

CHAPTER 203

AN ACT

HB 2445

Relating to programs administered by the State Department of Agriculture; creating new provisions; amending ORS 195.308, 561.560, 561.580, 561.585, 570.010, 570.020, 570.130, 570.135, 570.140, 570.145, 570.155, 570.170, 570.190, 570.305, 570.345, 570.350, 570.355, 570.405, 570.415, 596.402, 621.072, 621.078, 633.571, 646.905 and 646.922; and repealing ORS 570.205, 570.650, 570.655, 570.660, 570.665, 570.670, 570.675, 570.680, 621.065, 646.912 and 646.921.

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

SECTION 1. ORS 561.560 is amended to read:

561.560. (1) The Director of Agriculture shall issue a written order declaring a quarantine if the director determines that:

(a) A disease or an infestation has a significantly adverse effect on plants, animals, fowls or bees;

(b) The disease or infestation is not widely prevalent or distributed within this state;

(c) The disease or infestation exists in another state, territory or country or in any locality within this state; and

(d) Following the procedure for declaring a quarantine by rule under ORS 561.510 would create a serious danger of the disease or infestation spreading within the state during the time required by the procedure.

(2) The written order declaring the quarantine shall prohibit the movement into or within the state of any plants, animals, fowls, bees or articles that are likely to spread the disease or infestation. The director may amend the order as the director considers necessary. The director shall sign the written order and any amendments to the order.

(3) The director shall file all quarantine orders and amendments to the orders with the Secretary of State. *[and shall publish a notice of the quarantine and of any amendments to a quarantine order in a newspaper of general circulation throughout the state. The director may take other action the director considers reasonable to ensure that the affected persons]* **The director shall give notice of the quarantine orders and amendments to the orders by publication in a newspaper of general circulation in the quarantine area and by one or more additional methods that reasonably ensure that affected persons and other members of the public have knowledge of the quarantine order or amendment.** A quarantine order or amendment to an order is effective upon filing with the Secretary of State. A person may not carry, move or transport any plants, animals, fowls, bees or articles specified in a quarantine order or amendment from the quarantined area into or through any part of the state, except as provided in the order or amendment. *[Proofs of the publication of the notices provided for in this section shall be filed in the office of the State*

Department of Agriculture.] **The State Department of Agriculture shall keep a record of the methods used to provide notice under this subsection for each quarantine order or amendment to an order.**

(4) A quarantine created by a written order issued under this section may not remain in effect more than 180 days after the first publication of notice under subsection (3) of this section. However, a quarantine for a longer period may be declared under ORS 561.510, to take effect at or before the expiration of the 180-day period.

(5) The Governor by filing an order with the Secretary of State may terminate a quarantine ordered by the director under this section. If the Governor terminates a quarantine under this subsection, the director must obtain the approval of the Governor before issuing any additional quarantine order or amendments under this section for the same disease or infestation.

SECTION 2. ORS 561.580 is amended to read:

561.580. (1) In order to prevent unnecessary and conflicting regulations on commerce, the State Department of Agriculture shall cooperate with the United States and other states in establishing a uniform system of quarantine and laws and rules and regulations governing quarantines, both as to animals, fowls, plants, *[weeds,]* insects **and other plant pests** and seeds, subject to quarantine, manner of enforcing quarantine and manner of treating *[diseased or]* infested animals, fowls, plants, seeds and articles containing *[weeds and weed seeds.]* **insects or other plant pests. As used in this section, "plant pests" has the meaning given that term in section 4 of this 2015 Act.**

(2) The Director of Agriculture shall suggest to the Governor, from time to time, any changes in the laws of this state or any additional laws *[which]* **that** will tend to unify the quarantine laws of the United States, *[and]* this **state** and other states of the United States.

(3) Whenever the director deems it to be of advantage toward carrying out the purpose of this section, the director may forward to the United States Department of Agriculture copies of proposed rules and regulations to govern quarantines in this state and request suggestions from the United States Department of Agriculture tending toward uniform provisions governing quarantines throughout the several states.

SECTION 3. ORS 561.585 is amended to read:

561.585. When the State Department of Agriculture is required to *[publish]* **give notice of** an order of quarantine or rules *[or regulations promulgated thereunder in a newspaper, it may in its discretion publish only]* **pertaining to a quarantine by publication in a newspaper, or by the use of one or more methods in addition to publication in a newspaper, the department may at its discretion satisfy the notice requirement by providing a brief concise summary statement of the contents of**

[*such order or regulations*] **the order or rules** and notice that complete copies [*thereof*] **of the order or rules** are on file and can be obtained from the department[, *certain county clerks*] and the Secretary of State.

SECTION 4. As used in ORS 570.010 to 570.050, 570.105 to 570.190, 570.210 to 570.225, 570.320 to 570.360 and 570.405:

(1) “**Infected**” means any appearance of a disease on trees or plants that may be a menace to horticultural or farm crops.

(2) “**Infested**” means when the adult, egg, larvae or pupae of an insect or other plant pest is found in such numbers as, in the opinion of the State Department of Agriculture, to be a menace to horticultural or farm crops.

(3) “**Plant pest**” means:

(a) A disease, microscopic organism, insect, nematode, arthropod, parasite or a noxious weed as defined in ORS 569.175, capable of having a significant adverse effect on the environmental quality of this state or of causing a significant level of economic damage in this state, including but not limited to damage to agricultural, horticultural or forest plants, crops, commodities or products; and

(b) Any biotic agent identified in an order or rule of the department as capable of having a significant adverse effect on the environmental quality of this state, or of causing a significant level of economic damage in this state, including but not limited to damage to agricultural, horticultural or forest plants, crops, commodities or products.

SECTION 5. ORS 570.010 is amended to read:

570.010. (1) Upon petition of not less than 25 resident fruit growers of any county of this state, the [*county court of such*] **governing body** of a county may, subject to the approval of the Director of Agriculture, appoint a county horticultural inspector, whose duties are:

(a) To inspect orchards, nurseries, trees, shrubs, vines, fruits, vegetables, plants, packing houses, warehouses, storerooms, farms and other places within the county.

(b) To visit and inspect the fruit drying and packing plants while [*such*] **the** plants are in operation.

(c) To enforce the regulations required by the State Department of Agriculture governing the handling, drying and packing of apples, loganberries or other fruits evaporated and packed for human consumption.

(d) To enforce all laws of the state relating to [*such insect pests and such diseases as*] **insects or other plant pests** that affect trees, vines, plants of any kind[,] or fruit or vegetables of any kind and all other horticultural laws, rules and regulations of the state.

(2) The county horticultural inspector shall hold office during the pleasure of the county [*court*] **governing body**.

SECTION 6. ORS 570.020 is amended to read:

570.020. The county horticultural inspectors, deputy county horticultural inspectors and all other persons authorized to enforce the horticultural and inspection laws of Oregon [*are authorized and empowered to*] **may** enter upon or into any premises, land, buildings, enclosures or other places for the purpose of:

(1) Inspecting any article [*which*] **that** is subject to or may be subject to infestation with any insect **or other plant pest** injurious to any article [*which*] **that** grows upon, [*or*] in or from the soil by processes of plant growth, or the eggs, larvae or pupae [*of such insects or with any disease*] **of an insect or other plant pest** injurious to [*any such*] **an** article or articles [*and for the further purpose of*]; **or**

(2) Enforcing any of the laws of this state relating to horticultural quarantine or horticultural inspection or the abatement of horticultural nuisances or any other duties imposed by law upon [*such*] **the** inspectors and other persons authorized to enforce the inspection and horticultural laws of Oregon.

SECTION 7. ORS 570.130 is amended to read:

570.130. When any shipment of nursery stock, fruits, vegetables, seed, nuts or field crops [*are*] **is** brought into this state or shipped within the state, [*they must have attached to the container*] the required permits, tags or markings of the state of origin **must be attached to the container**, and the **shipment** must be free of injurious [*insect pests and diseases or their*] **insects or other plant pests and of eggs, larvae or pupae [*or other pests*] of injurious insects or other plant pests**.

SECTION 8. ORS 570.135 is amended to read:

570.135. The officers, employees, deputies and inspectors of the State Department of Agriculture and the county horticultural inspectors and their deputies may enter at any time into any car, warehouse, depot, or upon any ship within the boundaries of this state, whether in the stream or at the dock, wharf, mole or any other place where [*such*] nursery stock, [*or*] fruit, [*or*] vegetables, [*or*] seed, [*or*] field crops or other [*such*] articles are received, or in which any [*of such*] articles are imported into the state, for the purpose of making the investigation or examination to ascertain whether [*such*] **the** articles are infested with any injurious insects or [*their*] **other plant pests or the** eggs, larvae or pupae [*or other plant pests or diseases*] **of injurious insects or other plant pests**.

SECTION 9. ORS 570.140 is amended to read:

570.140. When any shipment of nursery stock, fruits, vegetables, seed, nuts or field crops [*are*] **is** found upon inspection to be infested with injurious [*insect pests or diseases or their*] **insects or other**

plant pests or the eggs, larvae or pupae of **injurious insects** or other plant pests, the inspector shall give **the shipper** notice [to the shipper] of the pests [or diseases] found and the manner of disposition, as provided for in ORS 570.145 to 570.165.

SECTION 10. ORS 570.145 is amended to read:
570.145. [When] (1) **If**, in the judgment of the inspector, materials not infested or infected can be separated from the infested or infected article without danger of [escape from such article of the insects, their] **the insects or other plant pests or the** eggs, larvae or pupae [, diseases or other plant pests] **of insects or other plant pests escaping from the article**, and the owner[,] or the person[,] firm or corporation] having control or possession of [such] **the** articles desires to separate as instructed, the officer making the inspection shall give permission in writing to make [such] **the** separation:

(a) Within a specified time [and];

(b) At the expense of the owner or responsible party who authorized the separation; and

(c) Under the supervision of [such] **an** official or [some] **of a** person authorized by the inspector to exercise [such] supervision.

(2) [Whenever] **If** the official who makes [such] **the** inspection has other official work awaiting and it appears that the time required for separating and destroying [such] **the** articles may exceed one hour, the official may authorize and deputize [some proper] **an appropriate** person to supervise the separation of the infested or infected articles from the uninfested or uninfected articles and the destruction of the infested and infected articles. The person so authorized shall be paid by the owner or the party who authorized the separation, or by both, for services while supervising the separation and destruction of [such] **the** articles.

SECTION 11. ORS 570.155 is amended to read:
570.155. (1) [When] **If** no provision is made by the inspecting official for disposition by separation or treatment, the notice provided for in ORS 570.140 [will] **must** require that all condemned materials be promptly shipped out of the state within a specified time, the limit of which [shall] **may not** be [not] less than 48 hours [nor] **or** more than 10 days, according to the nature of the insects or [diseases] **other plant pests**. The owner or person in charge [thereof shall so ship such articles, but such shipment shall be made] **of the materials shall ship the materials** under the direction of the officer making the inspection and [shall be] at the expense of the owner or agent of the owner.

(2) If the owner or the agent of the owner fails to comply with the notice, the articles shall be destroyed by the officer at the expense of the owner or agent. [In case] **If** the articles cannot be re-shipped out of the state without danger of [escape of the pest or disease] **the insect or other plant pest escaping** to the orchards, vineyards, farms, gardens[,] or ornamentals[,] and their products of Oregon, the articles shall immediately be destroyed

by, **or under the direction of**, the inspecting official or the person who [has] inspected the [same] **articles** [or under the direction of the official or person].

SECTION 12. ORS 570.170 is amended to read:
570.170. The State Department of Agriculture, whenever [it] **the department** deems [it] necessary, shall cause an inspection to be made of any orchards, nurseries, trees, plants, vegetables, vines or field crops or any fruit packing house, storeroom, salesroom[,] or any other place or thing within this state. Any [such] places, orchards, nurseries, trees, plants, shrubs, vegetables, vines, fruit, [or] field crops or articles found infested or infected with any insects[, pests, diseases or fungous growth or noxious weeds, or the seeds thereof,] **or other plant pests** injurious to fruits, plants, trees, vegetables, [or] vines, [or] grain[,] or other field crops, or with **seeds, eggs, [or] larvae or pupae of injurious insects or other plant pests** liable to spread to other places or localities, or of such a nature as to be a public danger, [hereby] are declared to be a public nuisance. The department shall [notify in writing] **give** the record owner[,] or owners[,] of [such] **written notice that the** articles, things or places [that the same] are [so] infested or infected.

SECTION 13. ORS 570.190 is amended to read:
570.190. (1) All notices provided for in ORS 570.140 to 570.190 shall be served upon each owner of [such] **the** infested or infested premises or chattel, or upon the owner of each, if [such] **the** premises and chattel are under different ownership. Service shall be made in the following manner:

(a) If [such] **the** owners are individuals and can with reasonable diligence be found within the county where [such] **the** infested or infected premises or chattel are, [it] **notice** shall be served upon [such owners, or at least one of them,] **one or more of the owners** personally, by delivering a copy [thereof] **of the notice** certified [to] by the officer making the inspection.

(b) If [such] **the** owner is a corporation, by delivery of [such] **a** certified copy to the president or other head of the corporation[,] **or to a** secretary, cashier or managing agent, or [in case] **if** none of the officers of [such] **the** corporation can with reasonable diligence be found within [such] **the** county[, then]:

(A) **By delivery of a certified copy** to any clerk or agent of [such] **the** corporation who may with reasonable diligence be found within [such] **the** county; or

(B) If no [such officer] **person described in subparagraph (A) of this paragraph** is found, [then] by mailing [such] **a certified** copy to the principal office of [such] **the** corporation or to any person authorized to accept legal service for [said] **the** corporation.

(c) If [such] **the** owner is a minor under the age of 14 years[:]

(A) To [such] the minor's father, mother or guardian; or[.]

(B) If [none] **no father, mother or guardian of the minor** is found within [such] the county, then to any person:

(i) Having the care or control of [such] the minor[or];

(ii) With whom the minor resides[or]; **or**

(iii) In whose service the minor is employed.

(d) If [such] the owner is a person judicially declared to be of unsound mind, or incapable of conducting the affairs of the person, and for whom a guardian has been appointed, on [such] the guardian.

(e) If any [such] owner is a resident of [such] the county and personal service of [such] the notice cannot, with diligence, be had, [it] **personal service** may be made on some person of the family, above the age of 14 years, at the [dwellinghouse] **residence** or usual place of abode of the owner.

(f) [In case such] **If a** notice cannot with reasonable diligence be served as provided in this section, [such] the notice shall be posted by any person qualified to make personal service [thereof] **of the notice** in a conspicuous place on the infested or infested premises, or on the premises or conveyance containing the infested or infested chattel.

(2) [Such] **A** notice may be served by any representative of the State Department of Agriculture, or by a sheriff or deputies of the sheriff. The notice shall state the spray to be used or the treatment to be applied for the eradication of [insect pests, their eggs, larvae, and contagious diseases and fungous growths] **insects or other plant pests or the eggs, larvae or pupae of insects or other plant pests.** The treatment may include the destruction of infested or infested articles, if [such] destruction is necessary in the judgment of the person inspecting the [same] **articles** under the authority conferred by law.

(3) For the purposes of ORS 570.130 to 570.190 any reputed owner shall be considered as the owner of any infested or infested premises or chattel.

SECTION 14. ORS 570.305 is amended to read:

570.305. The Director of Agriculture, and the chief of the division of plant industry, are authorized and directed to use such methods as may be necessary to prevent the introduction into [the] **this** state of dangerous [insect pests and plant diseases] **insects or other plant pests**, and to apply methods necessary to prevent the spread, [and] to establish control and to accomplish the eradication of [such pests and diseases, which] **insects or other plant pests that** may seriously endanger agricultural and horticultural interests of the state, [which may be established or may be introduced, whenever in their opinion such]. **The methods may be established or introduced if the director or chief considers control or eradication [is] to be possible and practicable.**

SECTION 15. ORS 570.345 is amended to read:

570.345. [(1)] Any person, firm or corporation owning or operating a nursery, [a] fruit orchard, [a] hopyard, [a] flower garden or ornamental trees, and knowing the nursery, fruit orchard, hopyard, flower garden or ornamental trees to be infested or infected with any kind of insect **or other plant pest** [or disease] that is or may become a menace to horticultural or farm crops, or on being served with a written notice by the State Department of Agriculture that [such] the nursery, fruit orchard, hopyard, flower garden or ornamental trees are [so] infested or infected, shall immediately spray or destroy the nursery, fruit orchard, hopyard, flower garden or ornamental trees [in such manner] as the department directs.

[(2)(a)] "*Infested*" means when the adult, egg or larvae form of the insect is found in such numbers as, in the opinion of the department, to be a menace to horticultural or farm crops.]

[(b)] "*Infected*" means any appearance of a disease on such trees or plants that may be a menace to horticultural or farm crops.]

SECTION 16. ORS 570.350 is amended to read:

570.350. (1) [No] **A** person, [firm or corporation shall] **may not** import into this state, [or] transport within this state or sell or offer for sale by displaying in stores, in or at fruit stands, [or] along public highways or in any other manner within this state fruit [of any kind which] **that** is infested with any insect [pest or is infested with any disease] **or other plant pest.** The fact that any fruit bears the marks of scale, insects **or disease** or is worm eaten, [or bears the marks of a disease] in excess of tolerances permitted by the State Department of Agriculture, is prima facie evidence that the fruit is infested or infected [within the meaning of this section].

(2) [When] **If** an inspector, or other authorized person of the department, making an inspection of fruit finds that [such] the fruit does not meet the requirements of this section or of other [sections of the] **provisions of law** [relating to such fruit], the inspector or other authorized person shall place a seizure on [such] the fruit and immediately serve [notice in writing of such] **written notice of the seizure** upon the owner or person having possession. The owner or person having possession [shall] **may** not sell or dispose of the seized fruit or move the seized fruit from the place of location provided for in the notice of seizure without written permission from the inspector [so to do]. The failure of the person in possession of the seized fruit to show [such] the fruit in possession, or a written release signed by a [proper] person authorized by the department [so to do], is prima facie evidence that the owner or person having possession of [such] the fruit at the time of seizure has violated the provisions of this section.

(3) In addition to the penalties provided for in ORS 570.990, fruit seized for violation of this section shall:

(a) Be disposed of by court order or by consent of the owner or person in possession; or

(b) *[when the infestation is such as to cause immediate danger of spread of pests or diseases to orchard and farm crops growing from or on the soil of Oregon, such fruit or fruits immediately shall]* Be destroyed by the inspector making the seizure or by other persons authorized by the department, by burning or by other means that will completely eradicate the *[pest or disease, and]* **insect or other plant pest**, without compensation to the owner, agent or person in possession of *[such]* **the fruit**, *[where it appears beyond a reasonable doubt that the infestation is such as will cause immediate spread of pests or diseases. Such]* **if it reasonably appears to the inspector or other authorized person that the infestation presents an immediate danger of spreading the insects or other plant pests to orchard or farm crops in this state.**

(4) Infested or infected fruit may be sold to evaporators, fruit canneries, fruit product factories[,] or other by-product factories *[under the following conditions]* **if:**

(a) *[Fruit so sold shall be]* **The fruit is used solely for the production of manufactured fruit products, beverages or other manufactured products or by-products[.]; and**

(b) The nature of the infestation or infection is not such as to make the article of food or beverage manufactured from *[such]* **the fruit** unhealthful or unfit for use as a food or beverage.

[c)] **(5) The sale of [such fruit shall be] fruit under subsection (4) of this section is subject to [such] grades and regulations [as] adopted by the department [adopts].**

SECTION 17. ORS 570.355 is amended to read:

570.355. Each person who packs or prepares for shipment to any point within *[the]* **this** state, or who delivers or causes to be delivered to any express agent or railroad agent or other person or to any transportation company or corporation for shipment to any point *[without the]* **outside of this** state, any fresh, cured or dried fruit infected with *[insect pests or diseases]* **insects or other plant pests** injurious to trees, shrubs, plants, fruits or vegetables is guilty of a misdemeanor. This section does not prevent the grower of *[such]* infected fruit grown within this state from manufacturing the *[same]* **fruit** into a by-product or selling and shipping the *[same]* **fruit** to a by-product factory.

SECTION 18. ORS 570.405 is amended to read:

570.405. (1) The State Department of Agriculture may establish, in accordance with the provisions governing the procedure for the declaring of quarantines contained in ORS 561.510 to 561.590, control areas within this state, if after careful investigation *[it]* **the department** determines that *[such]* **the areas** are necessary for the general protection of the horticultural, agricultural or *[forest]* **forestry** industries *[of the]* **in this** state from *[diseases, insects, animals or noxious weeds]* **insects or other plant pests**, or for the eradication or exclusion from *[such]* **the areas** of certain plants or their

produce, trees[, *diseases, animals, insects or noxious weeds*] **or insects or other plant pests** that may be a menace to *[such]* **the areas** and generally to horticultural, agricultural or forestry industries. *[Whenever eastern filbert blight is found to exist, the department may declare it a hazard and may establish a control area without having to prove how the disease is transmitted.]*

(2) The power and authority to establish *[such]* control areas and for the eradication or exclusion of certain plants or their produce, trees[, *diseases, insects, animals or noxious weeds*] **or insects or other plant pests** existing *[therein]* **in the areas** or to be excluded *[therefrom]* **from the areas** shall be exercised reasonably and justly considering the exigencies of the particular situation, the danger to the interests sought to be protected and the immediate and continuing effect upon the property and the owners of the property in the areas established. *[Such powers shall in no case be exercised]* **The department may not exercise the power to establish control areas** unreasonably, unjustly or arbitrarily.

(3) The department, in *[such]* **making a** determination, shall define the boundaries of the **control areas** and specify the character and kinds of plants or their produce, trees[, *diseases, insects, animals or noxious weeds*] **or insects or other plant pests** to be eradicated or excluded and the manner and method of *[such]* eradication or exclusion. The provisions of ORS 561.510 to 561.590 apply to this section.

SECTION 19. ORS 570.415 is amended to read:

570.415. The Director of Agriculture may, at any time the director believes *[such action]* necessary, revoke any order concerning control areas made by the director. *[by giving notice in a newspaper published within or near the control area or lands affected and filing proof thereof with the county clerk of the county]* **The revocation shall become effective upon the director giving notice by publication in a newspaper of general circulation in the control area. The director shall also give notice by one or more additional methods that reasonably ensure that affected persons and other members of the public have knowledge of the revocation.**

SECTION 20. ORS 596.402 is amended to read:

596.402. (1) The State Department of Agriculture may also summarily quarantine any legally described area of this state and prohibit or otherwise restrict any movement of livestock, vehicles, persons or things into or out of *[such]* **the area** as the department deems necessary for the eradication or control of a disease in the area, or for the prevention of the spread of *[such]* **a disease** into other areas of this state.

[(2) When the department imposes a quarantine under this section, it shall forthwith but not later than seven days thereafter give notice of the quarantine in a newspaper of general circulation in

the quarantined area. A copy of the order of quarantine and any regulations relating thereto shall be filed in the office of the county clerk in each county in which quarantined property is located. The published notice of quarantine shall contain a description of the boundaries of the quarantined area and a notice that copies of the regulations applicable to the quarantine are filed with the county clerk or may be obtained from the department.]

(2) No later than seven days after imposing a quarantine under this section, the department shall give notice of the quarantine by publication in a newspaper of general circulation in the quarantine area and by one or more additional methods that reasonably ensure that affected persons and other members of the public have knowledge of the quarantine.

(3) The provisions of ORS 561.510 to 561.560 [shall] do not apply to quarantines imposed under this section.

SECTION 21. ORS 621.072 is amended to read:

621.072. (1) The State Department of Agriculture shall issue a license to use a grade designation to any person who:

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

(b) Pays the designated license fee;

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

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

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

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

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

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

of fluid milk. [The physical facilities must conform to the production, processing or distribution requirements for the fluid milk grade designation sought or held.]

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

(7) The department may adopt rules establishing license fee schedules for:

(a) Milk samplers and graders;

(b) Producer-distributors, distributors and non-processing distributors; and

(c) Producers.

(8) The department may determine the license fee for a producer-distributor, distributor or non-processing distributor based upon the annual gross dollar volume of sales and services by the applicant. In establishing the amount of the license fee for an applicant under this subsection, the department shall use the annual gross dollar volume of sales and services by that applicant within Oregon during the prior calendar year or, if the applicant maintains sales and service records on a fiscal basis, the prior fiscal year. If the applicant applying for an original license or for a renewal license cannot provide the annual gross dollar volume of sales and services for a full calendar year, the department shall base the fee on estimated annual gross sales and services by the applicant. If an applicant whose previous year's fee was determined using an estimated gross sales and services figure applies for renewal of that license, the fee for the previous license year shall be adjusted to reflect the actual gross dollar volume of sales and services by the applicant.

(9) The department may determine the license fee for a producer based upon the annual gross sales by the applicant. In establishing the amount of the license fee for an applicant under this subsection, the department shall use the annual gross sales by that applicant within Oregon during the prior calendar year or, if the applicant maintains sales records on a fiscal basis, the prior fiscal year. If the applicant applying for an original license or for a renewal license cannot provide the annual gross sales for a full calendar year, the department shall base the fee on estimated annual gross sales by the applicant. If an applicant whose previous year's fee was determined using an estimated gross sales figure applies for renewal of that license, the fee for the previous license year shall be adjusted to reflect the actual gross sales by the applicant.

(10) Except as provided in this subsection, the department may not adopt a rule under this section to establish a license fee that is more than three percent higher than the fee charged during the preceding year for a milk sampler and grader, for a producer-distributor, distributor or nonprocessing distributor having the same volume of gross sales and services or for a producer having the same volume of gross sales. When adopting a rule establish-

ing a license fee, notwithstanding the three percent limit, the department may round the fee amount to the next higher whole dollar amount. Fee schedules adopted under this section may not change the amount of the same license fee more frequently than once each year.

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

(12) The department may refuse to issue or renew, or may suspend or revoke, a license for any violation of this section or ORS 621.062, 621.070, 621.076, 621.084, 621.088, 621.117, 621.122 or 621.259 or processes or standards established under ORS 621.060 or 621.083.

SECTION 22. ORS 621.072, as amended by section 39, chapter 64, Oregon Laws 2012, is amended to read:

621.072. (1) The State Department of Agriculture shall issue a license to use a grade designation to any person who:

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

(b) Pays the designated license fee;

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

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

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

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

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

(5) Before and after issuing a license to a person as a producer, producer-distributor, distributor or nonprocessing distributor of fluid milk, the department shall, as it deems necessary, inspect the physical facilities of the applicant's dairy, milk processing plant or distribution center and investigate other factors the department determines may

relate to the production, processing or distribution of fluid milk. *[The physical facilities must conform to the production, processing or distribution requirements for the fluid milk grade designation sought or held.]*

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

(7) The department may adopt rules establishing license fee schedules for:

(a) Milk samplers and graders;

(b) Producer-distributors, distributors and non-processing distributors; and

(c) Producers.

(8) The department may determine the license fee for a producer-distributor, distributor or non-processing distributor based upon the annual gross dollar volume of sales and services by the applicant. In establishing the amount of the license fee for an applicant under this subsection, the department shall use the annual gross dollar volume of sales and services by that applicant within Oregon during the prior calendar year or, if the applicant maintains sales and service records on a fiscal basis, the prior fiscal year. If the applicant applying for an original license or for a renewal license cannot provide the annual gross dollar volume of sales and services for a full calendar year, the department shall base the fee on estimated annual gross sales and services by the applicant. If an applicant whose previous year's fee was determined using an estimated gross sales and services figure applies for renewal of that license, the fee for the previous license year shall be adjusted to reflect the actual gross dollar volume of sales and services by the applicant.

(9) The department may determine the license fee for a producer based upon the annual gross sales by the applicant. In establishing the amount of the license fee for an applicant under this subsection, the department shall use the annual gross sales by that applicant within Oregon during the prior calendar year or, if the applicant maintains sales records on a fiscal basis, the prior fiscal year. If the applicant applying for an original license or for a renewal license cannot provide the annual gross sales for a full calendar year, the department shall base the fee on estimated annual gross sales by the applicant. If an applicant whose previous year's fee was determined using an estimated gross sales figure applies for renewal of that license, the fee for the previous license year shall be adjusted to reflect the actual gross sales by the applicant.

(10) The department may not adopt or enforce a rule under this section establishing a license fee for a milk sampler and grader that is higher than the license fee charged for the license year that began July 1, 2018, for a milk sampler and grader. The department may not adopt or enforce a rule under this section establishing a license fee for a producer-distributor, distributor or nonprocessing distributor

that is higher than the license fee charged for the license year that began July 1, 2018, for a producer-distributor, distributor or nonprocessing distributor having the same volume of gross sales and services. The department may not adopt or enforce a rule under this section establishing a license fee for a producer that is higher than the license fee charged for the license year that began July 1, 2018, for a producer having the same volume of gross sales. Fee schedules adopted under this section may not change the amount of the same license fee more frequently than once each year.

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

(12) The department may refuse to issue or renew, or may suspend or revoke, a license for any violation of this section or ORS 621.062, 621.070, 621.076, 621.084, 621.088, 621.117, 621.122 or 621.259 or processes or standards established under ORS 621.060 or 621.083.

SECTION 23. ORS 621.078 is amended to read:

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

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

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

(4) The department may adopt rules to determine the responsibilities of a milk processing plant's primary operator and additional users of the milk

processing plant under standards prescribed by ORS 621.176 and 621.181 and under ORS 621.183.

(5) A recognized primary operator of a milk processing plant shall notify the department upon the expiration or termination of the rental or lease of the plant by an additional user of the plant.

SECTION 24. ORS 633.571 is amended to read:

633.571. (1) The Director of **Agriculture**, with the concurrence of the dean, may make the following changes in the list of prohibited noxious weed seeds or in the list of restricted noxious weed seeds:

(a) The addition to either list of the name of the seed of any weed.

(b) The removal from either list of the name of the seed of any weed.

(c) A change in the list of restricted noxious weed seeds of the number of such seeds per pound that may be present in agricultural, flower or vegetable seed.

(2) In determining whether the name of the seed of any weed should be added to or removed from either list, or whether a change should be made in the number of any restricted noxious weed seed that may be present in agricultural, flower or vegetable seed, the director and the dean shall consider the following factors:

(a) The prevalence of such weed in the state.

(b) The potential effect upon the seed industry and agriculture generally.

(c) Means of effective control or eradication.

(d) Toxicity to animals, including humans.

(e) Methods of separation from other seeds.

(f) Any other factor that may in the judgment of the director and the dean be a reasonable ground for making such change.

(3) The director shall cause all changes made pursuant to this section to be given to the press and [*printed in pamphlet form available for distribution*] **made available by one or more reasonable methods for use by affected persons or other members of the public.**

SECTION 25. ORS 646.905 is amended to read: 646.905. As used in ORS 646.910 to 646.923:

(1) "Alcohol" means a volatile flammable liquid having the general formula $C_nH_{(2n+1)}OH$ used or sold for the purpose of blending or mixing with gasoline for use in propelling motor vehicles, and commonly or commercially known or sold as an alcohol, and includes ethanol or methanol.

(2) "Biodiesel" means a motor vehicle fuel consisting of mono-alkyl esters of long chain fatty acids derived from vegetable oils, animal fats or other nonpetroleum resources, not including palm oil, designated as B100 and complying with ASTM D 6751.

(3) "Certificate of analysis" means:

(a) A document verifying that B100 biodiesel has been analyzed and complies with[, *at a minimum, the following*] ASTM D 6751 biodiesel fuel test methods and specifications[-]; **and**

[(A) *Flash point (ASTM D 93);*]

[(B) *Acid number (ASTM D 664);*]

- [(C) *Cloud point (ASTM D 2500);*]
- [(D) *Water and sediment (ASTM D 2709);*]
- [(E) *Visual appearance (ASTM D 4176);*]
- [(F) *Free glycerin (ASTM D 6854); and*]
- [(G) *Total glycerin (ASTM D 6854); and*]

(b) Certification of feedstock origination describing the percent of the feedstock sourced outside of the states of Oregon, Washington, Idaho and Montana.

(4) "Co-solvent" means an alcohol other than methanol which is blended with either methanol or ethanol or both to minimize phase separation in gasoline.

(5) "Ethanol" means ethyl alcohol, a flammable liquid having the formula C₂H₅OH used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles.

(6) "Gasoline" means any fuel sold for use in spark ignition engines whether leaded or unleaded.

(7) "Methanol" means methyl alcohol, a flammable liquid having the formula CH₃OH used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles.

(8) "Motor vehicles" means all vehicles, vessels, watercraft, engines, machines or mechanical contrivances that are propelled by internal combustion engines or motors.

(9) "Nonretail dealer" means any person who owns, operates, controls or supervises an establishment at which motor vehicle fuel is dispensed through a card- or key-activated fuel dispensing device to nonretail customers.

(10) "Other renewable diesel" means a diesel fuel substitute, produced from nonfossil renewable resources, that has an established ASTM standard, is approved by the United States Environmental Protection Agency, meets specifications of the National Conference on Weights and Measures, and complies with standards promulgated under ORS 646.957.

(11) "Retail dealer" means any person who owns, operates, controls or supervises an establishment at which gasoline is sold or offered for sale to the public.

(12) "Wholesale dealer" means any person engaged in the sale of gasoline if the seller knows or has reasonable cause to believe the buyer intends to resell the gasoline in the same or an altered form to another.

SECTION 26. ORS 646.922 is amended to read:

646.922. [(1) *A retail dealer, nonretail dealer or wholesale dealer may not sell or offer for sale diesel fuel unless the diesel fuel contains at least two percent biodiesel by volume or other renewable diesel with at least two percent renewable component by volume.*]

[(2)] (1) [Two months after the date of the notice given under ORS 646.921 (2),] A retail dealer, nonretail dealer or wholesale dealer may not sell or offer for sale diesel fuel unless the diesel fuel contains at least five percent biodiesel by volume or other renewable diesel with at least five percent renewable component by volume. Diesel fuel that contains more than five percent biodiesel by volume

or other renewable diesel with more than five percent renewable component by volume must be labeled as the State Department of Agriculture provides by rule.

[(3)] (2) A retail dealer, nonretail dealer or wholesale dealer may sell or offer for sale diesel fuel that otherwise meets the requirements of [subsections (1) and (2)] **subsection (1)** of this section and rules adopted pursuant to ORS 646.957 but to which there have been added substances to prevent congealing or gelling of diesel fuel containing biodiesel or other renewable diesel, without violating the requirements of [subsections (1) and (2)] **subsection (1)** of this section and rules adopted pursuant to ORS 646.957. This subsection applies only to diesel fuel sold or offered for sale during the period from October 1 of any year to February 28 of the following year.

[(4)] (3) The department shall adopt standards for biodiesel or other renewable diesel sold in this state. The department shall consult the specifications established for biodiesel or other renewable diesel by ASTM International in forming the department's standards. The department may review specifications adopted by ASTM International, or equivalent organizations, and revise the standards adopted pursuant to this subsection as necessary.

[(5)] (4) The minimum biodiesel fuel content and renewable component in other renewable diesel requirements under [subsections (1) and (2)] **subsection (1)** of this section do not apply to diesel fuel sold or offered for sale for use by railroad locomotives, marine engines or home heating or to facilities that store more than 50 gallons of diesel fuel for use in emergency power generation.

(5) All retail dealers, nonretail dealers and wholesale dealers in this state are required to provide, upon the request of the department, a certificate of analysis for biodiesel received.

SECTION 27. ORS 195.308 is amended to read:

195.308. Notwithstanding the requirement to pay just compensation for certain land use regulations under ORS 195.305 (1), compensation is not due for the enforcement or enactment of a land use regulation established in ORS 30.930 to 30.947, 527.310 to 527.370, 561.995, 569.360 to 569.495, 570.010 to 570.050, 570.105 to 570.190, 570.305, 570.310, 570.320 to 570.360, 570.405, 570.412, 570.420, 570.425, 570.450, [570.650,] 570.700 to 570.710, 570.755, 570.770, 570.775, 570.780, 570.790, 570.800, 570.995, 596.095, 596.100, 596.105, 596.393, 596.990 or 596.995 or in administrative rules or statewide plans implementing these statutes.

SECTION 28. ORS 570.205, 570.650, 570.655, 570.660, 570.665, 570.670, 570.675, 570.680, 621.065, 646.912 and 646.921 are repealed.

SECTION 29. The Legislative Assembly finds and declares that:

(1) **The Interstate Compact on Pest Control was dissolved by its governing board in 2013; and**

(2) The obligation to give notice of withdrawal ceased upon dissolution of the compact.

SECTION 30. Section 29 of this 2015 Act is repealed January 2, 2017.

Approved by the Governor June 2, 2015

Filed in the office of Secretary of State June 3, 2015

Effective date January 1, 2016
