Chapter 583

1963 REPLACEMENT PART

Milk Marketing, Production and Distribution

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GENERAL PROVISIONS

583.002 Suspension of chapter by federal milk marketing order. Notwithstanding other laws to the contrary and the provisions of ORS 583.004 and 583.405 to 583.545, in the event a milk marketing order under the jurisdiction of the United States Department of Agriculture or other appropriate federal agency, is created by referendum or under the applicable laws and procedures relating thereto, in this state or in any area within this state, the provisions of this chapter or any part thereof which is in conflict with such federal order, or which is unnecessary or is a duplication thereof, shall be suspended in the area covered by and during the existence of such federal order. After a public hearing and as authorized by ORS chapter 183, the department shall carry out the intent of this section by administrative order. The department shall take such steps and procedures as are necessary to wind up and conclude the administration and enforcement of the provisions of this chapter, or any part thereof, for the period prior to the suspension date.
[1963 c.442 §28]

583.004 Use of fees in enforcement of chapter; poundage fee under ORS 583.046 increased. (1) The fees in ORS 583.166, are continuously appropriated to the department for the purpose of administering and enforcing the provisions of this chapter.

(2) It is the intent of this section and ORS 583.545 to avoid duplication, and in lieu of requiring separate reports to be forwarded and deductions to be withheld by first handlers to support the provisions of this chapter, to combine the two into one deduction, payment and report. In order to provide fees necessary to carry out and enforce both laws and programs, an additional poundage fee of not more than one cent per hundredweight on all milk is hereby authorized and shall be deducted by first handlers and paid over to the department, at the same time, in the same manner and as required and authorized by the provisions of ORS 583.046. Subject to the limitations of subsection (2) of ORS 583.046, the total maximum poundage fee provided in ORS 583.046 is hereby increased to one and three-fourths cents per hundredweight on such milk.
[1963 c.442 §9(2), (3)]

583.005 [1957 c.719 §1; repealed by 1961 c.638 §20]

MARKETING

583.006 Definitions for ORS 583.006 to 583.166. (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. (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 ORS 583.006 to 583.166 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 ORS 583.006 to 583.166 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. (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 ORS 583.006 to 583.166.

(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 ORS 583.006 to 583.166. 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 ORS 583.006 to 583.166 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 ORS 583.006 to 583.166 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 ORS 583.006 to 583.166 and regulations promulgated thereunder; or

(c) Require a state-wide 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 ORS 583.006 to 583.166, 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 ORS 583.006 to 583.166.

[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 ORS 583.006 to 583.166 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 ORS 583.006 to 583.166 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 ORS 583.006 to 583.166, 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 ORS 583.006 to 583.166 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 ORS 583.006 to 583.166. 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 ORS 583.006 to 583.166, 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 ORS 583.006 to 583.166.

(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 ORS 583.006 to 583.166, 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 ORS 583.006 to 583.166.

(4) In addition to other remedies provided by ORS 583.006 to 583.166 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 ORS 583.006 to 583.166, 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 ORS 583.006 to 583.166 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 ORS 583.006 to 583.166. 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 ORS 583.006 to 583.166.
[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 583.006 to 583.166; exceptions. When, as a result of audit findings by the department, legal action or other provisions of ORS 583.006 to 583.166 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 ORS 583.006 to 583.166 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 ORS 583.006 to 583.166.
[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]

PRODUCTION AND DISTRIBUTION

583.405 Definitions for ORS 583.002, 583.004 and 583.405 to 583.545. As used in ORS 583.002, 583.004 and 583.405 to 583.545, unless the context requires otherwise:

(1) "Class 1 milk" means milk, used or sold to jobbers, stores or consumers for human consumption in fluid form.

(2) "Class 2 milk" means milk other than Class 1 milk used in the manufacture of milk products.

(3) "Consumer" means any person, other than a handler, jobber or store, who purchases milk for human consumption in fluid form.

(4) "Department" means the Oregon State Department of Agriculture.

(5) "Handler":

(a) Means any person engaged in the handling of milk in his capacity as the operator of a fluid milk plant which processes milk in Class 1 or Class 2 uses and who purchases such milk from a producer or from another handler, or

(b) Means any cooperative corporation or association serving in the capacity of a handler or as a marketing agent, or

(c) Means any contract purchaser making collective sales of milk to another handler, or

(d) Means any producer-distributor who qualifies as a producer-distributor under ORS 583.405 to 583.545.

(e) Does not mean a person operating exclusively a plant or establishment, purchasing and using Class 2 milk for manufacturing purposes only and providing such plant or establishment is not owned by, under the control of the same management, or a part of a fluid milk plant processing milk for human consumption.

(6) "Market area" means any one or more primary markets, as established under ORS 583.470.

(7) "Milk" means Grade A milk or Grade B milk as defined by ORS 621.055 to 621.124 and regulations relating thereto and promulgated thereunder.

(8) "Primary market" means an area established under ORS 583.465.

(9) "Producer" means any person producing milk, any portion of which is sold to a milk handler within this state, for human consumption in fluid form.

(10) "Producer-distributor" means any person who maintains his own herd, prepares and puts in containers for human consumption, the milk produced from such herd and distributes or sells, either partially or exclusively, 15,000 pounds or more per month to stores or consumers.

(11) "Replacement milk" is defined as milk produced in one market area, processed in another market area and replaced in the market area of production for distribution and sale.

(12) "Store" means any grocery store, hotel, restaurant, soda fountain or any other establishment or place of business wherein milk is sold as an article of merchandise, or served and consumed on the premises.
[1963 c.442 §2]

583.410 Statement of purpose; construction. (1) The production, processing, distribution and sale of fluid milk for human consumption are attended by conditions which adversely affect the general welfare and result in 90 to 95 percent of the total milk production in the United States being

marketed under federal and state stabilization regulations, deemed necessary to protect the interests of producers, distributors and consumers. It is therefore declared to be the policy of the State of Oregon, which imposes regulations on milk producers to assure a wholesome product for the benefit of the consuming public, to provide the necessary assistance and authority to maintain a stable milk market, to sustain the economy of the dairy industry and the economic welfare of the state and to assure an adequate and healthful supply of milk and milk products for the consuming public.

(2) The provisions of ORS 583.002, 583.004 and 583.405 to 583.545 are in pari materia with the provisions of ORS 583.006 to 583.166. If there is a conflict, the provisions of ORS 583.002, 583.004 and 583.405 to 583.545 supersede the provisions of ORS 583.006 to 583.166.

(3) The provisions of ORS 583.002, 583.004 and 583.405 to 583.545 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 board of health or sanitary requirement, or any municipal ordinance relating to the inspection, grading or production of Grade A milk.
[1963 c.442 §§1, 10, 26]

583.415 Application as to interstate commerce. No provision of ORS 583.002, 583.004 and 583.405 to 583.545 shall apply or be construed to apply to interstate commerce except to the extent that the Constitution and laws of the United States permit it to apply to interstate commerce.
[1963 c.442 §27]

583.420 Application as to producer-distributors. (1) Any producer-distributor:

(a) Located in a market area in which a market pool is established as provided by ORS 583.510, or any such producer-distributor regardless of his location who sells or delivers milk into such market area, is subject to the provisions of ORS 583.004 and 583.405 to 583.545 on all milk he sells or distributes in such market area, including milk which is produced from his own herd.

(b) Located in a market area in which a market pool is not established, who acts as a handler by obtaining or purchasing milk from a producer, producer-distributor or handler and thereafter sells or distributes such milk, is subject to the provisions of ORS 583.405 to 583.545 on all milk including milk which is produced from his own herd.

(2) Only producer-distributors subject to the provisions of ORS 583.405 to 583.545 as required by subsection (1) of this section, shall be licensed as required by ORS 583.440 and 583.445.
[1963 c.442 §24]

583.425 Administrative proceedings and orders. (1) Except as provided by subsection (2) of this section, the provisions of ORS chapter 183 apply to ORS 583.405 to 583.545, rules and regulations promulgated thereunder and to the appeal of any person aggrieved thereby. Before any order is promulgated, the department shall hold at least one public hearing. All hearings shall be public hearings and testimony shall be given under oath.

(2) Notwithstanding ORS chapter 183, and except as otherwise provided in ORS 583.405 to 583.545, a public hearing may be instituted only by:

(a) The department on its own motion, or

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

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

(3) All guide-posts, standards and the provisions of this chapter may be taken into consideration in the promulgation of any order.
[1963 c.442 §3]

583.430 Joint hearings and agreements with other states and Federal Government. In order to facilitate the carrying out of provisions and purposes of ORS 583.002, 583.004 and 583.405 to 583.545, the department may hold joint hearings with authorized officers or agencies of adjoining states who have duties and powers similar to those of the department or with any authorized person designated by the United States Department of Agriculture, and may enter into joint agreements with such authorized state or federal agencies for exchange of information with regard to prices paid to producers for milk moving from one state to the other or for any purpose to carry out and enforce the

provisions of ORS 583.002, 583.004 and 583.405 to 583.545.
[1963 c.442 §4]

583.435 [Reserved for expansion]

583.440 License required of handlers and producer-distributors; other licenses. (1) Beginning 30 days after June 4, 1963, no person shall engage in business as a handler or producer-distributor within this state unless such person is licensed as provided in ORS 583.440 to 583.450. With prior approval of the department, the location or place of business of the licensee may be moved without the requirement to obtain a new license. The license is personal to the applicant and any change in the business entity requires that a new license be obtained by the new owner.

(2) The license required by subsection (1) of this section is in addition to and not in lieu of any other license required of handlers or producer-distributors by any other law of this state or by any municipal ordinance.
[1963 c.442 §§5, 6]

583.445 Application for license. Application for a license required by subsection (1) of ORS 583.440 which shall be made upon forms furnished by the department, shall be accompanied by the license fee of $1, and shall state:

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

(2) The full name and address of the applicant, if an individual; if a partnership, the full name and address of each member thereof; and if a corporation or association, the full name and address of the officer authorized to sign on behalf of the corporation.

(3) The name of the city and the street number of the principal place of business of the applicant.
[1963 c.442 §7]

583.450 Denial, suspension or revocation of license. The department as authorized by ORS chapter 183 may decline to grant a license required by subsection (1) of ORS 583.440 or may suspend or revoke such license when it appears that the handler or producer-distributor has:

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

(2) Failed to withhold and pay the amounts required under subsection (3) of ORS 583.510.

(3) Failed to keep books and records or to furnish the reports, statements or information required of him by ORS 583.004 and 583.405 to 583.545 or regulations promulgated thereunder.

(4) Failed to pay the fees required by ORS 583.004 and 583.545.

(5) Failed to comply with any provision of ORS 583.002, 583.004 and 583.405 to 583.545.
[1963 c.442 §8]

583.455 Licensees to keep records and make reports regarding milk. (1) Each licensee shall keep books and records prescribed by the department showing:

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

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

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

(d) Such other information as the department deems necessary for the proper administration and enforcement of ORS 583.002, 583.004 and 583.405 to 583.545.

(2) Each licensee shall furnish such report, statements or information as are required by the department for the proper administration and enforcement of ORS 583.002, 583.004 and 583.405 to 583.545.
[1963 c.442 §11]

583.460 [Reserved for expansion]

583.465 Primary markets. (1) The department within 60 days after June 4, 1963, shall determine and establish primary markets. In addition to other guide-posts and standards set out in ORS 583.405 to 583.545, the department may take into consideration:

(a) Centers of processing and distribution of milk and milk products, on which producers, regardless of their location, depend for a market.

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

(2) Primary markets may be established,

changed, amended or terminated only after a public hearing has been held by the department in each established market area or in a proposed new or enlarged or reduced market area. When practical and if the interests of the milk industry will be more adequately protected, a hearing may be held in each established primary market area or proposed primary market area.
[1963 c.442 §16]

583.470 Market areas. (1) Concurrently with the establishment of primary markets, as provided by ORS 583.465, the department shall establish market areas embracing one or more primary markets. In addition to other guide-posts and standards set out in ORS 583.405 to 583.545, the department may take into consideration:

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

(b) Major metropolitan consumer areas.

(c) Normal flow of milk from producing areas to point of processing and distribution to consumers.

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

(e) Any other condition which may benefit or may have an adverse effect on the stability of the market, or the primary markets, in the market area.

(2) Market areas may be established, changed, amended or terminated only after a public hearing, in each established market area or in a proposed, new, enlarged or reduced market area.

(3) Producers or handlers as authorized by ORS 583.425, may file a petition requesting the department to hold a public hearing relating to market areas.
[1963 c.442 §17]

583.475 Referendum in market area on establishment or termination of market pool; subsequent petition to establish pool. (1) After June 4, 1963, and within 45 days after the department establishes a market area, as provided by ORS 583.470, the producers in such market area may file a petition with the department requesting that a referendum be held on the question of preventing a market pool being established as required by law in such area. The petition and the referendum shall clearly explain to the producers involved, that a market pool is to be established by law in their market area unless two-thirds of the producers voting in a referendum decide that a market pool shall not be established. If the petition complies with the provisions of ORS 583.405 to 583.545, the department shall hold a referendum in such market area and it shall take no further action in establishing a market pool in such area until after the referendum and the results thereof are known and filed with the Secretary of State. The ballots shall also contain wording, substantially as follows:

——No. I vote against the establishment of a market pool in Market Area No.———.

——Yes. I vote in favor of permitting a market pool to be established in Market Area No.———.

(a) If in the referendum two-thirds or more of the producers who vote, vote against the establishment of a market pool, the department shall take no further action at that time to establish a market pool in such market area. At least nine calendar months must elapse after the date the results of such referendum are filed with the Secretary of State, before the producers in such market area may petition the department for another referendum for the establishment of a market pool.

(b) If less than two-thirds of the producers who vote, vote against the establishment of a market pool, the department within 120 days from the date the results of the referendum are filed with the Secretary of State, shall establish a market pool in the market area, as authorized by ORS 583.510.

(2) If the petition referred to in subsection (1) of this section contains the signatures of two-thirds or more of the producers qualified to sign petitions in such market area and it is clear that the petition states such producers do not want a market pool established in their market area, no referendum shall be held by the department and it shall take no further action at that time to establish a market pool in such market area. At least nine calendar months must elapse after the date the petition is filed with the department before the producers may petition the department for the establishment of a market pool.

(3) Nothing in ORS 583.405 to 583.545 is to be construed as preventing producers from filing a petition and asking for a referendum on the question of establishing a market pool, or to terminate and close an existing market pool, if the petition and referendum are filed within applicable time limits

as authorized by this section or subsection (2) of ORS 583.490 and otherwise are in compliance with ORS 583.405 to 583.545.
[1963 c.442 §19]

583.480 Qualifications to sign petition or vote in referendum; list of qualified producers. (1) The producers qualified to sign a petition, or to vote in any referendum under ORS 583.405 to 583.545, shall be all those producers shipping milk to the market area on a regular supply basis and who would or do receive or pay equalization in an existing market pool in a market area, or in a market pool if established in such market area.

(2) The department is authorized during business hours to review the books and records of handlers or producer-distributors to obtain a list of the producers qualified to sign petitions or to vote in referendums.
[1963 c.442 §22(1), (5)]

583.485 Contents of petition. Petitions filed with the department by producers, handlers and licensees shall comply with the provisions of ORS 583.405 to 583.545 and applicable law and regulations thereunder. A petition shall:

(1) Consist of one or more pages, each of which is dated at the bottom. The date shall be inserted on each sheet prior to, or at the time the first signature is obtained on each sheet. The department shall not accept a sheet on which such date is more than 60 days prior to the time it is filed with the department. After a petition is filed, additional pages may be filed if time limits have not expired and there is compliance with other provisions of ORS 583.405 to 583.545.

(2) Contain wording at the top of each page which clearly explains to each person whose signature appears thereon the meaning and intent of the petition. Such wording shall also clearly indicate to the department if it is in reference to a request for public hearing exactly what matters are to be studied and desired. Similar information must be directed to the department if the matter relates to a referendum. The department has the authority to clarify wording from a petition before making it a part of a referendum.
[1963 c.442 §22(6)]

583.490 Conduct of referendum. (1) A two-thirds majority vote by the producers voting in a referendum is required to pass or approve the subject matter contained in or the proposition put to the voters by the referendum.

(2) The results of any referendum held by the department shall be filed with the Secretary of State and shall not be considered to be a part of its regulations. At least nine calendar months must elapse after the results of a referendum are filed with the Secretary of State, before another referendum can be held among producers relating to the same subject matter or proposition covered by the prior referendum.

(3) If the referendum is conducted by mail, the department in order to insure secret balloting, shall use a double-envelope ballot system similar to the voting and referendum procedure approved and used by the Oregon State Bar Association as of June 4, 1963. Two envelopes and a ballot shall be furnished by the department to each producer authorized to vote in a referendum. A transmittal envelope shall contain only information necessary for the department to accurately determine the producer is authorized to vote. The producer shall mark his ballot and place it in a ballot envelope, both of which shall not contain or be identified in any way as to the name of the producer. Upon receipt of the transmittal envelope and after verification of the right of the producer to vote, the department shall remove the unopened sealed ballot envelope and drop it in a locked box until such time as all ballots are later counted as required by law. Only the final results of any referendum shall be a public record.

(4) No informalities or technicalities in the conduct of a referendum, or in any matters relating thereto, shall invalidate any referendum if it is fairly and reasonably conducted by the department. The provisions of ORS 583.405 to 583.545 are intended as guide-posts or standards, with the department authorized to enumerate and define persons who may sign petitions, who may vote in referendums and to establish additional procedures to carry out the provisions of ORS 583.480 to 583.490.
[1963 c.442 §22(2), (3), (4), (7)]

583.495 [Reserved for expansion]

583.500 Hearing required before order issued; considerations in establishing minimum prices. (1) Before making any order under ORS 583.505, the department shall hold a public hearing in the market area to be affected by the order. The order shall be

made within 30 days after the hearing.

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

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

(b) Price of Class 1 and Class 2 milk in adjacent states.

(c) Cost of transporting milk.

(d) Prevailing price for manufacturing grade milk used in products which are sold in competition with similar products made from Grade A milk.

(e) Available supply of milk for human consumption in relation to actual consumption thereof.

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

[1963 c.442 §14]

583.505 Orders establishing minimum prices for sale of milk by producers to handlers. In accordance with ORS chapter 183, the department shall establish by order minimum prices for the sale of Class 1 and Class 2 milk by producers to handlers. The department after public hearing shall make a separate order for each market area and each order shall designate the market area to which it is applicable. Such orders and the minimum prices established thereby may vary in different market areas.

[1963 c.442 §15]

583.510 Pooling and equalization of milk in market areas; money withheld from producers; disposition of receipts by department. (1) Except as provided by ORS 583.475, the department, within 120 days from June 4, 1963, shall establish a system of pooling of all milk used in each market area established by ORS 583.470.

(2) Thereafter the department shall establish a system in each market area for the equalization of returns for all quota milk whereby all producers selling milk to milk handlers in such market area, and all producer-distributors selling or delivering milk in such market area, will receive the same price for all quota milk utilized as Class 1 and Class 2, except that any premium paid to a producer by a handler above minimum prices established under ORS 583.505, because of quality of milk produced and sold shall not be considered in determining average quota pool prices. A handler who acquires a surplus of quota milk over that necessary to meet his needs for Class 1 utilization shall, on order of the department, sell such surplus of quota milk to another handler within the market area for Class 1 utilization. Any such order which is refused for Class 1 utilization and which is subsequently utilized as Class 2 milk shall be excluded from the equalization.

(3) In providing for such pooling and equalization, the department shall determine amounts to be withheld from producers by a handler and paid to the department of not more than five cents per hundredweight for administering the market pool and amounts for the benefit of producers selling milk to other handlers in the market area in which the market pool is established in order to equalize payments between producers or producer groups. Upon the failure of any handler to withhold out of amounts due or to become due to a producer at the time a handler is notified by the department of the amounts to be withheld and upon failure of such handler to pay such amounts, the department subject to ORS 583.450, may revoke the license of the handler required by subsection (1) of ORS 583.440. The department may commence an action against the handler in the circuit court of the county in which the handler resides or has his principal place of business to collect such amounts. If it is determined upon such action that the handler has wrongfully refused to pay the amounts the handler shall be required to pay, in addition to such amounts, all the costs and disbursements of the action, to the department as determined by the court. If the department's contention in such action is not sustained, the department shall pay to the handler all costs and disbursements of the action as determined by the court.

(4) Replacement milk will be subject to equalization in the market area where produced and sold, without regard to the market area where processed.

(5) The amounts received by the department under this section, which shall not be

subject to the provisions of ORS 293.145 to 293.160, shall be deposited to the account of the department in any bank or banks in the state authorized as a depository of state funds and shall be disbursed therefrom as provided by this section or orders promulgated thereunder.
[1963 c.442 §18]

583.515 Establishment of quota for producers in market areas; adjustments and transfers. (1) Under a market pool and as used in this section, "quota" means a producer's portion of the total sales of Class 1 milk in a market area plus 15 percent.

(2) The department shall provide by order, under procedures set forth in ORS 583.405 to 583.545, for the transfer of quota between individual producers as necessary to carry out the purpose and intent of ORS 583.405 to 583.545.

(3) After June 4, 1963, to establish each producer's initial quota in the market area, the department shall give equal weight to production and to Class 1 sales by determining the simple average of his production and Class 1 sales in the market area during January, February, March and April 1963. The percentage that his monthly production-sales average is of the monthly production-sales average of all producers supplying the market area, times the total Class 1 sales in the area, times 115 percent, divided by 30, will be his daily quota in the area. Thereafter, annually on or before March 1 of each year, each producer's quota will be adjusted in accordance with his daily average production during the four low months of the previous calendar year adjusted to the average of the four high months of Class 1 sales in the market area, plus 15 percent; except the department may establish by administrative order, if there are months of low production because producers have adjusted production to meet conditions existing in a particular market, or because of acts of God or other legitimate reasons which cannot be attributed to poor management, such months may be excluded in determining the low four months.

(4) If, during any three consecutive months, in the market area surplus in quota is less than 10 percent or more than 20 percent, the department shall adjust quotas allocated under subsection (3) of this section to provide sufficient quota milk to meet Class 1 requirements.

(5) (a) A new producer or a producer with allocated quota can acquire quota or increase his quota by purchasing a herd with assigned quota providing the department, or the producer group which has reallocated assigned quota, is advised of the transfer.

(b) A new producer who does not acquire quota as provided by paragraph (a) of this subsection, may, after qualifying for Grade A production and after selling such production as manufacturing milk for a minimum of 180 days, have assigned as his quota in the market area the same proportion, less 30 percent, that his monthly average production for the 180-day period bears to the Class 1 utilization of all production in the market area. Such quota with penalty must be maintained for at least six months prior to adjustments, as provided by subsection (4) of this section.
[1963 c.442 §21]

583.520 Department to provide system for equitable payments to producers where no market pool exists; recognition of voluntary equalization program. In the event the producers through petition or referendum pursuant to ORS 583.475 prevent a market pool from being established, or by referendum terminate and close a market pool, the department shall provide a system whereby each producer selling milk to a particular handler except for replacement milk shall receive the same price for Class 1 milk and for Class 2 milk of like quality, as every other producer selling milk to that particular handler and whereby each producer shall receive the minimum price established by the department under ORS 583.505. Such system which is for the purpose of assuring fair, reasonable and equitable treatment and payment for all affected producers, may take into consideration the existence, if any, of a voluntary equalization program established by contract between groups of producers.
[1963 c.442 §20]

583.525 Handler not to purchase from producer for less than minimum price; allowable deductions by handler; additional deductions. (1) It is the intent of the provisions of ORS 583.405 to 583.545 to minimize and eliminate as far as possible and practical, certain unfair and inequitable trade and competitive practices and advantages that have existed between types or classes of handlers of milk.

(2) No handler shall purchase milk from a producer or producers for less than the minimum prices established under ORS 583.505. Each handler shall pool such milk in accordance with the provisions of ORS 583.510 and 583.520, whichever is applicable.

(3) Notwithstanding the provisions of ORS chapter 62 or amendments thereto, or other laws to the contrary, a handler may only deduct from the amounts due a producer or producers, the following:

(a) Deductions by the handler for payment to the Oregon Dairy Products Commission under ORS chapter 576, payments to the department under this chapter.

(b) A pooling charge of not to exceed the amount established by the department, if such handler actually performs a pooling service for the producer and if such pooling charges are limited to milk purchased from or handled for an individual producer.

(c) Deductions based on assignment, approved and signed by the producer, directing the handler to pay a specified sum to a person other than such handler on the producer's behalf. Such "other person" shall not be an officer, employe, agent or representative of the handler.

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

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

(f) After the above deductions have been taken, if any, a cooperative corporation or association organized under the laws of any state and engaged in marketing or making collective sales of milk produced by its members or other producers represented by or through the cooperative, may then take and retain such other deductions from payment to its members or producers, differentials as may be specifically authorized in advance by contract or membership agreements between the cooperative and its members.

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

(5) The department after public hearing and as authorized by ORS chapter 183, may approve additional deductions or further orders as may be necessary to carry out the provisions of this section. Such determinations shall not result in an undue advantage for one handler over another handler or permit a handler to evade or circumvent the intent of this secion.

[1963 c.442 §23]

583.530 Prohibited practices. (1) No handler or producer-distributor shall:

(a) Buy milk from any person other than a producer, producer agent, or another handler licensed under ORS 583.405 to 583.545.

(b) Deal in or handle milk if such handler knows such milk has previously been dealt in or handled in violation of any provision of ORS 583.002, 583.004 and 583.405 to 583.545.

(c) Purchase or accept delivery of any milk in a market area where a market pool is established, that has not been assigned quota as prescribed and established by the department under the provisions of ORS 583.405 to 583.545, unless such milk is replacement milk as defined in ORS 583.405.

(2) No handler shall buy or offer to buy from a handler, producer, producer's agent or cooperative corporation or association, and no handler, producer, producer's agent or cooperative corporation or association shall sell or offer to sell to a handler, any Class 1 or Class 2 milk at a price less than that established under ORS 583.505.

[1963 c.442 §§12, 25]

583.535 [Reserved for expansion]

583.540 Enforcement of ORS 583.405 to 583.545. (1) The department may enforce by injunction or other appropriate proceedings in the circuit court of the county in which the defendant resides or has his principal place of business any provisions of ORS 583.002, 583.004 and 583.405 to 583.545 or any order promulgated thereunder. The department shall not be required to give bond in any such proceeding. Such proceedings

shall be given preference on the calendar of the circuit court in which filed.

(2) The provisions of ORS 583.002, 583.004 and 583.405 to 583.545 or violations thereof may be enforced under and as a part of the provisions of ORS 583.006 to 583.166.
[1963 c.442 §13]

583.545 Disposition of fees. Except as provided by subsection (5) of ORS 583.510, the department shall deposit all fees paid to it under ORS 583.002, 583.004 and 583.405 to 583.545 in the General Fund in the State Treasury to the credit of the Department of Agriculture Account as provided by ORS 583.166.
[1963 c.442 §9(1)]

583.550 to 583.985 [Reserved for expansion]

583.990 [Repealed by 1955 c.1 §1]

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

PENALTIES

583.992 Penalties. Violation of any provision of ORS 583.002, 583.004 and 583.405 to 583.545 is punishable, upon conviction, by a fine of not more than $1,000.
[1963 c.442 §29]

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, 1963.

Sam R. Haley
Legislative Counsel