Chapter 583

2003 EDITION

Milk Marketing, Production and Distribution

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583.001 Short title; enforcement. The provisions of this chapter, which shall be designated as the Milk Audit and Stabilization Act, are combined and are hereby declared to be one law. The State Department of Agriculture shall enforce and carry out the law. [1967 c.440 §9]

583.002 [1963 c.442 §28; repealed by 1967 c.440 §26]

583.004 Use of fees in enforcement of chapter; poundage fee under ORS 583.046 increased. (1) The fees in ORS 583.166, are continuously appropriated to the State Department of Agriculture for the purpose of administering and enforcing the provisions of this chapter.

(2) It is the intent of this section and ORS 583.545 to avoid duplication, and in lieu of requiring separate reports to be forwarded and deductions to be withheld by first handlers to support the provisions of this chapter, to combine the two into one deduction, payment and report. In order to provide fees necessary to carry out and enforce both laws and programs, an additional poundage fee of not more than one cent per hundredweight on all milk is hereby authorized and shall be deducted by first handlers and paid over to the department, at the same time, in the same manner and as required and authorized by the provisions of ORS 583.046. Subject to the limitations of ORS 583.046 (2), the total maximum poundage fee provided in ORS 583.046 is hereby increased to one and three-fourths cents per hundredweight on such milk. [1963 c.442 §9(2),(3)]

583.005 [1957 c.719 §1; repealed by 1961 c.638 §20]

583.006 [1961 c.638 §2; repealed by 1967 c.440 §1 (583.007 enacted in lieu of 583.006)]

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

(1) "Classification" means the classification of all Grade A and Grade B milk into classes according to its utilization.

(a) "Class 1 milk" includes but is not limited to Grade A and Grade B milk received, used or sold to others for ultimate human consumption in fluid form.

(b) "Class 2 milk" includes but is not limited to Grade A and Grade B milk received, used or sold to others for ultimate use in the manufacture of cottage cheese, ice cream, condensed milk and the frozen desserts as shall be prescribed by the State Department of Agriculture under this chapter.

(c) "Class 3 milk" means all the Grade A and Grade B milk received, used or sold to others, for use other than that prescribed for Class 1 and Class 2 milk.

(d) In addition to the classifications under paragraphs (a) to (c) of this subsection, the department under this chapter may by rule classify, within the above classes, any Grade A or Grade B milk received, used or sold to others, that has not been defined herein.

(2) "Consumer" means any person, other than a handler, jobber or store who purchases milk for human consumption in fluid form.

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

(4) "First handler" means the handler who receives Grade A or Grade B milk from a producer, either physically or as a marketing agent, irrespective of the final or ultimate destination of such milk.

(5) "Handler":

(a) Means any person, partnership, corporation, association, cooperative organization or other entity engaged in the handling of Grade A or Grade B milk in the capacity as the operator of a fluid milk plant which processes milk in Class 1, Class 2 or Class 3 uses and who purchases or receives such milk from a producer, or from another handler, or from the herd of the producer or handler, or

(b) Means any person, cooperative corporation or association serving as a marketing agent for producers, or

(c) Means any contract purchaser making sales of Grade A or Grade B milk to another handler.

(d) Does not mean any person, partnership, corporation, association, cooperative organization or other entity operating exclusively a plant or establishment, purchasing or using manufacturing grade milk for manufacturing purposes only. This exception or exemption, however, does not apply if such plant or establishment is owned by, under the control of the same management, or is a part of a fluid milk plant processing milk for human consumption.

(6) "Jobber" means a person who purchases bottled or packaged milk or milk products from a handler or a producer-handler and who thereafter sells such milk or milk products at wholesale or retail.

(7) "Market area" means any one or more primary markets, as established under ORS 583.470.

(8) "Milk" means the whole milk or cream or any constituent part thereof which is the lacteal secretion of cows.

(a) "Grade A or Grade B milk" means all milk or cream as defined herein which meets the standards of identity as provided in ORS chapter 621.

(b) "Manufacturing grade milk" means all milk or cream, as defined herein, which

does not meet the standards of identity as provided in ORS chapter 621.

(9) "Milk product" means milk or dairy products as defined by the department under this chapter. It may adopt the same standards and definitions, all or in part, as are established by or under the provisions of ORS chapter 621.

(10) "Primary market" means an area established under ORS 583.465.

(11) "Producer" means any person producing Grade A or Grade B milk, any portion of which is sold to, or received by or used by, a licensed handler for human consumption in fluid form.

(12) "Producer-handler" means a person, partnership or corporation who:

(a) Operates a dairy farm which the person, partnership or corporation owns, leases or is purchasing;

(b) Owns or is purchasing the person's own dairy cows;

(c) Owns, or is purchasing or leasing the person's own dairy plant of the person, partnership or corporation which the person, partnership or corporation operates for the processing, bottling or packaging of Grade A or Grade B milk;

(d) Sells or distributes all bottled Class 1 Grade A or Grade B milk direct to wholesalers, to jobbers, to consumers, to stores or to drive-in markets, but not to licensed handlers or other producer-handlers;

(e) Sells surplus milk in excess of Class 1 sales only to a licensed handler, at Class 3 price established by the department, or to a nonlicensed manufacturing plant as manufactured milk;

(f) Confines milk processing and route distribution to milk produced by the dairy herd of the person, partnership or corporation, and receives no skim milk, including nonfat dry milk or condensed skim milk or skim milk recombined from nonfat dry milk or condensed skim milk, or butterfat from any other source for use in fluid milk products;

(g) Is in compliance with the provisions of this chapter or rules thereunder, including but not limited to a determination by the department that a lessee under paragraphs (a) and (c) of this subsection is otherwise qualified as a producer-handler; and

(h) Notwithstanding the provisions of this subsection, may purchase, from other licensed handlers, packaged fluid milk products, other than whole milk, in an amount not in excess of an average of 100 pounds per day during the month.

(13) "Replacement milk" means Grade A or Grade B milk produced in one market area, thereafter processed in another market area and then returned to the market area where it was originally produced, for distribution or sale within such original market area.

(14) "Store" means any grocery store, hotel, restaurant, soda fountain or any other place, establishment or business wherein milk is sold as an article of merchandise or served and consumed on the premises. [1967 c.440 §2 (enacted in lieu of 583.006); 1977 c.307 §1]

583.009 [1967 c.440 §14; repealed by 1977 c.307 §19]

583.010 [Amended by 1953 c.712 §4; repealed by 1955 c.1 §1]

583.015 [1957 c.719 §3; repealed by 1961 c.638 §20]

583.016 Purpose; construction. (1) Whereas, the production, sale and distribution of milk and milk products in this state are attended with conditions adversely affecting milk producers, handlers and consumers of milk, it is hereby declared that the purpose of ORS 583.007, 583.016 and 583.046 to 583.166 is to provide the assistance of the State of Oregon in maintaining an adequate supply of healthful milk through the state auditing of the records of handlers as they pertain to the pooling and usage of milk and the payment therefor.

(2) The provisions of ORS 583.007, 583.016 and 583.046 to 583.166 shall not be construed to conflict with or repeal, and are in addition to and not in lieu of, any other law of this state or any municipal ordinance relating to any health or sanitary requirement, or any municipal ordinance relating to the inspection, grading or production of Grade A milk. [1961 c.638 §§1,18]

583.020 [Repealed by 1955 c.1 §1]

583.021 Exemption of certain producer-handlers. Notwithstanding other provisions to the contrary, a producer-handler owning or maintaining less than 26 dairy cows, who does not purchase bulk, bottled or packaged milk, shall be exempt from the provisions of this chapter. The State Department of Agriculture is authorized to investigate the premises of any nonlicensed or licensed producer-handler claiming exemption as authorized in this section to verify the number of dairy cows owned or maintained by such person. [1967 c.440 §6]

583.025 [1957 c.719 §4; repealed by 1961 c.638 §20]

583.026 [Subsection (1) of 1963 Replacement Part enacted as 1961 c.638 §3; subsection (2) of 1963 Replacement Part enacted as last sentence of 1961 c.638 §13; repealed by 1967 c.440 §26]

583.028 Application of audit, pooling, equalization and quota provisions. (1) Notwithstanding other provisions of this chapter to the contrary, the following wording and provisions relate and apply to each

applicable section of law prescribed in this section:

(a) In addition to and as a part of the provisions of ORS 583.076, the State Department of Agriculture is also authorized thereunder to audit the records of all the milk received, handled, used or sold by a handler or producer-handler and may investigate the premises thereof to help verify the accuracy of the audit or to confirm the receipts, production, usage or disposition of all such milk regardless of its source.

(b) The provisions of ORS 583.500, 583.520 and 583.530 also include, cover and apply to Class 3 milk.

(c) The prices established by the department under this chapter also apply to milk sold or purchased between handlers.

(d) In ORS 583.515 (1) "quota" shall also mean a producer's portion of the total Class 1 sales of pool milk plus 15 percent.

(2) The provisions of subsection (1)(a) to (d) of this section are in addition to and not in lieu of the sections of law designated therein. If there is a conflict then the provisions of this section supersede the provisions of each such applicable or designated section of law. [1967 c.440 §10]

583.030 [Repealed by 1955 c.1 §1]

583.035 [1957 c.719 §8; repealed by 1961 c.638 §20]

583.036 [1961 c.638 §4; repealed by 1967 c.440 §26]

583.040 [Repealed by 1955 c.1 §1]

583.045 [1957 c.719 §9; repealed by 1961 c.638 §20]

583.046 Poundage fee on Grade A milk; hearing on increase or decrease. (1) Each first handler in Oregon of Grade A milk shall pay to the State Department of Agriculture a poundage fee of not more than three-fourths of one cent per hundredweight on all Grade A milk purchased or handled by said handler. Each first handler shall deduct from the purchase price for Grade A milk purchased or handled by such first handler from a producer or producer group the amount of the poundage fee such handler is required to pay to the department under this section as to such Grade A milk so purchased or handled. Such poundage fee shall be paid monthly not later than the last day of the month following the reported month for all quantities of Grade A milk purchased or handled by the first handler in the previous calendar month or part thereof.

(2) No increase or decrease in the poundage fee shall be established by the department until a hearing has been held. In addition to other standards, the department, in increasing or decreasing poundage fees, shall also consider:

(a) The current auditing and enforcement program.

(b) Proposed program changes.

(c) General milk industry changes.

(d) Increased or decreased benefits accruing to producers, handlers and consumers. [1961 c.638 §5(1),(2)]

583.050 [Repealed by 1955 c.1 §1]

583.055 [1957 c.719 §10; repealed by 1961 c.638 §20]

583.056 Penalty for late payment of fee; lien for unpaid fees and penalties; legal proceedings. (1) In addition to other penalties prescribed by ORS 583.007, 583.016 and 583.046 to 583.166, any handler who delays transmittal of payment of fees as required by this section beyond the due date, shall pay an additional one percent of the amount of poundage fees due for the first month of delay and 25 percent of the amount of poundage fees due for the second month of delay.

(2) A lien may be filed by the State Department of Agriculture as authorized by ORS 561.450 upon the real and personal property of any handler who fails to pay fees or penalties as required by this section.

(3) In addition to other remedies or actions, the department may file an action at law in the circuit court for the recovery of fees or penalties against any handler who delays transmittal of such amounts as required by this section. Nothing in this section shall be construed to prohibit the department from filing an action as authorized by ORS 561.280 against any handler for violation of the provisions of ORS 583.007, 583.016 and 583.046 to 583.166. [1961 c.638 §5(3),(4),(5)]

583.060 [Repealed by 1955 c.1 §1]

583.065 [1953 c.590 §2; repealed by 1955 c.1 §1]

583.066 [1961 c.638 §§8,9; repealed by 1967 c.440 §26]

583.070 [Repealed by 1955 c.1 §1]

583.075 [1957 c.719 §2; repealed by 1961 c.638 §20]

583.076 Auditing handlers' records. The State Department of Agriculture shall cause an audit to be made at least once each year, and at such other times as it deems necessary, of all handlers' records in so far as such records relate to Grade A milk handled, used or sold, and determine what proportion of the milk produced by each producer or producer group shall be considered used as milk for bottle and can and what proportion so produced shall be considered as used in the manufacture of milk products, and shall include the determination of whether producers are being accurately and properly paid for their milk. [1961 c.638 §7]

583.080 [Repealed by 1955 c.1 §1]

583.085 [1957 c.719 §11; repealed by 1961 c.638 §20]

583.086 Review of audit; filing additional information; when departmental findings final. (1) After an audit has been

completed as authorized by ORS 583.007, 583.016 and 583.046 to 583.166, the State Department of Agriculture shall first review such audit with the affected handler. If, after audit and review of such audit with the handler, the department finds that milk has not been properly accounted for or paid for by the handler or person whose records have been audited, or that such person has violated the provisions of ORS 583.007, 583.016 and 583.046 to 583.166 or regulations promulgated thereunder, the department shall file a copy of the audit findings in its Salem office, forward by certified mail a copy of the audit findings and such other pertinent information concerning the audit as it deems necessary to the handler or person whose records have been audited, and may notify affected producers. The findings shall include an order requiring that payment be made or that certain procedures or practices which are in violation of law or regulation be stopped, corrected or changed, as the case may be. The audit findings on file shall be available for examination only by the affected handler or producers of such milk, or the authorized agents of either.

(2) Within 30 days following the date the department mails a copy of its audit findings, as required by subsection (1) of this section, the handler or the person whose milk records have been audited, and the producers affected by such audit, either or both, may file with the department all additional information, facts, figures or other material which they believe may show or prove the audit findings to be incorrect.

(3) If at the expiration of the period specified in subsection (2) of this section:

(a) Handlers, persons or producers have not filed additional information, facts, figures and other material with the department, then the department shall forward a notice, by certified mail, to the handler or person, that the audit findings of the department are final. Within 16 days after the date the notice is mailed, the handler or person shall pay the amounts or make corrections of violations of law or regulations as set out in such findings.

(b) Handlers, persons or producers have filed additional information, facts, figures and other material with the department, then the department shall again review and reaudit, within 90 days, all necessary records of such handler or person as otherwise required by ORS 583.007, 583.016 and 583.046 to 583.166. The department may affirm, modify or set aside its prior findings. The department shall file in its Salem office a copy of the reaudit findings and forward a copy of such findings by certified mail to the affected handler or person, and in addition, shall forward by regular mail, as it deems necessary, a part or all of its findings to affected producers. Unless appealed to the circuit court, as authorized by ORS 583.096, the reaudit findings of the department shall become final. [1961 c.638 §10]

583.090 [Repealed by 1955 c.1 §1]

583.095 [1957 c.719 §12; repealed by 1961 c.638 §20]

583.096 Judicial review of audit findings. (1) A judicial review of the audit findings of the State Department of Agriculture, as provided by this section, shall be permitted only after any party claiming to be aggrieved by such findings has exhausted remedies under ORS 583.086.

(2) Within 30 days after the date the department mails a copy of its reaudit findings as provided by ORS 583.086 (3)(b), any party aggrieved thereby may secure judicial review thereof by commencing an action in the Circuit Court for Marion County or in the circuit court for the county in which the aggrieved party resides or has a principal business office. If an appeal is filed in the wrong county, the court shall enter an order transferring it to the proper county.

(3) In such action, the complaint shall name the department as defendant. A copy of such complaint shall be served by the sheriff or by certified mail on the department. It shall state the nature of the aggrieved party's interest, the facts showing how such person or persons are aggrieved by the decision or findings of the department, and the ground or grounds upon which such person or persons contend that the decision or findings should be reversed and set aside.

(4) Within 30 days after service of the complaint, or within such further time as the court may allow, the department shall file its answer with the court and transmit to such court the original or certified copies of all findings, decisions, documents, records and other papers related to such audit and reaudit.

(5) If, before the date set for hearing, application is made to the court for leave to present additional evidence as to the matters in controversy in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good and substantial reasons for failure to present it in the proceeding before the department, the court may order that the additional evidence be taken before the department upon such conditions as the court deems proper. The department may modify its findings and decision by reason of the additional evidence and shall, within a time to be fixed by the court, file with the reviewing court, to become a part of the record, the additional evidence, together with any mod-

ifications or new findings or decision, or its certificate that it elects to stand on its original findings or decision, as the case may be.

(6) The hearing and review shall be conducted by the court as an action tried without a jury and shall be given precedence on the docket over all other cases except those given equal status by statute.

(7) The court may adopt, modify or set aside the decision and the findings of the department. In the actual reversal or modification, the court shall make special findings of fact based upon evidence in the record and conclusions of law indicating clearly all respects in which the decision and the findings of the department are erroneous.

(8)(a) If the court affirms findings of the department which require a handler or person to make payment for milk or if the court modifies such findings, the court shall also at the same time order that such amounts be paid.

(b) If the court affirms the findings of the department that violations of law or regulations exist, or if the court modifies such findings, the court shall also order that the handler or person shall be enjoined from further violating such law or regulations. Future similar violation of such law or regulations is subject to contempt action as provided by paragraph (a) of this subsection.

(9) An appeal may be taken from the order or judgment of the circuit court to the Court of Appeals as in other cases, regardless of the amounts involved. The court may in its discretion assess costs to the prevailing party. [1961 c.638 §11; 1979 c.284 §175]

583.100 [Amended by 1953 c.712 §4; repealed by 1955 c.1 §1]

583.105 [1957 c.719 §5; 1961 c.425 §5; repealed by 1961 c.638 §20]

583.106 Proceedings to compel handler to make payments or produce information; appeal. (1) The State Department of Agriculture shall file an injunction action in the circuit court for the county in which the handler or person resides or has the principal business office of the handler or person, based upon the findings of the department against a handler or other person whose records have been audited, if:

(a) The handler or such person has not made payment or corrected violations of law or regulations promulgated thereunder as required by the provisions of ORS 583.086 (3)(a) and if such handler or producers have not filed additional information, facts or figures with the department within the time prescribed as authorized by ORS 583.086 (3)(b); or

(b) The handler or such person has not made payment or correction of violations of law or regulations promulgated thereunder as set out in the reaudit as provided by ORS 583.086 (3)(b) and has not filed an appeal to the circuit court within the time prescribed by ORS 583.096.

(2) In any judicial proceeding under this section, the findings of the department as to the facts if supported by substantial evidence, in the absence of fraud, are conclusive and the jurisdiction of the court shall be confined to questions of law. Such action shall be heard in a summary manner without a jury and shall be given precedence on the docket over all other civil cases except those given equal status by statute.

(3) If the findings of the department include a requirement that the handler or person make payment to producers or persons for milk, the court shall order such handler or person to make payment. If the order is not carried out within the time prescribed by the court, then upon motion or notification from the department, the court shall proceed against such handler or person for contempt of court. If the findings of the department include violations of law or regulations, the court may, in the same order, enjoin such handler or person from further violation of law or regulations. The court may take such action as it deems necessary and proper in regard to any complaint filed under this section.

(4) The court may adopt, modify or set aside the decision and the findings of the department. In the case of reversal or modification, the court shall make special findings of the conclusions of law indicating clearly all respects in which the decision and the findings of the department are erroneous.

(5) An appeal may be taken from the order or judgment of the circuit court to the Court of Appeals as in other cases, regardless of the amount of money involved. [1961 c.638 §12; 1979 c.562 §28; 2003 c.576 §523]

583.110 [Amended by 1953 c.712 §4; repealed by 1955 c.1 §1]

583.115 [1957 c.719 §6; repealed by 1961 c.638 §20]

583.116 Remedies after court approval of departmental findings. If the court, as provided by ORS 583.096 or 583.106, affirms or modifies findings of the State Department of Agriculture that a handler owes moneys to producers or other persons under ORS 583.007, 583.016 and 583.046 to 583.166, the order shall be a judgment of record against the real and personal property of such handler or person until paid. In addition to other remedies, the department, for and in the name of persons entitled to such funds, may file an attachment or take other action authorized by law in order to require such

judgment or moneys be paid. Moneys recovered or received by the department shall be paid over to the persons entitled thereto, without deduction of the department's cost incurred. [Part of 1961 c.638 §13]

583.120 [Repealed by 1955 c.1 §1]

583.125 [1957 c.719 §7; repealed by 1961 c.638 §20]

583.126 Producers' complaints; handlers' unfair practices; remedies. (1) Producers have the right as set out in but not limited to the provisions of ORS 583.086, either individually or through agents, to file with the State Department of Agriculture information, facts, figures and material relating to the handling of their milk, the audits thereof and practices or problems which may affect such milk or payment therefor, under the provisions of ORS 583.007, 583.016 and 583.046 to 583.166.

(2) No handler shall engage in any of the following unfair practices:

(a) Interfere with, restrain or coerce producers in the exercise of their rights under subsection (1) of this section.

(b) Terminate an agreement or threaten to terminate an agreement relating to handling or sale of milk or payment therefor, or refuse to accept milk from a producer because such producer has exercised rights and privileges as set out under subsection (1) of this section.

(3) The department, as authorized by ORS 583.007, 583.016 and 583.046 to 583.166, shall, in the course of auditing, review and investigate all unfair practices as provided by subsection (2) of this section coming to its attention and shall in audit or reaudit findings make a finding of fact and a determination relative to such practices. Such audit findings shall be subject to review and appeal by producers and handlers as otherwise provided in ORS 583.007, 583.016 and 583.046 to 583.166.

(4) In addition to other remedies provided by ORS 583.007, 583.016 and 583.046 to 583.166 or other law, any producer injured by any violation of the provisions of this section may maintain an action for damages in a circuit court. The court may award reasonable attorney fees to the prevailing party in an action under this section. [1961 c.638 §14; 1981 c.897 §67; 1995 c.618 §88]

583.130 [Repealed by 1955 c.1 §1]

583.135 [1957 c.719 §13; repealed by 1961 c.638 §20]

583.136 Temporary injunction against handler. Notwithstanding other provisions of ORS 583.007, 583.016 and 583.046 to 583.166, if the State Department of Agriculture has reason to believe that any handler or other person whose records have been or are being audited, is violating the provisions of ORS 583.007, 583.016 and 583.046 to 583.166 or regulations promulgated thereunder and that such violation could result in serious economic loss to producers or handlers, the department is authorized to file an action in the circuit court asking for a temporary injunction against such handler or person until such time as the department may complete an audit and reaudit procedure or take other action as authorized by ORS 583.007, 583.016 and 583.046 to 583.166. The court shall have broad authority under this section to approve any action necessary to protect the rights and interests of producers, producer groups and handlers as provided by ORS 583.007, 583.016 and 583.046 to 583.166. [1961 c.638 §15(1)]

583.140 [Repealed by 1955 c.1 §1]

583.145 [1957 c.719 §14; repealed by 1961 c.638 §20]

583.146 Attorney fees. In legal proceedings filed under ORS 583.096, 583.106 or 583.136, the court may award reasonable attorney fees to the prevailing party. Any attorney fees awarded to the State Department of Agriculture shall be deposited by and used by the department as authorized under ORS 583.166. If the department does not prevail in such legal proceedings, it shall pay the costs, disbursements and reasonable attorney fees at trial and on appeal, as adjudged by the court, of the prevailing party from the moneys in the Department of Agriculture Account. [1961 c.638 §15(2); 1981 c.897 §68; 1995 c.618 §89]

583.150 [Repealed by 1955 c.1 §1]

583.155 [1957 c.719 §15; repealed by 1961 c.638 §20]

583.156 Finality of payment required under ORS 583.007 to 583.166; exceptions. When, as a result of audit findings by the State Department of Agriculture, legal action or other provisions of ORS 583.007, 583.016 and 583.046 to 583.166 authorizing and requiring certain payment to be made, a handler or other person whose records have been audited makes payment for milk, such payment shall be in full and final settlement between the parties concerned, except:

(1) For errors in audit or the verification of new facts, figures or information which would change the results of such audit, brought to the attention of or discovered or verified by the department within three years of such audit.

(2) For procedures or actions of such handler or other person, based upon fraud. [1961 c.638 §16]

583.160 [Repealed by 1955 c.1 §1]

583.165 [1953 c.274 §2; repealed by 1955 c.1 §1]

583.166 Disposition of fees. The State Department of Agriculture shall deposit all fees paid under ORS 583.046 to 583.166 in the State Treasury to the credit of the Department of Agriculture Service Fund, and such fees are continuously appropriated to the de-

partment for administering and enforcing ORS 583.001 to 583.565. [1961 c.638 §6; 1979 c.499 §6]

583.170 [Repealed by 1955 c.1 §1]

583.175 [1957 c.719 §16; repealed by 1961 c.638 §20]

583.180 [Amended by 1953 c.712 §4; repealed by 1955 c.1 §1]

583.190 [Repealed by 1955 c.1 §1]

583.200 [Repealed by 1955 c.1 §1]

583.310 [Repealed by 1955 c.1 §1]

583.320 [Repealed by 1955 c.1 §1]

583.330 [Amended by 1953 c.712 §4; repealed by 1955 c.1 §1]

583.340 [Repealed by 1955 c.1 §1]

583.350 [Repealed by 1955 c.1 §1]

583.360 [Repealed by 1955 c.1 §1]

583.370 [Repealed by 1955 c.1 §1]

583.380 [Repealed by 1955 c.1 §1]

583.390 [Repealed by 1955 c.1 §1]

583.400 [Repealed by 1955 c.1 §1]

583.405 [1963 c.442 §2; repealed by 1967 c.440 §26]

583.410 Purpose; construction. (1) The production, processing, distribution and sale of fluid milk for human consumption are attended by conditions which adversely affect the general welfare and result in 90 to 95 percent of the total milk production in the United States being marketed under federal and state stabilization regulations, deemed necessary to protect the interests of producers, distributors and consumers. It is therefore declared to be the policy of the State of Oregon, which imposes regulations on milk producers to assure a wholesome product for the benefit of the consuming public, to provide the necessary assistance and authority to maintain a stable milk market, to sustain the economy of the dairy industry and the economic welfare of the state and to assure an adequate and healthful supply of milk and milk products for the consuming public.

(2) The provisions of ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565 are in pari materia with the provisions of ORS 583.007, 583.016 and 583.046 to 583.166. If there is a conflict, the provisions of ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565 supersede the provisions of ORS 583.007, 583.016 and 583.046 to 583.166.

(3) The provisions of ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565 shall not be construed to conflict with or repeal, and are in addition to and not in lieu of, any other law of this state or any municipal ordinance relating to any board of health or sanitary requirement, or any municipal ordinance relating to the inspection, grading or production of Grade A milk. [1963 c.442 §§1,10,26; 1977 c.307 §3]

583.415 Application as to interstate commerce. No provision of ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565 shall apply or be construed to apply to interstate commerce except to the extent that the Constitution and laws of the United States permit it to apply to interstate commerce. [1963 c.442 §27]

583.420 [1963 c.442 §24; repealed by 1967 c.440 §26]

583.425 Administrative proceedings and orders. (1) Except as provided by subsection (2) of this section, the provisions of ORS chapter 183 apply to ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565, rules promulgated thereunder and to the appeal of any person aggrieved thereby. Before any order is promulgated, the State Department of Agriculture shall hold at least one public hearing. All hearings shall be public hearings and testimony shall be given under oath.

(2) Notwithstanding ORS chapter 183, and except as otherwise provided in ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565, a public hearing may be instituted only by:

(a) The department on its own motion, or

(b) A petition filed with the department and signed by at least 10 percent of the producers qualified to sign petitions as provided by ORS 583.480 to 583.490, or

(c) A petition filed with the department and signed by at least 50 percent of the handlers in the applicable market area.

(3) All guideposts, standards and the provisions of this chapter may be taken into consideration in the promulgation of any order. [1963 c.442 §3; 1977 c.307 §4]

583.430 Joint hearings and agreements with other states and federal government. In order to facilitate the carrying out of provisions and purposes of ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565, the State Department of Agriculture may hold joint hearings with authorized officers or agencies of adjoining states who have duties and powers similar to those of the department or with any authorized person designated by the United States Department of Agriculture, and may enter into joint agreements with such authorized state or federal agencies for exchange of information with regard to prices paid to producers for milk moving from one state to the other or for any purpose to carry out and enforce the provisions of ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565. [1963 c.442 §4; 1977 c.307 §5]

583.440 License required of handlers and producer-handlers; other licenses. (1) Beginning 30 days after June 4, 1963, no person shall engage in business as a handler

or producer-handler within this state unless such person is licensed as provided in subsections (1) and (2) of this section and ORS 583.445 and 583.450. With prior approval of the State Department of Agriculture, the location or place of business of the licensee may be moved without the requirement to obtain a new license. The license is personal to the applicant and any change in the business entity requires that a new license be obtained by the new owner.

(2) The license required by subsection (1) of this section is in addition to and not in lieu of any other license required of handlers or producer-handlers by any other law of this state or by any municipal ordinance.

(3) No person shall operate as, or engage in the business or activities of a handler, or as a producer-handler or any other type of operation, except the category or type approved by the department under ORS 583.447. The department may reissue a license showing a change in a category or type of operation if it verifies there has been such a change. Persons affected thereby may appeal the decision of the department as provided in ORS chapter 183. [1963 c.442 §§5,6; subsection (3) enacted as 1967 c.440 §5(3)]

583.445 Application for license. Application for a license required by ORS 583.440 (1) which shall be made upon forms furnished by the State Department of Agriculture, shall be accompanied by the license fee of $1, and shall state:

(1) The nature of the business to be conducted.

(2) The full name and address of the applicant, if an individual; if a partnership, the full name and address of each member thereof; and if a corporation or association, the full name and address of the officer authorized to sign on behalf of the corporation.

(3) The name of the city and the street number of the principal place of business of the applicant. [1963 c.442 §7]

583.447 License form; reissuance. (1) After the State Department of Agriculture receives an application for a license as required under ORS 583.445 and after it has been furnished sufficient information by the applicant to make such determination, when the license is issued the department shall designate on the license which of the following categories of type of operation the licensee is authorized to operate and engage in:

(a) A handler as defined in ORS 583.007 (5), or

(b) A producer-handler as defined in ORS 583.007 (12) and other provisions or rules relating thereto.

(c) Any other category or type of operation deemed necessary to carry out the purpose and intent of this chapter.

(2) After July 1, 1967, the department shall without cost to the licensees, reissue licenses to those persons who as of such date were licensed under ORS 583.445 and shall designate on the reissued licenses, or on new licenses, the categories or types set forth in subsection (1)(a) to (c) of this section. Any licensee shall at the request of the department immediately furnish information which may be necessary in order for the department to make the proper determination. [1967 c.440 §5(1),(2)]

583.450 Denial, suspension or revocation of license. The State Department of Agriculture as authorized by ORS chapter 183 may decline to grant a license required by ORS 583.440 (1) or may suspend or revoke such license when it appears that the handler or producer-handler has:

(1) Failed to account and make payment without reasonable cause for milk purchased from a producer.

(2) Failed to withhold and pay the amounts required under ORS 583.510 (3).

(3) Failed to keep books and records or to furnish the reports, statements or information required of the handler or producer-handler by ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565 or regulations promulgated thereunder.

(4) Failed to pay the fees required by ORS 583.004 and 583.545.

(5) Failed to comply with any provision of ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565. [1963 c.442 §8; 1977 c.307 §6]

583.455 Licensees to keep records and make reports regarding milk. (1) Each licensee shall keep books and records prescribed by the State Department of Agriculture showing:

(a) The quantity of all milk received or produced, the butterfat content thereof, the prices paid therefor, the deductions or charges made in connection therewith and the name and address of each person from whom received.

(b) The quantity of milk used or sold as Class 1 milk.

(c) The quantity of milk used or sold for use in the manufacture of Class 2 milk products.

(d) The quantity of milk used or sold for use in the manufacture of Class 3 milk products.

(e) Such other information as the department deems necessary for the proper administration and enforcement of this chapter.

(2) Each licensee shall furnish such report, statements or information as are required by the department for the proper administration and enforcement of this chapter. [1963 c.442 §11; 1967 c.440 §15]

583.457 Licensee to notify department upon termination of business. (1) Holders of licenses issued under ORS 583.440 shall in writing notify the State Department of Agriculture when they cease doing business thereunder, or when there is a change in ownership or entity of their operations or business.

(2) When the department receives such a notice of termination of business or if it finds the licensee has ceased to do business, it may suspend the license by sending a written notice to the licensee at the last-known address on the records of the department. The department may then remove the license from its active files.

(3) Any person whose license has been temporarily suspended under this section may within two years from the date the department mailed its notice, file a written notice with the department again advising that such person is again engaged in the business covered by the license. After receiving the notice, if the department verifies the applicant is in compliance with the law and there has been no change in the entity or ownership, it shall reinstate the license. [1967 c.440 §13]

583.459 [1967 c.440 §3; repealed by 1977 c.307 §19]

583.461 [1967 c.440 §4; repealed by 1977 c.307 §19]

583.463 Milk purchase reports required of nonlicensed manufacturing plants. Nonlicensed milk manufacturing plants shall file reports and information, in the manner and at the times required by the State Department of Agriculture in the proper carrying out and enforcement of the provisions of this chapter, of the purchases of Grade A milk and cream from handlers, producer-handlers and Grade A producers. [1967 c.440 §19]

583.464 [1967 c.440 §12; repealed by 1973 c.794 §34]

583.465 Primary markets. (1) The State Department of Agriculture within 60 days after June 4, 1963, shall determine and establish primary markets. In addition to other guideposts and standards set out in ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565, the department may take into consideration:

(a) Centers of processing and distribution of milk and milk products, on which producers, regardless of their location, depend for a market.

(b) Locations or combinations of locations with similar marketing conditions, where substantial quantities of milk are received and processed and from which such milk is distributed for sale in consumer channels.

(2) Primary markets may be established, changed, amended or terminated only after a public hearing has been held by the department in each established market area or in a proposed new or enlarged or reduced market area. When practical and if the interests of the milk industry will be more adequately protected, a hearing may be held in each established primary market area or proposed primary market area. [1963 c.442 §16; 1977 c.307 §7]

583.470 Market areas. (1) Concurrently with the establishment of primary markets, as provided by ORS 583.465, the State Department of Agriculture shall establish market areas embracing one or more primary markets. In addition to other guideposts and standards set out in ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565, the department may take into consideration:

(a) Primary markets where market conditions and influences are similar.

(b) Major metropolitan consumer areas.

(c) Normal flow of milk from producing areas to point of processing and distribution to consumers.

(d) Influence of markets and marketing conditions in adjacent states.

(e) Any other condition which may benefit or may have an adverse effect on the stability of the market, or the primary markets, in the market area.

(2) Market areas may be established, changed, amended or terminated only after a public hearing, in each established market area or in a proposed, new, enlarged or reduced market area.

(3) Producers or handlers as authorized by ORS 583.425, may file a petition requesting the department to hold a public hearing relating to market areas. [1963 c.442 §17; 1977 c.307 §8]

583.475 Referendum in market area on establishment or termination of market pool; subsequent petition to establish pool. (1) After June 4, 1963, and within 45 days after the State Department of Agriculture establishes a market area, as provided by ORS 583.470, the producers in such market area may file a petition with the department requesting that a referendum be held on the question of preventing a market pool being established as required by law in such area. The petition and the referendum shall clearly explain to the producers involved, that a market pool is to be established by law in their market area unless two-thirds of the producers voting in a referendum de-

cide that a market pool shall not be established. If the petition complies with the provisions of ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565, the department shall hold a referendum in such market area and it shall take no further action in establishing a market pool in such area until after the referendum and the results thereof are known and filed with the Secretary of State. The ballots shall also contain wording, substantially as follows:

__ No. I vote against the establishment of a market pool in Market Area No. __.

__Yes. I vote in favor of permitting a market pool to be established in Market Area No. __.

(a) If in the referendum two-thirds or more of the producers who vote, vote against the establishment of a market pool, the department shall take no further action at that time to establish a market pool in such market area. At least nine calendar months must elapse after the date the results of such referendum are filed with the Secretary of State, before the producers in such market area may petition the department for another referendum for the establishment of a market pool.

(b) If less than two-thirds of the producers who vote, vote against the establishment of a market pool, the department within 120 days from the date the results of the referendum are filed with the Secretary of State, shall establish a market pool in the market area, as authorized by ORS 583.510.

(2) If the petition referred to in subsection (1) of this section contains the signatures of two-thirds or more of the producers qualified to sign petitions in such market area and it is clear that the petition states such producers do not want a market pool established in their market area, no referendum shall be held by the department and it shall take no further action at that time to establish a market pool in such market area. At least nine calendar months must elapse after the date the petition is filed with the department before the producers may petition the department for the establishment of a market pool.

(3) Nothing in ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565 is to be construed as preventing producers from filing a petition and asking for a referendum on the question of establishing a market pool, or to terminate and close an existing market pool, if the petition and referendum are filed within applicable time limits as authorized by this section or ORS 583.490 (2) and otherwise are in compliance with ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565. [1963 c.442 §19; 1977 c.307 §9]

583.480 Qualifications to sign petition or vote in referendum; list of qualified producers. (1) The producers qualified to sign a petition, or to vote in any referendum under ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565, shall be all those producers shipping milk to the market area on a regular supply basis and who would or do receive or pay equalization in an existing market pool in a market area, or in a market pool if established in such market area.

(2) The State Department of Agriculture is authorized during business hours to review the books and records of handlers or producer-handlers to obtain a list of the producers qualified to sign petitions or to vote in referendums. [1963 c.442 §22(1),(5); 1977 c.307 §10]

583.485 Contents of petition. Petitions filed with the State Department of Agriculture by producers, handlers and licensees shall comply with the provisions of ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565 and applicable law and regulations thereunder. A petition shall:

(1) Consist of one or more pages, each of which is dated at the bottom. The date shall be inserted on each sheet prior to, or at the time the first signature is obtained on each sheet. The department shall not accept a sheet on which such date is more than 60 days prior to the time it is filed with the department. After a petition is filed, additional pages may be filed if time limits have not expired and there is compliance with other provisions of ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565.

(2) Contain wording at the top of each page which clearly explains to each person whose signature appears thereon the meaning and intent of the petition. Such wording shall also clearly indicate to the department if it is in reference to a request for public hearing, exactly what matters are to be studied and desired. Similar information must be directed to the department if the matter relates to a referendum. The department has the authority to clarify wording from a petition before making it a part of a referendum. [1963 c.442 §22(6); 1977 c.307 §11]

583.490 Conduct of referendum. (1) A two-third majority vote by the producers voting in a referendum is required to pass or approve the subject matter contained in or the proposition put to the voters by the referendum.

(2) The results of any referendum held by the State Department of Agriculture shall be filed with the Secretary of State and shall not be considered to be part of its regu-

lations. At least nine calendar months must elapse after the results of a referendum are filed with the Secretary of State, before another referendum can be held among producers relating to the same subject matter or proposition covered by the prior referendum.

(3) If the referendum is conducted by mail, the department in order to insure secret balloting, shall use a double-envelope ballot system similar to the voting and referendum procedure approved and used by the Oregon State Bar Association as of June 4, 1963. Two envelopes and a ballot shall be furnished by the department to each producer authorized to vote in a referendum. A transmittal envelope shall contain only information necessary for the department to accurately determine the producer is authorized to vote. The producer shall mark a ballot and place it in a ballot envelope, both of which shall not contain or be identified in any way as to the name of the producer. Upon receipt of the transmittal envelope and after verification of the right of the producer to vote, the department shall remove the unopened sealed ballot envelope and drop it in a locked box until such time as all ballots are later counted as required by law. Only the final results of any referendum shall be a public record.

(4) No informalities or technicalities in the conduct of a referendum, or in any matters relating thereto, shall invalidate any referendum if it is fairly and reasonably conducted by the department. The provisions of ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565 are intended as guideposts or standards, with the department authorized to enumerate and define persons who may sign petitions, who may vote in referendums and to establish additional procedures to carry out the provisions of ORS 583.480 to 583.490. [1963 c.442 §22(2),(3),(4),(7); 1977 c.307 §12]

583.500 Hearing required before order issued; considerations in establishing minimum prices. (1) Before making any order under ORS 583.505, the State Department of Agriculture shall hold a public hearing in the market area to be affected by the order. The order shall be made within 30 days after the hearing.

(2) In establishing minimum prices under ORS 583.505 and this section, the department may take into consideration, with regard to the market area to be affected by the order:

(a) Average price per hundredweight for manufacturing milk, f.o.b. plants in Wisconsin and Minnesota, as reported monthly by the United States Department of Agriculture.

(b) Price of Class 1 and Class 2 milk in adjacent states.

(c) Cost of transporting milk.

(d) Prevailing price for manufacturing grade milk used in products which are sold in competition with similar products made from Grade A milk.

(e) Available supply of milk for human consumption in relations to actual consumption thereof.

(f) Cost of producing Grade A milk, especially sanitary measures necessary to insure the purity and wholesomeness of the milk, leveling out of seasonal production to meet requirements of the market and such other factors as are pertinent. [1963 c.442 §14]

583.505 Orders establishing minimum prices for sale of milk by producers to handlers. (1) In accordance with ORS chapter 183, the State Department of Agriculture shall establish by order:

(a) The minimum price for the sale of Class 1 milk by producers to handlers and between handlers.

(b) The minimum price for Class 2 milk by producers to handlers and between handlers. This price shall be computed by the department establishing a differential amount above the Class 3 price, which shall be automatically added by the department at the same time it establishes the price for Class 3 milk as authorized by ORS 583.507.

(2) The department after public hearing shall make a separate order for each market area and each order shall designate the market area to which it is applicable. Such orders and the minimum price for Class 1 milk and the differential amount which is used to arrive at the Class 2 price established thereby may vary in different market areas. [1963 c.442 §15; 1967 c.440 §16]

583.507 Establishment of basic price of Class 3 milk. (1) The basic price for the sale of Class 3 milk testing 3.5 percent, by producers to handlers and the sale thereof between handlers shall be established by formula in each market pool in each market area. The formula, sometimes referred to as the "Chicago butter-powder formula," is computed as follows:

(a) Multiply the Chicago butter price by 4.2.

(b) Multiply by 8.2 the weighted average of carlot prices per pound of nonfat dry milk solids, spray process, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th of the immediately preceding month through the 25th day of the current month by the United States Department of Agriculture. From the sum of the results arrived at under paragraphs (a) and (b) of this

subsection, subtract a "make charge" and round to the nearest cent.

(2) "Chicago butter price" means the simple average of the daily wholesale selling prices, using the midpoint of any price range as one price, of Grade AA (93-score) bulk creamery butter per pound at Chicago as reported for the month by the United States Department of Agriculture. If no price is reported for Grade AA (93-score) butter, the highest of the prices reported for Grade A (92-score) butter for that day shall be used in lieu of the price for Grade AA (93-score) butter.

(3) "Make charge" shall be established by the State Department of Agriculture, after public hearing, under ORS chapter 183. It is a figure or amount representing the cost of manufacturing, processing, handling and moving the product to market. The department shall receive evidence and testimony from all segments of the industry, take into consideration any other facts, information, figures or data and the "make charge" use by other federal and state milk laws, rules or programs and arrive at such charge or amount.

(4) If the average butterfat content of Class 3 milk, computed pursuant to subsection (1) of this section differs from 3.5 percent, there shall be added to, or subtracted from, the basic price for each one-tenth of one percent that the average butterfat content is above or below 3.5 percent, a differential. Rules relating to the determination of such differential shall be established by the department after public hearing pursuant to the provisions of ORS chapter 183.

(5) It must be recognized that the provisions of this section are standards and guideposts and that the details must by necessity be more completely set forth as otherwise authorized in this chapter to establish and maintain the formula to make it fair, reasonable, practical and workable for the benefit of the entire dairy industry of this state. [1967 c.440 §17]

583.510 Pooling and equalization of milk in market areas; money withheld from producers; disposition of receipts by department; producer-handler quota. (1) Except as provided by ORS 583.475, the State Department of Agriculture shall establish a system of pooling of all milk used in each market area established by ORS 583.470.

(2) Thereafter the department shall establish a system in each market area for the equalization of returns for all quota milk and all surplus over quota milk whereby all producers selling milk to milk handlers will receive the same price for all quota milk and all surplus over quota milk utilized as Class 1, Class 2 and Class 3 except that any premium paid to a producer by a handler above minimum prices established under ORS 583.505, because of quality of milk produced and sold shall not be considered in determining average pool prices.

(3) In providing for such pooling and equalization, the department shall determine amounts to be withheld from producers by a handler and paid to the department of not more than five cents per hundredweight for administering the market pool and amounts for the benefit of producers selling milk to other handlers in the market area in which the market pool is established in order to equalize payments between producers or producer groups. Upon the failure of any handler to withhold out of amounts due or to become due to a producer at the time a handler is notified by the department of the amounts to be withheld and upon failure of such handler to pay such amounts, the department subject to ORS 583.450, may revoke the license of the handler required by ORS 583.440 (1). The department may commence an action against the handler in the circuit court of the county in which the handler resides or has principal place of business to collect such amounts. If it is determined upon such action that the handler has wrongfully refused to pay the amounts the handler shall be required to pay, in addition to such amounts, all the costs and disbursements of the action, to the department as determined by the court. If the department's contention in such action is not sustained, the department shall pay to the handler all costs and disbursements of the action as determined by the court.

(4) Replacement milk will be subject to equalization in the market area where produced and sold, without regard to the market area where processed.

(5) The amounts received by the department under this section shall be deposited in a designated account in the State Treasury in accordance with ORS 293.445. Disbursements therefrom shall be made as provided by this section or orders promulgated thereunder. Notwithstanding ORS 293.140, interest earned on cash balances invested by the State Treasurer shall be credited to this account.

(6) A producer-handler desiring to be a producer may have a quota activated in the producer equalization and pooling system in a manner prescribed by the department. Such activated quota shall remain in effect thereafter for at least 12 consecutive months. In order to establish ability and intent to assume the obligation of supplying consumers' need for milk, a producer-handler who becomes a producer shall be ineligible to

transfer such quota for two years. Also, a producer who sells cows and transfers quota shall become ineligible to become a producer-handler for a period of two years thereafter. A producer-handler who for any reason fails to meet the requirements set forth in ORS 583.007 (12) shall be treated as a producer with quota and as a licensed handler until such time as the producer-handler again qualifies as a producer-handler for a full month. [1963 c.442 §18; 1967 c.440 §18; 1967 c.637 §§16,16a; 1977 c.307 §2; 1981 c.523 §1]

583.512 [1967 c.440 §23; repealed by 1977 c.307 §19]

583.515 Establishment of quota for producers in market areas; adjustments and transfers. (1) Under a market pool and as used in this section, "quota" means a producer's portion of the total sales of Class 1 milk in a market area plus 15 percent.

(2) The State Department of Agriculture shall provide by order, under procedures set forth in ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565, for the transfer of quota between individual producers as necessary to carry out the purpose and intent of ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565.

(3) After June 4, 1963, to establish each producer's initial quota in the market area, the department shall give equal weight to production and to Class 1 sales by determining the simple average of the production of the producer and Class 1 sales in the market area during January, February, March and April 1963. The percentage that the monthly production-sales average of the producer is of the monthly production-sales average of all producers supplying the market area, times the total Class 1 sales in the area, times 115 percent, divided by 30, will be the daily quota of the producer in the area. Thereafter, annually on or before March 1 of each year, each producer's quota will be adjusted in accordance with the daily average production of the producer during the four low months of the previous calendar year adjusted to the average of the four high months of Class 1 sales in the market area, plus 15 percent; except the department may establish by administrative order, if there are months of low production because producers have adjusted production to meet conditions existing in a particular market, or because of acts of God or other legitimate reasons which cannot be attributed to poor management, such months may be excluded in determining the low four months.

(4) If, during any three consecutive months, in the market area surplus in quota is less than 10 percent or more than 20 percent, the department shall adjust quotas allocated under subsection (3) of this section to provide sufficient quota milk to meet Class 1 requirements.

(5)(a) A new producer or a producer with allocated quota can acquire quota or increase the quota of the producer by purchasing a herd with assigned quota providing the department, or the producer group which has reallocated assigned quota, is advised of the transfer.

(b) A new producer who does not acquire quota as provided by paragraph (a) of this subsection, may, after qualifying for Grade A production and after selling such production as manufacturing milk for a minimum of 180 days, have assigned as the quota of the producer in the market area the same proportion, less 30 percent, that the monthly average production of the producer for the 180-day period bears to the Class 1 utilization of all production in the market area. Such quota with penalty must be maintained for at least six months prior to adjustments, as provided by subsection (4) of this section. [1963 c.442 §21; 1977 c.307 §13]

583.516 Quota reallocation. Notwithstanding the provisions of ORS 583.515 and in addition thereto, at the time, each March 1, when the State Department of Agriculture under a plan or system reallocates quota to producers, it is also authorized to include provisions allowing a producer to maintain the quota of the producer if the producer consistently produces and furnishes milk equal to or in excess of the quota of the producer. Such a plan or part of the system shall be considered if it is apparent a large segment of the producers are in agreement therewith and if such procedures will not seriously lessen or reduce the supply of milk needed for consumers and handlers thereof. [1967 c.440 §7]

583.517 Diversion and transportation of pooled milk. (1) In order to further carry out the intent and purposes of this chapter and to further help stabilize the production, marketing and use of pooled milk and to insure an adequate supply of healthful milk for the people of this state, and to assure licensed handlers in a market pool and market area that they will at all times when possible and practical have a total supply of milk to meet their Class 1 and Class 2 needs, the State Department of Agriculture is authorized to establish, maintain, carry out and enforce a plan or system under which licensed handlers shall divert and move pool milk from their own use and needs to another licensed handler for Class 1 or Class 2 use and needs.

(2) If after public hearing under ORS chapter 183 there is sufficient evidence and testimony received by the department to indicate a general agreement and approval by

and between producers and other segments of the dairy industry, the department may also establish a plan or system to require and provide for the equalization between producers of the cost of moving or transporting pooled milk. In considering the provisions necessary to carry out this intent and purpose, the department may pattern such provisions or requirements after the system wherein producers under equalization receive the same price for quota milk and surplus over quota milk, or it may provide any other plan or system which is fair and reasonable.

(3) If a plan or system of equalizing the costs of moving or transporting pool milk is established under subsection (2) of this section, then any amount required by the department to be deducted by a handler from producers is an authorized deduction and it shall be identified and deducted as set forth in ORS 583.525 (3).

(4) No handler shall fail or refuse to comply with a directive or order issued by the department if a plan or system is established to move pool milk under the provisions of subsection (1) or (2) of this section. [1967 c.440 §11]

583.518 Handler who fails or refuses to transport pool milk in accordance with department plan penalized. In addition to other actions it may take, or penalties it may apply, the State Department of Agriculture after public hearing under ORS chapter 183 may establish a plan or system of assessing a penalty amount against a handler who fails or refuses to move or transport pool milk for the Class 1 or Class 2 needs of another handler, when ordered so to do by the department as authorized in ORS 583.517. This penalty which shall be established in an amount not to exceed $1 per hundredweight of milk and paid to the department, shall be computed on the basis of the number of pounds of milk which was not moved or transported as ordered by the department. If the handler in violation of such an order does not pay the amount of penalty within 30 days after the date of the written notice by the department, the department in addition to other actions available to it under this chapter may:

(1) File suit against the handler for recovery of the penalty amount, or

(2) Deduct the amount of the penalty from any amount or equalization which may be later due and payable by the department to such handler. Any such withholding by the department shall not be passed on to, or be withheld by the handler from the price paid to producers for milk. [1967 c.440 §20]

583.520 Department to provide system for equitable payments to producers where no market pool exists; recognition of voluntary equalization program. In the event the producers through petition or referendum pursuant to ORS 583.475 prevent a market pool from being established, or by referendum terminate and close a market pool, the State Department of Agriculture shall provide a system whereby each producer selling milk to a particular handler except for replacement milk shall receive the same price for Class 1 milk and for Class 2 milk of like quality, as every other producer selling milk to that particular handler and whereby each producer shall receive the minimum price established by the department under ORS 583.505. Such system which is for the purpose of assuring fair, reasonable and equitable treatment and payment for all affected producers, may take into consideration the existence, if any, of a voluntary equalization program established by contract between groups of producers. [1963 c.442 §20]

583.525 Handler not to purchase from producer for less than minimum price; allowable deductions by handler; additional deductions. (1) It is the intent of the provisions of ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565 to minimize and eliminate as far as possible and practical, certain unfair and inequitable trade and competitive practices and advantages that have existed between types or classes of handlers of milk.

(2) No handler shall purchase milk from a producer or producers for less than the minimum prices established under ORS 583.505. Each handler shall pool such milk in accordance with the provisions of ORS 583.510 and 583.520, whichever is applicable.

(3) Notwithstanding the provisions of ORS chapter 62 or amendments thereto, or other laws to the contrary, a handler may only deduct from the amounts due a producer or producers, the following:

(a) Deductions by the handler for payment to the Oregon Dairy Products Commission under ORS 576.051 to 576.455, payments to the State Department of Agriculture under this chapter.

(b) A pooling charge of not to exceed the amount established by the department, if such handler actually performs a pooling service for the producer and if such pooling charges are limited to milk purchased from or handled for an individual producer.

(c) Deductions based on assignment, approved and signed by the producer, directing the handler to pay a specified sum to a person other than such handler on the producer's behalf. Such "other person" shall not be

an officer, employee, agent or representative of the handler.

(d) Deductions based on an assignment, approved and signed by the producer, authorizing amounts to be retained by the handler to cover or reimburse such handler for bona fide loans or advances of money made to the producer, or for commodities, articles or merchandise which have been furnished by the handler to the producer.

(e) Deductions for hauling charges in accordance with applicable common or contract carrier rates approved by the Public Utility Commission. If no rates have been established by the Public Utility Commission for the hauling of the milk which is covered by the deduction, then such deduction shall not exceed the rate established by the department after public hearing under the provisions of ORS chapter 183 and taking into consideration the advice of the Public Utility Commission.

(f) After the above deductions have been taken, if any, a cooperative corporation or association organized under the laws of any state and engaged in marketing or making collective sales of milk produced by its members or other producers represented by or through the cooperative, may then take and retain such other deductions from payment to its members or producers, differentials as may be specifically authorized in advance by contract or membership agreements between the cooperative and its members.

(4) A handler when making payment for milk, shall clearly identify and explain the deductions to the producer.

(5) The department after public hearing and as authorized by ORS chapter 183, may approve additional deductions or further orders as may be necessary to carry out the provisions of this section. Such determinations shall not result in an undue advantage for one handler over another handler or permit a handler to evade or circumvent the intent of this section. [1963 c.442 §23; 1977 c.307 §14; 2003 c.604 §105]

583.530 Prohibited practices. (1) No handler or producer-handler shall:

(a) Buy milk from any person other than a producer, producer agent, or another handler licensed under ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.465.

(b) Deal in or handle milk if such handler knows such milk has previously been dealt in or handled in violation of any provision of ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.465.

(c) Purchase or accept delivery of any milk in a market area where a market pool is established, that has not been assigned quota as prescribed and established by the State Department of Agriculture under the provisions of ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565, unless such milk is replacement milk as defined in ORS 583.007.

(2) No handler shall buy or offer to buy from a handler, producer, producer's agent or cooperative corporation or association, and no handler, producer, producer's agent or cooperative corporation or association shall sell or offer to sell to a handler, any Class 1 or Class 2 milk at a price less than that established under ORS 583.505. [1963 c.442 §§12,25; 1977 c.307 §15; 1983 c.740 §225]

583.540 Enforcement of ORS 583.410 to 583.565. (1) The State Department of Agriculture may enforce by injunction or other appropriate proceedings in the circuit court of the county in which the defendant resides or has the principal place of business of the defendant any provisions of ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565 or any order promulgated thereunder. The department shall not be required to give bond in any such proceeding. Such proceedings shall be given preference on the calendar of the circuit court in which filed.

(2) The provisions of ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565 or violations thereof may be enforced under and as a part of the provisions of ORS 583.007, 583.016 and 583.046 to 583.166. [1963 c.442 §13; 1977 c.307 §16]

583.545 Disposition of fees. Except as provided by ORS 583.510 (5), the State Department of Agriculture shall deposit all fees paid under ORS 583.004 and 583.410 to 583.565 in the State Treasury to the credit of the Department of Agriculture Service Fund, and such fees are continuously appropriated to the department for administering and enforcing ORS 583.001 to 583.565. [1963 c.442 §9(1); 1977 c.307 §17; 1979 c.499 §7]

583.560 Modification of legal proceedings and administrative matters; department authorized to compromise claims. Nothing in the provisions of ORS 583.001, 583.007, 583.021, 583.028, 583.440 (3), 583.445 to 583.463, 583.505 to 583.510, 583.516 to 583.518, 583.560, 583.565 and 583.993 shall be construed as terminating, repealing, settling or changing any action, suit, audit or any other matter, started, commenced or hereinafter started or commenced by the State Department of Agriculture, or by any person against the department, for violations of, or for any matter arising from the provisions of this chapter prior to July 1, 1967. All moneys owing to the department, or owing by the department, continue to be owing. The department may with the written approval, which shall be a public record, of the direc-

tor, the Attorney General and other supervisory officials, compromise or settle any matter or claim arising before or after July 1, 1967, if in their opinion such action is in the best interests of the milk industry. [1967 c.440 §22; 1971 c.418 §15; 1977 c.307 §18]

583.565 Effect of termination of chapter. (1) Notwithstanding other provisions to the contrary, including ORS 182.080, if all or only a part of the provisions of this chapter are terminated or become inoperative, in all or in a part of the state, the State Department of Agriculture is authorized to take such steps and procedures as are necessary to immediately wind up and conclude the administration and enforcement of this chapter, all or in part, for the period prior to such termination or inoperative date. If the provisions of this chapter continue to apply and cover a part or parts of the state, the department is authorized to continue to carry out and enforce the provisions of this chapter in such part or parts of the state.

(2) The termination shall not affect or impair any act done, right accrued, acquired or occurring, liability, payment demanded or required under this chapter to be paid, or rules or orders promulgated for the period prior to the termination. The department in carrying out the intent and purpose of this section shall have the authority to determine, collect and disburse any moneys due it, or due other persons who were subject to the law, as authorized or required by this chapter prior to its termination. The department with the written approval of the director and the Attorney General, in order to expedite the winding-up procedures, is authorized to compromise any matter or debt owing to it, or owing by the department to persons subject to the provisions of this chapter.

(3) After the department has carried out its responsibilities and duties as required in this section and has paid the expenses thereof, any unexpended funds under its control or supervision derived under this chapter and not needed thereunder, shall be transferred by the department to the account designated in ORS 621.015 and may be expended by the department thereunder. [1967 c.440 §8; 1971 c.418 §16]

583.600 Prohibits sale at less than cost; determination of cost; exceptions; recordkeeping. (1)(a) No handler, producer-handler, jobber or other person shall sell or offer to sell fluid milk to retailers or other milk distributors at a price less than the amount paid for the raw fluid milk product, plus the cost to manufacture and distribute the product.

(b) The State Department of Agriculture shall establish a method for determining individual costs of manufacture and distribution of fluid milk.

(c) For the purpose of this section, price shall be determined after deductions of all discounts and rebates, either direct or indirect, given before sale, at sale or after sale.

(2) A handler, producer-handler, jobber or other person may sell or offer to sell fluid milk to an existing customer at a price less than the amount established in subsection (1) of this section if the price is not less than the price offered to the customer by another handler, producer-handler, jobber or other person who is selling or offering to sell at a price lawfully established pursuant to this section. This subsection only permits sales or offers to sell at less than the price established pursuant to subsection (1) of this section for locations where the competitive situation described in this subsection exists.

(3) Every handler, producer-handler, jobber and store shall keep accurate records of transactions concerning fluid milk, for at least one year. This subsection requires a store to keep only those records necessary to provide information to the department concerning the purchase price paid by the store for fluid milk covered by subsection (1) of this section. [1977 c.285 §2]

583.610 Fees; reports on milk sales. (1) The State Department of Agriculture may determine and assess a fee, not to exceed one cent per hundredweight on fluid milk, to be paid monthly by the handler, producer-handler or jobber who first sells the milk in this state.

(2) The department shall deposit all fees paid under this section in the Department of Agriculture Service Fund, and such fees are continuously appropriated to the department for the administration of ORS 583.600 to 583.630.

(3) To assist the department in its determination of fees under this section, the department may prescribe periodic reports to be submitted to the department by all handlers, producer-handlers and jobbers evidencing the volume of milk distributed during specific periods. [1977 c.285 §3; 1979 c.499 §8]

583.620 Enforcement of ORS 583.600 to 583.630. (1) The State Department of Agriculture may investigate for any violations of the provisions of ORS 583.600 to 583.630 and 583.993, either on its own initiative or upon the written request of any person.

(2) In accordance with audit and enforcement provisions set forth in ORS 583.028 to 583.166, 583.540 and 583.560, the department may enforce the provisions of ORS 583.600 to 583.630 and 583.993 against any handler, producer-handler, jobber or any other person selling or offering to sell fluid

milk to retailers or other milk distributors and may conduct audits of any handler, producer-handler, jobber or store.

(3) Provisions for the enforcement of ORS 583.600 to 583.630 and 583.993 are not exclusive and are cumulative to any other applicable provision of law. [1977 c.285 §4]

583.630 Rulemaking under ORS 583.600 to 583.630. In accordance with ORS chapter 183, the State Department of Agriculture may adopt any rules necessary to carry out the provisions of ORS 583.600 to 583.630 and 583.993, except that the rules first adopted under ORS 583.600 to 583.630 and 583.993 shall be established with the advice of the segments of the milk industry affected by the provisions of ORS 583.600 to 583.630 and 583.993. The provisions of ORS 583.425 apply to the procedures the department uses to establish a method for determination of individual costs under ORS 583.600 (1). [1977 c.285 §5]

583.990 [Repealed by 1955 c.1 §1]

583.991 [1957 c.719 §17; repealed by 1961 c.638 §20]

583.992 [1963 c.442 §29; repealed by 1967 c.440 §26]

583.993 Penalties. (1) Subject to ORS 153.022, violation of any provision of ORS 583.001 to 583.565 or rule thereunder is a Class A violation.

(2) Subject to ORS 153.022, violation of any provision of ORS 583.600 to 583.630, or of any rule promulgated pursuant thereto, is punishable, upon conviction, by a fine not to exceed $10,000. [1967 c.440 §25; 1977 c.285 §6; 1999 c.1051 §204]