will reasonably ensure that fluid milk produced thereunder will be of a quality substantially equal to fluid milk produced in this state, the department may issue a permit to any person operating under that system for the movement of fluid milk into this state.

(3) Recognition by the department of the system of regulation and inspection of fluid milk produced or processed in any other governmental unit shall be granted only in cases where the other governmental unit grants a reciprocal recognition to fluid milk produced or processed in this state.

(4) The department may give full faith and credit to the acts of any other governmental unit administering a system of fluid milk regulation recognized by the department, suspending the right or privilege of any person under the jurisdiction of that governmental unit to produce or process fluid milk.

(5) The department shall arrange with any other governmental unit administering

and enforcing a system of fluid milk regulation recognized by the department for the exchange of information necessary to ensure an uninterrupted interchange of wholesome and nutritious fluid milk between that governmental unit and this state. [Formerly 621.105]

621.020 [1957 c.346 §6; 1999 c.197 §7; renumbered 621.300 in 1999]

621.055 [Amended by 1955 c.714 §11; 1959 c.346 §2; 1981 c.523 §2; repealed by 1999 c.197 §61]

GRADING AND STANDARDS OF IDENTITY

621.056 Employment of grader. Each distributor, producer-distributor and dairy products plant licensee shall employ a grader who shall accurately and impartially grade all milk or fluid milk purchased by the distributor, producer-distributor or licensee from producers before it is commingled with other milk or otherwise loses its identity. [Formerly 621.206]

621.057 Record of grade of milk. The grader shall make a true written record of the grade of all milk graded by the grader. The record shall also show the name of the producer, the date of delivery and of grading, and the quantity involved. The record shall be delivered to and retained by the distributor, producer-distributor or dairy products plant licensee for 30 days and shall be available for inspection by the producer of the milk and by the State Department of Agriculture. [Formerly 621.216]

621.058 Grades and standards of quality for milk, fluid milk and dairy products; rules. (1) The State Department of Agriculture shall establish by rule, as provided in ORS chapter 183, official state grades and standards of quality applicable to all milk, fluid milk and dairy products.

(2) The grades and standards for milk, fluid milk and dairy products may from time to time be changed by the department as provided in subsection (1) of this section. [Formerly 621.201]

621.059 Definitions and standards of identity for cheese; rules. The State Department of Agriculture may adopt rules establishing definitions and standards of identity for all types of cheese. To the extent that the department considers practicable and applicable in this state, the definitions and standards of identity established by rule of the department shall conform to the definitions and standards of identity made under 21 C.F.R. part 133. The department may change the definitions and standards of identity from time to time as the department considers desirable to conform with alterations or amendments to the federal definitions and standards of identity. [1999 c.197 §3]

621.060 Establishing standards of quality and identity for fluid milk; rules. (1) The State Department of Agriculture shall establish official state standards of quality for all forms of fluid milk in the manner prescribed by ORS 632.900 to 632.935.

(2) The standards of quality established for fluid milk shall be based upon:

(a) The health of the cows, sheep and goats;

(b) The physical facilities of dairy farms and milk processing plants;

(c) The standard of sanitary maintenance of dairy farms and milk processing plants including equipment used therein, the cleanliness of operating personnel and the cleanliness of adjacent land areas;

(d) The physical facilities for the transportation of fluid milk and the methods and standards of sanitary maintenance of those facilities;

(e) The quality and nutritional value of fluid milk as a human food as determined by examination; and

(f) Any other factor found by the department, upon hearing, to affect the quality, odor, flavor or wholesomeness of fluid milk.

(3) The department, by rule, may establish definitions and standards of identity for all types of fluid milk. To the extent that the department considers practicable and applicable in this state, the definitions and standards of identity established by rule of the department shall conform to the definitions and standards of identity made under 21 C.F.R. part 131. The department may change the definitions and standards of identity from time to time as the department considers desirable to conform with alterations or amendments to the federal definitions and standards of identity. [Amended by 1971 c.769 §1; 1981 c.523 §3; 1999 c.197 §8]

621.062 Deviation from standard of identity prohibited. A person shall not process, distribute, sell or offer or expose for sale fluid milk that does not conform to a standard of identity established by the State Department of Agriculture. [1959 c.346 §3; 1999 c.197 §9]

621.065 Designation of grades. The State Department of Agriculture shall establish two standards of quality for fluid milk. The higher standard of quality shall be designated as "grade A." The other standard of quality shall be designated as "grade B." [Amended by 1955 c.714 §12; 1999 c.197 §10; 2003 c.14 §372]

GRADE DESIGNATION USE

621.070 License required to use grade designation. A person shall not use any grade designation on bottle caps, in advertising, on labels or in any other manner connected with the sale of fluid milk unless the State Department of Agriculture has licensed the person to use the grade designation. [Amended by 1999 c.197 §11]

621.072 Issuance of license to use grade designation; grading by milk hauler; facility inspections; fees. (1) The State Department of Agriculture shall issue a license to use a grade designation to any person who:

(a) Makes written application for a license on forms provided by the department;

(b) Pays the designated license fee;

(c) Is engaged in the business of producing or distributing fluid milk; and

(d) Meets the requirements of the particular grade designation for which application is made.

(2) If a person carries on the activities of a producer and a producer-distributor, the person must obtain a separate license for each of those activities. If a producer-distributor manufactures products from both grade A fluid milk and grade B fluid milk at the same premises, the producer-distributor must obtain separate licenses for grade A product manufacturing activity and grade B product manufacturing activity.

(3) Licenses issued under this section shall be personal and not transferable.

(4) Each milk hauler, milk receiver or other person who grades fluid milk as fit or unfit for processing as fluid milk due to quality, odor, flavor or wholesomeness must first obtain a license from the department authorizing that person to sample and grade fluid milk. Each applicant for a milk sampler's and grader's license shall, by written examination, demonstrate an adequate knowledge of milk sanitation as it relates to the sampling, grading and handling of fluid milk and cream for analysis. The department shall give examinations for licenses at such times and places as appears to be necessary and practicable.

(5) Before and after issuing a license to a person as a producer, producer-distributor, distributor or nonprocessing distributor of fluid milk, the department shall, as it deems necessary, inspect the physical facilities of the applicant's dairy, milk processing plant or distribution center and investigate other factors the department determines may relate to the production, processing or distribution of fluid milk. The physical facilities must conform to the production, processing or distribution requirements for the fluid milk grade designation sought or held.

(6) Each license issued under this section expires on June 30 next following the date of its issuance unless sooner revoked and may be renewed upon application of the licensee. Each application for a license or annual renewal thereof shall be accompanied by a license fee.

(7) The department shall establish license fee schedules for milk samplers and graders in accordance with ORS chapter 183. A fee may not be less than $25 or more than $50.

(8) The license fees for producer-distributors, distributors and nonprocessing distributors are:

(a) $135 if the applicant's annual gross dollar volume of sales and services is not more than $50,000;

(b) $189 if an applicant's annual gross dollar volume of sales and services is more than $50,000 and not more than $500,000;

(c) $325 if an applicant's annual gross dollar volume of sales and services is more than $500,000 and not more than $1 million;

(d) $487 if an applicant's annual gross dollar volume of sales and services is more than $1 million and not more than $5 million;

(e) $649 if an applicant's annual gross dollar volume of sales and services is more than $5 million and not more than $10 million; or

(f) $812 if an applicant's annual gross dollar volume of sales and services is more than $10 million.

(9) The license fees for producers are:

(a) $135 if the applicant's annual gross sales are not more than $50,000;

(b) $189 if an applicant's annual gross sales are more than $50,000 and not more than $500,000;

(c) $325 if an applicant's annual gross sales are more than $500,000 and not more than $1 million;

(d) $487 if an applicant's annual gross sales are more than $1 million and not more than $5 million;

(e) $649 if an applicant's annual gross sales are more than $5 million and not more than $10 million; or

(f) $812 if an applicant's annual gross sales are more than $10 million.

(10) In establishing the amount of the license fee for an applicant under this section, the department shall use the annual gross dollar volume of sales and services by that applicant within Oregon during the prior calendar year or, if the applicant maintains sales and service records on a fiscal basis,

the prior fiscal year. If the applicant applying for an original license or for a renewal license cannot provide the annual gross dollar volume of sales and services for a full calendar year, the department shall base the fee on estimated annual gross sales and services by the applicant. If an applicant whose previous year's fee was determined using an estimated gross sales and services figure applies for renewal of that license, the fee for the previous license year shall be adjusted to reflect the actual gross dollar volume of sales and services by the applicant.

(11) A distributor or producer-distributor must obtain a license and pay license fees as provided under subsection (8) of this section for each physical facility used to produce, process or distribute fluid milk. A person is not required to obtain a distributor or producer-distributor license to act as a milk hauler or to operate receiving or transfer stations in conjunction with a milk processing plant.

(12) The department may refuse to issue or renew, or may suspend or revoke, a license for any violation of this section or ORS 621.062, 621.070, 621.076, 621.084, 621.088, 621.117, 621.122 or 621.259 or processes or standards established under ORS 621.060 or 621.083. [Formerly 621.075; 1967 c.254 §1; 1971 c.773 §8; 1982 s.s.1 c.4 §7; 1991 c.632 §4; 1997 c.249 §188; 1999 c.197 §12; 2005 c.735 §§9,10]

621.073 Suspension of grade use privilege. (1) In addition to the powers conferred on the State Department of Agriculture under ORS 621.018, 621.060, 621.072, 621.076, 621.083 and 621.226, the department may suspend the privilege of any person to use a grade designation on containers of fluid milk produced or distributed by the person. The power of suspension may be exercised by the department for any violation of ORS 621.062, 621.070, 621.072, 621.076, 621.084, 621.088, 621.117, 621.122 (7), 621.226 or 621.259, standards adopted under ORS 621.060, 621.083 or 621.224 or any department rules.

(2) A suspension shall not exceed 10 days except that, before lifting the suspension, the department shall ensure that the violation causing the suspension has been corrected.

(3) A suspension shall not be imposed for a violation unless the violator has previously committed the same violation and the department has, within the six months immediately preceding the violation for which the suspension is imposed, provided written notification to the violator that another violation of the same character would be grounds for suspension. The notice of suspension shall be in writing and shall state length of the suspension and the reason for the suspension.

(4) The provisions of ORS 183.413 to 183.470 do not apply to suspensions imposed under authority of this section, although appeal shall be in the manner provided by ORS 183.484, 183.486, 183.490 and 183.497. This subsection shall not deprive a person of the right to present any defense to a criminal prosecution instituted for violation of ORS 621.062, 621.070, 621.072, 621.076, 621.084, 621.088, 621.117, 621.122 (7), 621.226 or 621.259, nor shall it deprive a person of the right to a declaratory judgment. [Formerly 621.120]

621.074 [Formerly 621.080; repealed by 1963 c.48 §5]

621.075 [Amended by 1955 c.714 §13; renumbered 621.072]

621.076 Container labeling; bottling unpasteurized milk; prohibition against milk by or from suspended licensee. (1) A person shall not sell, expose or offer for sale or knowingly transport fluid milk in containers:

(a) If the fluid milk has been produced or processed in violation of ORS 621.070.

(b) If the container or container cap is not labeled with the name and address of the producer, distributor, nonprocessing distributor or producer-distributor of the milk and the applicable state grade. However, containers of unpasteurized fluid milk that are shipped by producers to a milk processing plant or a dairy products plant for pasteurization and that are identified by shipper name or number shall not be required to be so labeled.

(2) A person shall not bottle unpasteurized fluid milk except on the premises where it is produced.

(3) A producer or producer-distributor shall not sell or offer for sale fluid milk during the period that the license of the producer or producer-distributor to use a grade designation on fluid milk has been suspended under ORS 621.072 or 621.073.

(4) A distributor shall not knowingly purchase fluid milk from any person whose license to use a grade designation has been suspended under ORS 621.072 or 621.073.

(5) A distributor shall not knowingly purchase fluid milk from any person other than a person licensed under ORS 621.072.

(6) Each container of fluid milk sold or exposed or offered for sale by a nonprocessing distributor shall be labeled on the container or on the container cap with either the name and address of the distributor or producer-distributor processing and bottling the fluid milk or with a code number, assigned by the State Department of Agriculture, identifying the distributor or producer-distributor. [Formerly 621.115]

621.077 [Formerly 621.082; 1999 c.197 §13; renumbered 621.224 in 1999]

621.078 Additional users of milk processing plant; fees; rules. (1) The State Department of Agriculture may issue a distributor or producer-distributor license under ORS 621.072 to one or more additional users of a milk processing plant that is primarily operated by another distributor or producer-distributor. A license issued to an additional user for activities at the milk processing plant may differ in activity type and fluid milk grade from the license issued to the primary operator of the plant. The physical facilities of the milk processing plant must conform to the requirements for all activity types and milk grades for which the primary operator and the additional users of the plant are licensed. Regardless of the number of persons licensed to use a milk processing plant, the department may not recognize more than one distributor or producer-distributor as the primary operator of the plant.

(2) The department may assess a distributor or producer-distributor license fee to an additional user of a milk processing plant, calculated as provided in ORS 621.072. In calculating license fees under ORS 621.072, the annual gross dollar volume of sales and services for an additional user of a milk processing plant is independent of the annual gross dollar volume of sales and services for any other user or the primary operator of the plant.

(3) Notwithstanding ORS 621.072, the department may adopt rules to establish the license expiration, renewal and application dates for distributors or producer-distributors that are additional users of a milk processing plant.

(4) The department may adopt rules to determine the responsibilities of a milk processing plant's primary operator and additional users of the milk processing plant under standards prescribed by ORS 621.176 and 621.181 and under ORS 621.183.

(5) A recognized primary operator of a milk processing plant shall notify the department upon the expiration or termination of the rental or lease of the plant by an additional user of the plant. [2007 c.645 §7]

621.079 [1959 c.145 §§2, 3; 1979 c.320 §1; repealed by 1982 s.s.1 c.4 §7]

621.080 [Amended by 1959 c.145 §9; renumbered 621.074]

621.081 [1959 c.145 §§4,5,6,8; 1963 c.48 §3; 1971 c.773 §9; 1979 c.320 §2; repealed by 1982 s.s.1 c.4 §14]

621.082 [1955 c.714 §16; renumbered 621.077]

621.083 Procedures and equipment for graders. The State Department of Agriculture may establish standards of procedure and acceptable types of equipment for use by graders in taking and safeguarding samples of milk for analysis. [1959 c.145 §7; 1979 c.320 §11; 1999 c.197 §14]

WEIGHING, SAMPLING AND TESTING

621.084 Weighing, sampling and testing fluid milk. Distributors, producer-distributors, dairy products plant licensees and all other purchasers of milk from producers shall weigh, sample and test fluid milk purchased by them from producers in the same manner as milk and cream are weighed, sampled and tested under ORS 621.096. [1955 c.714 §8; 1999 c.197 §15]

621.085 [Repealed by 1999 c.197 §61]

621.088 Sale or possession of milk or cream to which water has been added. A producer, producer-distributor, distributor, nonprocessing distributor or dairy products plant licensee shall not offer or expose for sale, sell, exchange, deliver, possess or control with intent to sell, expose for sale or deliver, purchase for resale or receive for manufacture, any milk or cream to which water has been added, as evidenced by official State Department of Agriculture laboratory testing, except as may be permitted by the department in:

(1) The reconstitution of fluid milk; or

(2) The transportation of the product containing added water to a dairy products plant for recovery of the milk food solids. [1955 c.714 §10; 1957 c.346 §1; 1979 c.320 §3; 1999 c.197 §16]

621.089 [1955 c.25 §2; 1973 c.99 §1; 1983 c.55 §1; 1999 c.197 §17; 1999 c.937 §2a; renumbered 621.012 in 1999]

621.090 [Amended by 1959 c.241 §1; repealed by 1999 c.197 §61]

621.092 Right of producer to be present at weighing, sampling or testing and to have own tests made. The producer of milk or cream, or the producer's agent, has the right to be present while the distributor, producer-distributor or dairy products plant licensee weighs, samples or tests the milk or cream, and to take samples of the milk or cream and have them privately tested. At the request of any producer, a distributor, producer-distributor or dairy products plant licensee shall notify the producer of the time and place where the milk or cream will be weighed, sampled or tested. [Formerly 621.241]

621.093 Liability of licensee for inaccurate weighing, sampling, testing or recording; attorney fees. If a producer is damaged by an inaccurate weighing, sampling or testing of milk or cream by a distributor, producer-distributor or dairy products plant licensee or by the inaccurate recording of the results of any test by the distributor, producer-distributor or licensee, the producer may bring an action for those damages. The court may award reasonable

attorney fees to the prevailing party in an action under this section. [Formerly 621.246]

621.094 Authority of department to take charge of weighing, sampling and testing upon noncompliance. (1) If a distributor, producer-distributor or dairy products plant licensee fails to comply with any provision of ORS 621.056, 621.057, 621.084, 621.092, 621.122 (7) to (10) or 621.226 or regulations adopted under ORS 621.096, the State Department of Agriculture may revoke the license or, with the written consent of the distributor, producer-distributor or licensee, may perform the weighing, sampling and testing of the milk or cream received or purchased by the distributor, producer-distributor or licensee.

(2) The department shall employ competent personnel of its own choice to perform the weighing, sampling or testing under subsection (1) of this section. The salary and necessary expenses of the personnel shall be paid by the department. The distributor, producer-distributor or licensee shall reimburse the department for the salary and expenses monthly.

(3) The department shall continue to perform the weighing, sampling and testing of the milk or cream received or purchased by the distributor, producer-distributor or dairy products plant licensee until the department is satisfied that the distributor, producer-distributor or licensee is willing and able to comply with all the provisions of ORS 621.056, 621.057, 621.084, 621.092, 621.122 (7) to (10) and 621.226 and regulations adopted under ORS 621.096. When the department is so satisfied, control of the weighing, sampling and testing shall be returned to the distributor, producer-distributor or licensee. [Formerly 621.251]

621.095 [Repealed by 1999 c.197 §61]

621.096 Regulations regarding weighing, sampling and testing. (1) The State Department of Agriculture shall promulgate regulations relating to the weighing, sampling and testing of milk and cream.

(2) The department shall ensure that all milk that a distributor, producer-distributor or dairy products plant licensee purchases from producers is tested by the distributor, producer-distributor or licensee for milk fat content using an accurate and efficient test approved by the department. [Formerly 621.236]

621.100 [Repealed by 1999 c.197 §61]

621.102 [1957 c.346 §2; repealed by 1999 c.197 §61]

621.105 [Amended by 1999 c.197 §18; renumbered 621.018 in 1999]

621.110 [Repealed by 1979 c.320 §19]

621.115 [Amended by 1955 c.714 §14; 1999 c.197 §19; renumbered 621.076 in 1999]

PROHIBITED ACTS, GENERALLY

621.116 Prohibition against retail sale of unpasteurized milk from cows. A person may not sell or distribute for sale unpasteurized milk or fluid milk from cows, or dairy products from unpasteurized milk or fluid milk from cows, other than to a distributor, producer-distributor, dairy products plant licensee or nonprocessing cooperative. This section does not apply to the sale or distribution of cheese otherwise exempt from pasteurization requirements or to sales or distributions by a person described under ORS 621.012. [1999 c.937 §2]

621.117 Distributor or producer-distributor may sell only milk that is pasteurized or from disease-free goats or sheep. A distributor, producer-distributor or dairy products plant licensee shall not sell or offer or expose for sale any dairy product or fluid milk for human consumption unless the milk used in the dairy product or fluid milk has been pasteurized or is goat or sheep's milk that was produced by a disease-free herd, except that if not more than one reactor animal appears when the goat or sheep herd is tested for brucellosis, the milk, dairy products or fluid milk may still be sold if the animal is slaughtered and no additional reactor animals appear when the herd is retested, as provided in ORS chapter 596 and regulations promulgated thereunder. If one or more reactor animals appear when the herd is retested, no milk, dairy products or fluid milk from the herd may be sold until the herd regains a brucellosis-free status. [1955 c.714 §9(3); 1957 c.346 §3; 1969 c.152 §5; 1975 c.299 §1; 1999 c.197 §20; 1999 c.937 §4]

621.118 [1955 c.714 §9(1), (2); 1999 c.197 §21; renumbered 621.259 in 1999]

621.119 [1955 c.714 §9(4); repealed by 1999 c.197 §61]

621.120 [Amended by 1961 c.425 §14; 1979 c.320 §4; 1999 c.197 §22; renumbered 621.073 in 1999]

621.122 Prohibitions regarding sales, pasteurization, sampling, weighing, grading and containers; prohibited acts of licensees; pasteurization exemption. (1) A person shall not operate or permit the operation of any pasteurization equipment except under the direct personal supervision of a person licensed as a pasteurizer operator under ORS 621.266.

(2) A distributor, producer-distributor or dairy products plant licensee shall not sell, offer or expose for sale any milk or cream that has not been pasteurized or produced by a disease-free goat or sheep herd, except to another distributor, producer-distributor or dairy products plant licensee for the manufacture of milk, fluid milk or dairy products.

(3) Except as permitted by ORS 621.003, 621.012, 621.060 and 621.076, a person shall not knowingly sell, offer or expose for sale

any milk or cream that has not been pasteurized or produced by a disease-free goat or sheep herd, except to a distributor, producer-distributor or dairy products plant licensee for the manufacture of milk, fluid milk or dairy products.

(4) A distributor, producer-distributor or dairy products plant licensee shall not sell, offer or expose for sale any milk, fluid milk or dairy product processed or manufactured by the distributor, producer-distributor or licensee unless all of the milk or cream constituents from cows have been pasteurized and all milk or cream constituents from goats or sheep were produced by a disease-free herd or have been pasteurized.

(5) A person shall not knowingly sell, offer or expose for sale any dairy product unless all of the milk or cream constituents of the product from cows have been pasteurized and all constituents from goats or sheep were produced by a disease-free herd or have been pasteurized.

(6) Excepting cottage cheese and any cheese required to be pasteurized by rule of the State Department of Agriculture, the pasteurization requirement of subsections (4) and (5) of this section shall not apply to cheese that has been aged for at least 60 days from the date of manufacture. The manufacture date must appear on the cheese or its container.

(7) A person shall not falsely represent by word, design, device or by any other means that any milk, cream, fluid milk, dairy product, frozen dessert mix or frozen dessert has been pasteurized.

(8) A distributor, producer-distributor or dairy products plant licensee must provide for the grading of all milk transported, received or purchased by the distributor, producer-distributor or licensee as required by ORS 621.056, 621.057, 621.084 and 621.226 and regulations adopted under ORS 621.096.

(9) A person shall not alter, remove or tamper with any condemnation tag affixed by the State Department of Agriculture or a grader pursuant to the provisions of ORS 621.203 or 621.226.

(10) A distributor, producer-distributor or dairy products plant licensee or grader shall not:

(a) Negligently sample, weigh or test any milk or cream.

(b) Fraudulently manipulate any weight, sample or test of milk or cream.

(c) Make a false entry or record of the weight, or test of milk or cream on any statement, record or invoice. [Formerly 621.286]

621.124 Milk not to be sold if from diseased animals or from animals that have not been tested or retested for brucellosis. (1) A person shall not sell or offer or expose for sale any fluid milk with knowledge that the milk has been produced from a herd of cows, sheep or goats, one or more of which were infected with brucellosis at the time the milk was produced, or with knowledge that not all the animals in the herd have been tested or retested for brucellosis in a manner approved by the State Department of Agriculture.

(2) The tests described by this section shall be performed only by state veterinarians, assistant state veterinarians or deputy state veterinarians employed or appointed by the department, or by veterinarians employed by the United States Department of Agriculture. [1957 c.346 §5 (enacted in lieu of 621.125); 1999 c.197 §23]

621.125 [Amended by 1955 c.14 §1; repealed by 1957 c.346 §4 (621.124 enacted in lieu of 621.125)]

621.151 [1953 c.686 §30; repealed by 1999 c.197 §61]

621.152 [1953 c.686 §1; 1957 c.346 §7; 1963 c.80 §1; 1969 c.164 §4; 1971 c.769 §2; 1981 c.523 §4; repealed by 1999 c.197 §61]

621.155 [Repealed by 1953 c.686 §37]

621.156 [1953 c.686 §29; 1955 c.714 §6; 1971 c.769 §3; 1979 c.320 §5; 1982 s.s.1 c.4 §8; repealed by 1999 c.197 §61]

621.160 [Repealed by 1953 c.686 §37]

DAIRY PRODUCTS PLANTS

621.161 Operation of dairy products plant without license prohibited. A person shall not operate a dairy products plant unless that person has a valid dairy products plant license. A separate license is required for each dairy products plant operated. A person is not required to obtain a dairy products plant license to act as a milk hauler or to operate receiving or transfer stations in conjunction with a milk processing plant. [1953 c.686 §2; 1971 c.769 §4; 1999 c.197 §24]

621.165 [Repealed by 1953 c.686 §37]

621.166 Application for dairy products plant license; rules; fee; expiration; mobile milk tanker fees. (1) Application for a dairy products plant license shall be made to the State Department of Agriculture on forms provided by the department. Each license and each annual renewal shall expire on June 30 next following its issuance or on such date as may be specified by department rule. Dairy products plant licenses are personal and are not transferable.

(2) Each dairy products plant shall submit a separate fee established by the department for each mobile milk tanker. The fee shall not apply to a mobile milk tanker owned and operated by a dairy products plant while transporting dairy products from

the dairy products plant to wholesale or retail outlets for those products. As used in this section, "mobile milk tanker" means a tank or other receptacle that attaches to a bulk tank truck or other equipment and is used to transport fluid milk, milk or milk products.

(3) The department shall establish the license fee for a mobile milk tanker in accordance with ORS chapter 183. The fee may not be less than $25 or more than $50. The fees for a dairy products plant are:

(a) $135 if the applicant's annual gross dollar volume of sales and services is not more than $50,000;

(b) $189 if an applicant's annual gross dollar volume of sales and services is more than $50,000 and not more than $500,000;

(c) $325 if an applicant's annual gross dollar volume of sales and services is more than $500,000 and not more than $1 million;

(d) $487 if an applicant's annual gross dollar volume of sales and services is more than $1 million and not more than $5 million;

(e) $649 if an applicant's annual gross dollar volume of sales and services is more than $5 million and not more than $10 million; or

(f) $812 if an applicant's annual gross dollar volume of sales and services is more than $10 million.

(4) In establishing the amount of the license fee for an applicant, the department shall use the annual gross dollar volume of sales and services by that applicant within Oregon during the prior calendar year or, if the applicant maintains sales and service records on a fiscal basis, the prior fiscal year. If the applicant applying for an original license or for a renewal license cannot provide the annual gross dollar volume of sales or services for a full calendar year, the department shall base the fee on estimated annual gross sales and services by the applicant. If an applicant whose previous year's fee was determined using an estimated gross sales and services figure applies for renewal of that license, the fee for the previous license year shall be adjusted to reflect the actual gross dollar volume of sales and services by the applicant. [1953 c.686 §3; 1967 c.254 §2; 1971 c.769 §5; 1979 c.320 §6; 1982 s.s.1 c.4 §9; 1991 c.632 §5; 1999 c.197 §25; 2005 c.735 §§11,12; 2007 c.768 §§27,28]

621.169 Additional users of dairy products plant; fees; rules. (1) The State Department of Agriculture may issue a dairy products plant license under ORS 621.166 to one or more additional users of a dairy products plant that processes or uses milk to manufacture dairy products and is primarily operated by another person. A license issued to an additional user for activities at the dairy products plant shall cover all operations at that plant by the person licensed. Regardless of the number of persons licensed to use a dairy products plant, the department may not recognize more than one person as the primary operator of the plant.

(2) The department may assess a license fee to an additional user of a dairy products plant described in subsection (1) of this section, calculated as provided in ORS 621.166. In calculating license fees under ORS 621.166, the annual gross dollar volume of sales and services for an additional user of the dairy products plant is independent of the annual gross dollar volume of sales and services for any other user or the primary operator of the plant.

(3) Notwithstanding ORS 621.166, the department may adopt rules to establish the license expiration, renewal and application dates for additional users of a dairy products plant.

(4) The department may adopt rules to determine the responsibilities of the dairy products plant's primary operator and additional users of the dairy products plant's under standards prescribed by ORS 621.176 and 621.181 and under ORS 621.183.

(5) A recognized primary operator of a dairy products plant shall notify the department upon the expiration or termination of the rental or lease of the plant by an additional user of the plant. [2007 c.645 §8]

621.170 [Repealed by 1953 c.686 §37]

621.171 Issuance of license; renewal; suspension; revocation. (1) The State Department of Agriculture shall issue a dairy products plant license under ORS 621.166 or a license under ORS 621.072 for a distributor or producer-distributor to use a physical facility when it determines that the dairy products plant or the facility to be operated by the applicant is in compliance with the standards prescribed by the department pursuant to ORS 621.176 and 621.181.

(2) The department may refuse to issue or renew or may revoke or suspend the license of any person who fails to comply with the provisions of ORS 621.056, 621.057, 621.092, 621.122, 621.183 and 621.198 and the regulations promulgated under ORS 621.096 or 621.261. [1953 c.686 §4; 1999 c.197 §26]

621.175 [Repealed by 1953 c.686 §37]

DISEASE AND CONTAMINATION PREVENTION

621.176 Standards of construction for plants and facilities. To ensure that the handling and processing of milk, fluid milk and dairy products is conducted in a sanitary environment, the State Department of Agriculture shall prescribe minimum standards

of construction for dairy products plants and physical facilities of a distributor or producer-distributor, including but not limited to standards for:

(1) Floors, walls, ceilings.

(2) Doors and windows.

(3) Lighting and ventilation.

(4) Toilet and lavatory facilities.

(5) Water supply.

(6) Separation and partitioning of rooms for carrying on the several handling, processing and storage functions. [1953 c.686 §5; 1999 c.197 §27]

621.180 [Repealed by 1953 c.686 §37]

621.181 Standards of sanitation for operation of plants and facilities. The State Department of Agriculture shall prescribe minimum standards of sanitation for the operation of dairy products plants and physical facilities of a distributor or producer-distributor including, but not limited to, standards for the:

(1) Washing, cleaning, maintenance and condition of floors, walls and ceilings of all rooms directly connected with the handling, processing and storage of dairy products, fluid milk or milk, and the equipment used therein, including bulk tank trucks and other mobile equipment used in the transportation of milk or cream from farm to plant or between plants.

(2) Health and cleanliness of personnel.

(3) Cleanliness and sanitation of surrounding premises.

(4) Disposal of all waste and sewage material.

(5) Control of insects and rodents.

(6) Construction, cleaning and sanitizing of utensils, containers and equipment used in direct contact with dairy products, fluid milk or milk. [1953 c.686 §6; 1999 c.197 §28]

621.183 Prohibition against operating plant or facility that does not meet standards. A person shall not operate a dairy products plant or a physical facility of a distributor or producer-distributor that fails to conform to the standards prescribed pursuant to ORS 621.176 and 621.181. [1999 c.197 §4]

621.185 [Repealed by 1953 c.686 §37]

621.186 [1953 c.686 §7; repealed by 1999 c.197 §61]

621.190 [Repealed by 1953 c.686 §37]

621.191 [1953 c.686 §8; repealed by 1969 c.152 §6]

621.193 Standards for farm bulk storage facilities. The State Department of Agriculture shall prescribe standards of construction and sanitation for bulk storage tanks, equipment, buildings and other facilities used by producers to store milk that is to be sold to a dairy products plant or to be used at a physical facility of a distributor or producer-distributor. The standards shall be for the purpose of ensuring the wholesomeness of milk, fluid milk and dairy products, and may include, but are not limited to, standards regulating the:

(1) Size, location, construction and sanitation of bulk storage tanks, equipment, buildings and other facilities.

(2) Lighting and ventilation.

(3) Water supply.

(4) Cooling equipment. [1969 c.164 §2; 1999 c.197 §29]

621.195 [Repealed by 1953 c.686 §37]

621.196 [1953 c.686 §9; repealed by 1969 c.152 §6]

621.198 Prohibition against use or dealing with user of nonstandard bulk storage facilities. (1) A producer shall not store milk that is to be sold to a dairy products plant or to be used at a physical facility of a distributor or producer-distributor, in bulk storage tanks, equipment, buildings or other facilities that do not conform to the standards prescribed pursuant to ORS 621.193.

(2) A distributor, producer-distributor or dairy products plant licensee shall not receive or purchase milk from a producer, that is stored in bulk storage tanks, equipment, buildings or other facilities that do not conform to the standards prescribed pursuant to ORS 621.193. [1969 c.164 §3; 1999 c.197 §30]

621.200 [Repealed by 1953 c.686 §37]

621.201 [1953 c.686 §10; 1955 c.118 §1; 1979 c.91 §1; 1999 c.197 §31; renumbered 621.058 in 1999]

621.203 Condemnation of unfit container and its contents. (1) The State Department of Agriculture shall condemn any container that it finds unfit for use by reason of dirt, rust, open seams or any other condition that may contaminate fluid milk, milk or dairy products or otherwise render them unfit for human use or consumption. The department shall provide by rule the method of plainly identifying condemned containers, which shall include affixing a tag to, or marking on, the container a notice of the fact of condemnation and a brief statement of the reasons therefor.

(2) It shall be conclusively presumed that any fluid milk, milk or dairy product in a container that has been condemned by the department and that bears a condemnation tag or marking is unfit for human consumption. The department shall condemn such fluid milk, milk or dairy product. The condemnation shall be carried out by thoroughly mixing a harmless red coloring matter prescribed by the department with the contents of the container. The department may authorize licensed pasteurizer operators and graders to make the condemnation.

(3) If the container can be repaired, or the reason for the condemnation otherwise removed, the condemnation of the container may be lifted by the department. The department may authorize licensed pasteurizer operators and graders to lift the condemnation of a container when appropriate repairs have been made or the reason for the condemnation has been otherwise removed. [Formerly 621.661]

621.205 [Repealed by 1953 c.686 §37]

621.206 [1953 c.686 §11; 1979 c.320 §12; 1999 c.197 §32; renumbered 621.056 in 1999]

621.207 Prohibition against unauthorized removal of condemnation tag or marking or use of container or its contents. (1) A person other than an authorized employee or agent of the State Department of Agriculture shall not remove a condemnation tag or marking from a container.

(2) A person shall not place any fluid milk, cream, milk or dairy product in a container bearing a condemnation tag or marking.

(3) A person shall not use the contents of a container that has been condemned to manufacture, process or bottle fluid milk, cream, milk or dairy products. [Formerly 621.666]

621.210 [Repealed by 1953 c.686 §37]

621.211 [1953 c.686 §15; 1979 c.320 §16; repealed by 1999 c.197 §61]

621.215 [Repealed by 1953 c.686 §37]

621.216 [1953 c.686 §12; 1979 c.320 §14; 1999 c.197 §33; renumbered 621.057 in 1999]

621.220 [Repealed by 1953 c.686 §37]

621.221 [1953 c.686 §13; 1955 c.118 §2; repealed by 1999 c.197 §61]

621.224 Bacterial standards. All fluid milk is subject to the same bacterial standards as established by rule of the State Department of Agriculture. [Formerly 621.077]

621.225 [Repealed by 1953 c.686 §37]

621.226 Condemnation of unlawful milk, cream, dairy product or fluid milk. (1) Whenever a grader determines that any milk, cream, dairy product or fluid milk is unlawful, the grader shall immediately affix a condemnation tag to the milk, cream, dairy product or fluid milk container. Condemnation tags shall be in a form prescribed by the State Department of Agriculture. The grader shall also thoroughly mix sufficient harmless red coloring matter with the condemned milk, cream, dairy product or fluid milk to prevent the milk, cream, dairy product or fluid milk from being sold, offered or exposed for sale for human consumption.

(2) As used in this section, the term "unlawful" means:

(a) Milk, cream, fluid milk or dairy product that contains dirt, filth, oil or other foreign matter that may render the milk, cream, fluid milk or dairy product, or dairy products derived from them, unfit for human consumption.

(b) Milk, cream, fluid milk or dairy product that is stale, cheesy, rancid, putrid, decomposed or actively foaming. [1953 c.686 §14; 1999 c.197 §34]

621.230 [Repealed by 1953 c.686 §37]

621.231 [1953 c.686 §18; 1959 c.144 §1; repealed by 1999 c.197 §61]

621.236 [1953 c.686 §19; 1959 c.144 §2; 1999 c.197 §35; renumbered 621.096 in 1999]

621.241 [1953 c.686 §20; 1999 c.197 §36; renumbered 621.092 in 1999]

621.246 [1953 c.686 §21; 1981 c.897 §72; 1995 c.618 §92; 1999 c.197 §37; renumbered 621.093 in 1999]

621.251 [1953 c.686 §22; 1999 c.197 §38; renumbered 621.094 in 1999]

621.255 [Repealed by 1953 c.686 §37]

621.256 [1953 c.686 §16; repealed by 1999 c.197 §61]

621.259 Pasteurization equipment; supervision by licensed pasteurizer operator. If pasteurization equipment is used by a distributor or producer-distributor or at a dairy products plant, the distributor, producer-distributor or dairy products plant licensee shall ensure that the pasteurization process is under the direct supervision of a pasteurizer operator licensed under ORS 621.266. [Formerly 621.118]

621.260 [Repealed by 1953 c.686 §37]

621.261 Regulations regarding equipment used in pasteurization process. The State Department of Agriculture shall promulgate regulations prescribing the equipment to be used in the pasteurization of dairy products and the manner of cleaning and maintaining the equipment. When the department authorizes the use of heat as a method of pasteurization, it shall prescribe the necessary regulations for the use of recording thermometers or other devices for determining the time and temperature reached during the pasteurization process. [1953 c.686 §17]

621.265 [Repealed by 1953 c.686 §37]

621.266 Pasteurizer operator license; rules; fee. (1) Application for a pasteurizer operator license shall be made to the State Department of Agriculture on forms provided by the department. A license issued or renewed by the department under this section may be restricted so as to authorize the licensee to engage only in a limited line of activity commensurate with the ability of the licensee.

(2) An applicant for original issuance of a license must pass a reasonable written examination, give a practical demonstration of ability to carry out licensee duties and pay the fee required by this section.

(3) A license issued under this section expires on June 30 of each even-numbered year next following the date of its issuance or on such date as may be specified by department rule, and may be renewed upon application of the licensee. Each application for issuance or renewal of a license shall be accompanied by a nonrefundable fee determined by the department.

(4) The fee described in subsection (3) of this section shall be established by the department in accordance with ORS chapter 183 and shall not exceed $50.

(5) Subsections (1) to (3) of this section do not apply to a pasteurizer operator license issued as a lifetime license prior to September 29, 1991. However, in order to maintain a lifetime license in effect, the licensee must submit a registration form to the department by June 30 of each even-numbered year or by such date as may be specified by department rule confirming the desire of the licensee to continue the lifetime license. [1953 c.686 §23; 1963 c.48 §4; 1971 c.773 §10; 1979 c.320 §7; 1991 c.404 §2; 1999 c.197 §39; 2007 c.768 §29]

621.270 [Repealed by 1953 c.686 §37]

621.271 [1953 c.686 §24; repealed by 1979 c.320 §19]

621.275 [Repealed by 1953 c.686 §37]

621.276 Licensees to show knowledge of and ability to comply with changes in laws or regulations. (1) When any amendment is made in the laws of this state or new regulations are promulgated relating to a change in the grades of milk or the operation of pasteurizing equipment, the State Department of Agriculture may require any person licensed by the department to demonstrate knowledge and familiarity with the amendments or changes and ability to comply with them.

(2) Any person who becomes subject to the provisions of this section has not less than 30 nor more than 60 days to meet the additional requirements. If, at the expiration of 60 days, the person licensed has not demonstrated knowledge and ability in respect to the additional requirements, the applicable license shall be suspended automatically. [1953 c.686 §25; 1979 c.320 §13; 1999 c.197 §40]

621.280 [Repealed by 1953 c.686 §37]

621.281 Suspension or revocation of licenses issued under ORS 621.266. If a person licensed under ORS 621.266 does not fully and faithfully comply with all provisions of ORS 621.122, 621.266 or 621.276 or standards and regulations adopted under ORS 621.181 and 621.261, the license of the person may be revoked, suspended or limited. [1953 c.686 §26; 1999 c.197 §41]

621.285 [Repealed by 1953 c.686 §37]

621.286 [1953 c.686 §28; 1969 c.152 §1; 1971 c.743 §402; 1971 c.769 §6; 1979 c.320 §17; 1983 c.740 §234; 1999 c.197 §42; 1999 c.937 §6; renumbered 621.122 in 1999]

621.290 [Repealed by 1953 c.686 §37]

621.291 [1953 c.686 §36; repealed by 1999 c.197 §61]

621.293 [1971 c.769 §8; repealed by 1979 c.320 §19]

621.295 [Repealed by 1953 c.686 §37]

621.297 Certification of milk and dairy product testing laboratories; fee. (1) The chief laboratory officer of the State Department of Agriculture may certify milk and dairy industry laboratories or other commercial laboratories capable of analyzing milk and dairy products to perform specified analyses of milk and dairy products. Certification shall be for those tests, analyses and methods specified by the department and may be limited by the department to one or more specific tests, methods or products.

(2) On or before July 1 of each year, a laboratory certified under subsection (1) of this section shall pay a fee established by the department not exceeding $100. [1971 c.769 §9; 1999 c.197 §43]

621.300 Use of Ring Test or Whey Test for brucellosis. The State Department of Agriculture may approve the use of the Ring Test or the Whey Test as alternatives to blood testing of milk producing animals for brucellosis. [Formerly 621.020]

621.305 [Amended by 1953 c.684 §12; 1959 c.343 §1; 1961 c.459 §1; 1965 c.45 §1; 1979 c.320 §8; repealed by 1999 c.197 §61]

ICE CREAM AND OTHER FROZEN DESSERTS

621.310 [Amended by 1953 c.684 §12; repealed by 1961 c.360 §1 (621.311 enacted in lieu of 621.310)]

621.311 Definitions and standards of identity for frozen desserts; rules. As authorized by ORS 616.230 and 632.900 to 632.935, the State Department of Agriculture shall, by rule, establish definitions and standards of identity for frozen desserts. [1961 c.360 §2 (enacted in lieu of 621.310); 1965 c.45 §2; 1985 c.286 §1; 1999 c.197 §44]

621.315 [Amended by 1953 c.684 §12; repealed by 1999 c.197 §61]

621.320 Labeling requirements for frozen desserts; exemption. (1) Frozen desserts sold in package form or final delivery containers shall be labeled as required by rule of the State Department of Agriculture. Except as provided under subsection (2) of this section, to the extent that the department considers practicable and applicable in this state, the labeling requirements adopted by rule of the department shall conform to the labeling requirements prescribed under 21 C.F.R. part 101. The department labeling requirements may be changed from time to time as the department considers desirable to conform with alterations or amendments to federal labeling requirements.

(2) Packages and final delivery containers of frozen desserts that are filled in the pres-

ence of the purchaser at retail are exempt from the labeling requirements of this section if a sign in boldfaced type not less than three-eighths of an inch high is displayed in plain view of the purchaser and contains all the information otherwise required to be on the label. [Amended by 1953 c.684 §12; 1961 c.360 §3; 1969 c.152 §2; 1979 c.320 §9; 1999 c.197 §45]

621.325 [Amended by 1953 c.684 §12; subsection (3) enacted as 1953 c.684 §7; 1961 c.360 §4; 1985 c.286 §2; repealed by 1999 c.197 §61]

621.330 [Amended by 1953 c.684 §12; 1979 c.320 §10; repealed by 1999 c.197 §61]

621.335 Licenses to make and sell frozen desserts at wholesale; fees; expiration; rules. (1) A person engaged in the business of freezing or making frozen desserts and then selling those frozen desserts at wholesale must obtain a license to carry on that business from the State Department of Agriculture as provided in this section. The person must obtain a separate license for each wholesale establishment operated by the person.

(2) Upon payment to the department of a license fee of $60, the department may issue a license to any applicant to make or freeze frozen desserts and then sell those frozen desserts at wholesale.

(3) The license shall expire on June 30 next following the date of its issuance or on such date as may be specified by department rule. A license is personal to the applicant and is not transferable. [Amended by 1959 c.343 §2; 1967 c.254 §3; 1983 c.4 §10; 1999 c.197 §45a; 2007 c.768 §30]

621.340 Selling frozen dessert with excessive bacteria count prohibited. A frozen dessert wholesaler shall not sell, offer for sale or possess with intent to sell a frozen dessert or frozen dessert mix that has an excessive bacteria count as established by rule of the State Department of Agriculture. Frozen desserts in which cultured milk is an ingredient shall not be required to meet any bacteria count standards. [Amended by 1953 c.684 §12; 1969 c.152 §3; 1999 c.197 §46]

621.345 Sale or offering for sale of nonconforming product prohibited. A person shall not sell or offer for sale any product that the person represents to be a frozen dessert or that simulates or imitates the taste, texture or general composition of a frozen dessert unless the product conforms to the standard of identity for that frozen dessert established by rule of the State Department of Agriculture pursuant to ORS 621.311. [Amended by 1953 c.684 §12; 1999 c.197 §47]

621.348 [1953 c.684 §12; repealed by 1999 c.197 §61]

621.350 [Amended by 1953 c.684 §12; repealed by 1999 c.197 §61]

621.352 [1953 c.684 §12; repealed by 1999 c.197 §61]

621.355 [Repealed by 1999 c.197 §61]

621.357 [1953 c.684 §12; repealed by 1999 c.197 §61]

621.360 [Amended by 1953 c.684 §12; repealed by 1999 c.197 §61]

621.365 [Repealed by 1999 c.197 §61]

621.367 [1953 c.684 §12; repealed by 1999 c.197 §61]

621.368 Revocation of licenses. The State Department of Agriculture may revoke a license issued pursuant to ORS 621.335 for a violation of ORS 621.340 or 621.345 by the licensee. [1953 c.684 §12; 1999 c.197 §48]

621.369 Possession of frozen dessert or frozen dessert mix as prima facie evidence of intent to sell. In any proceeding instituted for a violation of ORS 621.340 in which possession with intent to sell a frozen dessert or frozen dessert mix is an issue, possession by the accused of frozen dessert or frozen dessert mix in containers of the size and type commonly used by the accused in selling that product shall be prima facie evidence of intent to sell. [1953 c.684 §12; 1999 c.197 §49]

621.370 [Repealed by 1963 c.48 §5]

CONDENSED OR EVAPORATED MILK; IMITATION MILK AND DAIRY PRODUCT SUBSTITUTES

621.405 Definitions and standards for condensed or evaporated milk. (1) A person shall not manufacture for sale, possess with the intent to sell, offer or expose for sale or sell any condensed or evaporated milk unless it conforms to the definitions and standards established by the State Department of Agriculture pursuant to subsection (2) of this section.

(2) The department shall establish definitions and standards of identity, quality and fill of container for condensed and evaporated milk. In establishing the definitions and standards the department shall take into consideration:

(a) Definitions and standards established in other states; and

(b) Definitions and standards established by the federal government under the authority of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 301, et seq., as amended. [Amended by 1975 c.304 §6; 1999 c.197 §50]

621.410 Requisites of milk used in manufacture of condensed or evaporated milk; vegetable fat prohibited. (1) A person shall not manufacture for sale, or sell or exchange, or expose or offer for sale or exchange, any condensed or evaporated milk, or any substance containing any milk or milk products and designed or intended to be used or capable of being used for or as a substitute for condensed or evaporated milk, if the milk used in the manufacture thereof is unlawful as defined under ORS 621.226.

(2) A person shall not manufacture for sale, or sell or expose, or offer for sale or exchange, any condensed or evaporated milk containing any vegetable fat. [Amended by 1999 c.197 §51]

621.415 [Repealed by 1963 c.165 §1 (621.416 enacted in lieu of 621.415)]

621.416 [1963 c.165 §2 (enacted in lieu of 621.415); 1969 c.149 §1; repealed by 1999 c.197 §61]

621.418 Standards for imitation milk products; sale of nonstandard imitation milk prohibited. (1) The State Department of Agriculture shall establish official state standards of quality and identity for imitation milk products in the manner prescribed in ORS 632.900 to 632.935.

(2) In establishing standards of quality and identity for imitation milk products, the department shall consider, in addition to other factors:

(a) The composition and purity of the product ingredients;

(b) The nutritional value of the fats, nonfat solids, vitamins, minerals or other ingredients affecting the food value of the product; and

(c) The degree of sanitation maintained for buildings, equipment and personnel involved in the production, processing and distribution of the product.

(3) A person shall not sell or offer for sale an imitation milk product that does not conform to a standard of quality and identity established by the department. [1969 c.149 §§3,4; 1999 c.197 §52; 2003 c.14 §373]

621.420 [Amended by 1963 c.165 §3; repealed by 1999 c.197 §61]

621.425 [Amended by 1963 c.165 §6; 1969 c.152 §4; repealed by 1999 c.197 §61]

621.429 [1963 c.165 §5; repealed by 1999 c.197 §61]

621.430 [Repealed by 1963 c.165 §8]

621.435 Substitute or imitation dairy products; use of words or pictures indicating product to be genuine; exception. (1) A person engaged in manufacturing, selling, offering for sale, advertising or otherwise dealing in any product used or intended for use as a substitute for or imitation of a dairy product or fluid milk shall not use a trade or corporate name or product name, description, label, package, container, advertising matter or sales literature employing the terms "milk," "butter," "cream," "creamery," "churn," "cheese," "cow" or "dairy" except in connection with imitation milk products.

(2) A person described in subsection (1) of this section shall not use any pictorial or other representations resembling a dairy product or fluid milk in or on the labels, packages, containers, advertising matter or literature of a substitute or imitation product described in subsection (1) of this section in a manner suggesting that the product is made of milk.

(3) This section does not forbid a true statement concerning the ingredients or composition of a product if the statement is not misleading or in any way deceptive.

(4) Subsections (1) and (2) of this section do not apply to products manufactured in this state for the purpose of shipping out of the state and not offered for sale in this state. [Amended by 1963 c.165 §7; 1999 c.197 §53]

621.440 [Repealed by 1999 c.197 §61]

621.445 Restrictions on serving colored butter substitute in public eating place. (1) In any public eating place serving meals for compensation at which a butter substitute colored to imitate butter is served, the owner or manager shall cause the butter substitute to be served:

(a) In triangular pats or triangular bricks; or

(b) On a parchment paper that is clearly marked or labeled with the words "margarine" or "butter substitute."

(2) The administration and enforcement of this section is vested in the State Department of Agriculture. [Amended by 1999 c.197 §54]

621.455 [Repealed by 1953 c.686 §37]

621.460 [Repealed by 1953 c.686 §37]

621.465 [Repealed by 1953 c.686 §37]

621.470 [Repealed by 1953 c.686 §37]

621.475 [Repealed by 1953 c.686 §37]

621.480 [Repealed by 1953 c.686 §37]

621.485 [Repealed by 1953 c.686 §37]

621.490 [Repealed by 1953 c.686 §37]

621.495 [Repealed by 1953 c.686 §37]

621.500 [Repealed by 1953 c.686 §37]

621.505 [Repealed by 1953 c.686 §37]

621.555 [Repealed by 1965 c.107 §7]

621.560 [Repealed by 1965 c.107 §7]

621.565 [Repealed by 1965 c.107 §7]

621.570 [Repealed by 1965 c.107 §7]

621.575 [Repealed by 1965 c.107 §7]

621.580 [Repealed by 1965 c.107 §7]

621.585 [Repealed by 1965 c.107 §7]

621.590 [Repealed by 1965 c.107 §7]

621.595 [Repealed by 1965 c.107 §7]

621.600 [Repealed by 1965 c.107 §7]

621.605 [Repealed by 1959 c.79 §1]

621.610 [Repealed by 1959 c.79 §1]

621.655 [Repealed by 1955 c.81 §1]

621.656 [1955 c.714 §2; repealed by 1999 c.197 §61]

621.660 [Repealed by 1955 c.81 §1]

621.661 [1955 c.714 §3; 1979 c.320 §18; 1999 c.197 §55; renumbered 621.203 in 1999]

621.665 [Repealed by 1955 c.81 §1]

621.666 [1955 c.714 §4; 1999 c.197 §56; renumbered 621.207 in 1999]

621.670 [Repealed by 1955 c.81 §1]
621.675 [Repealed by 1955 c.81 §1]
621.680 [Repealed by 1955 c.81 §1]
621.685 [Repealed by 1953 c.423 §2]
621.690 [Repealed by 1955 c.81 §1]
621.695 [Repealed by 1955 c.50 §1]
621.700 [Repealed by 1955 c.50 §1]
621.705 [Repealed by 1955 c.50 §1]
621.710 [Repealed by 1955 c.50 §1]
621.715 [Repealed by 1955 c.50 §1]

STATE FACILITIES FOR TESTING MILK FAT CONTENT

621.720 Testing for milk fat content required. The State Department of Agriculture shall establish and maintain procedures, systems and plans to carry out and enforce the intent and purposes of ORS 621.730, 621.740 and 621.750. The department shall make department laboratory facilities, equipment, materials and services available to producers and other persons engaged in the milk industry for the official testing, retesting or duplicate testing of milk for milk fat content by means of the "Babcock Test" or any equally accurate and efficient test approved by the department. [1965 c.474 §2; 1999 c.197 §57]

621.730 Department to provide testing; contracts of purchase not to be terminated; testing fees. (1) Within the availability of funds to be collected under ORS 621.740, the State Department of Agriculture shall maintain laboratory facilities and purchase necessary equipment and materials to carry out this section and ORS 621.720, 621.740 and 621.750.

(2) Any producer or other person engaged in the milk industry is authorized to request the department to provide and furnish official testing, retesting or duplicate testing of milk.

(3) A milk handler, dealer, licensee or purchaser of milk shall not terminate or threaten to terminate the purchase of milk from a producer or seller, or take or threaten to take other retaliatory action against a producer or seller of milk, because the producer or seller has exercised rights and privileges as authorized in this section. In addition to any action the department is authorized to take against any person taking retaliatory steps or procedures, the producer or seller of milk may also maintain an action for damages against the same person. The prevailing party in the action shall be entitled to reasonable attorney fees at trial and on appeal.

(4) The department may establish reasonable fees for enforcing and carrying out this section and ORS 621.720, 621.740 and 621.750, in amounts necessary to reimburse the department for the furnishing of services and materials as required thereunder. [1965 c.474 §3; 1979 c.499 §24; 1981 c.897 §73; 1999 c.197 §58]

621.740 Liability for payment of fees. (1) The producer or person requesting official testing and related testing services from the State Department of Agriculture, as authorized under ORS 621.730 and 621.750 shall pay the fees established under ORS 621.730 as provided by rule of the department.

(2) If the producer or person requesting the services is selling milk to a first handler as defined and prescribed in ORS chapter 583, or to a distributor, producer-distributor or dairy products plant licensee, the department may forward an itemized statement for services rendered to the person requesting the services and also to the first handler, distributor, producer-distributor or licensee. The first handler, distributor, producer-distributor or licensee shall pay the itemized amount to the department and shall deduct that amount from the amount paid to the producer or other person selling milk in the same manner and under the same procedures as set forth in ORS 583.046. Any first handler, distributor, producer-distributor or licensee who refuses to make the deduction shall pay the itemized amount to the department.

(3) Subsection (2) of this section does not relieve the producer or person requesting the services from being primarily responsible for payment to the department. The department may take all actions necessary to collect the amount due against the producer or person requesting the services. [1965 c.474 §4; 1999 c.197 §59]

621.750 Sampling and testing; payment adjustments; rules. The State Department of Agriculture shall promulgate rules including but not limited to the following:

(1) Any producer may request the department to make an official milk fat content test of the milk the producer is selling to a dealer, milk handler or purchaser of milk. Official sample test periods used by the department shall correspond to the testing periods used by the dealer, handler or purchaser. At the time that the grader samples the milk, each sample shall be split. One portion of the split sample shall be placed in a separate container furnished and approved by the department. The container shall be sealed as required by the department and signed or initialed by both the producer and the grader. The split sample shall be forwarded by the dealer, handler or purchaser to the department at the expense of the producer and as prescribed by rules of the department. The department shall combine the samples for the period involved and make the official test requested of the com-

posite group of samples. The department shall forward a copy of the test to the producer and a copy shall be mailed to the dealer, handler or purchaser submitting the sample. If the test performed and carried out by the department varies by more than one-tenth of one percent from the test made by the dealer, handler or purchaser, within the time prescribed by the department the dealer, handler or purchaser shall adjust and make proper payments to the producer based upon the official tests made by the department.

(2) The department shall allow similar official testing for milk fat to be made available to any other person subject to this chapter and ORS chapter 583. [1965 c.474 §5; 1999 c.197 §60]

621.754 [1965 c.474 §6; repealed by 1999 c.197 §61]

621.755 [Repealed by 1953 c.686 §37]

621.760 [Repealed by 1953 c.686 §37]

621.765 [Repealed by 1953 c.686 §37]

621.770 [Repealed by 1953 c.686 §37]

621.775 [Repealed by 1953 c.686 §37]

621.785 [Repealed by 1953 c.686 §37]

621.790 [Repealed by 1953 c.686 §37]

PENALTIES

621.990 [Amended by 1953 c.684 §12; subsection (4) enacted as 1953 c.686 §31; subsection (9) of 1963 Replacement Part enacted as 1955 c.714 §5; 1965 c.107 §4; subsection (10) enacted as 1965 c.474 §7; subsection (11) enacted as 1969 c.164 §6; subsection (12) enacted as 1969 c.149 §5; repealed by 1999 c.197 §61]

621.991 Criminal penalty. Violation of any provision of ORS 621.056, 621.057, 621.062, 621.070, 621.072, 621.076, 621.084, 621.088, 621.117, 621.122, 621.124, 621.161, 621.166, 621.183, 621.198, 621.207, 621.226, 621.259, 621.335, 621.340, 621.345, 621.418, 621.445 or 621.730 or any rule or standard adopted under ORS 621.060, 621.083, 621.096, 621.224 or 621.261, or failure to pay a fee assessed under ORS 621.166, is a Class A misdemeanor. [1999 c.197 §5; 2011 c.597 §253]

621.995 Civil penalties; rules; hearing; disposition of moneys. (1) In addition to any penalty available under ORS 561.190 or 621.991, the State Department of Agriculture may impose a civil penalty for a violation of ORS 621.056, 621.057, 621.062, 621.070, 621.072, 621.076, 621.084, 621.088, 621.117, 621.122, 621.124, 621.161, 621.166, 621.183, 621.198, 621.207, 621.226, 621.259, 621.335, 621.340, 621.345, 621.418, 621.445 or 621.730 or of rules, regulations or standards adopted under ORS 621.060, 621.083, 621.096, 621.224 or 621.261. For the purposes of this section, each day a violation continues after the period of time established for compliance shall be considered a separate violation unless the department finds that a different period of time is more appropriate to describe a specific violation event.

(2) The department may adopt rules establishing a schedule of civil penalties that may be imposed under this section. Civil penalties imposed under this section may not exceed $10,000 for each violation.

(3) When the department imposes a civil penalty under subsection (1) of this section, the department shall impose the penalty in the manner provided by ORS 183.745, except that the written application for a hearing must be received by the department no later than 10 days after the date of mailing or personal service of the notice of civil penalty.

(4) Moneys received by the department from civil penalties imposed under this section shall be deposited in the General Fund to the credit of the Department of Agriculture Account. [2009 c.175 §16]