

Chapter 583

Milk Marketing

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MILK MARKETING GENERALLY

583.010 Definitions. As used in this chapter:

(1) "Board" means the State Board of Agriculture or the Milk Marketing Administrator acting on behalf of the State Board of Agriculture to the extent that its powers and duties have been delegated to him by the State Board of Agriculture.

(2) "Consumer" means any person other than a milk dealer who purchases milk for human consumption.

(3) "Market area" or "marketing area" means any geographical area within the state comprising one or more counties or parts thereof, where marketing conditions are substantially similar, and which may be designated by the board or administrator as one marketing area, wherein wholesale, retail and producer prices may be established.

(4) "Milk" means fluid milk and sweet cream, skimmed milk, cultured milk and all flavored milk sold for human consumption in fluid form.

(5) "Milk dealer" means any person who purchases or handles milk within the state for sale within this state, except when consumed on the premises where sold. A producer who delivers only to a milk dealer is not a milk dealer.

(6) "Processor" is any person owning and operating a plant wherein such person has been duly licensed by the board or Milk Marketing Administrator to process the raw fluid milk by pasteurization, homogenization or other processing means.

(7) "Producer" means a person producing milk within this state for processing or sale within this state.

(8) "Producer-distributor" means any producer who maintains his own herd, prepares and puts in containers for human consumption the milk produced from such herd and distributes and sells either partially or exclusively his own product direct to stores or consumers. The terms "milk dealer" and "producer," wherever used in this chapter, include the term "producer-distributor."

(9) "Production area" means any geographical area which may be designated by the board or Milk Marketing Administrator as a production area from which fluid milk shall be produced for a designated marketing area and in which marketing conditions are substantially similar.

(10) "Sales area" means any area com-

prising any city, town or village of this state, or two or more cities, towns or villages and surrounding contiguous territory for which the board or Milk Marketing Administrator may issue licenses for the processing or sale of milk in said sales area and in which marketing conditions are substantially similar.

(11) "Store" means any grocery store, hotel, restaurant, soda fountain, dairy products store or any other establishment wherein milk is sold. [Amended by 1953 c.712 §4]

583.020 State Board of Agriculture to control administration of milk marketing laws. After August 2, 1951, all provisions of the law administered before that date by the Milk Marketing Administrator under the provisions compiled in this chapter shall be administered under the direction and control of the State Board of Agriculture.

583.030 Meetings of board; compensation of members. The State Board of Agriculture shall meet at least every three months and at such other times as it deems necessary. The members of the State Board of Agriculture shall receive \$10 each for each day engaged in their services under this chapter and shall be reimbursed for actual and necessary expenses while attending to their official duties, which expenses and per diem shall be charged to the Milk Control Account.

583.040 Milk Marketing Administrator; other employes; incurring expenses. (1) For the purpose of carrying out the provisions of this chapter, the board shall employ, to serve at its pleasure, an executive officer to be known as the Milk Marketing Administrator. At each meeting of the board it shall examine the work of the Milk Marketing Administrator.

(2) The board has authority to employ such persons as may be necessary and to fix their compensation and to incur all expenses necessary to carry out the purposes of this chapter.

583.050 Powers of board, generally. The board, or the Milk Marketing Administrator acting on behalf of the board, is vested with power:

(1) To confer and to cooperate with the legally constituted authorities of other states and of the United States, with a view to securing a uniform system of milk control with respect to milk coming into this state

and going out of this state in interstate commerce and particularly to cooperate with the duly constituted authorities of the United States vested with the administration of such Acts of Congress as are designed to encourage and promote agricultural and industrial recovery and to coordinate the activities of and the powers exercised by the board with such other duly constituted authorities with a view to accomplishing the purposes of this chapter and to enter into compact or compacts for such uniform system of milk control.

(2) To investigate with Oregon State College all matters pertaining to the production, manufacture, storage, transportation, distribution and sale of milk in this state.

(3) To supervise and regulate the milk industry of the state, including production as defined in ORS 583.180, transportation, manufacture, storage, distribution and sale of milk.

(4) To act as mediator or arbiter in any controversial issue arising in connection with the milk industry which involves a producer, milk dealer or consumer.

(5) To exercise such other powers as are specified in this chapter.

583.060 Examining records; subpoenas; oaths; depositions; rules and regulations.

(1) The board, or the Milk Marketing Administrator acting on behalf of the board, is vested with power:

(a) To examine into the business records and accounts of any milk dealer, to issue subpoenas to milk dealers, and to require them to produce their records, books and accounts, to subpoena any other person from whom information is desired.

(b) To take depositions of witnesses within or without the state.

(c) To adopt and enforce all rules, regulations and orders necessary to carry out the provisions of this chapter, to make all necessary rules, regulations and orders to carry out the true intent and purpose of this chapter.

(2) Any member of the board or any employe designated by the board may sign and issue subpoenas and administer oaths to witnesses.

583.065 Authority of board to institute suits; civil penalty for violation of chapter or board orders; disposition of moneys recovered. (1) In addition to any other remedies provided by law, the board in the name of the State of Oregon shall have the right

to sue in any court of competent jurisdiction for the recovery of any moneys due it from any person subject to this chapter, and shall also have the right to institute suits in equity for injunctive relief and for the purpose of enforcement of the provisions of this chapter, or any order of the board.

(2) Any person who violates any provision of any order of the board which has been made and filed with the Secretary of State pursuant to law on or after January 1, 1953, or any provision of this chapter shall be liable civilly in the penal sum not to exceed \$350 for each and every violation, such sum to be recovered by the board in the name of the State of Oregon in any court of competent jurisdiction. All sums recovered under this section shall be deposited with the State Treasurer and placed to the credit of the General Fund.

(3) The remedy provided in this section shall not be exclusive and is in addition to any and all remedies possessed by the board or Milk Marketing Administrator either at law or in equity. [1953 c.590 §2]

583.070 Compliance with subpoenas and regulations required. No person shall fail or refuse to comply with any subpoena issued by the board or pursuant to its authority, or to comply with any rule, regulation or order of the board.

583.080 Court to compel obedience to subpoenas and regulations. If any person fails to comply with any rule, regulation or order of the board, or to obey any subpoena issued thereby, or if any witness refuses to testify to any matter concerning which he lawfully may be interrogated by the board or its representative, the circuit court of any county, or judge thereof, upon application of the board, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court, refusal to testify therein, or disobedience of an order or decree of such court. The proceeding authorized in this section in the circuit court to compel obedience is in addition to the prohibition provisions of ORS 583.070 and the penalty provided in subsection (2) of ORS 583.990.

583.090 Examiner or board member conducting hearings. Any hearing required to be held by the board may be conducted in its absence by an examiner appointed by the board for such purpose or by one of its

own members appointed as an examiner for such purpose. If a hearing is so conducted, the examiner shall make, or cause to be made, a record of the evidence and proceedings on such hearing, and certify the record to the board, which may take action thereon to the same extent as though the hearing had been conducted in its presence. The examiner has full power to swear and examine witnesses, take testimony, and, in the name of the board, subpoena witnesses and records, and require the production of records and documents, and to conduct the proceedings in any such hearing to the same extent as the board itself could.

583.100 Establishing market, sales and production areas. The board may define what constitutes a natural market area or sales area and define and fix the limits of the production area or territorial area within which milk shall be produced to supply any such sales areas. However, producers, or their successors, shipping to any market on December 15, 1933, may continue so to do until they voluntarily discontinue shipping to designated sales areas. [Amended by 1953 c.712 §4]

583.110 Hearing and separate order required for each particular market or sales area. A separate order of the board in the establishment of minimum prices, as provided in ORS 583.120 to 583.170, or in pursuance of the powers conferred by ORS 583.180, shall be made for each sales and marketing area, established under ORS 583.100 or 583.180, and each such order shall be preceded by a hearing held within the particular marketing area to be affected by the order. [Amended by 1953 c.712 §4]

583.120 Determination of minimum prices for milk; factors considered; reports of unit cost. The board shall ascertain what prices for milk in each locality and market area of the state will best protect the milk industry and insure a sufficient quantity of pure and wholesome milk in the public interest. The board shall take into consideration all conditions affecting the milk industry, including the price necessary to produce a reasonable return to the producer and to the milk dealer. In determining the minimum prices for each class in any market area, the board shall take into consideration the reasonable unit cost of each class of handling milk incurred by each such class mentioned

in ORS 583.130, including all costs of hauling, processing, selling and delivering by the several methods used in such marketing area in accomplishing such hauling, processing, selling and delivery, as such costs are determined by impartial audits or examination of the books, records, reports or surveys, of all, or such portions of each class, respectively, in such market area as are reasonably determined by the board to be sufficiently representative to indicate the costs of each class in such market area. The board shall, as often as feasible, report in writing the unit cost for each class in each market and shall make copies of such report available upon request.

583.130 Fixing minimum prices by class for milk producers and dealers. (1) After making the investigation pursuant to ORS 583.120 the board shall, by order, fix the minimum prices to be charged for milk handled and sold within the state for human consumption in fluid form for each of the following classes:

(a) By producers or associations of producers to milk dealers.

(b) By milk dealers to stores for consumption on the premises.

(c) By milk dealers to stores for consumption off the premises where sold.

(d) By stores making cash sales to consumers for consumption off the premises where sold.

(e) By stores making credit sales to consumers for consumption off the premises where sold.

(f) By milk dealers for delivery to the homes of the consumers.

(2) The board shall require such records and accounting procedures to be kept and adopted by milk dealers and stores as will enable the board to determine the differences in costs of each class, if any, between the various classes mentioned in subsection (1) of this section. The minimum prices fixed by the board shall reflect any reasonable differences in costs between each class thus determined to the extent that it is practicable.

583.140 Fixing minimum prices for grades of milk. Where by statute, regulation adopted thereunder, or municipal ordinance, various grades of milk are specified, the board shall fix the minimum price as provided in ORS 583.120 and 583.130, applicable to each grade.

583.150 Fixing minimum prices for different markets; areas where blending facilities inadequate. (1) Orders fixing minimum prices may vary in different markets, and each shall designate the market to which it is applicable. In fixing minimum prices and the standards or grades to which they apply the board shall in each market area and production area take into consideration costs of production and distribution and the market conditions in the particular sales and production area to be affected by the order applying to such sales and production area.

(2) In those sales areas or production areas supplying the sales area where the dealers do not have adequate facilities for the blending or standardizing of whole milk, sold in its form as whole milk and where such blending or standardizing is not required under applicable ordinances of the city or town in the sales area or laws of this state, the minimum prices for milk sold in the form of whole milk shall not be graduated according to butterfat content.

583.160 Sales or purchases at other than fixed prices prohibited. After the board has fixed the prices to be paid to the producer or association and the prices at which milk shall be sold, as provided in ORS 583.120 to 583.170, no person shall buy or offer to buy, sell or offer to sell, any milk at prices other than the prices fixed by order of the board. Any method, device or transaction whereby any person buys or offers to buy, sells or offers to sell at a price less than that fixed by order of the board applicable to the grade of milk involved in the transaction occurred, whether by discount, rebate, free service, advertising allowance, gift or otherwise, is unlawful.

583.165 Distribution of standardized milk with less than 3.5 butterfat content prohibited. (1) No person who purchases milk for resale and causes it to be standardized shall sell or distribute any milk which has a butterfat content of less than 3.5 percent; but this section does not prohibit the sale or distribution of skim milk, chocolate milk, buttermilk or cultured milk having a butterfat content of less than 3.5 percent if it has a butterfat content at least equal to that otherwise required by law.

(2) As used in this section, "standardized" means the process by which the butterfat content of milk is adjusted to a certain

percentage by the addition or removal of butterfat or skim milk, as the case may be. [1953 c.274 §2]

583.170 Amendment of board orders. The board may on its own motion or upon application, from time to time, alter, revise or amend any order theretofore made with respect to prices to be charged or paid for milk, designating and defining the limits of markets, milksheds, or upon any other matter within the jurisdiction of the board. After making an investigation under ORS 583.120 and before making, revising and amending the order, the board shall give notice to interested parties and the public generally of the time and place of hearing thereon, in such newspaper or newspapers as in the judgment of the board afford reasonable notice and publicity.

583.180 Surplus milk. It is recognized that, due to seasonal fluctuations in milk production, and other causes, there occurs in certain markets in the state a surplus of fluid milk suitable for human consumption, under the laws and ordinances in force in such markets, in excess of the quantities sold as fluid milk for human consumption, and that such surplus varies from day to day and from season to season; that such surpluses must be sold for factory or other purposes at prices usually lower than would be received if sold in the fluid milk trade; and that to stabilize and promote the milk industry it is necessary that uniform prices be paid to all producers who either directly or through any corporation, or cooperative association, furnish milk to any specified market. To accomplish these necessary purposes the board has power:

(1) To define and limit the geographical area from which the fluid milk is produced for any given market or sales area as fixed and designated by the board, subject to the limitations prescribed in ORS 583.100 to 583.170 in connection with the establishment by the board of market, production and sales areas; but producers, or their successors, shipping to any market on December 15, 1933, may continue so to do until they voluntarily discontinue shipping to designated market or sales areas.

(2) To determine, under uniform rules and regulations, what proportion of the milk produced by each producer shall be considered as marketed as fluid milk for human consumption and what proportion so produced shall be considered as surplus.

(3) To provide for the pooling and averaging of all returns from the sales of fluid milk produced in the geographical area from which fluid milk is produced for a designated market or sales area, and the payment to all producers of a uniform pool price for all milk so produced, subject to such equitable adjustments as are made by the board and subject to such rules and regulations as are imposed for the control of surplus production by the establishment of basic averages or other methods.

(4) To appoint, set up, select and employ agencies for the handling and disposal of the surplus fluid milk, keep, or supervise the keeping of all accounts and records necessary in connection with such transactions, and receive and disburse the funds received in connection therewith.

(5) To make reasonable deductions from the funds so received to pay all necessary expenses incidental to the performance of the duties and the execution of the powers conferred in this section.

(6) To make any other and further order, rule or regulation and exercise any such further power as may be necessary for the full accomplishment of the provisions of this section.

(7) To provide and establish distributor pools or market pools for a designated market area or sales area with such rules and regulations as the board or Milk Marketing Administrator may deem necessary for the purpose of obtaining a uniform payout to producers in said distributor's pools or market pools. [Amended by 1953 c.712 §4]

583.190 Cooperative associations; effect of chapter. (1) No provision of this chapter shall be deemed or construed to prevent or abridge the right of a cooperative corporation or association, organized under the laws of this state and engaged in marketing or making collective sales of milk produced by its members, to:

(a) Blend the net proceeds of all its sales in various classes and pay its producers such blended price, with such deductions therefrom and differentials as may be authorized under contracts between such corporation and its members.

(b) Make collective sales of the milk of its members and other producers represented by or marketing through it at a blended price based upon sales thereof in the various classes and markets.

(2) No provision of this chapter shall be deemed or construed to:

(a) Prevent or abridge the right of any milk dealer from contracting for his milk with a cooperative corporation or association, organized under the laws of this state and engaged in marketing or making collective sales of milk produced by its members, upon the basis provided in subsection (1) of this section.

(b) Affect or impair the contracts of any such cooperative association with its members or other producers marketing their milk through such corporation.

(c) Impair or affect any contracts which any such cooperative association has with milk dealers or others.

(d) Affect or abridge the rights and powers of any such cooperative association conferred by the laws of this state under which it is incorporated.

(3) The prices to be paid for milk marketed by or through any such corporation shall be those fixed by the order of the board.

583.200 Labeling milk containers. (1) No person who prepares milk and puts it in any of the types of containers mentioned in subsections (2), (3) or (4) of this section, for human consumption therefrom, shall distribute or sell, in any such containers, milk to milk dealers, stores or consumers unless the containers, or attachments thereto in the case of milk sold in bulk, are labeled as required by this section.

(2) On glass bottles of milk or cream for the bottle and canned trade, the minimum butterfat content should show in as large print as possible on the cap, or cover, whichever is used.

(3) On paper containers of milk or cream for the bottle and canned trade, the minimum butterfat content should show in letters at least one-half inch high on the top of the container.

(4) On the parchment used under the cover of bulk containers of milk or cream, the minimum butterfat content should show in letters at least one-half inch high.

(5) No person shall sell milk in or from containers not labeled as required by this section.

583.210 to 583.300 [Reserved for expansion]

MILK DEALER'S LICENSE

583.310 License required for milk dealers. (1) No milk dealer shall:

(a) Buy milk from producers or others for sale within this state, or sell or distribute milk within the state, unless such dealer is licensed so to do as provided in this chapter.

(b) Buy milk from or sell milk to a milk dealer who is not licensed under this chapter.

(c) Deal in or handle milk if such milk dealer has reason to believe the milk has previously been dealt in or handled in violation of the terms and provisions of this chapter.

(2) The board may, by official order, exempt from the license requirements provided by this chapter, milk dealers selling milk in any quantities in markets of 15,000 population or less.

583.320 Application for and granting of license. (1) In the application for a license to operate as a milk dealer the applicant shall state:

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

(b) The full name and address of the person applying for the license if an individual; and if a copartnership, the full name and address of each member thereof; and if a corporation, the full name and address of each officer and director.

(c) The name of the town and street number at which the business is to be conducted.

(d) The facts showing that the applicant has adequate personnel and facilities to properly conduct the business of handling and selling milk.

(e) That the applicant has complied with all rules, regulations and orders of the board.

(f) Such other facts with respect to the applicant as are required by the board.

(2) The application shall be made on blanks furnished by the board for the purpose, and when filed with the board shall be accompanied by the license fee required to be paid by ORS 583.380. The license granted to the applicant by the board is subject to the provisions of this chapter.

583.330 Classification of licenses as to sales areas. The board may classify licenses and may issue licenses to dealers, to stores or processors to handle or sell milk limited to a particular city or village, or to a par-

ticular sales area or areas within the state established under ORS 583.100. [Amended by 1953 c.712 §4]

583.340 Grounds for refusal, suspension or revocation of license. The board may decline to grant the license, or may suspend or revoke a license of any applicant, upon due notice and opportunity to the applicant to be heard, when any of the following conditions appear:

(1) The milk dealer has failed to account and make payment, without reasonable cause, for milk purchased from a producer.

(2) A milk dealer has committed any act injurious to the public health, welfare or to trade or commerce in milk to such an extent as to obstruct the purposes of this chapter.

(3) A milk dealer has continued in a course of dealing of such nature as to satisfy the board of his inability or unwillingness properly to conduct the business of handling or selling milk.

(4) A milk dealer has continued in a course of dealing of such nature as to satisfy the board of an intent to deceive or defraud the producers or consumers.

(5) A milk dealer has failed either to keep records or to furnish the statements or information required by the board.

(6) A milk dealer has failed to pay the license fees required by ORS 583.380.

(7) A milk dealer has failed to obey any lawful subpoena, rule, regulation or order of the board.

(8) Where any material statement upon which the license was issued is or was false or misleading.

(9) A milk dealer has violated any of the provisions of this chapter.

583.350 Hearing required to deny or revoke license. Before an order is made denying an application for a license or revoking a license which has been issued, the board shall fix the time and place for hearing of such matter and give notice to the applicant or licensee, as the case may be, of the time and place so fixed, with reasonable notice to the applicant or licensee to be heard and present evidence. The notice shall be in writing and shall be served either personally or by mail at least five days in advance of the time set for the hearing. Any hearing held prior to the refusal to grant a license or to the revocation of a license already issued shall be held at some

convenient place selected by the board or its examiner in the county where is located the residence or principal place of business of the applicant or licensee, unless such privilege is waived by the applicant or licensee. If the privilege is waived, the hearing may be held at the election of the board or its examiner either in such county or in the county of the principal office of the board.

583.360 Order refusing, suspending or revoking license; review. Any order of the board in refusing to issue a license or suspending or revoking a license may be reviewed upon writ of review by the circuit court for the county in which the applicant has his place of business.

583.370 Licensees to keep books and records; reports and audits. (1) Licensees under this chapter shall keep adequate books and records showing:

(a) All milk received, with butterfat content, prices paid, deductions or charges made, the name and address of each person from whom milk was received.

(b) All milk sold, classified as to grade, the prices and amounts received therefor and the market outlet and size and style of container.

(c) The quantity of each milk product manufactured and quantity of milk used in the manufacture thereof.

(d) All wastage or loss of milk or butterfat.

(e) The items of the spread or handling expense and profit or loss represented by the difference between the prices paid and the prices received for all milk.

(f) Such other records and information as the board may deem necessary for the proper enforcement of this chapter.

(2) The board shall at least annually require reports from or audits of the books and records of each licensee, other than stores, and shall also at least annually audit the books and records of a sufficient number of representative store licensees to enable it to determine representative costs.

583.380 License fees; records and reports. (1) Applicants for licenses shall pay the following license fees:

(a) All stores shall pay an annual license fee of \$1. Each separate place of business at which milk is sold by any store is deemed a separate store for which a license must be obtained and a license fee paid.

(b) All other milk dealers shall pay a license fee of \$1 per year and in addition thereto one-half of one cent on each pound of butterfat contained in milk received and handled by the licensee. Such fee on the butterfat poundage shall be paid to the board monthly by each such licensee on the fifth day of each month as to all quantities of milk received and handled by such licensee in the previous calendar month. The \$1 annual fee shall be paid each year on January 5.

(2) Each such licensee shall keep such records and make such reports as are required by the board for the purpose of computing the payment of the license fee.

(3) The provisions of paragraph (b) of subsection (1) of this section and the provisions of subsection (2) of this section do not apply to any producer who is also a milk dealer, who produces milk from only one cow, and who distributes or sells only the milk produced from such cow.

583.390 Disposition of license fees; Milk Control Account; continuing appropriation. All receipts from license fees paid under ORS 583.380 shall be paid by the board to the State Treasurer and shall be by the State Treasurer placed to the credit of the General Fund to an account to be known as the Milk Control Account and such amount as is necessary, and no more, hereby is appropriated out of the Milk Control Account for the payment of all expenses incurred by the board in administering and enforcing this chapter.

583.400 License as additional to others required by law; effect of chapter on other laws. The licenses required by ORS 583.310 are in addition to any other licenses required by existing laws of this state or by any municipal ordinance. Nothing in this chapter shall be construed to conflict with or repeal any laws in force in this state relating to any board of health or sanitary code in force in this state or in any municipality thereof, nor any municipal ordinances relating to the inspection, grading, production, sale or distribution of milk.

583.410 to 583.980 [Reserved for expansion]

PENALTIES

583.990 Penalties. (1) Violation of any of the provisions of ORS 583.010 to 583.190 or 583.310 to 583.400 is punishable, upon

conviction, by a fine of not less than \$25 nor more than \$1,000, or by imprisonment in the county jail for not less than 30 days nor more than 90 days, or by both. Justice courts and district courts have concurrent jurisdiction with circuit courts of all criminal offenses provided for in this chapter.

(2) Violation of ORS 583.070 is punishable, upon conviction, by a fine not exceeding \$100 or by imprisonment in the county jail for not more than 90 days, or by both.

Each day during which the violation continues is a separate offense.

(3) Violation of subsection (1) of ORS 583.200 or wilful misrepresentation of the minimum butterfat content of the milk or cream in any container required to be labeled by ORS 583.200 is punishable, upon conviction, by a fine of not less than \$100 nor more than \$500.

(4) Violation of subsection (5) of ORS 583.200 is punishable, upon conviction, by a fine not to exceed \$100.