

House Bill 2249

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Joint Interim Committee on Judiciary for Office of Legislative Counsel)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Conforms language in federally preempted Milk Audit and Stabilization Act to current legislative form and style. Rearranges and harmonizes language. Changes base period for determining initial quota in newly established marketing area from four-month period in 1963 to four-month period in year preceding establishment of marketing area.

A BILL FOR AN ACT

1
2 Relating to milk industry; creating new provisions; amending ORS 561.144, 583.001, 583.007, 583.016,
3 583.021, 583.046, 583.056, 583.126, 583.146, 583.156, 583.410, 583.425, 583.430, 583.440, 583.445,
4 583.450, 583.455, 583.457, 583.465, 583.470, 583.475, 583.480, 583.485, 583.490, 583.500, 583.505,
5 583.507, 583.510, 583.515, 583.516, 583.517, 583.518, 583.520, 583.525, 583.530, 583.540, 583.545,
6 583.565, 583.600, 583.610, 583.620, 583.630 and 583.993; and repealing ORS 583.004, 583.028,
7 583.076, 583.086, 583.096, 583.106, 583.116, 583.136, 583.166, 583.415, 583.447, 583.463 and 583.560.

8 **Be It Enacted by the People of the State of Oregon:**

9 **SECTION 1. Sections 2 to 7 of this 2005 Act are added to and made a part of ORS 583.046**
10 **to 583.166.**

11 **SECTION 2. (1) If a person is a lessor of a dairy farm or a dairy plant, the person does**
12 **not qualify as a producer-handler unless the person obtains a determination from the State**
13 **Department of Agriculture that the person is a producer-handler.**

14 **(2) A person who qualifies as a producer-handler may purchase from other licensed han-**
15 **dlers packaged fluid milk products other than whole milk. The monthly purchases of pack-**
16 **aged fluid milk products by the producer-handler may not exceed an average of 100 pounds**
17 **a day.**

18 **SECTION 3. (1) The State Department of Agriculture shall cause an audit to be made of**
19 **all records of a handler or producer-handler that relate to Grade A milk handled, used or**
20 **sold. The audit must include a determination of the proportion of the milk produced by each**
21 **producer or producer group that is used as milk for bottled and canned purposes and the**
22 **proportion of the milk that is used in the manufacture of milk products. The department**
23 **shall use the audit information to determine whether producers are being accurately and**
24 **properly paid for milk. The department shall cause an audit of each handler and producer-**
25 **handler to be conducted at least once each year.**

26 **(2) In carrying out this section, the department may audit the records for all milk re-**
27 **ceived, handled, used or sold by a handler or producer-handler and may investigate the**
28 **premises of the handler or producer-handler to verify the accuracy of the audit or to confirm**
29 **the receipt, production, usage or disposition of milk regardless of the source of the milk.**

30 **SECTION 4. (1) After an audit has been completed under section 3 of this 2005 Act, the**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 State Department of Agriculture shall review the audit with the handler or producer-handler.
 2 If, after audit and review, the department finds that milk has not been properly accounted
 3 for or paid for by the handler or producer-handler, or that the handler or producer-handler
 4 has violated a provision of this chapter or a department rule:

5 (a) The department shall file a copy of the audit findings in the Salem office of the de-
 6 partment. The audit findings shall be confidential as provided in ORS 192.501 (5) and be
 7 available for examination only by the audited handler or producer-handler, an affected pro-
 8 ducer or an authorized agent of an audited handler or producer-handler or affected producer;

9 (b) The department shall send to the handler or producer-handler by certified mail a copy
 10 of the audit findings and other information the department deems pertinent;

11 (c) The department may notify affected producers of the audit findings for a handler or
 12 producer-handler; and

13 (d) The department shall include with the audit findings a proposed order requiring that
 14 payment be made or that certain procedures or practices that violate a law or department
 15 rule be stopped, corrected or changed.

16 (2) No later than 30 days after the department mails a copy of the audit findings, the
 17 audited handler or producer-handler or the producers affected by the audit may file with the
 18 department any additional information, facts, figures or other material that may show the
 19 audit findings to be incorrect.

20 (3) If the audited handler or producer-handler or an affected producer does not timely file
 21 additional information, facts, figures or other material with the department, the department
 22 shall issue a final order based on the audit findings and send a copy of the final order by
 23 certified mail to the handler or producer-handler. Within 16 days after the date the final
 24 order is mailed, the handler or producer-handler shall pay amounts or make corrections of
 25 violations of law or department rules as required by the final order.

26 (4) If the audited handler or producer-handler or an affected producer timely files addi-
 27 tional information, facts, figures or other material with the department, the department
 28 shall review and reaudit, within 90 days, all necessary records of the handler or producer-
 29 handler. The department may affirm, modify or set aside its audit findings. The department
 30 shall file a copy of the reaudit findings in the Salem office of the department. The reaudit
 31 findings shall be confidential as provided in ORS 192.501 (5) and shall be available for exam-
 32 ination only by the audited handler or producer-handler, an affected producer or an author-
 33 ized agent of an audited handler or producer-handler or affected producer. The department
 34 shall issue a final order based on the reaudit findings and send a copy of the final order by
 35 certified mail to the handler or producer-handler. The department may also forward to af-
 36 fected producers a part or all of its reaudit findings and final order. Within 16 days after the
 37 date the final order is mailed, the handler or producer-handler shall pay amounts or make
 38 corrections of violations of law or department rules as required by the final order.

39 (5) Judicial review of a final order issued under this section is available under ORS
 40 183.484 only if the department issued the final order after a reaudit under subsection (4) of
 41 this section.

42 **SECTION 5.** (1) The State Department of Agriculture may file an injunction action
 43 against a handler or producer-handler whose records have been audited under section 4 of
 44 this 2005 Act. The injunction may be filed in the circuit court for the county in which the
 45 handler or producer-handler resides or has a principal business office if the handler or

1 producer-handler has not made payment or corrected violations of law or department rules
 2 as required by a final order issued under section 4 of this 2005 Act and has not filed an appeal
 3 to the circuit court within the time prescribed by ORS 183.484.

4 (2) In a judicial proceeding under this section, the findings of the department are con-
 5 clusive regarding the making of payments or occurrence of violations. Unless the proceeding
 6 is consolidated with trial on the merits, the issues before the court are limited to whether
 7 the facts are sufficient to establish entitlement to relief under subsection (1) of this section.
 8 The court shall hear the petition in a summary manner without a jury and shall give the
 9 petition priority on the docket of the court over all civil cases except those given equal or
 10 greater priority by statute.

11 **SECTION 6.** If a court affirms or modifies the findings contained in a final order of the
 12 State Department of Agriculture that states a handler owes moneys to producers or other
 13 persons under this chapter, the court shall render judgment in favor of the department with
 14 a money award for the unpaid amount. The department shall pay moneys recovered or re-
 15 ceived by the department to persons entitled to payment, without deduction for the costs
 16 incurred by the department.

17 **SECTION 7.** If the State Department of Agriculture has reason to believe that any han-
 18 dler or producer-handler is violating a provision of this chapter or department rules and that
 19 the violation could result in serious economic loss to handlers, producer-handlers or pro-
 20 ducers, the department may file an action in the circuit court asking for a temporary in-
 21 junction against the handler or producer-handler until the department completes an audit
 22 and reaudit procedure or takes other action as authorized by this chapter. The court may
 23 approve any action necessary to protect the rights and interests of producers, producer
 24 groups and handlers provided by this chapter.

25 **SECTION 8.** Sections 9 and 10 of this 2005 Act are added to and made a part of ORS
 26 583.410 to 583.565.

27 **SECTION 9.** If the State Department of Agriculture issues an applicant under ORS
 28 583.445 a license, the department shall designate on the license one or more of the following
 29 as a type of operation the licensee may operate and engage in:

- 30 (1) A handler.
- 31 (2) A producer-handler.
- 32 (3) Any other category or type of operation the department deems appropriate to carry
 33 out the purpose and intent of this chapter.

34 **SECTION 10.** The State Department of Agriculture may require unlicensed milk manu-
 35 facturing plants to file reports and information regarding purchases by the plants of Grade
 36 A milk from handlers, producer-handlers and producers. The department shall specify by rule
 37 the frequency and manner of reporting.

38 **SECTION 11.** ORS 583.001 is amended to read:

39 583.001. *[The provisions of this chapter, which shall be designated]* **This chapter may be cited**
 40 **as the Milk Audit and Stabilization Act**, *[are combined and are hereby declared to be one law]*. The
 41 State Department of Agriculture shall *[enforce and carry out the law.]* **administer and enforce this**
 42 **chapter.**

43 **SECTION 12.** ORS 583.007 is amended to read:

44 583.007. As used in this chapter, unless the context requires otherwise:

45 *[(1) "Classification" means the classification of all Grade A and Grade B milk into classes ac-*

1 *ording to its utilization.]*

2 *[(a) "Class 1 milk" includes but is not limited to]*

3 **(1) "Class 1 milk" means:**

4 **(a)** Grade A and Grade B milk received, used or sold to others for ultimate human consumption
5 in fluid form[.]; **and**

6 **(b) Milk designated as Class 1 milk by State Department of Agriculture rule.**

7 *[(b) "Class 2 milk" includes but is not limited to]*

8 **(2) "Class 2 milk" means:**

9 **(a)** Grade A and Grade B milk received, used or sold to others for ultimate use in the manu-
10 *facture of [cottage cheese, ice cream, condensed milk and the frozen desserts as shall be prescribed by*
11 *the State Department of Agriculture under this chapter.]* **products meeting the standards of iden-**
12 **tity for cottage cheese, ice cream, condensed milk or frozen desserts established by the de-**
13 **partment by rule; and**

14 **(b) Any other milk designated as Class 2 milk by department rule.**

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

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

20 **(3) "Class 3 milk" means Grade A or Grade B milk received, used or sold to others for**
21 **use other than as Class 1 and Class 2 milk.**

22 *[(2)]* **(4) "Consumer"** means any person, other than a handler, jobber or store, who purchases
23 milk for human consumption in fluid form.

24 *[(3) "Department" means the State Department of Agriculture.]*

25 *[(4)]* **(5) "First handler"** means the handler who receives Grade A or Grade B milk from a pro-
26 *ducer, either physically or as a marketing agent[, irrespective of the final or ultimate destination of*
27 *such milk].*

28 *[(5) "Handler":]*

29 *[(a) means any person, partnership, corporation, association, cooperative organization or other en-*
30 *tity engaged in the handling of Grade A or Grade B milk in the capacity as the operator of a fluid*
31 *milk plant which processes milk in Class 1, Class 2 or Class 3 uses and who purchases or receives such*
32 *milk from a producer, or from another handler, or from the herd of the producer or handler, or]*

33 *[(b) Means any person, cooperative corporation or association serving as a marketing agent for*
34 *producers, or]*

35 *[(c) Means any contract purchaser making sales of Grade A or Grade B milk to another*
36 *handler.]*

37 *[(d) Does not mean any person, partnership, corporation, association, cooperative organization or*
38 *other entity operating exclusively a plant or establishment, purchasing or using manufacturing grade*
39 *milk for manufacturing purposes only. This exception or exemption, however, does not apply if such]*

40 **(6) "Grade A milk" means milk that meets the standards of identity for Grade A milk**
41 **established by the department under ORS chapter 621.**

42 **(7) "Grade B milk" means milk that meets the standards of identity for Grade B milk**
43 **established by the department under ORS chapter 621.**

44 **(8) "Handler":**

45 **(a) Means:**

1 (A) An operator of a fluid milk plant who processes Grade A or B milk for Class 1, Class
2 2 or Class 3 uses and who:

3 (i) Receives the milk from the plant operator's own herd; or

4 (ii) Purchases the milk from a producer or another handler;

5 (B) A marketing agent for producers; or

6 (C) A contract purchaser making sales of Grade A or Grade B milk to another handler.

7 (b) Does not mean the operator of a plant or establishment purchasing or using manu-
8 facturing grade milk for manufacturing purposes. The exclusion provided by this paragraph
9 does not apply if the plant or establishment is owned by, under the control of the same manage-
10 ment as[,] or [is] a part of a fluid milk plant processing milk for human consumption.

11 [(6)] (9) "Jobber" means a person who purchases bottled or packaged milk or milk products from
12 a handler or a producer-handler and [who thereafter sells such] sells the milk or milk products at
13 wholesale or retail.

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

15 [(8)] "Milk" means the whole milk or cream or any constituent part thereof which is the lacteal se-
16 cretion of cows.]

17 [(a)] "Grade A or Grade B milk" means all milk or cream as defined herein which meets the stan-
18 dards of identity as provided in ORS chapter 621.]

19 [(b)] "Manufacturing grade milk" means all milk or cream, as defined herein, which does not meet
20 the standards of identity as provided in ORS chapter 621.]

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

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

25 (10) "Manufacturing grade milk" means milk that does not meet the standards of identity
26 for Grade A or Grade B milk established by the department under ORS chapter 621.

27 (11) "Market area" means an area consisting of one or more of the primary markets es-
28 tablished under ORS 583.465.

29 (12) "Milk" means all or part of the lacteal secretion of cows.

30 (13) "Milk product" means fluid milk or dairy products meeting standards of identity es-
31 tablished by the department by rule.

32 [(11)] (14) "Producer" means [any] a person producing Grade A or Grade B milk, any portion
33 of which is sold to, or received [by] or used by, a licensed handler for human consumption in fluid
34 form.

35 [(12)] (15) "Producer-handler" means a person[, partnership or corporation] who:

36 (a) Operates a dairy farm [which the person, partnership or corporation] that the person owns,
37 leases or is purchasing;

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

39 (c) Owns, or is purchasing or leasing the person's own dairy plant [of the person, partnership or
40 corporation which the person, partnership or corporation] that the person operates for the process-
41 ing, bottling or packaging of Grade A or Grade B milk;

42 (d) Sells or distributes [all] bottled Class 1 Grade A or Grade B milk [direct] directly to whole-
43 salers, [to jobbers, to consumers, to stores or to drive-in markets] jobbers, consumers or stores, but
44 not to licensed handlers or other producer-handlers;

45 (e) Sells surplus milk in excess of Class 1 sales only to a licensed handler, at a Class 3 milk

1 price established by the department, or to [a nonlicensed] **an unlicensed** manufacturing plant as
2 manufactured milk; **and**

3 (f) **Except as provided in section 2 of this 2005 Act**, confines milk processing and route dis-
4 tribution to milk produced by the dairy herd of the person[, *partnership or corporation, and receives*
5 *no*] **and does not receive** skim milk, including nonfat dry milk or condensed skim milk or skim milk
6 recombined from nonfat dry milk or condensed skim milk, or butterfat from any other source for use
7 in fluid milk products[;].

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

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

14 [(13) *“Replacement milk” means Grade A or Grade B milk produced in one market area, thereafter*
15 *processed in another market area and then returned to the market area where it was originally*
16 *produced, for distribution or sale within such original market area.*]

17 **(16) “Replacement milk” means Grade A or Grade B milk produced in one market area**
18 **and processed in another market area, then returned to the market area where the milk was**
19 **originally produced for distribution or sale within the original market area.**

20 [(14)] (17) “Store” means any grocery store, hotel, restaurant, soda fountain or any other place,
21 establishment or business [wherein] **where** milk is sold [as an article of merchandise or served and
22 consumed on the premises] **at retail.**

23 **SECTION 13.** ORS 583.016 is amended to read:

24 583.016. (1) [Whereas,] **The Legislative Assembly finds and declares that:**

25 (a) The production, sale and distribution of milk and milk products in this state are attended
26 with conditions adversely affecting milk producers, handlers and consumers of milk.[, *it is hereby*
27 *declared that the purpose of ORS 583.007, 583.016 and]*

28 (b) **The purpose of this section and ORS 583.046 to 583.166** is to [provide the assistance of the
29 *State of Oregon in maintaining an adequate supply of healthful milk through the state auditing of the*
30 *records of handlers as they pertain to the pooling and usage of milk and the payment therefor.] **ensure***
31 **an adequate supply of milk through state auditing of handler and producer-handler records**
32 **pertaining to the pooling and usage of milk and payments for milk.**

33 [(2) *The provisions of ORS 583.007, 583.016 and 583.046 to 583.166 shall not be construed to con-*
34 *flict with or repeal, and]*

35 (2) **ORS 583.001 to 583.565** are in addition to [and not in lieu of,] any other law of this state
36 or any municipal ordinance relating to [any] a health or sanitary requirement, or [any] a municipal
37 ordinance relating to the inspection, grading or production of Grade A milk.

38 **SECTION 14.** ORS 583.021 is amended to read:

39 583.021. [Notwithstanding other provisions to the contrary,] A producer-handler owning or main-
40 taining less than 26 dairy cows, who does not purchase bulk, bottled or packaged milk, [shall be
41 exempt from the provisions of] **is exempt from** this chapter. The State Department of Agriculture
42 is authorized to investigate the premises of any [nonlicensed or licensed producer-handler claiming
43 exemption as authorized in] **producer-handler claiming exemption under** this section to verify the
44 number of dairy cows owned or maintained by [such] **the** person.

45 **SECTION 15.** ORS 583.046 is amended to read:

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

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

12 **(1) Each first handler shall pay to the State Department of Agriculture a poundage fee**
 13 **on all Grade A milk purchased or handled by the handler. Each first handler shall deduct the**
 14 **amount of the poundage fee the handler is required to pay to the department under this**
 15 **section for purchased or handled Grade A milk from the purchase price paid to a producer**
 16 **or producer group. The first handler shall pay the poundage fee not later than the last day**
 17 **of the month for all quantities of Grade A milk purchased or handled by the first handler**
 18 **during the previous month.**

19 **(2) The department shall determine the poundage fee by rule, not to exceed one and**
 20 **three-fourths cents per hundredweight. The department must hold a hearing before estab-**
 21 **lishing an increase or decrease in the poundage fee. In deciding whether to establish an in-**
 22 **crease or decrease in the poundage fee, the department must consider at least the following:**

- 23 (a) The current auditing and enforcement program.
- 24 (b) Proposed program changes.
- 25 (c) General milk industry changes.
- 26 (d) Increased or decreased benefits accruing to producers, handlers and consumers.

27 **SECTION 16.** ORS 583.056 is amended to read:

28 583.056. (1) [In addition to other penalties prescribed by ORS 583.007, 583.016 and 583.046 to
 29 583.166] **In addition to penalties imposed under ORS 583.993**, any handler who delays transmittal
 30 of payment of fees [as required by this section] **under ORS 583.046** beyond the due date[,] shall pay
 31 **a penalty equal to** an additional one percent of the amount of poundage fees due for the first month
 32 of delay and 25 percent of the amount of poundage fees due for the second month of delay.

33 (2) [A lien may be filed by] The State Department of Agriculture [as authorized by ORS 561.450
 34 upon] **may file a lien against** the real and personal property of [any] **a handler who fails to pay fees**
 35 **or penalties as required by this section or ORS 583.046.**

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

41 **SECTION 17.** ORS 583.126 is amended to read:

42 583.126. (1) Producers, [have the right as set out in but not limited to the provisions of ORS
 43 583.086, either] individually or through agents, [to] **may** file with the State Department of Agricul-
 44 ture information, facts, figures and material relating to the handling of their milk, the audits thereof
 45 and practices or problems [which may affect such milk or payment therefor, under the provisions of

1 *ORS 583.007, 583.016 and* **that may affect the milk or payment under ORS 583.046 to 583.166.**

2 (2) *[No handler shall engage in any of the following unfair practices]* **A handler may not:**

3 (a) Interfere with, restrain or coerce producers *[in the exercise of their rights]* **with regard to**
4 **the making of a filing** under subsection (1) of this section.

5 (b) Terminate an agreement or threaten to terminate an agreement relating to handling or sale
6 of milk or payment *[therefor]* **for milk**, or refuse to accept milk from a producer because *[such pro-*
7 *ducer has exercised rights and privileges as set out]* **the producer has made a filing** under sub-
8 section (1) of this section.

9 (3) The department, *[as authorized by ORS 583.007, 583.016 and 583.046 to 583.166, shall, in the*
10 *course of auditing, review and investigate all unfair practices as provided by subsection (2) of this*
11 *section coming to its attention and shall]* **when conducting an audit, shall review and investigate**
12 **any alleged conduct described in subsection (2) of this section. The department shall include**
13 **in audit or reaudit findings** *[make]* a finding of fact and a determination relative to *[such practices.*
14 *Such audit findings shall be subject to review and appeal by producers and handlers as otherwise*
15 *provided in ORS 583.007, 583.016 and 583.046 to 583.166.]* **the alleged conduct. Findings regarding**
16 **alleged conduct described in subsection (2) of this section are subject to review and appeal**
17 **by producers and handlers as provided in section 4 of this 2005 Act and ORS 183.484 for re-**
18 **view and appeal of audit or reaudit findings.**

19 (4) In addition to other remedies provided by *[ORS 583.007, 583.016 and 583.046 to 583.166 or*
20 *other]* law, any producer injured by any violation of *[the provisions of]* **subsection (2) of this section**
21 may maintain an action for damages in a circuit court. The court may award reasonable attorney
22 fees to the prevailing party in an action under this *[section]* **subsection.**

23 **SECTION 18.** ORS 583.146 is amended to read:

24 583.146. In legal proceedings filed under ORS *[583.096, 583.106 or 583.136]* **183.484 or section 5**
25 **or 7 of this 2005 Act**, the court may award reasonable attorney fees to the prevailing party. Any
26 attorney fees awarded to the State Department of Agriculture shall be deposited by and used by the
27 department as authorized under ORS *[583.166]* **583.545.** If the department does not prevail in *[such]*
28 **the** legal proceedings, *[it]* **the department** shall pay the costs, disbursements and reasonable at-
29 torney fees at trial and on appeal, as adjudged by the court, of the prevailing party from the moneys
30 in the Department of Agriculture Account.

31 **SECTION 19.** ORS 583.156 is amended to read:

32 583.156. *[When, as a result of]* **If** audit findings by the State Department of Agriculture, legal
33 action or other provisions of ORS *[583.007, 583.016 and 583.046 to 583.166 authorizing and requiring*
34 *certain payment to be made, a handler or other person whose records have been audited makes payment*
35 *for milk, such payment shall be in]* **583.046 to 583.166 authorize or require that a particular**
36 **payment be made, and a handler or producer-handler makes that payment, the making of**
37 **that payment constitutes** full and final settlement between the parties concerned, *[except]* **other**
38 **than any additional payments that may become due as a result of:**

39 (1) *[For]* Errors in audit or the verification of new facts, figures or information *[which]* **that**
40 would change the results of *[such audit, brought to the attention of or discovered or verified by the*
41 *department within three years of such audit]* **the audit and that are identified by the department**
42 **less than three years after the audit finding.**

43 (2) *[For]* Procedures or actions of *[such]* **the handler or** *[other person,]* **producer-handler that**
44 **are based upon fraud.**

45 **SECTION 20.** ORS 583.410 is amended to read:

1 583.410. (1) The **Legislative Assembly finds and declares that the** production, processing,
 2 distribution and sale of fluid milk for human consumption are attended by conditions [*which*] **that**
 3 adversely affect the general welfare and result in 90 to 95 percent of the total milk production in
 4 the United States being marketed under federal and state stabilization regulations, deemed neces-
 5 sary to protect the interests of producers, distributors and consumers. It is [*therefore declared to*
 6 *be*] the policy of the State of Oregon[, *which imposes*] **to impose** regulations on milk producers to
 7 [*assure*] **ensure** a wholesome product for the benefit of the consuming public, [*to*] provide the nec-
 8 essary assistance and authority to maintain a stable milk market, [*to*] sustain the economy of the
 9 dairy industry and [*the*] economic welfare of the state and [*to assure*] **ensure** an adequate and
 10 healthful supply of milk and milk products for the consuming public.

11 (2) [*The*] **If there is a conflict between one or more** provisions of ORS 583.001, [*583.004,*
 12 *583.021,* *583.028*] and 583.410 to 583.565 [*are in pari materia with the*] **and one or more** provisions
 13 of ORS 583.007, 583.016 and 583.046 to 583.166[. *If there is a conflict*], the provisions of ORS 583.001,
 14 [*583.004,* *583.021,* *583.028*] and 583.410 to 583.565 **control**. [*supersede the provisions of ORS 583.007,*
 15 *583.016 and 583.046 to 583.166.*]

16 [(3) *The provisions of ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565 shall not be*
 17 *construed to conflict with or repeal, and are in addition to and not in lieu of, any other law of this state*
 18 *or any municipal ordinance relating to any board of health or sanitary requirement, or any municipal*
 19 *ordinance relating to the inspection, grading or production of Grade A milk.*]

20 **SECTION 21.** ORS 583.425 is amended to read:

21 583.425. (1) Except as provided by subsection (2) of this section, the provisions of ORS chapter
 22 183 apply to [*ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565, rules promulgated there-*
 23 *under and to the appeal of any person aggrieved thereby. Before any order is promulgated*] **this**
 24 **chapter and rules adopted under this chapter. Before a rule is adopted under ORS 583.410 to**
 25 **583.565**, the State Department of Agriculture shall hold at least one public hearing. All hearings
 26 **regarding the rule** shall be public hearings and testimony shall be [*given*] under oath.

27 (2) Notwithstanding ORS [*chapter 183, and except as otherwise*] **183.335, and except as** provided
 28 in ORS [*583.001, 583.004, 583.021, 583.028 and*] 583.410 to 583.565, a public hearing **regarding a rule**
 29 may be instituted only by:

30 (a) The department on its own motion;[*or*]

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

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

35 [(3) *All guideposts, standards and the provisions of this chapter may be taken into consideration*
 36 *in the promulgation of any order.*]

37 **SECTION 22.** ORS 583.430 is amended to read:

38 583.430. [*In order to facilitate the carrying out of provisions and purposes of ORS 583.001, 583.004,*
 39 *583.021, 583.028 and 583.410 to 583.565,*] The State Department of Agriculture may hold joint
 40 hearings with authorized officers or agencies of adjoining states who have duties and powers similar
 41 to those of the department or with any authorized person designated by the United States Depart-
 42 ment of Agriculture, and may enter into joint agreements with [*such authorized state or federal*
 43 *agencies for exchange of information with regard to prices paid to producers for milk moving from one*
 44 *state to the other or for any purpose to carry out and enforce the provisions of ORS 583.001, 583.004,*
 45 *583.021, 583.028 and 583.410 to 583.565.*] **those officers, agencies or persons to facilitate the ad-**

1 **ministration and enforcement of this chapter by the State Department of Agriculture.**

2 **SECTION 23.** ORS 583.440 is amended to read:

3 583.440. (1) *[Beginning 30 days after June 4, 1963, no person shall engage in business as a handler*
 4 *or producer-handler within this state unless such person is licensed as provided in subsections (1) and*
 5 *(2) of this section and ORS 583.445 and 583.450. With prior approval of]* **A person may not engage**
 6 **in business as a handler or producer-handler within this state unless the person is designated**
 7 **as a handler or producer-handler on a license as described in section 9 of this 2005 Act.**
 8 **Subject to prior approval by** the State Department of Agriculture, the location or place of business
 9 of the licensee may be moved without the requirement to obtain a new license. The license is per-
 10 sonal to the applicant and any change in the business entity requires that a new license be obtained
 11 by the new owner.

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

15 (3) *[No person shall operate as, or engage in the business or activities of a handler, or as a*
 16 *producer-handler or any other type of operation, except the category or type approved by the department*
 17 *under ORS 583.447.]* **A person licensed as a handler or producer-handler may engage only in**
 18 **a type of operation designated on the license issued to the handler or producer-handler under**
 19 **section 9 of this 2005 Act.** The department may reissue a license showing a change in a *[category*
 20 *or]* type of operation if *[it]* **the department** verifies there has been such a change. Persons affected
 21 *[thereby may appeal the decision of the department]* **by a licensing decision may request a con-**
 22 **tested case hearing** as provided in ORS chapter 183.

23 **SECTION 24.** ORS 583.445 is amended to read:

24 583.445. Application for a license required by ORS 583.440 *[(1) which shall]* **must** be made upon
 25 forms furnished by the State Department of Agriculture, *[shall]* be accompanied by the license fee
 26 of \$1, and *[shall]* state **the following:**

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

28 (2) The full name and address of the applicant, *[if an individual; if a partnership, the full name*
 29 *and address of each member thereof; and if a corporation or association,].* **If the applicant is a**
 30 **partnership, the application must state the full name and address of each partner. If the**
 31 **applicant is a corporation or association, the application must state** the full name and address
 32 of the officer authorized to sign on behalf of the corporation.

33 (3) The name of the city and the street number of the principal place of business of the appli-
 34 cant.

35 **SECTION 25.** ORS 583.450 is amended to read:

36 583.450. The State Department of Agriculture *[as authorized by ORS chapter 183 may decline to*
 37 *grant a license required by ORS 583.440 (1) or may suspend or revoke such license when it appears]*
 38 **may suspend, revoke or refuse to issue a license required by ORS 583.440 if it appears to the**
 39 **department** that the handler or producer-handler has:

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

42 (2) Failed to withhold and pay the amounts *[required]* **determined by the department** under
 43 ORS 583.510 *[(3)].*

44 (3) Failed to keep books and records or to furnish the reports, statements or information re-
 45 quired of the handler or producer-handler by *[ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to*

1 583.565 or regulations promulgated thereunder.] **department rule.**

2 (4) Failed to pay the fees required by ORS [583.004 and 583.545] **583.046 or 583.410 to 583.465.**

3 (5) Failed to comply with any provision of ORS [583.001, 583.004, 583.021, 583.028 and] 583.410
4 to 583.565.

5 **SECTION 26.** ORS 583.455 is amended to read:

6 583.455. (1) Each licensee shall keep books and records prescribed by the State Department of
7 Agriculture showing:

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

11 **(a) For all milk received or produced, the:**

12 **(A) Quantity;**

13 **(B) Butterfat content;**

14 **(C) Prices paid;**

15 **(D) Deductions or charges made; and**

16 **(E) Name and address of each person from whom the milk was received.**

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

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

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

20 (e) *[Such]* **Any** other information *[as]* the department deems necessary for the proper adminis-
21 tration and enforcement of this chapter.

22 (2) Each licensee shall furnish *[such]* **the** report, statements or information *[as are]* required by
23 the department for the proper administration and enforcement of this chapter.

24 **SECTION 27.** ORS 583.457 is amended to read:

25 583.457. *[(1) Holders of licenses issued under ORS 583.440 shall in writing notify the State De-*
26 *partment of Agriculture when they cease doing business thereunder, or when there is a change in*
27 *ownership or entity of their operations or business.]*

28 **(1) A licensee described in ORS 583.440 shall give written notice to the State Department**
29 **of Agriculture when the licensee ceases doing business under the license, or when there is**
30 **a change in ownership or entity for the operations or business of the licensee.**

31 (2) When the department receives *[such]* a notice of termination of business or if *[it finds]* **the**
32 **department discovers that** the licensee has ceased to do business, *[it]* **the department** may sus-
33 pend the license by sending a written notice to the licensee at the last-known address on the records
34 of the department. The department may then remove the license from *[its]* **the department's** active
35 files.

36 (3) *[Any]* **A** person whose license has been *[temporarily]* suspended under this section may
37 *[within two years from the date the department mailed its notice, file a written notice with the depart-*
38 *ment again advising that such person is again engaged], not later than two years after the date*
39 **the department mailed the suspension notice, give the department written notice that the**
40 **person intends to again engage** in the business covered by the license. After receiving the notice,
41 *[if the department verifies the applicant is in compliance with the law and there has been no change*
42 *in the entity or ownership, it shall reinstate the license.]* **the department shall reinstate the license**
43 **to active status unless there is a disciplinary action pending against the person or unless**
44 **there has been a change in ownership or entity for the operations or business of the person.**

45 **SECTION 28.** ORS 583.465 is amended to read:

1 583.465. (1) The State Department of Agriculture [*within 60 days after June 4, 1963,*] shall de-
 2 termine and establish primary markets. [*In addition to other guideposts and standards set out in ORS*
 3 *583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565, the department may take into consideration*]
 4 **Factors considered by the department when establishing the primary markets may include,**
 5 **but need not be limited to, the:**

6 (a) Centers of processing and distribution of milk and milk products, on which producers, re-
 7 gardless of [*their*] location, depend for a market.

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

11 (2) [*Primary markets may be established, changed, amended or terminated only after a public*
 12 *hearing has been held by the department*] **The department may establish, change, amend or ter-**
 13 **minate primary markets only after holding a public hearing. The department shall hold the**
 14 **hearing** in each established market area or [*in a*] proposed new, [*or*] enlarged or reduced market
 15 area. [*When practical and if the interests of the milk industry will be more adequately protected, a*
 16 *hearing may be held*] **or, at the discretion of the department,** in each established primary market
 17 [*area*] or proposed primary market [*area*].

18 **SECTION 29.** ORS 583.470 is amended to read:

19 583.470. (1) [*Concurrently with the establishment of primary markets, as provided by ORS*
 20 *583.465,*] The State Department of Agriculture shall establish market areas embracing one or more
 21 **of the primary markets established under ORS 583.465.** [*In addition to other guideposts and stan-*
 22 *dards set out in ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565, the department may*
 23 *take into consideration*] **Factors considered by the department when establishing the market**
 24 **areas may include, but need not be limited to, the:**

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

26 (b) Major metropolitan consumer areas.

27 (c) Normal flow of milk from producing areas to point of processing and distribution to con-
 28 sumers.

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

30 (e) **Impact of** any other condition [*which*] **that** may benefit or may have an adverse effect on
 31 the stability of [*the market, or*] the primary markets[,] in the market area.

32 (2) [*Market areas may be established, changed, amended or terminated*] **The department may**
 33 **establish, change, amend or terminate market areas** only after **holding** a public hearing[,] in
 34 each established market area or in a proposed, new, enlarged or reduced market area.

35 (3) [*Producers or handlers as authorized by ORS 583.425, may file a petition requesting the de-*
 36 *partment to*] **Subject to ORS 583.425, producers or handlers may file a petition demanding that**
 37 **the department** hold a public hearing relating to market areas.

38 **SECTION 30.** ORS 583.475 is amended to read:

39 583.475. [(1) *After June 4, 1963, and within 45 days after the State Department of Agriculture es-*
 40 *tablishes a market area, as provided by ORS 583.470, the producers in such market area may file a*
 41 *petition with the department requesting that a referendum be held on the question of preventing a*
 42 *market pool being established as required by law in such area. The petition and the referendum shall*
 43 *clearly explain to the producers involved, that a market pool is to be established by law in their market*
 44 *area unless two-thirds of the producers voting in a referendum decide that a market pool shall not be*
 45 *established. If the petition complies with the provisions of ORS 583.001, 583.004, 583.021, 583.028 and*

1 583.410 to 583.565, the department shall hold a referendum in such market area and it shall take no
 2 further action in establishing a market pool in such area until after the referendum and the results
 3 thereof are known and filed with the Secretary of State. The ballots shall also]

4 (1) **No later than 45 days after the State Department of Agriculture establishes a market**
 5 **area under ORS 583.470, the producers in the market area may file a petition with the de-**
 6 **partment requesting that a referendum be held regarding establishment of a market pool for**
 7 **the market area. The petition and the referendum shall clearly state that a market pool will**
 8 **be established in the market area unless two-thirds of the producers voting in the referen-**
 9 **dum oppose establishment of the market pool. If the petition complies with the require-**
 10 **ments of ORS 583.410 to 583.565, the department shall hold the referendum and cease efforts**
 11 **to establish the market pool in that market area until the referendum is held and the results**
 12 **are filed with the Secretary of State. The ballots used in the referendum must contain**
 13 **wording[,] substantially [as follows] similar to the following:**

-
- 14
 15
 16 — No. I vote against the establishment of a market pool in Market Area No. ____.
 17 — Yes. I vote in favor of permitting a market pool to be established in Market Area No. ____.
-

19
 20 [(a)] (2) If in the referendum two-thirds or more of the producers who vote, vote against the
 21 establishment of a market pool, the department shall [take no further action at that time] **cease ef-**
 22 **forts** to establish a market pool in [such] **the** market area **at that time**. At least nine calendar
 23 months must elapse after the date the results of [such] **the** referendum are filed with the Secretary
 24 of State, before the producers in [such] **that** market area may petition the department for another
 25 referendum for the establishment of a market pool.

26 [(b)] (3) If less than two-thirds of the producers who vote, vote against the establishment of a
 27 market pool, the department [within 120 days from], **no later than 120 days after** the date the re-
 28 sults of the referendum are filed with the Secretary of State, shall establish a market pool in the
 29 market area[, as authorized by ORS 583.510].

30 [(2)] (4) **A referendum is not required under subsection (1) of this section** if the petition
 31 referred to in subsection (1) of this section contains the signatures of two-thirds or more of the
 32 producers qualified to sign petitions in [such market area and it is clear that the petition states such
 33 producers do not want a market pool established in their market area, no referendum shall be held by
 34 the department and it shall take no further action at that time to establish a market pool in such market
 35 area] **the market area and the petition states that the producers do not want a market pool**
 36 **established in that market area. Upon receipt of a petition described in this subsection, the**
 37 **department shall cease efforts to establish a market pool in the market area at that time.**
 38 At least nine calendar months must elapse after the date the petition is filed with the department
 39 before the producers **in that market area** may petition the department for the establishment of a
 40 market pool.

41 [(3) Nothing in ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565 is to be construed
 42 as preventing producers from filing a petition and asking for a referendum on the question of estab-
 43 lishing a market pool, or to terminate and close an existing market pool, if the petition and referendum
 44 are filed within applicable time limits as authorized by this section or ORS 583.490 (2) and otherwise
 45 are in compliance with ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565.]

SECTION 31. ORS 583.480 is amended to read:

583.480. (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]* **A producer qualifies to sign a petition, or to vote in a referendum under ORS 583.410 to 583.565, if the producer ships** milk to the market area on a regular supply basis and *[who would or do receive or pay]* **is or would be subject to the receipt or payment of** equalization in an existing or **proposed** market pool in *[a] the 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.

(3) The department may determine which persons are authorized to sign petitions or vote in referendums. The department, by rule, may establish additional procedures to carry out the provisions of this section and ORS 583.480 and 583.485.

SECTION 32. ORS 583.485 is amended to read:

583.485. (1) 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)] shall consist of one or more pages, each of which is dated at the bottom. The date shall be inserted on *[each sheet prior to,]* **a page before** or at the time the first signature is obtained on *[each sheet. The department shall not accept a sheet on which such date is]* **the page. The department may not accept a page that is dated** more than 60 days *[prior to the time it]* **before the page** 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) **The petition must** contain wording at the top of each page *[which clearly explains to each person whose signature appears thereon]* **that clearly explains** 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.]* **If the petition is for the holding of a public hearing or a referendum, the wording must clearly state the subject of the hearing or referendum.** The department has the authority to clarify wording from a petition before making *[it]* **the petition** a part of a referendum.

SECTION 33. ORS 583.490 is amended to read:

583.490. (1) **Except as provided in ORS 583.475 (3) for votes in favor of creating a marketing pool,** 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 **State Department of Agriculture shall file with the Secretary of State 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 regulations]* **department.** 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*

1 used by the Oregon State Bar Association as of June 4, 1963.] **shall use a double-envelope ballot**
 2 **system to ensure secret balloting. The department shall furnish** two envelopes and a ballot
 3 [shall be furnished by the department] to each producer authorized to vote in a referendum. A
 4 transmittal envelope shall contain only information necessary for the department to accurately de-
 5 termine **that** the producer is authorized to vote. The producer shall mark a ballot and place it in
 6 a ballot envelope[, both of which shall not contain or be identified in any way as to the name of the
 7 producer]. **The ballot and ballot envelope may not identify the producer.** Upon receipt of the
 8 transmittal envelope and after verification of the right of the producer to vote, the department shall
 9 remove the [unopened] sealed ballot envelope and drop [it] **the ballot envelope** in a locked box until
 10 [such time as all ballots are later counted as required by law] **the ballots are counted.** Only the final
 11 results of [any referendum shall be] **a referendum are** a public record.

12 (4) [No] Informalities or technicalities in the conduct of a referendum, or in any matters relating
 13 [thereto, shall invalidate any referendum if it] **to a referendum, do not invalidate a referendum**
 14 **if the referendum** is fairly and reasonably conducted by the department. [The provisions of ORS
 15 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565 are intended as guideposts or standards, with
 16 The department authorized to enumerate and define persons who may sign petitions, who may vote in
 17 referendums and to establish additional procedures to carry out the provisions of ORS 583.480 to
 18 583.490.]

19 **SECTION 34.** ORS 583.500 is amended to read:

20 583.500. (1) Before making any order under ORS 583.505, the State Department of Agriculture
 21 shall hold a public hearing in the market area to be affected by the order. **The department shall**
 22 **issue** the order [shall be made] within 30 days after the hearing.

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

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

27 (b) Price of [Class 1 and Class 2] **similarly classed** milk in adjacent states.

28 (c) Cost of transporting milk.

29 (d) Prevailing price for manufacturing grade milk used in products [which] **that** are sold in
 30 competition with similar products made from Grade A milk.

31 (e) Available supply of milk for human consumption in [relations] **relation** to actual consumption
 32 [thereof] **of milk.**

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

36 **(f) Cost of producing Grade A milk, including but not limited to sanitary measures nec-**
 37 **essary to ensure the purity and wholesomeness of the milk.**

38 **(g) Leveling out of seasonal production to meet requirements of the market.**

39 **(h) Impact of other factors the department considers pertinent.**

40 **SECTION 35.** ORS 583.505 is amended to read:

41 583.505. (1) In accordance with ORS chapter 183, the State Department of Agriculture shall es-
 42 tablish by order:

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

45 (b) The minimum price for Class 2 milk by producers to handlers and between handlers. [This

1 price shall be computed by the department establishing a differential amount above the Class 3 price,
 2 which shall be automatically added by the department at the same time it establishes the price for Class
 3 3 milk as authorized by ORS 583.507.] **The department shall calculate the Class 2 milk price by**
 4 **establishing a differential amount above the Class 3 price established under ORS 583.507.**

5 (2) The department after public hearing shall make a separate order for each market area and
 6 each order shall designate the market area to which [it] **the order** is applicable. [*Such orders and*
 7 *the minimum price for Class 1 milk and the differential amount which is used to arrive at the Class*
 8 *2 price established thereby may vary in different market areas.*] **The department may establish**
 9 **different Class 1 and Class 2 milk prices for each market area.**

10 **SECTION 36.** ORS 583.507 is amended to read:

11 583.507. [(1) *The basic price for the sale of Class 3 milk testing 3.5 percent, by producers to han-*
 12 *dlers and the sale thereof between handlers shall be established by formula in each market pool in each*
 13 *market area. The formula, sometimes referred to as the “Chicago butter-powder formula,” is computed*
 14 *as follows:*]

15 (1) **As used in this section, “Chicago butter price” means the simple average of the daily**
 16 **wholesale selling prices, using the midpoint of any price range as one price, of Grade AA**
 17 **(93-score) bulk creamery butter per pound at Chicago as reported for the month by the**
 18 **United States Department of Agriculture, except that if no price is reported for Grade AA**
 19 **(93-score) butter for any day during the month, the highest price reported for Grade A**
 20 **(92-score) butter for that day shall be used instead of the average price for Grade AA**
 21 **(93-score) butter.**

22 (2) **The State Department of Agriculture shall establish the basic price in each market**
 23 **pool for the sale of Class 3 milk testing 3.5 percent by producers to handlers or between**
 24 **handlers using the following formula:**

25 (a) Multiply the Chicago butter price by 4.2.

26 (b) Multiply by 8.2 the weighted average of carlot prices per pound of nonfat dry milk solids,
 27 spray process, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published
 28 for the period from the 26th of the immediately preceding month through the 25th day of the current
 29 month by the United States Department of Agriculture.

30 (c) From the sum of the results arrived at under paragraphs (a) and (b) of this subsection, sub-
 31 tract [*a “make charge”*] **the make charge established under subsection (3) of this section** and
 32 round to the nearest cent.

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

38 (3) [*“Make charge” shall be established by the State Department of Agriculture, after public hear-*
 39 *ing, under ORS chapter 183. It is a figure or amount*] **The State Department of Agriculture, by**
 40 **rule, shall establish for each market area a make charge** representing the cost of manufactur-
 41 ing, processing, handling and moving the product to market. **In determining a make charge,** the
 42 department shall receive evidence and testimony from all segments of the industry[,]
 43 **and may take** into consideration **the factors described in ORS 583.500,** any other facts, information, figures or
 44 data and the [*“make charge” use*] **make charge used** by other federal and state milk laws, rules or
 45 programs. [*and arrive at such charge or amount.*]

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

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

10 **(4) If the average butterfat content of Class 3 milk differs from 3.5 percent, for each**
 11 **one-tenth of one percent that the average butterfat content is greater than 3.5 percent, the**
 12 **State Department of Agriculture shall add a differential from the price determined under**
 13 **subsection (2) of this section. For each one-tenth of one percent that the average butterfat**
 14 **content is less than 3.5 percent, the department shall subtract a differential from the price**
 15 **determined under subsection (2) of this section. The department shall adopt rules relating**
 16 **to the determination of a differential.**

17 **SECTION 37.** ORS 583.510 is amended to read:

18 583.510. (1) Except as provided by ORS 583.475, the State Department of Agriculture shall es-
 19 tablish a system of pooling of all milk used in each market area established by ORS 583.470.

20 (2) *[Thereafter]* The department shall establish a system in each market area for the equalization
 21 of returns for all quota milk and all surplus over quota milk *[whereby]* **that ensures that** all pro-
 22 ducers selling milk to milk handlers *[will]* receive the same price for all quota milk and all surplus
 23 over quota milk utilized as Class 1, Class 2 and Class 3 *[except that]* **milk. In determining the**
 24 **average pool prices, the department may not consider** any premium paid to a producer by a
 25 handler above minimum prices established under ORS 583.505, because of quality of milk produced
 26 and sold *[shall not be considered in determining average pool prices].*

27 [(3) *In providing for such pooling and equalization, the department shall determine amounts to be*
 28 *withheld from producers by a handler and paid to the department of not more than five cents per*
 29 *hundredweight for administering the market pool and amounts for the benefit of producers selling milk*
 30 *to other handlers in the market area in which the market pool is established in order to equalize pay-*
 31 *ments between producers or producer groups. Upon the failure of any handler to withhold out of*
 32 *amounts due or to become due to a producer at the time a handler is notified by the department of the*
 33 *amounts to be withheld and upon failure of such handler to pay such amounts, the department subject*
 34 *to ORS 583.450, may revoke the license of the handler required by ORS 583.440 (1).]*

35 **(3) The department shall determine amounts to be withheld from producers by a handler**
 36 **and to be paid to the department for administering the market pool and for making equaliz-**
 37 **ing payments to producers or producer groups selling milk to other handlers in the market**
 38 **area in which the market pool is established. The amount withheld and paid to the depart-**
 39 **ment for administrative costs may not exceed five cents per hundredweight.**

40 **(4) If a handler fails to withhold and pay amounts due the department under subsection**
 41 **(3) of this section, in addition to any sanction that may be imposed under ORS 583.450, the**
 42 **department may commence an action against the handler in the circuit court of the county in which**
 43 **the handler resides or has principal place of business to collect** *[such amounts. If it is determined*
 44 *upon such action that the handler has wrongfully refused to pay the amounts the handler shall be re-*
 45 *quired to pay, in addition to such amounts, all the costs and disbursements of the action, to the de-*

1 *partment as determined by the court. If the department's contention in such action is not sustained, the*
 2 *department shall pay to the handler all costs and disbursements of the action as determined by the*
 3 *court.] those amounts. In an action brought under this subsection, the court may award costs*
 4 **and disbursements to the prevailing party.**

5 [(4) (5) Replacement milk *[will be]* **is** subject to equalization in the market area where produced
 6 and sold, without regard to the market area where processed.

7 [(5) (6) The amounts received by the department under this section shall be deposited in a
 8 designated account in the State Treasury in accordance with ORS 293.445. *[Disbursements therefrom*
 9 *shall be made as provided]* **The department may authorize disbursements from the account for**
 10 **the purposes described** by this section *[or orders promulgated thereunder]*. Notwithstanding ORS
 11 293.140, interest earned on **account** cash balances invested by the State Treasurer shall be credited
 12 to this account.

13 [(6) (7) A producer-handler desiring to be a producer may have a quota, **as defined in ORS**
 14 **583.515** activated in the producer equalization and pooling system in a manner prescribed by the
 15 department. *[Such activated quota shall remain in effect thereafter for at least 12 consecutive months.*
 16 *In order to establish ability and intent to assume the obligation of supplying consumers' need for milk,*
 17 *A producer-handler who becomes a producer shall be ineligible to transfer such quota for two years.*
 18 *Also, A producer who sells cows and transfers quota shall become ineligible to become a producer-*
 19 *handler for a period of two years thereafter. A producer-handler who for any reason fails to meet the*
 20 *requirements set forth in ORS 583.007 (12) shall be treated as a producer with quota and as a licensed*
 21 *handler until such time as the producer-handler again qualifies as a producer-handler for a full*
 22 *month.] **The activated quota shall remain in effect for at least 12 consecutive months. A***
 23 **producer-handler who becomes a producer may not transfer the activated quota for two**
 24 **years following activation. A producer who sells cows and transfers the quota may not be-**
 25 **come a producer-handler for a period of two years after the transfer. A person who ceases**
 26 **to qualify as a producer-handler shall be treated by the department as a producer with quota**
 27 **and as a licensed handler until a full month after the person again qualifies as a producer-**
 28 **handler.**

29 **SECTION 38.** ORS 583.515 is amended to read:

30 583.515. (1) *[Under a market pool and]* As used in **ORS 583.510 and 583.516** and this section,
 31 "quota" means **115 percent of** a producer's portion of the total sales of Class 1 milk in a market
 32 area *[plus 15 percent]*.

33 (2) The State Department of Agriculture shall provide by order~~],~~ *under procedures set forth in*
 34 *ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565,* for the transfer of quota between in-
 35 dividual producers as necessary to carry out the purpose and intent of ORS *[583.001, 583.004,*
 36 *583.021, 583.028 and]* 583.410 to 583.565.

37 (3) *[After June 4, 1963, To establish each producer's initial quota in the market area, the depart-*
 38 *ment shall give equal weight to production and to Class 1 sales by determining the simple average of*
 39 *the production of the producer and Class 1 sales in the market area during January, February, March*
 40 *and April 1963. The percentage that the monthly production-sales average of the producer is of the*
 41 *monthly production-sales average of all producers supplying the market area, times the total Class 1*
 42 *sales in the area, times 115 percent, divided by 30, will be the daily quota of the producer in the area.*
 43 *Thereafter, annually on or before March 1 of each year, each producer's quota will be adjusted in ac-*
 44 *cordance with the daily average production of the producer during the four low months of the previous*
 45 *calendar year adjusted to the average of the four high months of Class 1 sales in the market area, plus*

1 15 percent; except the department may establish by administrative order, if there are months of low
 2 production] **If the department establishes a new marketing area, the department shall deter-**
 3 **mine the initial daily quota for each producer in the marketing area based on the producer's**
 4 **average daily production for primary markets in the market area during January, February,**
 5 **March and April of the preceding year. The department shall determine the daily quota for**
 6 **a producer by the following calculation:**

7 (a) **Dividing the monthly production-sales average of the producer by the monthly**
 8 **production-sales average of all producers supplying the market area and expressing the re-**
 9 **sult as a percentage;**

10 (b) **Multiplying the percentage in paragraph (a) of this subsection by the total Class 1**
 11 **sales in the market area for the month;**

12 (c) **Multiplying the product in paragraph (b) of this subsection by 115 percent; and**

13 (d) **Dividing the product in paragraph (c) of this subsection by 30.**

14 (4)(a) **Except as provided in ORS 583.516, on or before March 1 of each year, the depart-**
 15 **ment shall adjust each producer's quota by the following calculation:**

16 (A) **Dividing the daily average production of the producer during the four low months of**
 17 **the previous calendar year by the production-sales average during the same four months of**
 18 **all producers supplying the market area and expressing the result as a percentage;**

19 (B) **Multiplying the percentage in subparagraph (A) of this paragraph by the average of**
 20 **the four high months of Class 1 sales in the market area; and**

21 (C) **Multiplying the percentage in subparagraph (B) of this paragraph by 115 percent.**

22 (b) **The department may, by administrative order, exclude from the determination of the**
 23 **four low months for a producer any months that the department considers atypical** because
 24 producers have adjusted production to meet conditions existing in a particular market, or because
 25 of acts of God or other *[legitimate reasons which cannot be attributed]* **reasons not attributable** to
 26 poor management, *[such months may be excluded in determining the low four months].*

27 [(4)] (5) **If in the market area, during any three consecutive months, [in the market area] sur-**
 28 **plus in quota is less than 10 percent or [more] greater than 20 percent, the department shall adjust**
 29 **quotas allocated under [subsection (3) of] this section to provide sufficient quota milk to meet Class**
 30 **1 requirements.**

31 [(5)(a)] (6)(a) **A new producer or a producer with allocated quota can acquire quota or increase**
 32 **the quota of the producer by purchasing a herd with assigned quota [providing] if the producer**
 33 **advises the department, or the producer group [which] that has reallocated assigned quota, [is ad-**
 34 **vised] of the transfer.**

35 (b) **A new producer who does not acquire quota [as provided by] under paragraph (a) of this**
 36 **subsection, may[,] be assigned a quota** after qualifying for Grade A production and *[after]* selling
 37 *[such]* **the production as manufacturing milk for a minimum of 180 days. [, have assigned as]** The
 38 **quota [of] assigned to the producer in the market area shall equal** the same proportion, less 30
 39 percent, that the monthly average production of the producer for the 180-day period bears to the
 40 Class 1 utilization of all production in the market area. *[Such quota with penalty must be maintained*
 41 *for at least six months prior to adjustments, as provided by subsection (4) of this section.]* **A quota**
 42 **assigned under this paragraph may not be adjusted under subsection (5) of this section until**
 43 **at least six months following assignment of the quota.**

44 **SECTION 39.** ORS 583.516 is amended to read:

45 583.516. *[Notwithstanding the provisions of ORS 583.515 and in addition thereto, at the time, each*

1 *March 1, when the State Department of Agriculture under a plan or system reallocates quota to pro-*
 2 *ducers, it is also authorized to include provisions allowing a producer to maintain the quota of the*
 3 *producer if] **The State Department of Agriculture may allow a producer to maintain the quota***
 4 *of the producer without yearly adjustment under ORS 583.515 if:*

5 (1) The producer consistently produces and furnishes milk equal to or in excess of the quota of
 6 the producer; *[. Such a plan or part of the system shall be considered if it is apparent]*

7 (2) **The department determines that** a large segment of the producers *[are in agreement*
 8 *therewith and if such procedures]* **agree that the quota should be maintained; and**

9 (3) **Maintaining the quota** will not seriously lessen or reduce the supply of milk needed for
 10 consumers and handlers *[thereof]*.

11 **SECTION 40.** ORS 583.517 is amended to read:

12 583.517. (1) *[In order to further carry out the intent and purposes of this chapter and to further*
 13 *help stabilize the production, marketing and use of pooled milk and to insure an adequate supply of*
 14 *healthful milk for the people of this state, and to assure licensed handlers in a market pool and market*
 15 *area that they will at all times when possible and practical have a total supply of milk to meet their*
 16 *Class 1 and Class 2 needs, the State Department of Agriculture is authorized to establish, maintain,*
 17 *carry out] **The State Department of Agriculture may establish** and enforce a plan or system*
 18 *under which licensed handlers [shall] divert and move pool milk from their own use and needs to*
 19 *another licensed handler for Class 1 or Class 2 use and needs.*

20 *[(2) If after public hearing under ORS chapter 183 there is sufficient evidence and testimony re-*
 21 *ceived by the department to indicate a general agreement and approval by and between producers and*
 22 *other segments of the dairy industry, the department may also establish a plan or system to require and*
 23 *provide for the equalization between producers of the cost of moving or transporting pooled milk. In*
 24 *considering the provisions necessary to carry out this intent and purpose, The department may pattern*
 25 *such provisions or requirements after the system wherein producers under equalization receive the same*
 26 *price for quota milk and surplus over quota milk, or it may provide any other plan or system which*
 27 *is fair and reasonable.]*

28 (2) **If, after public hearing, the department determines that there is general agreement**
 29 **between producers and other segments of the dairy industry, the department may establish**
 30 **a plan or system to provide for the equalization between producers of the cost of moving or**
 31 **transporting pooled milk. The department may pattern the plan or system so that producers**
 32 **under equalization receive the same price for quota milk and surplus over quota milk, or the**
 33 **department may provide any other plan or system that is fair and reasonable.**

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

39 (4) *[No handler shall fail or refuse to] **A handler shall** comply with a directive or order issued*
 40 *by the department [if a plan or system is established to move pool milk under the provisions of sub-*
 41 *section (1) or (2) of] **pursuant to a plan or system established under** this section.*

42 **SECTION 41.** ORS 583.518 is amended to read:

43 583.518. *[In addition to other actions it may take, or penalties it may apply, the State Department*
 44 *of Agriculture after public hearing under ORS chapter 183 may establish a plan or system of assessing*
 45 *a penalty amount against a handler who fails or refuses to move or transport pool milk for the Class*

1 *1 or Class 2 needs of another handler, when ordered so to do by the department as authorized in ORS*
 2 *583.517. This penalty which shall be established in an amount not to exceed \$1 per hundredweight of*
 3 *milk and paid to the department, shall be computed on the basis of the number of pounds of milk which*
 4 *was not moved or transported as ordered by the department. If the handler in violation of such an*
 5 *order] **The State Department of Agriculture, by rule, may adopt a penalty schedule for han-***
 6 *dlers who do not move or transport pool milk for the Class 1 or Class 2 needs of another*
 7 *handler, when ordered so to do by the department under ORS 583.517. The penalty may not*
 8 *exceed \$1 per hundredweight of milk calculated on the basis of the number of pounds of milk*
 9 *that were not moved or transported as ordered by the department. If the handler does not*
 10 *pay the amount of penalty within 30 days after the date of the written notice by the department, the*
 11 *department in addition to other actions available [to it under this chapter] may:*

12 (1) File *[suit]* **an action** against the handler for recovery of the penalty amount[,]; or

13 (2) Deduct the amount of the penalty from any amount or equalization *[which]* **that** may be later
 14 due and payable by the department to *[such handler. Any such withholding by the department shall*
 15 *not be passed on to, or be]* **the handler. The department may not pass on a penalty to producers**
 16 **or have the penalty** withheld by the handler from the price paid to producers for milk.

17 **SECTION 42.** ORS 583.520 is amended to read:

18 583.520. (1) *[In the event the]* **If** producers through petition or referendum pursuant to ORS
 19 583.475 prevent a market pool from being established, or by referendum terminate and close a mar-
 20 ket pool, the State Department of Agriculture shall provide a system *[whereby each producer selling*
 21 *milk to a particular handler except for replacement milk shall receive the same price for Class 1 milk*
 22 *and for Class 2 milk of like quality, as every other producer selling milk to that particular handler and*
 23 *whereby]* **for:**

24 (a) **Each producer selling milk to a particular handler to receive the same price for Class**
 25 **1 or Class 2 milk of similar quality, other than replacement milk, as every other producer**
 26 **selling to that handler; and**

27 (b) Each producer *[shall]* **to** receive **at least** the minimum price established by the department
 28 under ORS 583.505. *[Such system which is for the purpose of assuring fair, reasonable and equitable*
 29 *treatment and payment for all affected producers, may take into consideration]*

30 (2) **In establishing a system under this section, the department may consider** the exist-
 31 ence, if any, of a voluntary equalization program established by contract between groups of pro-
 32 ducers.

33 **SECTION 43.** ORS 583.525 is amended to read:

34 583.525. (1) *[It is the intent of the provisions of ORS 583.001, 583.004, 583.021, 583.028 and 583.410*
 35 *to 583.565 to minimize and eliminate as far as possible and practical, certain]* **It is the intent of the**
 36 **Legislative Assembly that ORS 583.410 to 583.565 eliminate to the extent practicable** unfair
 37 and inequitable trade and competitive practices and advantages that have existed between types or
 38 classes of handlers of milk.

39 (2) *[No handler shall]* **A handler may not** purchase milk from a producer or producers for less
 40 than the minimum prices established under ORS 583.505. Each handler shall *[pool such]* **purchase**
 41 milk in accordance with *[the provisions of]* ORS 583.510 and 583.520, whichever is applicable.

42 (3) *[Notwithstanding the provisions of ORS chapter 62 or amendments thereto, or other laws to the*
 43 *contrary,]* **Except as provided in subsection (5) of this section,** a handler may *[only]* deduct **only**
 44 **the following** from the amounts due a producer or producers*[, the following]:*

45 (a) Deductions *[by the handler]* for:

1 (A) Payment to the Oregon Dairy Products Commission under ORS 576.051 to 576.455[.]; **and**

2 (B) Payments to the State Department of Agriculture under this chapter.

3 (b) A pooling charge [*of not to exceed*] **not exceeding** the amount established by the department,
4 if [*such*]:

5 (A) **The** handler actually performs a pooling service for the producer [*and if such*]; **and**

6 (B) **The** pooling charges are limited to milk purchased from or handled for an individual pro-
7 ducer.

8 (c) Deductions based on assignment, approved and signed by the producer, directing the handler
9 to pay a specified sum to a person other than [*such*] **the** handler on the producer's behalf. [*Such*
10 "*other person*" *shall*] **The person receiving payment of the sum may** not be an officer, employee,
11 agent or representative of the handler.

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

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

21 (f) [*After the above deductions have been taken, if any,*] **If the handler is** a cooperative corpo-
22 ration or association organized under the laws of any state and engaged in marketing or making
23 collective sales of milk produced by its members or other producers represented by or through the
24 cooperative, [*may then take and retain such other deductions from payment to its members or produc-*
25 *ers, differentials as may be*] **deductions** specifically authorized in advance by contract or member-
26 ship agreements between the cooperative and its members. **Deductions may be made under this**
27 **paragraph only after making any applicable deductions described under paragraphs (a) to (e)**
28 **of this subsection.**

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

31 (5) The department [*after public hearing and as authorized by ORS chapter 183*], **by rule**, may
32 approve additional deductions or further orders as may be necessary to carry out the provisions of
33 this section. [*Such determinations shall not*] **The department may not allow deductions that** result
34 in an undue advantage for one handler over another handler or permit a handler to evade or cir-
35 cumvent the intent of this section.

36 **SECTION 44.** ORS 583.530 is amended to read:

37 583.530. (1) [*No*] **A** handler or producer-handler [*shall*] **may not**:

38 (a) Buy milk from any person other than a producer, producer agent, or another handler licensed
39 under ORS [*583.001, 583.004, 583.021, 583.028 and 583.410 to 583.465*] **583.410 to 583.565.**

40 (b) Deal in or handle milk if [*such handler knows such*] **the handler or producer-handler**
41 **knows that the** milk has previously been dealt in or handled in violation of any provision of ORS
42 [*583.001, 583.004, 583.021, 583.028 and 583.410 to 583.465.*] **583.410 to 583.565.**

43 (c) Purchase or accept delivery of any milk in a market area where a market pool is established,
44 that has not been assigned quota as prescribed and established by the State Department of Agri-
45 culture under the provisions of ORS [*583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565, unless*

1 *such milk is replacement milk as defined in ORS 583.007.] 583.410 to 583.565, unless the milk is*
 2 **replacement milk.**

3 (2) *[No handler shall]* **A handler may not** buy or offer to buy from a handler, producer, pro-
 4 ducer's agent or cooperative corporation or association[, *and no*] **any Class 1 or Class 2 milk at**
 5 **a price less than the minimum price established for milk of that class under ORS 583.505.**

6 (3) **A handler, producer, producer's agent or cooperative corporation or association** *[shall]* **may**
 7 **not** sell or offer to sell to a handler, any Class 1 or Class 2 milk at a price less than *[that]* **the**
 8 **minimum price** established under ORS 583.505.

9 **SECTION 45.** ORS 583.540 is amended to read:

10 583.540. *[(1)]* The State Department of Agriculture may enforce by injunction or other appropri-
 11 ate proceedings in the circuit court of the county in which the defendant resides or has the principal
 12 place of business of the defendant any provisions of ORS *[583.001, 583.004, 583.021, 583.028 and*
 13 *583.410 to 583.565 or any order promulgated thereunder. The department shall not be required to give*
 14 *bond in any such proceeding. Such proceedings shall be given preference on the calendar of the circuit*
 15 *court in which filed.] 583.410 to 583.565 or 583.600 to 583.630 or any order issued by the depart-*
 16 **ment under ORS 583.410 to 583.565 or 583.600 to 583.630. The department is not required to**
 17 **give bond in any proceeding under this section. A court shall give proceedings under this**
 18 **section priority on the docket over all civil cases except those given equal or greater priority**
 19 **by statute.**

20 *[(2) The provisions of ORS 583.001, 583.004, 583.021, 583.028 and 583.410 to 583.565 or violations*
 21 *thereof may be enforced under and as a part of the provisions of ORS 583.007, 583.016 and 583.046 to*
 22 *583.166.]*

23 **SECTION 46.** ORS 583.545 is amended to read:

24 583.545. Except as provided by ORS 583.510 *[(5)]*, the State Department of Agriculture shall de-
 25 posit all fees paid under ORS *[583.004 and 583.410]* **583.001** to 583.565 in the State Treasury to the
 26 credit of the Department of Agriculture Service Fund[, *and such fees*]. **Fees deposited to the fund**
 27 **under this section** are continuously appropriated to the department for **the purpose of** adminis-
 28 tering and enforcing ORS 583.001 to 583.565.

29 **SECTION 47.** ORS 583.565 is amended to read:

30 583.565. *[(1) Notwithstanding other provisions to the contrary, including ORS 182.080, If all or*
 31 *only a part of the provisions of this chapter are terminated or become inoperative, in all or in a part*
 32 *of the state, the State Department of Agriculture is authorized to take such steps and procedures as*
 33 *are necessary to immediately wind up and conclude the administration and enforcement of this chapter,*
 34 *all or in part, for the period prior to such termination or inoperative date. If the provisions of this*
 35 *chapter continue to apply and cover a part or parts of the state, the department is authorized to con-*
 36 *tinue to carry out and enforce the provisions of this chapter in such part or parts of the state.]*

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

45 *[(3) After the department has carried out its responsibilities and duties as required in this section*

1 *and has paid the expenses thereof,]* **If all or part of this chapter is repealed, or becomes inop-**
 2 **erative, in all or part of this state, the State Department of Agriculture shall transfer** any
 3 unexpended funds under *[its]* **the control or supervision of the department** derived under this
 4 chapter and not needed *[thereunder, shall be transferred]* by the department **for the administration**
 5 **and enforcement of this chapter** to the account designated in ORS 621.015. *[and may be expended*
 6 *by the department thereunder]* **The department may expend funds transferred under this section**
 7 **as provided in ORS 621.015.**

8 **SECTION 48.** ORS 583.600 is amended to read:

9 583.600. (1)(a) *[No]* **Except as provided in subsection (2) of this section,** a handler,
 10 producer-handler, jobber or other person *[shall]* **may not** sell or offer to sell fluid milk to retailers
 11 or other milk distributors at a price less than the **total** amount paid for the raw fluid milk
 12 product[,] plus the cost to manufacture and distribute the product.

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

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

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

24 (3) Every handler, producer-handler, jobber and store shall keep accurate records of transactions
 25 concerning fluid milk[,] for at least one year. *[This subsection requires]* **However,** a store **is re-**
 26 **quired by this subsection** to keep only those records necessary to provide information to the de-
 27 partment concerning the purchase price paid by the store for fluid milk *[covered by subsection (1)*
 28 *of this section]*.

29 **(4) ORS 583.425 applies to the adoption of a department rule establishing a method for**
 30 **determination of individual costs under this section in the same manner as for the adoption**
 31 **of a department rule under ORS 583.410 to 583.565.**

32 **SECTION 49.** ORS 583.610 is amended to read:

33 583.610. (1) The State Department of Agriculture may determine and assess a fee, not to exceed
 34 one cent per hundredweight on fluid milk, to be paid monthly by the handler, producer-handler or
 35 jobber who first sells the milk in this state.

36 (2) The department shall deposit all fees paid under this section in the Department of Agricul-
 37 ture Service Fund.[, *and such*] Fees **deposited under this section** are continuously appropriated to
 38 the department for the administration of ORS 583.600 to 583.630.

39 (3) To assist the department in *[its determination of fees]* **determining the fees due** under this
 40 section, the department may prescribe periodic reports to be submitted to the department by all
 41 handlers, producer-handlers and jobbers evidencing the volume of milk distributed during specific
 42 periods.

43 **SECTION 50.** ORS 583.620 is amended to read:

44 583.620. *[(1)]* The State Department of Agriculture may investigate for any violations *[of the*
 45 *provisions]* of ORS 583.600 to 583.630 *[and 583.993, either on its own initiative]* **on the department's**

1 **own initiative** or upon the written request of any person. **As part of an investigation, the de-**
 2 **partment may conduct audits of any handler, producer-handler, jobber or store.**

3 *[(2) In accordance with audit and enforcement provisions set forth in ORS 583.028 to 583.166,*
 4 *583.540 and 583.560, the department may enforce the provisions of ORS 583.600 to 583.630 and 583.993*
 5 *against any handler, producer-handler, jobber or any other person selling or offering to sell fluid milk*
 6 *to retailers or other milk distributors and may conduct audits of any handler, producer-handler, jobber*
 7 *or store.]*

8 *[(3) Provisions for the enforcement of ORS 583.600 to 583.630 and 583.993 are not exclusive and*
 9 *are cumulative to any other applicable provision of law.]*

10 **SECTION 51.** ORS 583.630 is amended to read:

11 583.630. *[In accordance with ORS chapter 183,] The State Department of Agriculture may adopt*
 12 *any rules necessary to carry out the provisions of ORS 583.600 to 583.630. [and 583.993, except that*
 13 *the rules first adopted under ORS 583.600 to 583.630 and 583.993 shall be established with the advice*
 14 *of the segments of the milk industry affected by the provisions of ORS 583.600 to 583.630 and 583.993.*
 15 *The provisions of ORS 583.425 apply to the procedures the department uses to establish a method for*
 16 *determination of individual costs under ORS 583.600 (1).]*

17 **SECTION 52.** ORS 583.993 is amended to read:

18 583.993. (1) *[Subject to ORS 153.022,] Violation of any provision of ORS 583.001 to 583.565 or*
 19 *[rule thereunder] a rule adopted under ORS 583.001 to 583.565 is a Class A violation.*

20 (2) *[Subject to ORS 153.022,] Violation of any provision of ORS 583.600 to 583.630[or of any rule*
 21 *promulgated pursuant thereto,] or a rule adopted under ORS 583.600 to 583.630 is punishable[upon*
 22 *conviction,] by a fine not to exceed \$10,000.*

23 **SECTION 53.** ORS 561.144 is amended to read:

24 561.144. (1) The State Treasurer shall establish a Department of Agriculture Service Fund *[which*
 25 *shall be] as a trust fund separate and distinct from the General Fund. The State Department of*
 26 *Agriculture shall deposit all license and service fees paid to [it] the department under the pro-*
 27 *visions of the statutes identified in subsection (3) of this section in the Department of Agriculture*
 28 *Service Fund. The State Treasurer is the custodian of [this] the trust fund [which shall be deposited*
 29 *by the treasurer in such depositories as are] and shall deposit the trust fund moneys in deposi-*
 30 *tories authorized to receive deposits of the General Fund[and which may be invested by the treas-*
 31 *urer]. The State Treasurer may invest the trust fund moneys in the same manner as authorized*
 32 *by ORS 293.701 to 293.820.*

33 (2) Interest received on deposits credited to the Department of Agriculture Service Fund shall
 34 accrue to and become a part of the Department of Agriculture Service Fund.

35 (3) The license and service fees subject to this section are those described in ORS 561.400,
 36 570.710, 571.057, 571.063, 571.145, *[583.004,]* 583.046, 583.445, 583.510, 583.610, 585.050, 586.270,
 37 586.580, 586.650, 596.030, 596.311, 599.235, 599.269, 599.406, 599.610, 601.040, 602.090, 603.025, 603.075,
 38 616.706, 618.115, 618.136, 619.031, 621.072, 621.166, 621.266, 621.297, 621.335, 621.730, 622.080, 625.180,
 39 628.240, 632.211, 632.425, 632.600, 632.720, 632.730, 632.741, 632.940, 632.945, 633.015, 633.029, 633.318,
 40 633.362, 633.461, 633.471, 633.680, 633.700, 633.720, 634.016, 634.116, 634.122, 634.126, 634.132, 634.136,
 41 634.212 and 635.030.

42 **SECTION 54.** ORS 583.004, 583.028, 583.076, 583.086, 583.096, 583.106, 583.116, 583.136,
 43 583.166, 583.415, 583.447, 583.463 and 583.560 are repealed.