

## TITLE 49

### FOOD AND OTHER COMMODITIES (Purity; Sanitation; Grades; Standards; Labels; Weights and Measures)

- Chapter 616. General and Miscellaneous Provisions
- 616.005 Definitions
  - 616.010 Department of Agriculture and Board of Health to administer and enforce food laws
  - 616.015 Cooperation between Board of Health and Department of Agriculture
  - 616.020 Surveys by Board of Health
  - 616.025 Administration and enforcement of laws by Department of Agriculture
  - 616.055 Inspection; samples
  - 616.060 Report on, and delivery of, analyzed sample
  - 616.065 Certificate of analysis or test as evidence
  - 616.070 Inspection of dairy industry
  - 616.075 Publishing reports of analyses and of food and dairy standards, rules and regulations
  - 616.080 Common carrier employees to assist department; interference with department prohibited
  - 616.090 Prosecuting violators; employing experts; designating complainants
  - 616.095 Procedure for detention, seizure or embargo of food or other products
  - 616.100 When hearing need not be held
  - 616.110 Removing or defacing seizure or embargo notice unlawful
  - 616.115 Jurisdiction of prosecutions; procedure
  - 616.120 Disposition of fines collected

## Chapter 616

### General and Miscellaneous Provisions

#### ADMINISTRATION AND ENFORCEMENT OF FOOD, DRINK AND SANITATION LAWS GENERALLY

- 616.005 Definitions
- 616.010 Department of Agriculture and Board of Health to administer and enforce food laws
- 616.015 Cooperation between Board of Health and Department of Agriculture
- 616.020 Surveys by Board of Health
- 616.025 Administration and enforcement of laws by Department of Agriculture
- 616.055 Inspection; samples
- 616.060 Report on, and delivery of, analyzed sample
- 616.065 Certificate of analysis or test as evidence
- 616.070 Inspection of dairy industry
- 616.075 Publishing reports of analyses and of food and dairy standards, rules and regulations

- 616.080 Common carrier employees to assist department; interference with department prohibited
- 616.090 Prosecuting violators; employing experts; designating complainants
- 616.095 Procedure for detention, seizure or embargo of food or other products
- 616.100 When hearing need not be held
- 616.110 Removing or defacing seizure or embargo notice unlawful
- 616.115 Jurisdiction of prosecutions; procedure
- 616.120 Disposition of fines collected

#### SALE OF ADULTERATED, MISBRANDED, OR IMITATION FOODS

- 616.205 Definitions
- 616.210 "Selling of food" construed
- 616.215 Prohibited acts
- 616.220 Injunction against violation of ORS 616.215
- 616.225 Disposal of adulterated, misbranded, un-

- 616.230 sound or perishable food
- 616.230 Regulations fixing definitions and standards; conformity to federal regulations
- 616.235 What food deemed adulterated
- 616.240 Contamination during manufacture, processing or packing; temporary permits
- 616.245 Adding poisonous or deleterious substance
- 616.250 When food deemed misbranded
- 616.255 Food in transit exempted from labeling requirements
- 616.260 Information required on label also to appear on outside container or wrapper
- 616.265 When advertisement deemed false
- 616.270 Determining when label or advertisement misleading
- 616.275 Liability for dissemination of false advertisement
- 616.280 Rules and regulations; hearings
- 616.285 Access to factories and vehicles to inspect and secure samples
- 616.290 Examining samples
- 616.295 Reports and information issuable by department
- 616.300 Notices in public eating places that specified imitation food products served
- 616.305 District attorney to prosecute violations
- 616.310 Notice or warning of minor violations
- 616.315 Jurisdiction of courts
- 616.320 Short title

#### **GRADES AND STANDARDS FOR, INSPECTION AND CLASSIFICATION OF, AGRICULTURAL PRODUCTS**

- 616.405 "Horticultural and agricultural products" defined
- 616.410 Department of Agriculture to fix grades and standards for agricultural products and containers
- 616.415 Factors to be considered in establishing grades and standards
- 616.420 Consideration of commercial or other use; change of grades, standards or classifications
- 616.425 Notice of hearing
- 616.430 Hearing; publication and distribution of grades, standards, rules and regulations
- 616.435 Revocation of grades and standards
- 616.440 Adoption of United States standards; cooperation with United States
- 616.445 Inspection and classification of agricultural products
- 616.450 Investigation of complaint of purchaser's misrepresentation of product; inspection and classification of products received by purchaser
- 616.455 Appeal to department for classification
- 616.460 Certificate of grade, classification, quality or condition as prima facie evidence
- 616.465 Misrepresentation of grades and standards for agricultural products; improper use of insignia indicating grade
- 616.470 Use of containers not conforming to standard
- 616.475 Improper grading and incorrect certificates prohibited
- 616.480 Submitting hay, grain, potatoes or onions to inspection

#### **PACKING AND LABELING OF HORTICULTURAL PRODUCTS**

- 616.505 Definitions
- 616.510 Labeling container of horticultural products
- 616.515 Establishment of grades; branding and packing regulations
- 616.520 Used packages or containers
- 616.525 False representations as to raising, production or packing
- 616.530 Possession of unlabeled, falsely labeled or deceptively packed products
- 616.535 Shipment or sale of deceptive pack, load or display prohibited
- 616.540 Enforcement; entry and inspection; seizure
- 616.545 Labeling fruit or vegetables as Oregon grown or packed
- 616.550 Liability for false representation as to variety of nursery stock

#### **REGISTRATION OF BRAND FOR, AND USE OF, CONTAINERS, EQUIPMENT AND SUPPLIES**

- 616.605 Filing and publishing name or mark for containers, equipment and supplies for fruit and vegetables
- 616.610 Unlawful use of, or traffic in, name or mark as presumptive evidence
- 616.615 Security for return not a sale
- 616.620 Acquiring of marked containers, supplies and equipment
- 616.625 Filing name or mark for bottles or other containers with Secretary of State
- 616.630 Use by others of containers prohibited
- 616.635 Consent to use
- 616.640 Search warrant where violation of ORS 616.630 suspected; proceedings where articles found

#### **SANITARY REGULATIONS**

- 616.705 Required sanitary conditions for buildings
- 616.710 Ceiling, walls and floors
- 616.715 Screens
- 616.720 Living or sleeping quarters where food is prepared for sale
- 616.725 Display of food products
- 616.730 Sanitary conditions for liquids; use of secondhand bottles
- 616.735 When insanitary conditions exist
- 616.740 Condemnation where insanitary conditions exist
- 616.745 Handling of food by diseased persons prohibited
- 616.750 Procedure where food handler suspected of disease
- 616.755 Securing information from health officers
- 616.760 Inspection of premises; informing district attorney of violations
- 616.765 Jurisdiction of courts; procedure
- 616.770 Disposition of fines

#### **PENALTIES**

- 616.990 Penalties

## CROSS REFERENCES

Rules and regulations, making and filing, Ch. 183

**616.230**

Bakery products, standards of identity and quality for, 625.205

**616.235**

Benzoate of soda or benzoates, use in beverages, 635.060

Carcass of animal used for medical or laboratory experiments considered adulterated, 619.060

Commercial feeding stuffs, when considered adulterated, 633.090

Fish, when unfit for human consumption, 509.070, 509.075

Milk, imitation, when considered adulterated, 621.430

Sausage and sausage casings coloring prohibited, 619.110

**616.245**

Benzoate of soda or benzoates, use in beverages, 635.060

**616.250**

Packaged goods, marking net quantity, 618.160

**616.300**

Colored butter substitute, restrictions on serving in public eating place, 621.445

Horse meat, posting notice where sold, 620.040

Ice cream substitutes, notice where sold, 621.325

Imitation milk, notice where used, 621.420

Imported eggs, posting notice, 632.085

**616.475**

Other practices prohibited, 561.210

**616.480**

Grain and hay, inspection, 586.230, 586.620

**616.520**

Empty or used containers, when use a crime, 165.185

**616.525**

Misrepresentation as to producer of goods, 646.840

**REGISTRATION OF BRAND FOR, AND USE OF, CONTAINERS, EQUIPMENT AND SUPPLIES**

Counterfeit brand or label, 165.185

Dairy products and substitutes, brands, Ch. 621

Discrimination and unfair trade practices generally, Ch. 646

Milk products brands, containers and advertising, 621.555 to 621.610

Trade-marks and merchandise brands, Ch. 647

**SANITARY REGULATIONS**

Beverages, buildings used for manufacture, 635.070

Dairy products plants, 621.151 to 621.291

Factories, mills and workshops, 654.215

Fish, 513.020

Meat packing plants, 619.140, 620.070

Slaughterhouses, 433.710

**616.745**

Bottling establishments, diseased persons working in, 635.150

Refrigerated locker plant, diseased persons working in, 628.270

Restaurants, diseased persons working in, 624.080

Venereal disease, persons having restricted as to employment, 434.180



## ADMINISTRATION AND ENFORCEMENT OF FOOD, DRINK AND SANITATION LAWS GENERALLY

**616.005 Definitions.** As used in this chapter, the term "department" means the State Department of Agriculture.

**616.010 Department of Agriculture and Board of Health to administer and enforce food laws.** The duty of administration and enforcement of all regulatory legislation applying to:

(1) The production, processing and distribution of all food products or commodities of agricultural origin shall, in addition to such further legislation as shall specifically name the department as the administering agency, be performed by the department to the exclusion of any other department not so specifically named.

(2) The sanitation of establishments where food or drink is consumed on the premises where sold, or to sanitary practices used in such establishments, be performed by the State Board of Health.

**616.015 Cooperation between Board of Health and Department of Agriculture.** In order to more effectively utilize the agencies of the state in the public interest and without unnecessary duplication and expense, the relationship between the production, processing and distribution of food and the public health hereby is recognized. Therefore there shall be the fullest cooperation between the State Board of Health and the department.

**616.020 Surveys by Board of Health.** (1) In addition to any State Board of Health survey, investigation or inquiry authorized by law, which involves the production, processing or distribution of agricultural products, the State Board of Health shall make such further surveys, investigations or inquiries as may be requested by the Director of Agriculture for the purpose of showing the manner in which the production, processing or distribution of agricultural products may affect the public health.

(2) In order that maximum protection to the public health may result from the activities of the State Board of Health and the department, the State Board of Health shall notify the Director of Agriculture in writing of any contemplated survey which affects or may affect agricultural products which are under the regulation of the department. The notice shall cover in detail the

scope of the survey under consideration, and the reasons therefor. However, this section shall not be construed as prohibiting such board from taking immediate action in any case where such action seems necessary in the interests of public health. The written notice is not required in the case of a survey instituted on the request of the Director of Agriculture.

(3) Not less than 30 days after the completion of any such survey, the State Board of Health shall file with the Director of Agriculture a certified copy of its report. The report shall include the findings of the board with respect to all matters covered thereby. Whenever the findings in the report of any survey, investigation or inquiry made by the board show any hazard to public health existing incident to the production, processing or distribution of any agricultural commodity, the department shall take such action as may be necessary and within the scope of its resources to remove such hazards.

**616.025 Administration and enforcement of laws by Department of Agriculture.** Subject to ORS 616.010 and except as otherwise provided, the department, acting through its officers, employees, agents and deputies, shall:

(1) Perform all the duties provided in ORS 616.030 to 616.090, 616.205 to 616.320, 616.625 to 616.640, 616.705 to 616.770, ORS chapter 619, ORS 620.310, 620.320, 620.330, 621.405 to 621.440, 621.555, 621.655 to 621.715, ORS chapter 624, 633.010 to 633.130 and 633.210 to 633.250.

(2) Enforce the statutes mentioned in subsection (1) of this section. [Amended by 1953 c.686 §37]

**616.030** [Repealed by 1953 c.686 §37]

**616.035** [Repealed by 1953 c.686 §37]

**616.040** [Repealed by 1953 c.686 §37]

**616.045** [Repealed by 1953 c.686 §37]

**616.050** [Repealed by 1953 c.686 §37]

**616.055 Inspection; samples.** In the performance of the duties imposed on the department by ORS 616.025, all officers, employees, agents and deputies of the department shall have access, ingress and egress to all places or things where any food or dairy product is stored, kept, prepared, compounded, manufactured, transported, sold or offered or exposed for sale. They

also shall have the power and authority to open any package, case or vessel containing such article, which may be manufactured, kept, exposed or offered for sale or sold. Any owner or person in possession of such package, case or vessel containing articles of food, shall deliver to the department, or to its authorized officer, employee, agent or deputy, any sample of food or drink, for analysis or testing, upon a tender of the price thereof in money.

**616.060 Report on, and delivery of, analyzed sample.** (1) Any officer, employee, agent or deputy of the department or any state, city or town officer, who obtains a sample of a food product for analysis shall, within 10 days after obtaining the result of analysis, send it to the person from whom the sample was taken or to the person who is responsible for the condition of such food product.

(2) Any person from whom samples are taken for proof and analysis may require the department or such officer to leave a similar sample with such person, sealed with the seal of the department or officer. When requested, a duplicate sample so sealed shall be delivered to the person in possession of, or responsible for, such adulterated food at the time the sample was taken.

**616.062** [Repealed by 1953 c.686 §37]

**616.065 Certificate of analysis or test as evidence.** The certificate of analysis or test of any chemist, or other authorized officer, employee or deputy of the department, signed and certified to by him, is prima facie evidence in all courts of justice of the matters and facts certified to therein.

**616.070 Inspection of dairy industry.** The department shall cause its officers, employees, agents or deputies to visit and inspect, as often as practicable and at least once in every year, every creamery and cheese factory operated within Oregon. The department shall cause its officers, employees, agents or deputies to visit and inspect, as often as practicable, the several dairy herds of the state, and the methods of feeding, caring for and stabling them, and to disseminate information calculated to develop the dairy industry within the state.

**616.075 Publishing reports of analyses and of food and dairy standards, rules and regulations.** The department shall publish at least quarterly, either in a separate bul-

letin or in some other publication of the department, a report of all analytical and chemical examinations made by it or under its direction of food products or drinks found or offered for sale in the markets of the state. The report shall include the name of the brand examined, the name and address of the manufacturer and shall state whether the product or drink is pure or adulterated, properly branded or is misbranded. The Director of Agriculture shall publish in the report all food standards, rules and regulations made and promulgated by him for the purpose of enforcing any of the provisions of dairy and food laws of this state.

**616.080 Common carrier employees to assist department; interference with department prohibited.** (1) All clerks, bookkeepers, express agents, railroad officials and employees of common carriers shall render the department and its officers, employees and deputies all the assistance in their power in tracing, finding or discovering the presence or disposition of any food product and the name and address of any shipper or consignee of any food product.

(2) Any person who hinders or interferes with the department, or any of its officers, employees or agents in the performance of its or his duties in the enforcement of ORS 616.025, 616.055 to 616.075, 616.090, 616.115, 616.120, 616.205 to 616.320, 616.705 to 616.770, 619.030, subsection (2) of 619.040, ORS 619.070, 619.100, 621.405, 621.440, 621.600 or 633.210 to 633.260, is guilty of a violation of those sections. [Amended by 1953 c.686 §37]

**616.085** [Repealed by 1953 c.686 §37]

**616.090 Prosecuting violators; employing experts; designating complainants.** The department shall prosecute any person violating any provision of the sections listed in subsection (2) of ORS 616.080. For this purpose the department may, if necessary, employ experts, and may further designate some person connected with the department, or some other suitable person, to make complaints in its behalf. In making complaints for violation of the sections listed in subsection (2) of ORS 616.080 the person so designated shall not be required to enter into any recognizance or to give security for the payment of costs.

**616.095 Procedure for detention, seizure or embargo of food or other products.** (1) In order that the rights of consumers, prop-

erty owners or other affected persons may be protected and procedures made uniform the department, its agents, employees or officials, shall observe the procedure prescribed by this section whenever it becomes necessary for the department to detain, seize or embargo any food, article or product under any law the administration of which is vested in the department.

(2) The department shall cause to be affixed to the products being detained, seized or embargoed, a notice that the products are being detained, seized or embargoed by the department and warning all persons that they may not be removed from the place at which they are being held without written permission from the department.

(3) The department shall notify in writing the owner or person in possession of the products that the products are being detained, seized or embargoed by the department. If the person in possession of the products is not the owner, the department shall make a reasonable effort to notify the owner. Such notice shall state the reason for the department's action, and shall notify the owner or person in possession of the right to be heard before the department in opposition to the action.

(4) A request of the department for a hearing on the propriety of the detention, seizure or embargo and related matters must be filed with the department in writing within 10 days of receiving actual notice of such action. The request may be filed either by the owner or the person in possession but the time limited for filing such request is to be computed from the time the required notice is first received by either of such persons. When the department receives a request for a hearing, it shall designate the time and place of hearing. The hearing shall not be held sooner than 10 days after the request for a hearing has been received by the department. However, if the subject matter of the department's action is perishable goods, or if, in the opinion of the department, other good and sufficient reason appears, the hearing may, at the request of the owner or person in possession of such goods, be held at an earlier date.

(5) The hearing shall be conducted by the director of the department, or by a person appointed by the director for that purpose. The department shall notify the owner or person in possession of the products in writing of its decision in respect to the disposition of the products within 10 days after

the hearing. If it appears that the products are not being stored, sold, kept, offered or exposed for sale in violation of law, the products shall be released to the owner or person in possession. If it appears that all or part of such products may be reconditioned or relabeled or segregated in such a way as to comply with state laws, the owner or person in possession may cause them to be reconditioned, relabeled or segregated at his own expense, after which the department shall release them. If it appears that all or a part of the products may not be reconditioned, relabeled or segregated in such a way as to comply with state laws, that portion of the products which may not be so treated shall be destroyed, unless the owner or person in possession executes and delivers to the department a good and sufficient bond to the effect that the products shall not be sold, disposed of or used contrary to the laws of Oregon and the rules, regulations or orders thereunder promulgated. If any food products are found to be unfit for human consumption but suitable for animal feeding, such food products may be used for animal feeding as permitted by the department.

(6) In the event that the owner or person in possession does not request a hearing on the propriety of the seizure, detention or embargo within the time limited for making such request, the department may summarily destroy or otherwise dispose of the subject matter of the action, or, if the owner or person in possession of such products does not within 30 days after the hearing either comply with the orders of the department as to reconditioning, relabeling or segregating or perfect an appeal to the circuit court, the department may summarily destroy or otherwise dispose of the subject matter of the action. If it appears to the department that there is a reasonable possibility that a product is capable of salvage and the owner or person in possession does not seek to regain custody within the time and in the manner herein provided, the department may dispose of the product so as to obtain such salvage. Any salvage so recovered shall, after paying the costs of sale or disposition and including storage, if any, be remitted to the true owner, if known, or if not known, then to the person in possession. A sale or disposition for salvage shall be upon such conditions as to labeling, reconditioning or segregation as the department deems necessary to comply with the law relating to such product.

(7) Any person, firm or corporation adversely affected by any order, ruling or action of the department made or taken under the provisions of the sections listed in ORS 616.100 shall have the right to the remedy provided by ORS 561.570. [Amended by 1953 c.66 §2]

**616.100 When hearing need not be held.** Nothing in ORS 616.095, 616.110, 616.225, 616.540, 632.120, 633.090 and 633.670 shall be construed as requiring that a hearing be held in connection with the seizure or embargoing of illegal or suspected products or as prohibiting the release, destruction or other disposition of such products by agreement between the department and the owner or person in possession of such products.

**616.105** [Reserved for expansion]

**616.110 Removing or defacing seizure or embargo notice unlawful.** No person shall remove or deface any notice placed upon products seized or embargoed by the department, or move any such products from the place designated in the notice without written permission from the department.

**616.115 Jurisdiction of prosecutions; procedure.** Justice courts, district courts, and municipal courts sitting as justice courts, have concurrent jurisdiction with the circuit courts of all prosecutions arising under ORS 616.025 to 616.090. The district attorney is authorized to institute prosecutions for violations of those sections by information, or the prosecutions may be instituted by indictment or by complaint verified before any magistrate.

**616.120 Disposition of fines collected.** In all prosecutions under ORS 616.025 to 616.090 the fine or fines collected shall be transmitted by the officer collecting them to the State Treasurer. The fines so remitted shall become a part of the General Fund of the state.

**616.125 to 616.200** [Reserved for expansion]

### **SALE OF ADULTERATED, MISBRANDED, OR IMITATION FOODS**

**616.205 Definitions.** As used in ORS 616.205 to 616.295, unless the context clearly indicates a different meaning:

(1) "Advertisement" includes all representations disseminated in any manner or

by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of the food.

(2) "Contaminated with filth" applies to any food not securely protected from dust, dirt and, as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(3) "Federal Act" means the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 301 et seq., 52 Stat. 1040 et seq.

(4) "Food" includes articles used for food and drink, chewing gum and articles used for components of any such article.

(5) "Immediate container" does not include package liners.

(6) "Label" means a display of written, printed or graphic matter upon the immediate container of any article.

(7) "Labeling" means all labels and other written, printed or graphic matter upon an article or any of its containers or wrappers, or accompanying such article.

**616.210 "Selling of food" construed.** The provisions of ORS 616.205 to 616.295 regarding the selling of food include the manufacture, production, processing, packing, exposure, offer, possession and holding of any such article for sale, the sale, dispensing and giving of any such article, and the supplying or applying of any such articles in the conduct of any food establishment.

**616.215 Prohibited acts.** The following acts and the causing thereof within the State of Oregon are prohibited:

(1) The manufacture, sale or delivery, holding or offering for sale of any food that is adulterated or misbranded.

(2) The adulteration or misbranding of any food.

(3) The receipt in commerce of any food that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(4) The sale, delivery for sale, holding for sale or offering for sale of any article in violation of ORS 616.240.

(5) The dissemination of any false advertisement.

(6) The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized.

(7) The giving of a guaranty or undertaking which is false, except by a person



who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person from whom he received in good faith the food.

(8) The removal or disposal of a detained or embargoed article in violation of ORS 616.225.

(9) The alteration, mutilation, destruction, obliteration or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, if such act is done while such article is held for sale and results in such article being misbranded.

(10) Forging, counterfeiting, simulating or falsely representing, or without proper authority using any mark, stamp, tag, label or other identification device authorized or required by regulations promulgated under the provisions of ORS 616.205 to 616.295 and 616.305 to 616.315.

**616.220 Injunction against violations of ORS 616.215.** In addition to the remedies provided by ORS 616.205 to 616.295, the department or its authorized agents may apply to the circuit court for, and such court shall have jurisdiction upon hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of ORS 616.215, irrespective of whether or not there exists an adequate remedy at law.

**616.225 Disposal of adulterated, misbranded, unsound or perishable food.** (1) Whenever a duly authorized representative of the department finds, or has probable cause to believe, that any food is adulterated, or so misbranded as to be dangerous or fraudulent, within the meaning of ORS 616.205 to 616.295, he shall proceed in the manner directed by law for the disposal of products seized by the department.

(2) Whenever the department or any of its authorized representatives finds in any room, building, vehicle of transportation, or other structure, any meat, seafood, poultry, vegetable, fruit or other perishable articles which are unsound, or contain any filthy, decomposed or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the same hereby being declared a nuisance, the department or its authorized representative forthwith shall condemn or destroy the same, or in any other manner render it unsalable as human food.

**616.230 Regulations fixing definitions and standards; conformity to federal regulations.** Whenever in the judgment of the department such action will promote honesty and fair dealing in the interest of consumers, the department shall promulgate regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, reasonable standard of quality or fill of container. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the department shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated by authority of the United States and shall not be inconsistent with definitions and standards promulgated by such authority.

**616.235 What food deemed adulterated.** A food shall be deemed to be adulterated:

(1) (a) If it bears or contains any poisonous or deleterious substance which may render it injurious to health. However, if the substance is not an added substance such food shall not be considered adulterated under this paragraph if the quantity of such substance in such food does not ordinarily render it injurious to health;

(b) If it bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of ORS 616.245;

(c) If it consists in whole or in part of a diseased, contaminated, filthy, putrid or decomposed substance, or if it is otherwise unfit for food;

(d) If it has been produced, prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome or injurious to health;

(e) If it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse;

(f) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(g) If it is butter that contains less than 80 percent milk fat;

(h) If it is milk that contains more than 88 percent water;

(i) If it is milk that contains less than 3.2 percent butterfat;

(j) If it is milk that contains less than 8.5 percent solids other than butterfat;

(k) If it is milk drawn from cows within 15 days next before and five days after parturition, or from cows fed on unwholesome food;

(L) If it is the flesh of any calf that has been slaughtered under the age of four weeks; or

(m) If it is cream that contains less than 18 percent butterfat.

(2) (a) If any valuable constituent has been in whole or in part omitted or abstracted therefrom;

(b) If any substance has been substituted wholly or in part therefor;

(c) If damage or inferiority has been concealed in any manner; or

(d) If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is.

(3) If it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one percent, harmless natural gum and pectin; but this subsection does not apply to any confectionery by reason of its containing less than one-half of one percent by volume of alcohol derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless non-nutritive masticatory substances.

(4) If it bears or contains a coal-tar color other than one from a batch which has been certified by the United States Department of Agriculture.

**616.240 Contamination during manufacture, processing or packing; temporary permits.** (1) Whenever the department finds after investigation that the distribution in Oregon of any class of food may, by reason of contamination with microorganisms during manufacture, processing or packing thereof in any locality, be injurious to health, and that such injurious nature cannot adequately be determined after such articles have entered commerce, it then,

and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing or packing of such class of food, for such temporary period of time as may be necessary to protect the public health. After the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed or packed by any such manufacturer, processor or packer, unless the manufacturer, processor or packer holds a permit issued by the department as provided by such regulations.

(2) The department is authorized to suspend immediately upon notice any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of the permit so suspended shall be privileged at any time to apply for the reinstatement of the permit, and the department shall, immediately after prompt hearing and an inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued, or as amended.

(3) Any officer or employee duly designated by the department shall have access to any factory or establishment, the operator of which holds a permit from the department, for the purpose of ascertaining whether or not the conditions of the permit are being complied with. Denial of access for such inspection is ground for suspension of the permit until the access is freely given by the operator.

**616.245 Adding poisonous or deleterious substance.** Any poisonous or deleterious substance added to any food except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed to be unsafe for purposes of the application of paragraph (b) of subsection (1) of ORS 616.235; but when such substance is so required or cannot be so avoided, the department shall promulgate regulations limiting the quantity therein or thereon to such extent as the department finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be

unsafe for purposes of the application of paragraph (b) of subsection (1) of ORS 616.235. While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of paragraph (a) of subsection (1) of ORS 616.235. In determining the quantity of such added substance to be tolerated in or on different articles of food, the department shall take into account the extent to which the use of such substances is required or cannot be avoided in the production of each such article and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

**616.250 When food deemed misbranded.**

A food shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular.

(2) If it is offered for sale under the name of another food.

(3) If it is an imitation of another food, unless its label bears in type of uniform size and prominence the word "imitation" and, immediately thereafter, the name of the food imitated.

(4) If its container is so made, formed or filled as to be misleading.

(5) If in package form, unless it bears a label containing:

(a) The name and place of business of the manufacturer, packer or distributor; and

(b) An accurate and informative statement of the quantity of the contents in terms of weight, measure or numerical count. Under paragraph (b) of this subsection:

(A) Reasonable variations shall be permitted for unavoidable leakage, shrinkage or evaporation which may normally occur in good distribution practices.

(B) Exemptions as to small packages shall be established.

(C) The statement of quantity shall be in the term or terms customarily used by consumers in referring to the quantity of such food. The statement of quantity may be in terms other than those customarily used by consumers if such terms give the consumer more or equally accurate information as to the quantity of food in the package.

(D) If the department deems it necessary in the interest of consumers, the de-

partment may prescribe by regulation the term or terms which must be used in making the statement of quantity as to any food.

(6) If any word, statement or other information required by or under authority of ORS 616.205 to 616.295 to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs or devices, in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(7) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by ORS 616.230, unless it conforms to such definition and standard and its label bears the name of the food specified in the definition and standard, and, in so far as may be required by such regulations, the common names of optional ingredients, other than spices, flavoring and coloring, present in such food.

(8) If it purports to be or is represented as a food for which a standard of quality, or standards of fill of container, have been prescribed by regulations as provided by ORS 616.230 and its quality or fill of container falls below such standards, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

(9) If it is not subject to the provisions of subsection (7) of this section, unless its label bears:

(a) The common or usual name of the food, if any there be; and

(b) In case it is fabricated from two or more ingredients, the common or usual name of each such ingredient.

However, spices, flavorings and colorings, other than those sold as such, may be designated as spices, flavorings and colorings, without naming them. To the extent that compliance with the requirements of paragraph (b) of this subsection is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the department.

(10) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral and other dietary properties as the department determines to be, and by regulations prescribed as, necessary in order to fully inform purchasers as to its value for such uses.

(11) If it bears or contains any artificial flavoring, artificial coloring or chemical preservative, unless it bears labeling stating that fact. To the extent that compliance with the requirements of this subsection is impracticable, exemptions shall be established by regulations promulgated by the department. This section does not prohibit the use of harmless coloring matter in butter, cheese or ice cream. [Amended by 1953 c.267 §2]

**616.255 Food in transit exempted from labeling requirements.** Food which is, in accordance with the practice of the trade, to be processed, labeled or repacked at an establishment other than the establishment where it was originally processed or packed, is exempted from the labeling requirements of ORS 616.205 to 616.295 while it is in transit from the one establishment to the other, if such transit is made in good faith. However, such food is otherwise subject to all the applicable provisions of ORS 616.205 to 616.295.

**616.260 Information required on label also to appear on outside container or wrapper.** A requirement made by or under authority of ORS 616.205 to 616.320 that any word, statement or other information appearing on the label shall not be considered to be complied with unless such word, statement or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article or is easily legible through the outside container or wrapper.

**616.265 When advertisement deemed false.** An advertisement of a food shall be deemed to be false if it is false or misleading in any particular.

**616.270 Determining when label or advertisement misleading.** If any article is alleged to be misbranded because the labeling is misleading, or if any advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement

relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

**616.275 Liability for dissemination of false advertisement.** No publisher, radio broadcast licensee or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor or seller of the article to which a false advertisement relates, is liable under this section by reason of the dissemination by him of such false advertisement, unless he has refused, on the request of the department, or its authorized representative, to furnish the department the name and postoffice address of the manufacturer, packer, distributor, seller or advertising agency who caused him to disseminate the advertisement.

**616.280 Rules and regulations; hearings.** (1) The authority to promulgate regulations for the efficient enforcement of ORS 616.205 to 616.295 and 616.305 to 616.315 hereby is vested in the department. The department hereby is authorized to make the regulations promulgated under such sections conform, in so far as practicable, with those promulgated under the Federal Act and shall not be inconsistent with definitions and standards promulgated by such authority.

(2) Hearings authorized or required by ORS 616.205 to 616.295 and 616.305 to 616.315 shall be conducted by such officer or representative of the department as may be designated for the purpose by the director of the department.

(3) Before promulgating any regulation contemplated by ORS 616.230, 616.240 and subsection (10) of ORS 616.250, the department shall give appropriate notice of the proposal and of the time and place for a hearing. The regulation so promulgated shall become effective on a date fixed by the department, which date shall not be prior to 10 days after its promulgation. Such regulation may be amended or repealed in the same manner as other regulations of the department, except that in the case of a regulation amending or repealing any such regulation the department, to such an extent as it deems necessary in order to prevent undue hardship, may disregard the provisions of this section regarding notice, hearing or effective date.

**616.285 Access to factories and vehicles to inspect and secure samples.** The department or its duly authorized representatives shall have free access at all reasonable hours to any factory, warehouse or establishment in which foods are manufactured, processed, packed or held for introduction into commerce, or to enter any vehicle being used to transport or hold such foods in commerce, for the purpose of inspecting such factory, warehouse, establishment or vehicle to determine if any of the provisions of ORS 616.205 to 616.295 or 616.305 to 616.320 are being violated, and securing samples or specimens of any food after paying or offering to pay for such sample.

**616.290 Examining samples.** The department shall make or cause to be made examinations of samples secured under ORS 616.285 to determine whether or not any provision of ORS 616.205 to 616.295, is being violated.

**616.295 Reports and information issuable by department.** (1) The department may cause to be published from time to time reports summarizing all judgments, decrees and court orders which have been rendered under ORS 616.205 to 616.295, 616.305 to 616.315, and subsection (3) of ORS 616.990, including the nature of the charge and the disposition thereof.

(2) The department also may cause to be disseminated such information regarding food as the department deems necessary in the interest of public health and the protection of the consumer against fraud.

(3) Nothing in this section shall be construed to prohibit the department from collecting, reporting and illustrating the results of its investigations.

**616.300** [Repealed by 1953 c.686 §37]

**616.305 District attorney to prosecute violations.** The district attorney of each county to whom the department or its authorized representative reports any violation of ORS 616.205 to 616.295 or 616.305 to 616.315 shall cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

**616.310 Notice or warning of minor violations.** Nothing in ORS 616.205 to 616.295, 616.305 to 616.315 and subsection (3) of ORS 616.990 shall be construed as requiring the department to report for the

institution of proceedings under those sections minor violations of those sections whenever the department believes that the public interest will be served adequately in the circumstances by a suitable written notice or warning.

**616.315 Jurisdiction of courts.** Justice courts and district courts have concurrent jurisdiction with the circuit courts for the enforcing of the provisions of ORS 616.205 to 616.295, 616.305 to 616.315 and subsection (3) of ORS 616.990.

**616.320 Short title.** ORS 616.205 to 616.320 may be cited as the Oregon Food Law.

**616.325 to 616.400** [Reserved for expansion]

#### **GRADES AND STANDARDS FOR, INSPECTION AND CLASSIFICATION OF, AGRICULTURAL PRODUCTS**

**616.405 "Horticultural and agricultural products" defined.** As used in ORS 616.405 to 616.475, "horticultural and agricultural products" includes articles of food, drinks, dairy products, livestock products, poultry products and apiary products, grown or produced in this state, exclusive of bakery products and alcoholic liquors.

**616.410 Department of Agriculture to fix grades and standards for agricultural products and containers.** In order to promote, protect, further and develop the agricultural industry of this state the department may, after investigation and public hearing, fix and promulgate official standards for grading and classifying any or all horticultural and agricultural products, may fix and promulgate official standards for containers of such products and may change any of such grades and standards from time to time. The grades and standards fixed and promulgated by the department shall be in conformance to any and all laws of this state providing special grades or standards for any of such products or containers. With respect to canned goods, the department is empowered to promulgate only definitions and standards of identity, quality and fill of containers. Unless modified, altered or revoked, grades and standards in force on February 2, 1939, shall continue to be official as though promulgated under ORS 616.405 to 616.475.

**616.415 Factors to be considered in establishing grades and standards.** In estab-

lishing, under any law of this state, any grades, standards or classifications for any horticultural or agricultural products, the department, in addition to such other factors as may be specified by such law, shall take into account and base such grades, standards or classifications upon such of the following factors as are applicable to the product involved: Degree of maturity; size, measured by dimensions or weight; degree of freshness, as determined by physical examination or chemical test or analysis; moisture content; uniformity; color; firmness; tenderness; freedom from injury; freedom from insect pests; diseases; appearance; freedom from mixture with other varieties; freedom from decay; conformation; soundness; varietal characteristics or type; number of specimens per pound; nature of pack; presence of dirt or other foreign material; condition as to temperature and extent to which the product is hot or heating or is in a sour condition; extent to which commodity is satisfactory for human or other consumption or use, as the case may be; extent to which the product has been affected by handling or treatment; extent to which the product has a commercially objectionable odor or flavor; and other factors indicative of quality or condition, and the value or suitability of the commodity involved for the commercial or other use to be made thereof. In addition, the department shall take into account any grades, standards or classifications for such product established by the United States Department of Agriculture and also applicable federal grades and standards laws.

**616.420 Consideration of commercial or other use; change of grades, standards or classifications.** The factors required to be considered by the department in establishing any grades, standards or classifications for any agricultural or horticultural product shall be applied in accordance with the extent to which and manner in which the same relate to the quality, quantity and condition of that product and the value and suitability thereof for the commercial or other use to which it normally is put. Any such grades, standards or classifications established pursuant to law by the department may, from time to time, be changed thereby in order to conform the same more nearly to commercial or trade requirements, practices or methods or to meet changed conditions or to comply with new and improved

methods of handling, processing, packing, transporting, marketing or using the product involved, or in order to apply or make effective any new and improved method of test, analysis or examination of the quality or condition of that product or the value or suitability thereof for its normal use, and to comply with new methods of controlling insect pests and diseases.

**616.425 Notice of hearing.** In promulgating the standards or any alterations or modifications to such standards, the department shall call a public hearing and shall give notice thereof at least 10 days prior thereto by publication of the notice in some publication of general circulation throughout the state. The notice shall give the time and place at which the department will hold a hearing on the grades and standards to be promulgated, altered or modified.

**616.430 Hearing; publication and distribution of grades, standards, rules and regulations.** After holding a public hearing upon the establishment, alteration or modification of any grades and standards, the department shall consider all the facts and arguments presented at the hearing and shall issue its order establishing such grades and standards, or modifying or altering such grades and standards, as it may deem best suited to the agricultural and horticultural interests of the state and of the citizens of Oregon, and shall publish such grades and standards, together with rules and regulations applying thereto, in pamphlet form and have such pamphlets available for distribution before the date upon which such grades and standards become effective.

**616.435 Revocation of grades and standards.** Whenever the department finds that any grades and standards established by it no longer meet the purposes for which they were established, the department may, by order, revoke such grades and standards in the same manner and under the same procedure that the department is authorized to establish such grades and standards.

**616.440 Adoption of United States standards; cooperation with United States.** The department may fix and promulgate, under the procedure provided in ORS 616.405 to 616.435, as the official standard for this state for any horticultural or agricultural product or container, any standard which may have been promulgated or an-

nounced therefor under the authority of the Congress of the United States, and the department is authorized to cooperate with the United States, or any department thereof, in accomplishing the matters and things provided for in ORS 616.405 to 616.475.

**616.445 Inspection and classification of agricultural products.** The department may designate any competent employe or agent of the department to inspect or classify horticultural and agricultural products in accordance with such regulations as it may prescribe at such places as the volume of business may be found to warrant the furnishing of such inspection service. Such services may be done at the request of persons having an interest in such products, and the department may ascertain and certify to such persons the grade, classification, quality, condition or amount thereof and any other pertinent facts relating to such products that the interested person may request. The department may fix, assess and collect, or cause to be collected, fees for such services when they are performed by employes or agents of the department. Such fees shall be on a uniform basis in an amount reasonably necessary to cover the cost of such inspection and administration of this section. The department shall so adjust the fees to be collected under this section as to meet the expenses necessary to carry out the provisions of this section, and may prescribe a different scale of fees for different localities. The department also may prescribe a reasonable charge for traveling expenses and services when such services involve unusual cost to the department in their performance. All fees and moneys collected or received by the department, its employes or agents, under this section shall be deposited in the General Fund of the state to the credit of the Department of Agriculture Account.

**616.450 Investigation of complaint of purchaser's misrepresentation of product; inspection and classification of products received by purchaser.** Upon complaint of any person to the department that the grade, classification, quality, condition or amount of any horticultural or agricultural product is being misrepresented by the purchaser thereof, or that the grades are not being made by the purchaser in accordance with the purchase agreement, the department shall investigate such complaint and, when in its opinion such complaint is justified,

shall order such purchaser so misrepresenting to cease and desist from such practices in addition to the other provisions of ORS 616.405 to 616.475. Upon failure of the purchaser to so cease and desist from such practices, the department shall designate its agent to inspect and classify all such products received by such purchaser, the cost of such service to be fixed, assessed and collected from such purchaser as provided in ORS 616.445. This section does not apply to a cooperative association nor to a person deriving his major livelihood from a farm or orchard which he himself operates either as owner or renter.

**616.455 Appeal to department for classification.** Whenever any quantity of any horticultural or agricultural product has been inspected under ORS 616.445 to 616.475 and a question arises as to whether the certificate issued therefor shows the true grade, classification, quality or condition of such product, any interested person, subject to such regulations as the department may prescribe, may appeal the question to the department. The department is authorized to cause such investigation to be made and such tests to be applied as it may deem necessary and to determine and issue a finding as to the true grade or classification of the product or the quality or condition thereof. Whenever any appeal is taken to the department under this section it shall charge and assess and collect, or cause to be collected, a reasonable fee, to be fixed by it, which shall be refunded if the appeal is sustained.

**616.460 Certificate of grade, classification, quality or condition as prima facie evidence.** A certificate, when not superseded by a finding on appeal, or a finding on appeal of the grade, classification, quality or condition of any horticultural or agricultural product, issued under ORS 616.405 to 616.475 and all certificates issued under authority of the Congress of the United States relating to the grade, classification, quality or condition of horticultural or agricultural products shall be accepted in any court of this state as prima facie evidence of the true grade, classification, condition or quality of the horticultural or agricultural products at the time of its inspection.

**616.465 Misrepresentation of grades and standards for agricultural products; improper use of insignia indicating grade.** If any



quantity of any horticultural or agricultural product has been inspected and a certificate issued under ORS 616.405 to 616.475 showing the grade, classification, quality or condition thereof, no person shall represent that the grade, classification, quality or condition of the product at the time and place of the inspection was other than as shown by the certificate. Whenever any standard for the grading or classification of any horticultural or agricultural product becomes effective under ORS 616.405 to 616.475, and any word or words, figure or letter, has been adopted by the department to indicate the grade or quality of the horticultural or agricultural product contained in any container or package, no person, firm or corporation shall use any of such words, letters or figures, in connection with any container or package, to represent the grade or quality of the horticultural or agricultural product contained therein, to be sold or offered for sale, if such product does not meet the requirements of the grade indicated by the marking.

**616.470 Use of containers not conforming to standard.** Whenever any standard for a container for any horticultural or agricultural product becomes effective under ORS 616.405 to 616.475, no person thereafter shall pack or place for sale, offer for sale, consign for sale or sell and deliver, in a container, any such horticultural or agricultural product to which the standard is applicable, unless the container conforms to the standard, subject to such variations therefrom as may be allowed by law or by rules and regulations made pursuant to law, unless such product is brought from outside the state and offered for sale, consigned for sale, or sold in the original package which is a standard package in the state of origin. This section does not apply to horticultural or agricultural products packed for and sold as gift packages, and shipped in containers, the specifications of which, or a sample of which, have been submitted to and approved by the department.

**616.475 Improper grading and incorrect certificates prohibited.** No person shall, under ORS 616.405 to 616.475, knowingly inspect, grade or classify improperly any horticultural or agricultural product or knowingly give any incorrect certificate of grade, classification, quality or condition.

**616.480 Submitting hay, grain, potatoes or onions to inspection.** (1) No operator or person in charge of any motor vehicle shall transport on the streets or highways of this state, any hay, grain, potatoes or onions, of which inspection is required by law, out of, into or through any inspection district, so designated by the department, or out of, into or through any city which has been declared an inspection point, unless he has given notice by mail or in person to the nearest office or inspector of the department, that such products or any thereof are available for inspection as required by law.

(2) Every person receiving any shipment, load or lot of such products, which has not been inspected, for the purpose of sale or storage in such quantities and in such places as would require inspection, shall give notice within 24 hours by mail or in person, to the nearest office or inspector of the department that the products have been received and are being held for inspection.

**616.485 to 616.500** [Reserved for expansion]

### PACKING AND LABELING OF HORTICULTURAL PRODUCTS

**616.505 Definitions.** As used in ORS 616.505 to 616.540:

(1) "Horticultural products" means all horticultural products excepting those that are canned, bottled, frozen, dried, candied or brined.

(2) "Container" means the box, crate, lug, chest, basket, carton, barrel, keg, drum, sack, hamper, bag, bin, tray, bucket or other receptacle, whether open or closed, used by any person in transporting horticultural products, or in which such products are offered for sale.

(3) "Stamp," "mark" or "label plainly" means placing the information required by ORS 616.505 to 616.540 on the container in legible letters or figures of not less than three-eighths inch in height and not less than three-sixteenths inch in width, by means of a rubber stamp, stencil, printing by machine, or by attaching to the package by means of glue or paste, a machine-printed label. Such marks, and the location thereof, shall conform to the rules and regulations established by the department when promulgating grades for horticultural products.

(4) "Deceptive pack" means any ar-



rangement of horticultural products which has in the outer layer or any exposed surface horticultural products which are so superior in quality, size, condition or in any other respect to those in the interior of the lot or the unexposed portion as to materially misrepresent the contents of the lot. A deceptive pack also means a container slackly filled so as to deceive the purchaser in regard to the total contents, or a container which has had a portion of the original contents removed and then offered for sale as a full pack.

**616.510 Labeling container of horticultural products.** No person shall sell, offer for sale or transportation, or transport within Oregon, horticultural products unless each container or package of such products is plainly and conspicuously labeled with the name and postoffice address of the grower, shipper or dealer, and the net contents of the container or package in terms of weight, measure or numerical count. This section does not apply to transportation from the owner's fields to a warehouse for storage or grading and packing, or to processing plants.

**616.515 Establishment of grades; branding and packing regulations.** (1) The department may establish grades for horticultural products and provide by regulation such branding and packing requirements as are deemed necessary. Such regulations shall be adopted under the procedure and in the manner provided by ORS 616.405 to 616.430.

(2) Except as expressly provided in ORS 616.505 to 616.540, all grades and regulations relating to fruits and vegetables in effect on June 14, 1941, shall so remain unless changed under the authority conferred by ORS 616.505 to 616.540.

(3) The use of grade standards authorized to be established by this section is not mandatory unless otherwise specifically provided by law. However, the deceptive use or misuse of any grade standards is unlawful.

**616.520 Used packages or containers.** It is unlawful to sell or offer for sale or to transport or offer for transportation, horticultural products in used packages or containers unless such used packages or containers are first cleaned of all foreign matter and substances and are in all respects sanitary, and unless all previous markings, brands, grade markings, labels, trade-marks, names and addresses are entirely removed or so defaced as to destroy their legibility,

or by turning such container or package inside out. This section does not apply to transportation from the owner's fields to a warehouse for storage or grading and packing, or to processing plants.

**616.525 False representations as to raising, production or packing.** No person, by means of any false representation, either verbal, printed or written, shall represent or pretend that horticultural products were raised, produced or packed by any person, or in any locality other than by the person, and in the locality where the same were in fact raised, produced or packed.

**616.530 Possession of unlabeled, falsely labeled or deceptively packed products.** (1) No person shall have in his possession for sale or transportation any horticultural products not labeled as required in ORS 616.505 to 616.540, or falsely marked or labeled, or deceptively packed contrary to the provisions of ORS 616.505 to 616.540.

(2) The possession for sale or transportation by such person of any such horticultural products so falsely marked, labeled or packed is prima facie evidence that such person has so falsely marked, labeled or packed such horticultural products.

(3) The provisions of ORS 616.505 to 616.540 do not apply to the transportation of horticultural products by common carrier, except when the common carrier is issued a written notice by the department that the lot of horticultural products offered for shipments has been seized by the department for not meeting the requirements of ORS 616.505 to 616.540 and the notice is accompanied with a copy of the seizure notice.

**616.535 Shipment or sale of deceptive pack, load or display prohibited.** No person shall prepare, deliver for shipment, ship, transport, offer for sale or sell a deceptive pack, or package, load, arrangement or display of horticultural products.

**616.540 Enforcement; entry and inspection; seizure.** (1) The director and all authorized agents of the department shall enforce ORS 616.505 to 616.540 and to that end may enter any place or conveyance within this state where any fruit, nuts or vegetables are produced, stored, packed, delivered for shipment, loaded, shipped, being transported, or sold, and inspect all such fruit, nuts or vegetables and the containers thereof and take for inspection such repre-

sentative samples of the fruit, nuts or vegetables and such containers, as may be necessary, to determine whether or not ORS 616.505 to 616.540 have been violated.

(2) Whenever a duly authorized representative of the department finds, or has probable cause to believe, that any products are marked, labeled or packed in violation of ORS 616.505 to 616.540, he shall seize the products and proceed in the manner directed by law for the disposal of products seized by the department.

**616.545 Labeling fruit or vegetables as Oregon grown or packed.** All persons operating under their own private brand in Oregon in the business of packing or canning fruit or vegetables, either fresh, canned, evaporated or otherwise, shall plainly designate on such private brand that goods were Oregon grown or packed in Oregon. For the purpose of this section it is sufficient for the firms whose headquarters are in Oregon to either designate the local address of the cannery or to designate the location of their main office in Oregon. This section does not apply to sales to wholesalers, packers or others for reselling.

**616.550 Liability for false representation as to variety of nursery stock.** Any person selling nursery stock and representing it to be of a variety different from what the nursery stock actually is, shall be required to replace all such stock with stock of the same grade and variety as the original order and shall be required to make reasonable compensation to the purchaser for expenses and loss of time due to the error having been made. The failure of five percent of any nursery stock delivered under any order to any individual to be true to name, age and variety is not a violation of this section.

**616.555 to 616.600** [Reserved for expansion]

#### **REGISTRATION OF BRAND FOR, AND USE OF, CONTAINERS, EQUIPMENT AND SUPPLIES**

**616.605 Filing and publishing name or mark for containers, equipment and supplies for fruit and vegetables.** Any persons, firms, corporations or associations engaged in producing, packing, canning tree fruits, vegetables and small fruits who furnish or provide lug boxes or containers for any grower or other person, firm or corporation with

his or its name or names, or other marks or devices impressed or produced thereon, or whose equipment or supplies, owned by and used in his or its business, bears a name or other mark or device impressed or produced thereon, and any corporations and associations whose members are so engaged and use such containers or have such equipment or supplies may:

(1) File in the office of the department and in the office of the county clerk of the county in which his principal place of business, or the principal place of business of its members is situated, or if such place of business is situated out of the state, then in the office of the county clerk of any county in the state, and also in the office of the department, a description of the name or names, marks or devices so used, as a brand; and

(2) Also cause a description to be printed once a week for three consecutive weeks in a newspaper published in the county in which the description is filed pursuant to this section.

**616.610 Unlawful use of, or traffic in, name or mark as presumptive evidence.** Each of the following is presumptive evidence of unlawful use of or traffic in the containers, supplies or equipment described in ORS 616.605 if the description of the name, mark or device has been filed and published as provided in ORS 616.605:

(1) The use, without the consent provided for in ORS 616.620, of such container, supplies or equipment by any person other than:

(a) The person, firm, corporation or association whose name, mark or device is upon the container, supplies or equipment; and

(b) The members of any corporation registering the name, mark or device.

(2) The having by any junk dealer, or any dealer in secondhand articles, of possession of any such containers, supplies or equipment.

**616.615 Security for return not a sale.** If the owner of containers marked or branded pursuant to ORS 616.605, or of equipment or supplies used in the business so marked or otherwise impressed, or others lawfully entitled to use the containers, equipment or supplies, requires the taking or accepting of money as a deposit for security for the safekeeping and return of the articles, it shall not constitute a sale of such

property, either optional or otherwise, in any proceedings under ORS 616.605 to 616.620.

**616.620 Acquiring of marked containers, supplies and equipment.** Any person, firm, corporation or association, or any member of such corporation or association acquiring containers, supplies or equipment marked pursuant to ORS 616.605, by purchase or other lawful means, and having written consent, shall not be required to again file and publish the description, but shall as to the containers, supplies and equipment, describe any such written consent acquired as a part of the purchase and shall have all such benefits as the vendor has under ORS 616.605 to 616.620.

**616.625 Filing name or mark for bottles or other containers with Secretary of State.** Any person owning or using milk cans, milk bottles, milk jars, butter boxes valued each at 50 cents or more, ice-cream cans, ice-cream molds, ice-cream tubs, aerated mineral water bottles and siphon bottles, soda water bottles, or other containers with his name or any other private mark or marks respectively branded, stamped, etched or blown thereon, may file in the office of the Secretary of State a description of the names used or other private mark or marks to be branded, stamped, etched or blown thereon.

**616.630 Use by others of containers prohibited.** If a description of the name or mark has been filed under ORS 616.625, it is unlawful for any person, other than the lawful owner, as mentioned and referred to in ORS 616.625, or persons permitted to do so by the lawful owner pursuant to express filing thereby with the Secretary of State, to fill with milk, cream, butter, ice cream, mineral aerated water, or soda water, for any purpose whatever, any container included in ORS 616.625, or to use, traffic in, purchase, sell, dispose, detain, convert, mutilate or destroy or wilfully or unreasonably refuse to return or deliver to such owner, upon demand being made, any such container, so branded, stamped, etched or blown, or from which the brand, stamp, etching or blowing, had been removed, cut off, defaced or obliterated, or to remove, cut off, deface or obliterate, or to stamp other brands, stamps, etchings or blowings, on the same without the permission of such original or lawful owner thereof, unless there was a sale in express terms of any such articles, exclusive of the

ingredient contained therein, to such person by the original or lawful owners.

**616.635 Consent to use.** Consent by the owner of any articles described in ORS 616.625 to use by any other person of any of such articles branded, stamped, etched or blown upon with the private mark of such owner, shall be evidenced by written statement of the owner filed with the Secretary of State, describing the containers, the private marks and the persons permitted to use them. Such permission may be revoked at any time by the owner as to any person upon filing the revocation with the Secretary of State.

**616.640 Search warrant where violation of ORS 616.630 suspected; proceedings where articles found.** If an owner referred to in ORS 616.625, or the agent of such owner, makes oath or affirmation before any justice of the peace or any magistrate having jurisdiction in criminal matters, that he has reason to believe, setting forth the facts upon which the belief is founded, and does believe that any of the articles described in ORS 616.625 belong to him, branded, stamped, etched or blown as described in ORS 616.625, or from which the brands, stamps, etchings or blowings, have been cut off, removed, defaced or obliterated, or which have been mutilated or wilfully detained after demand has been made by any person or persons owning or using containers described in ORS 616.625, or that any junk dealer, cast dealer, or any other person has in his possession any of the articles described, unlawfully, or secreted in his premises, or any other place under his control, the magistrate shall thereupon, on proof of such demand having been made, issue a search warrant directed to any constable or other proper officer to search the premises of the offenders or place where the articles are alleged to be, properly describing the premises or place, and if, upon search, any such article is found, to take possession of it and bring the persons in whose possession or control any such articles are found, before the magistrate to be tried as provided by law for the trial of misdemeanors and be punished in the manner set forth in subsection (10) of ORS 616.990.

**616.645 to 616.700** [Reserved for expansion]

**SANITARY REGULATIONS**

**616.705 Required sanitary conditions for buildings.** Every building, room, basement or cellar, occupied or used as a bakery, confectionery, cannery, packing house, bottling house, slaughterhouse, grocery, meat market, dairy, creamery, butter factory, cheese factory or other places used for the preparation for sale, manufacture, packing, storage, sale or distribution of any food for consumption outside such premises, shall be properly lighted, drained, plumbed, ventilated and kept and maintained in a clean, healthful and sanitary condition. Any failure to comply with the conditions prescribed by this section is a violation of ORS 616.705 to 616.760. This section shall not be construed in conjunction with ORS 616.735 and 616.740. In cases where the department, its officer, employe or inspector does not deem it necessary to condemn or close any establishment or place for the protection of the public health, prosecution under this section may be had without posting notice or doing any of the other things required to be done under ORS 616.735 and 616.740.

**616.710 Ceilings, walls and floors.** The ceiling and sidewalls of every bakery and confectionery shall be plastered, tiled, wainscoted or ceiled with metal or lumber and shall be oilpainted or kept well limewashed, and all the interior woodwork in every bakery and confectionery shall be kept well oiled or painted with oil paints, and shall be kept washed clean with soap and water. Every building, room, basement or cellar occupied or used for the preparation, manufacture, packing, storing, sale or distribution of food for consumption outside such premises, shall have an impermeable floor made of cement, tile laid in cement, brick, wood or other suitable nonabsorbent material which can be flushed and washed clean with water. However, the use of other forms of construction is lawful in the case of wholesale manufacturing plants, whenever, in the opinion of the department such construction will not result in unwholesome, unhealthful or insanitary conditions.

**616.715 Screens.** The doors, windows and other openings of every establishment or place mentioned in ORS 616.705 shall during the fly season be fitted with self-closing screen doors and wire window screens of not coarser than 14-mesh wire gauze.

**616.720 Living or sleeping quarters where food is prepared for sale.** No person shall be allowed to maintain living or sleeping quarters, or to sleep, in any room of any bakeshop, kitchen, confectionery, ice-cream factory, where food is prepared for sale for consumption outside the premises. Each day that a violation of this section continues is a separate violation of this section.

**616.725 Display of food products.** The display of food products is prohibited unless the products are inclosed in a showcase or similar device which will protect the products from flies, dust or other contamination. However, food products other than fish, meat and meat products, that necessarily have to be peeled, pared or cooked before they are fit for consumption, may be displayed without a showcase or similar device if in such display the bottom of the container is at least 18 inches above the surface of the sidewalk, floor, ground or other surface where the container sets.

**616.730 Sanitary conditions for liquids; use of secondhand bottles.** The placing of vinegar or other liquid, used as food or drink, in open vessels without covering the same is unlawful. The use of secondhand bottles for vinegar or other liquids used as food or drink is unlawful unless the bottles are first sterilized with live steam.

**616.735 When insanitary conditions exist.** Unclean, unhealthful and insanitary conditions shall be deemed to exist if:

(1) Food in the process of manufacture, preparation, packing, storing, sale, distribution or transportation is not securely protected from flies, dust, dirt and, as far as may be necessary, by all reasonable means from all other foreign or injurious contamination;

(2) The refuse, dirt and waste products, subject to decomposition or fermentation incident to the manufacture, preparation, packing, storing, selling, distributing and transporting of foods, are not removed daily;

(3) All trunks, trays, boxes, baskets, buckets, or other receptacles, chutes, platforms, racks, troughs, shelves and all knives, saws, cleavers and other utensils and machinery used in moving, handling, cutting, mixing, chopping, canning and all other processes are not thoroughly cleaned daily;

(4) Proper toilet and lavatory facilities are not provided for employes, or not

maintained and kept in a clean and sanitary condition, or

(5) The clothing and persons of operatives, employes, clerks or other persons therein employed are unclean.

**616.740 Condemnation where insanitary conditions exist.** (1) Whenever the department, or any of its authorized officers, employes or deputies, determines that any floor, sidewall, ceiling, locker, closet, furniture, receptacle, implements or machinery of any establishment or place where food intended for sale or distribution is manufactured, packed, stored, sold or distributed for consumption outside such premises, or any truck or vehicle used in the transportation of food products is kept in an unclean, unhealthful or insanitary condition, the department, or any of its authorized officers, employes or deputies, shall:

(a) Notify the owner or person in charge of such establishment or place where such food is manufactured, packed, stored, sold or distributed that such establishment, place, truck or vehicle shall not be used for the purpose of manufacturing, packing, storing, selling or distributing food until it is put in a sanitary condition by making the changes ordered by the department or its authorized officer, employe or deputy, in the notice; and

(b) Post a notice upon the establishment, place, truck or vehicle found in an unclean, unhealthful or insanitary condition, to the effect that it is condemned for further use on account of the unclean, unhealthful or insanitary condition.

(2) The notice shall not be removed from any such establishment, place, truck or vehicle until the same has been put in a sanitary condition. A continued use of such establishment, place, truck or vehicle, without making the changes ordered, or unauthorized removal of the notice is a violation of this section.

**616.745 Handling of food by diseased persons prohibited.** No owner or employer shall require, permit or suffer any person to work, nor shall any person work, in a building, room, basement, cellar or vehicle occupied or used for the production, preparation, manufacture, packing, storage or distribution of food for consumption outside such premises, or in or about any truck or vehicle used in the transportation of food, who is affected with any venereal disease, small-

pox, diphtheria, scarlet fever, tuberculosis or consumption, typhoid fever, epidemic dysentery, or any other communicable disease reportable to the State Board of Health.

**616.750 Procedure where food handler suspected of disease.** If the department, or any of its officers, employes or inspectors, for reasonable cause believes that any person working in or around any place or vehicle described in ORS 616.745 is affected with any infectious or contagious disease, the department, officer, employe or inspector may require the person to be examined by a competent physician and that the physician furnish the department with a certificate stating whether upon examination the physician has found the person to be affected with any infectious or contagious disease. If within five days after so required the person has not furnished the department with such a certificate by a competent physician, he is guilty of a violation of ORS 616.745 and the department or the officer, employe or inspector who made the request may apply to the circuit court to enjoin the person from continuing to work in or about any such place or vehicle and from working in or about any place or vehicle used for similar purposes until the certificate is furnished. The circuit court hereby is authorized to issue the injunction.

**616.755 Securing information from health officers.** The department may, for the purpose of enforcing the provisions of ORS 616.745 and 616.750, request information from any city, county or state health officer, bureau, board or commission within Oregon. Such officer, bureau, board or commission, when so requested, shall furnish the department any and all information which he or it may have.

**616.760 Inspection of premises; informing district attorney of violations.** (1) All authorized officers, employes and deputies of the department, or any state, county, city or town health, peace or police official has full power at any time to enter and inspect any yard, pen, chute, building, room, basement or cellar occupied or used, or suspected of being used, for the production for sale, manufacture for sale, storage, sale or distribution of food for consumption outside such premises, or any truck or other vehicle used in the transportation of food, and all uten-

sils, fixtures, furniture and machinery therein used.

(2) If upon such inspection of any food producing, storing or distributing establishment or place, any owner, employer, employee, operative, clerk, driver or other person is found to be violating any of the provisions of ORS 616.705 to 616.760, 619.030, subsection (2) of 619.040, ORS 619.070 and 619.100, or if the production, cooking, preparation, manufacture, packing, storing, sale, distribution or transportation of food is being conducted in a manner detrimental to the character or quality of the food therein being produced, manufactured, packed, stored, sold, distributed or conveyed, the officer or inspector making the examination or inspection shall furnish evidence of the violation to the district attorney of the county in which the violation occurs.

(3) All district attorneys shall represent and prosecute on behalf of the people, when called upon by the department so to do, all such cases or offenses arising under the provisions of ORS 616.705 to 616.760, 619.030, subsection (2) of 619.040, ORS 619.070 and 619.100.

**616.765 Jurisdiction of courts; procedure.** Justice courts, district courts and municipal courts sitting as justice courts have concurrent jurisdiction with the circuit courts of all prosecutions arising under ORS 616.705 to 616.770. The district attorney is authorized to institute prosecutions for violations of those sections by informations or the prosecutions may be instituted by indictment or by complaint verified before any magistrate.

**616.770 Disposition of fines.** In all prosecutions under ORS 616.705 to 616.770, the fines collected shall be transmitted by the officer collecting them to the State Treasurer. The fines so remitted shall become a part of the General Fund of the state.

**616.775 to 616.985** [Reserved for expansion]

## PENALTIES

**616.990 Penalties.** (1) Violation of any of the provisions of ORS 616.025, 616.055, 616.090, 616.120, or 616.705 to 616.770 is punishable, upon the first conviction, by a fine of not less than \$10 nor more than \$1,000, or by imprisonment in the county

jail not exceeding one year, or both, and upon a second conviction, by a fine of not less than \$50 nor more than \$1,000, or by imprisonment in the county jail for not less than 10 days nor more than one year, or both.

(2) Violation of any of the provisions of ORS 616.095 to 616.110 is punishable, upon conviction, by a fine of not less than \$10 nor more than \$100.

(3) Violation of any of the provisions of ORS 616.205 to 616.295 or 616.305 to 616.315 is punishable, upon conviction, by a fine of not more than \$500, or by imprisonment for not more than six months in the county jail, or both. However, if the violation is committed after a former conviction of the person has become final, such person is subject to a fine of not more than \$1,000, or to imprisonment of not more than one year in the county jail, or both.

(4) Violation of ORS 616.465 or 616.470 is a misdemeanor and is punishable, upon conviction, by a fine of not more than \$100, or by imprisonment for not more than one year, or by both.

(5) Violation of ORS 616.475 is a misdemeanor and is punishable, upon conviction, by a fine of not more than \$250, or by imprisonment for not more than one year, or both.

(6) Violation of ORS 616.480 is punishable, upon conviction, by a fine not exceeding \$50, or by imprisonment for not more than 10 days in the county jail, or both.

(7) Violation of any of the provisions of ORS 616.505 to 616.550 is punishable, upon conviction, by a fine of not less than \$20 nor more than \$500, or by imprisonment in the county jail for a period not to exceed 60 days, or both.

(8) Violation of subsection (1) of ORS 616.530 is a misdemeanor.

(9) Violation of any of the provisions of ORS 616.605 to 616.620 constitutes a misdemeanor punishable for the first offense by imprisonment for not less than 10 days nor more than six months, or by a fine of 50 cents for each container or article of supply or equipment so filled, sold, used, disposed of, held, bought or trafficked in, or both, and for each subsequent offense by imprisonment for not less than 20 days nor more than one year, or by a fine of not less than \$1 nor more than \$5 for each container or article of supply or equipment

so filled, sold, used, disposed of, held, bought or trafficked in, or both.

(10) Violation of ORS 616.630 is punishable, upon conviction, for the first offense by a fine of \$10 for each such milk can, butter box, ice-cream can, ice-cream mold, ice-cream tub, aerated mineral water bottle or siphon bottle, soda water bottle, or other

containers so filled, trafficked in, purchased, so disposed, detained, converted, mutilated or destroyed, or not so delivered or returned, and by a fine of \$20, or by imprisonment in the county jail of not less than one and not more than three months for each and every subsequent offense, to be recovered in the same manner as fines are recoverable.

#### CHAPTER 617

[Reserved for expansion]

