Chapter 583

1961 REPLACEMENT PART

Milk Marketing

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CROSS REFERENCES

Administrative procedures and rules of state agencies, Ch. 183
Cancellation of uncollectible debts owed to department, 561.270
Dairy products, Ch. 621
Milk production and distribution controls, 1961 c.529

583.056

Enjoining violations of law, 561.280
Jurisdiction over prosecutions, 561.290

583.005 [1957 c.719 §1; repealed by 1961 c.638 §20]

583.006 Definitions. (1) "Classification" means the classification of milk and milk products into classes according to their utilization.

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

(3) "First handler" means the handler who first receives Grade A milk from a producer, irrespective of the ultimate destination of such milk.

(4) "Grade A milk" means fluid milk or cream defined by and which complies with the official state standards of quality established by the department for Grade A milk, as provided by ORS chapter 621.

(5) "Handler" means any person, corporation, association, or cooperative organization engaged in the handling of milk as the operator of a milk plant or as sales agent for producers.

(6) "Milk" shall be construed to include all whole milk or any constituent part thereof.

(7) "Milk product" means milk or dairy products as defined by ORS chapter 621.

(8) "Pooling" means:

(a) The arrangement for combining the payments made for milk at different class prices based on usage, and averaging them so that each producer and producer group participating in the pool receives payment on the same basis; or

(b) Any written pooling contract or plan of pooling agreed upon between producers, producer groups and handlers which is consistent with the principles and purposes set forth in ORS 583.016.

(9) "Producer" means any person who produces Grade A milk and sells any portion of such milk to or through a handler.

(10) "Producer-distributor" means a person producing unpasteurized fluid milk on a dairy farm and bottling such milk, either pasteurized or unpasteurized, on the premises where produced for distribution and sale for human consumption.

[1961 c.638 §2]

583.010 [Amended by 1953 c.712 §4; repealed by 1955 c.1 §1]

583.015 [1957 c.719 §3; repealed by 1961 c.638 §20]

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

(2) The provisions of this chapter shall not be construed to conflict with or repeal, and are in addition to and not in lieu of, any other law of this state or any municipal ordinance relating to any health or sanitary requirement, or any municipal ordinance relating to the inspection, grading or production of Grade A milk.

[1961 c.638 §§1, 18]

583.020 [Repealed by 1955 c.1 §1]

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

583.026 Administrative proceedings under chapter. (1) Subject to the applicable provisions of ORS chapter 183, unless otherwise provided in ORS 583.096 and 583.106, the department shall:

(a) Carry out and enforce the provisions of this chapter.

(b) Promulgate rules and regulations, as prescribed in ORS chapter 183, after a public hearing relating to milk pooling, classification of use, allocation of classification, producer payments and contracts and such other rules as are reasonable and necessary for the enforcement of this chapter. In promulgating rules and regulations relating to milk pooling, the department shall allow price differences based upon quality factors or the geographical location of producers supplying a handler.

(c) Verify that producers are being accurately and properly paid for their milk in accordance with their written pooling plan.

(d) Prepare and publish from its records such statistics as it deems advisable, and as do not reveal any confidential information.

(2) The provisions of ORS chapter 183 shall not apply to ORS 583.086 to 583.116.

[Subsection (1) enacted as 1961 c.638 §3; subsection (2) enacted as last sentence of 1961 c.638 §13]

583.030 [Repealed by 1955 c.1 §1]

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

583.036 Standards for enforcement and rule making; limitations on powers of department. (1) In enforcing and carrying out

the provisions of this chapter and in the promulgation of rules thereunder, the department shall consider:

(a) The trade practices of the milk industry in Oregon.

(b) The general welfare and economic consequences to the milk industry and to consumers of milk in Oregon.

(c) The laws and regulations of the United States and other states.

(2) Nothing in this chapter shall be construed as authorizing the department to:

(a) Set prices for milk or milk products;

(b) Prohibit any producer or producer group from contracting to sell milk to any handler if such contract is consistent with and is in compliance with the provisions of this chapter and regulations promulgated thereunder; or

(c) Require a statewide uniform contract or pooling agreement.

[1961 c.638 §4]

583.040 [Repealed by 1955 c.1 §1]

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

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

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

(a) The current auditing and enforcement program.

(b) Proposed program changes.

(c) General milk industry changes.

(d) Increased or decreased benefits accruing to producers, handlers and consumers.

[1961 c.638 §5 (1), (2)]

583.050 [Repealed by 1955 c.1 §1]

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

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

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

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

[1961 c.638 §5 (3), (4), (5)]

583.060 [Repealed by 1955 c.1 §1]

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

583.066 Handlers to keep records and make reports regarding milk and milk products. (1) Each handler subject to this chapter or any subsidiary of any such handler shall keep adequate and accurate records of receipts and utilization of all milk, cream and milk products and payment therefor. Such records shall be available to the department during regular business hours for audit purposes in order to verify the reports and information required by this chapter and to verify accurate and proper payments to producers.

(2) At such time and in such manner as the department may prescribe:

(a) Each handler shall forward information or reports containing such information, based upon and taken from the records and information required to be kept as provided by subsection (1) of this section.

(b) Each producer-distributor shall keep records of and shall report to the department relative to his receipts and utilization of milk and milk products.

[1961 c.638 §§8, 9]

583.070 [Repealed by 1955 c.1 §1]

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

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

583.080 [Repealed by 1955 c.1 §1]

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

583.086 Review of audit; filing additional information; when departmental findings final. (1) After an audit has been completed as authorized by this chapter, the department shall first review such audit with the affected handler. If, after audit and review of such audit with the handler, the department finds that milk has not been properly accounted for or paid for by the handler or person whose records have been audited, or that such person has violated the provisions of this chapter or regulations promulgated thereunder, the department shall file a copy of the audit findings in its Salem office, forward by certified mail a copy of the audit findings and such other pertinent information concerning the audit as it deems necessary to the handler or person whose records have been audited, and may notify affected producers. The findings shall include an order requiring that payment be made or that certain procedures or practices which are in violation of law or regulation be stopped, corrected or changed, as the case may be. The audit findings on file shall be available for examination only by the affected handler or producers of such milk, or the authorized agents of either.

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

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

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

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

583.090 [Repealed by 1955 c.1 §1]

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

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

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

court shall enter an order transferring it to the proper county.

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

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

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

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

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

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

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

(9) An appeal may be taken from the order or decree of the circuit court to the Supreme Court as in other cases, regardless of the amounts involved. The court may in its discretion assess costs to the prevailing party.

[1961 c.638 §11]

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

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

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

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

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

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

docket over all other civil cases except those given equal status by statute.

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

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

(5) An appeal may be taken from the order or decree of the circuit court to the Supreme Court as in other cases, regardless of the amount of money involved.
[1961 c.638 §12]

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

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

583.116 Remedies after court approval of departmental findings. If the court, as provided by ORS 583.096 or 583.106, affirms or modifies findings of the department that a handler owes moneys to producers or other persons under this chapter, the order shall be a judgment of record against the real and personal property of such handler or person until paid. In addition to other remedies, the department, for and in the name of persons entitled to such funds, may file an attachment or take other action authorized by law in order to require such judgment or moneys be paid. Moneys recovered or received by the department shall be paid over to the persons entitled thereto, without deduction of the department's cost incurred.
[Part of 1961 c.638 §13]

583.120 [Repealed by 1955 c.1 §1]

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

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

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

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

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

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

(4) In addition to other remedies provided by this chapter or other law, any producer injured by any violation of the provisions of this section may maintain an action for damages in a circuit court. In addition to damages, the plaintiff in the action is entitled to recover the costs of the action including a reasonable attorneys fee.
[1961 c.638 §14]

583.130 [Repealed by 1955 c.1 §1]

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

583.136 Temporary injunction against handler. Notwithstanding other provisions of this chapter, if the department has reason to believe that any handler or other person whose records have been or are being audited, is violating the provisions of this chapter or regulations promulgated thereunder and that such violation could result in serious economic loss to producers or handlers, the department is authorized to file an action in the circuit court asking for a temporary injunction against such handler

or person until such time as the department may complete an audit and reaudit procedure or take other action as authorized by this chapter. The court shall have broad authority under this section to approve any action necessary to protect the rights and interests of producers, producer groups and handlers as provided by this chapter.
[1961 c.638 §15 (1)]

583.140 [Repealed by 1955 c.1 §1]

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

583.146 Attorney fees. In legal proceedings filed under ORS 583.096, 583.106 or 583.136, the department is entitled to recover, in addition to other costs, such sum as the court or judge may adjudge reasonable as attorney fees. Such attorney fees shall be deposited by and used by the department as authorized under ORS 583.166. If the department does not prevail in such legal proceedings, it shall pay the costs, disbursements and reasonable attorney fees, as adjudged by the court, of the prevailing party from the moneys in the Department of Agriculture Account.
[1961 c.638 §15 (2)]

583.150 [Repealed by 1955 c.1 §1]

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

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

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

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

583.160 [Repealed by 1955 c.1 §1]

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

583.166 Disposition of fees. The department shall deposit all fees paid to it under this chapter in the General Fund in the State Treasury to the credit of the Department of Agriculture Account. Such account is continuously appropriated to the department for the purpose of administering and enforcing this chapter.
[1961 c.638 §6]

583.170 [Repealed by 1955 c.1 §1]

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

583.180 [Amended by 1953 c.712 §4; repealed by 1955 c.1 §1]
583.190 [Repealed by 1955 c.1 §1]
583.200 [Repealed by 1955 c.1 §1]
583.210 to 583.300 [Reserved for expansion]

583.310 [Repealed by 1955 c.1 §1]

583.320 [Repealed by 1955 c.1 §1]

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

583.340 [Repealed by 1955 c.1 §1]

583.350 [Repealed by 1955 c.1 §1]

583.360 [Repealed by 1955 c.1 §1]

583.370 [Repealed by 1955 c.1 §1]

583.380 [Repealed by 1955 c.1 §1]

583.390 [Repealed by 1955 c.1 §1]

583.400 [Repealed by 1955 c.1 §1]

583.410 to 583.980 [Reserved for expansion]

583.990 [Repealed by 1955 c.1 §1]

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

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 1, 1961.

Sam R. Haley
Legislative Counsel