Chapter 621

1981 REPLACEMENT PART

Purity, Grades, Standards and Labels of Dairy Products and Substitutes

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Note: Section 23, chapter 842, Oregon Laws 1977, is operative July 1, 1984, and repeals 621 079, 621,081, 621.083, 621.118, 621.161, 621 166, 621 171, 621.206, 621 256, 621 266, 621 271, 621 276, 621 281 and 621 293 relating to the Department of Agriculture.

DEFINITIONS; GENERAL PROVISIONS

621.005 Definitions. As used in this chapter, unless the context requires otherwise:

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

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

(3) "Grader" means a person who holds a milk sampler's and grader's license issued under ORS 621.081. [Amended by 1979 c 320 §15]

621.010 Restraining violations of ORS 621.055 to 621.124 or 621.151 to 621.291. (1) (a) If the State Department of Agriculture believes that any person is engaged in or is about to engage in any act or practice which is a violation of ORS 621.055 to 621.124 or 621.151 to 621.291, the department may apply for a temporary or permanent injunction restraining the person from violating the provisions of those sections. The application for the injunction may be made to the circuit court of any county in which the person is engaged in or is about to engage in the unlawful act or practice, and such court has jurisdiction to grant a temporary or permanent injunction without bond. No injunction under this section shall be granted without notice to the person sought to be enjoined unless it appears from facts shown by affidavit that serious injury to the public health would result before the matter can be heard on notice, in which case the court may grant a temporary injunction. The remedy provided the department by this section is in addition to all other remedies, civil and criminal.

(b) In case a temporary injunction is granted without notice, in the contingency specified in paragraph (a) of this subsection, the matter shall be made returnable on an order requiring cause to be shown, on the earliest day that the business of the court will permit, but not later than seven days from the date of such order, why the injunction should not be continued. When the matter first comes up for hearing after a temporary injunction has been granted without notice, the department must be ready to proceed and must have served upon the defendant, at least two days prior to such hearing, a copy of the original or an amended application for the temporary injunction and of the affidavits to be used in support of such application; if the department is not ready, or if the department fails to serve the defendant with a copy of the application and affidavits as required, the court shall dissolve the temporary injunction. The defendant, however, shall be entitled to one continuance for a reasonable period, if he desires it, to enable him to meet the application for the temporary injunction. The defendant may, in response to such order to show cause, present affidavits relating to the matter, and if such affidavits are served on the department at least two days prior to the hearing, the department shall not be entitled to any continuance on account thereof. On the day upon which the matter is made returnable on an order to show cause, such hearing shall take precedence over all other matters on the calendar of said day, except older matters of the same character, and matters to which special precedence may be given by law. When the cause is at issue it shall be set for trial at the earliest possible date and shall take precedence over all other cases, except older matters of the same character, and matters to which special precedence may be given by law.

(2) The sole method of procedure available to an applicant or licensee where a license required by or issued under ORS 621.055 to 621.124 or 621.151 to 621.291 is refused, revoked or suspended is the procedure provided in ORS 183.310 to 183.550; and the applicant or licensee shall not be permitted to litigate collaterally, as a defense in a proceeding for an injunction under subsection (1) of this section, any matter concerning the refusal to grant or the revocation or suspension of a license required by or issued under ORS 621.055 to 621.124 or 621.151 to 621.291 if he was heard or might have been heard on such matter directly in an administrative hearing under ORS 183.310 to 183.550, or on an appeal from such hearing. [1955 c.714 §1, 1961 c.425 §13]

621.015 Disposition of license fees; appropriation. The department shall deposit all fees paid to it under this chapter in the Department of Agriculture Service Fund. All such fees are continuously appropriated to the department for the purpose of administering and enforcing this chapter. [1963 c 48 §2, 1979 c 499 §23]

621.020 Use of Ring Test or Whey Test for brucellosis. Notwithstanding all other laws to the contrary, the department in lieu of blood testing of dairy-type animals for brucellosis as provided or required by this chapter, may approve by regulation the procedures, processes, practices, methods and the use of the Ring Test or the Whey Test. [1957 c 346 §6]

GRADES AND STANDARDS OF QUALITY FOR FLUID MILK

621.055 Definitions for ORS 621.055 to 621.124. As used in ORS 621.055 to 621.124, unless the context requires otherwise:

(1) "Distributor" means a person purchasing, only, unpasteurized fluid milk and causing it to be processed, including pasteurization, and bottled for distribution and sale for human consumption.

(2) "Fluid milk" includes milk and any other product made by the addition of any substance to milk or to any milk product which is produced, processed, distributed, sold, offered for sale or exposed for sale for human consumption in liquid form and shall include sterilized fluid milk products and the fluid milk products for which a standard of identity has been established by the department.

(3) "Milk" means the lacteal secretion of cows and goats.

(4) "Nonprocessing distributor" means a person who sells fluid milk in consumer sized units under the person's own brand or trade name, which fluid milk has been processed and packaged for such person by a distributor or producer-distributor.

(5) "Person" means and includes any individual, partnership, association or corporation and agents.

(6) "Producer" means a person engaged in the production on a dairy farm of unpasteurized fluid milk, but who does not bottle fluid milk for distribution and sale for human consumption.

(7) "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; but a producer-distributor may purchase unpasteurized milk from a producer and distribute such milk after pasteurization. [Amended by 1955 c 714 §11; 1959 c 346 §2, 1981 c 523 §2]

621.060 Establishing standards of quality and identity. (1) Official state standards of quality shall be established by the department for fluid milk, sterilized, pasteurized and unpasteurized, in the manner prescribed by ORS 632.900 to 632.935.

(2) The standards of quality established shall be based upon:

(a) The health of the cows and goats;

(b) The physical facilities of dairies and milk processing plants;

(c) The standard of sanitary maintenance of dairies and milk processing plants including equipment used therein, the cleanliness of operating personnel, and the cleanliness of adjacent land areas;

(d) The physical facilities for the transportation of fluid milk, and the methods and standards of sanitary maintenance of such facilities;

(e) The quality of the fluid milk as shown by an examination by means suitable to the determination of its quality, and also, the factors affecting the nutritional value of fluid milk as a human food; and

(f) Any other factor found by the department, upon hearing, to affect the quality, odor, flavor or wholesomeness of fluid milk.

(3) Definitions and standards of identity for fluid milk and sterilized milk may be established by the department. [Amended by 1971 c 769 §1, 1981 c 523 §3]

621.062 Deviation from standard of identity prohibited. No person shall process, distribute, sell, offer for sale or expose for sale fluid milk which does not conform to a standard of identity established by the department. [1959 c 346 §3]

621.065 Designation of grades. There shall be two standards of quality established for fluid milk. The highest standard of quality established for fluid milk shall be designated as "grade A." The other standard of quality shall be designated as "grade B." [Amended by 1955 c 714 §12]

621.070 License required to use grade designation. No person shall use any grade designation on bottle caps, in advertising, on labels or in any other manner connected with the sale of fluid milk, unless the person has obtained from the department a license to use the grade designation.

621.072 Licensing to use grade designation; determination of fees. (1) The department shall issue a license to use the grade designation "grade A" or "grade B" to any person who:

(a) Makes written application for a license; and

(b) Is engaged in the business of producing or distributing, or both, fluid milk; and

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

(2) If a person carries on both the activities of a producer and of a producer-distributor such person shall obtain a separate license for each such activity.

(3) Before and after issuing a license under this chapter the department shall as it deems necessary inspect the physical facilities of the applicant's dairy or plant and such other factors as may relate to the production or distribution of fluid milk The physical facilities must conform to the requirements created by regulation for the production and distribution of fluid milk meeting the standards of quality for which the license to use the particular grade designation is sought.

(4) Each license issued under this section expires one year from the date of its issuance unless sooner revoked and may be renewed upon application of the licensee. Each application for a license or annual renewal thereof shall be accompanied by a license fee. The fees for the several types of licenses shall in so far as reasonable and practical be based upon the cost of inspection. If a business under one entity or ownership is required to obtain more than one type of license under ORS 621.055 to 621.291, the fees shall be adjusted by the department in order that an owner is not required to pay more than a total of $120 during each license period.

(5) The fees which shall be established by the department, shall not exceed the following for each annual license:

Producer, $55.

Producer-distributor, $80.

Distributor, $80.

Nonprocessing distributor, $50.

(6) The department may refuse to issue or renew, or may suspend or revoke a license for any violation of ORS 621.055 to 621.120 or rule thereunder [Formerly 621 075, 1967 c 254 §1, 1971 c 773 §8]

621.074 [Formerly 621 080, repealed by 1963 c 48 §5]

621.075 [Amended by 1955 c 714 §13; renumbered 621 072]

621.077 Bacterial standards. All fluid milk shall conform to the same bacterial standards. [Formerly 621 082]

621.079 Milk sampler and grader license required for certain operations. (1) Each person who operates or drives a farm pickup milk tank truck for the purpose of transporting milk in bulk from a farm, other than a farm owned or controlled wholly or in part by such person, to any receiving point shall obtain a license from the department as provided by ORS 621.081 authorizing such person to take samples of milk for analysis by the department.

(2) Each distributor who receives milk in producer containers shall designate at least one plant employe who shall obtain a license as provided by ORS 621.081 from the department authorizing such person to take samples of milk for analysis by the department.

(3) Each milk hauler, milk receiver or other person who grades fluid milk as fit or unfit for processing as fluid milk due to quality, odor, flavor or wholesomeness shall first obtain a license from the department as provided by ORS 621.081 authorizing such person to sample and grade fluid milk. The grader shall make a true written record of grade, the reason for rejection with the name of the producer, the date of rejection and the quantity involved. A copy of the record shall be made available to the department. [1959 c 145 §§2, 3, 1979 c 320 §1]

621.080 [Amended by 1959 c 145 §9; renumbered 621 074]

621.081 Milk sampler and grader license; fee; issuance; revocation. (1) Each applicant for a milk sampler's and grader's license shall be required to demonstrate satisfactorily by written examination given by the department an adequate knowledge of milk sanitation as it relates to the sampling, grading and handling of fluid milk and cream for analysis. Each application for a license shall be accompanied by a fee of $25. The fee shall not be refunded for any reason.

(2) Examinations for licenses shall be given by the department at least once annually in Salem, and at such other places as appears by the volume of applications to be necessary and practical.

(3) The department shall issue licenses to the applicants it finds to be qualified. Each license shall be valid for so long as the licensee is employed in a position where milk sampling or grading is necessary, unless revoked or suspended by the department.

(4) The department may revoke or suspend or refuse to reissue the license of any person licensed as provided by ORS 621.079 who fails to take such samples or to perform grading as is required by the department or who does not or has not complied with the provisions of this chapter or rules promulgated under the authority of this chapter. [1959 c.145 §§4, 5, 6, 8, 1963 c 48 §3, 1971 c.773 §9; 1979 c 320 §2]

621.082 [1955 c.714 §16; renumbered 621 077]

621.083 Procedures and equipment for graders. The department shall establish standards of procedure and acceptable types of equipment which shall be used by graders in taking and safeguarding samples of milk for analysis. [1959 c 145 §7; 1979 c.320 §11]

621.084 Weighing, sampling and testing fluid milk. Distributors and producer-distributors and all other purchasers of milk from producers shall weigh, sample and test fluid milk purchased by them from producers in the same manner as milk and cream are weighed, sampled and tested under ORS 621.231 to 621.251. [1955 c 714 §8]

621.085 Milk not to be sold for human consumption; coloring defective milk. Any fluid milk which contains sediment in excess of the sediment toleration for fluid milk established by the department or which contains other foreign matter or deleterious substance which renders it unfit for human consumption shall be deemed to be unlawful milk and shall not be sold or offered for sale for human consumption. Any person grading fluid milk as unlawful shall immediately affix to the container thereof a condemnation tag which shall be in such form as the department may prescribe, and in addition shall thoroughly mix with that milk such harmless red coloring matter as will prevent the fluid milk from being sold, offered or exposed for sale for human consumption.

621.088 Sale or possession of milk or cream to which water has been added. No producer, producer-distributor, distributor, or nonprocessing distributor as defined by ORS 621.055, or licensee as defined by ORS 621.152, or a dairyman who produces and sells milk for manufacturing purposes, an employe or agent thereof shall offer or expose for sale, sell, exchange or deliver to any person, the retail trade or other places or have in possession or under control, with intent to sell, expose, deliver, purchase for resale or receive for manufacture, any milk or cream to which water has been added, as evidenced by official department laboratory test, except as may be permitted by the department in:

(1) The reconstitution of fluid milk; or

(2) The transportation of the product containing added water to a dairy products plant, as defined in ORS 621.152, for recovery of the milk food solids. [1955 c 714 §10, 1957 c 346 §1, 1979 c 320 §3]

621.089 Application of ORS 621.055 to 621.120 to person with only two cows or three goats. The provisions of ORS 621.055 to 621.120 do not apply to a person owning not more than two producing cows or three producing goats, but such person may sell the fluid milk from such animals for human or other consumption without complying with the provisions of ORS 621.055 to 621.120 only if:

(1) He does not advertise the milk for sale.

(2) The milk is sold directly to the consumer.

(3) No more than two producing cows or three producing goats are located on the premises where the milk is produced. [1955 c.25 §2, 1973 c 99 §1]

621.090 City milk ordinances; minimum state standards to be maintained. ORS 621.055 to 621.120 do not prohibit an incorporated city from enacting and enforcing an ordinance establishing standards of quality for fluid milk; except that the municipal grade designations authorized by such ordinances must conform to the state grade designations for fluid milk created by ORS 621.065. The department shall investigate at least once every two years the milk supply of incorporated cities having in force such ordinances, to determine whether or not minimum state standards of quality, at least, are being maintained. Whenever the department finds that the municipal standards are not being maintained and enforced so as to equal, at least, the state standards of quality, it shall give written notification of that finding to the chief administrative officer of the city. If the

department finds, not less than 30 days after the date of the written notice, that the municipal standards are not being maintained and enforced, the provisions of ORS 621.055 to 621.120 shall thereupon become applicable to all persons selling, delivering, producing or distributing fluid milk, or both, within the corporate limits of the city. [Amended by 1959 c 241 §1]

621.095 Application of ORS 621.055 to 621.120 to holder of permit or license where city milk ordinance in force. The provisions of ORS 621.055 to 621.120 do not apply to any person holding a valid permit or license to produce, distribute or sell fluid milk within the corporate limits of a city which has enacted and is enforcing an ordinance the terms of which establish standards of quality for fluid milk equal at least to the standards established by the department pursuant to ORS 621.060; except as state regulations may become applicable to such persons after withdrawal of state approval of a city inspection system as provided in ORS 621.090, and except as the provisions of ORS 621.100 shall also apply.

621.100 Free movement of fluid milk within state; inspection areas; cities prohibiting sale of unpasteurized fluid milk; emergencies. (1) Subject to subsections (2) to (5) of this section, the fluid milk of any producer operating under and complying with the system of fluid milk regulation authorized by ORS 621.055 to 621.120 may be transported or sold any place in this state irrespective of the fact that such transportation or sale may be in an area operating under a system of inspection other than that under which it was produced.

(2) A city having an approved system of fluid milk inspection may inspect, on a permanent basis, the dairy farm of any producer or any fluid milk produced thereon for the purpose of approving fluid milk for use within the corporate limits of the city.

(3) Whenever an individual producer is supplying fluid milk to two or more cities each having an approved system of inspection, the department shall make a determination, after conferring with authorized representatives of both cities, which city shall carry on the inspection of the producer's dairy farm and milk produced thereon, and in addition thereto shall make provision for the interchange of information between the affected cities relating to the inspection.

(4) Whenever fluid milk from several producers is pooled and commingled prior to movement for processing and bottling by distributors operating under different inspection systems, the department, after conferring with all inspection agencies concerned, shall assign definite areas within which each affected inspection agency may carry on inspection if it wishes to do so, otherwise the department shall carry on inspection of all dairy farms and fluid milk of producers furnishing milk to the pool.

(5) Any city having an approved system of fluid milk regulation may prohibit the sale within the corporate limit of such city of unpasteurized fluid milk except for the purpose of further processing, including pasteurization.

(6) In the event of an emergency creating a milk shortage in any area, the department may also permit the transportation and sale in such area of fluid milk prepared and processed by producer-distributors or by distributors without restriction and irrespective of the fact that such transportation or sale may be in an area operating under a system of inspection other than that under which the fluid milk was processed and bottled.

(7) Nothing in this section shall be construed to affect the provisions of ORS chapter 583 [1953 edition].

621.102 Application and enforcement outside area of jurisdiction of tests, findings, orders and notices of suspension of city or inspection agency. (1) Notwithstanding ORS 621.095, if a city or inspection agency in the enforcement of an ordinance, rule or regulation, as authorized by ORS 621.090 or 621.100, issues any order affecting the operations of any person holding a valid permit or license to produce, distribute or sell fluid milk or suspends the privilege of such person to use a grade designation on containers of fluid milk, because of a violation of an order, rule, regulation or ordinance and provided at the same time the person violated minimum state standards or the provisions of ORS 621.055 to 621.124, then such order or notice of suspension shall be effective against the operations of such person including the deliveries of fluid milk both within and without the limits of the city or the area over which the inspection agency has jurisdiction.

(2) If the city or the inspection agency lacks authority or jurisdiction because of the location of the person or his operations, or for

any other reason, then the department hereby is authorized to use the same identical city or inspection agency tests, inspection findings, orders or notices of suspension as if they had been issued, promulgated or adopted by the department and the department has concurrent jurisdiction and authority to enforce them against the person named therein as if he had been operating subject to and had been licensed by the department under this chapter.

(3) The violation by any person of any order or notice of suspension, enforceable by the department as provided for in subsection (1) of this section, shall subject the person to the same penalties as if he had been operating subject to and had been licensed by the department. [1957 c 346 §2]

621.105 Entry and use of fluid milk produced outside state; reciprocal agreements. (1) The department may, for the purpose of assuring the people of this state a continuous and adequate supply of wholesome and nutritious fluid milk, permit the entry and use in this state of fluid milk produced in other governmental units under the conditions set forth in this section. For the purposes of this section the term "governmental unit" means and includes any state, territory of the United States, or political subdivision of such state or territory.

(2) The department shall investigate and survey the system of regulation of the fluid milk industry in effect in the governmental unit in which the fluid milk, for which entry is sought, is produced. The investigation shall be made into all the factors relating to the quality of fluid milk as prescribed in ORS 621.060. Upon a determination by the department that the system of fluid milk regulation in effect in such governmental units is of a nature that will reasonably assure that fluid milk produced thereunder will be of a quality substantially as high as fluid milk produced in this state, the department may issue a permit to any person operating under that system for the movement of fluid milk into this state.

(3) Recognition by the department of the system of regulation and inspection of fluid milk produced or processed in any other governmental unit shall only be granted in cases where such other governmental unit grants a reciprocal recognition to fluid milk produced or processed in this state.

(4) The department may give full faith and credit to the acts of any other governmental unit administering a system of fluid milk regulation recognized by the department, suspending, temporarily or permanently, the right or privilege of any person under the jurisdiction of such governmental unit to produce or process fluid milk.

(5) The department shall arrange with any other governmental unit administering and enforcing a system of fluid milk regulation recognized by the department for the exchange of information necessary to assure an uninterrupted interchange of wholesome and nutritious fluid milk between such governmental unit and this state.

(6) Nothing in this section shall be construed to interfere with the operations and effect of ORS chapter 583 [1953 edition].

621.110 [Repealed by 1979 c.320 §19]

621.115 Labeling requirements; bottling unpasteurized fluid milk; sale or purchase during suspension; purchase from nonlicensed person. (1) No person shall sell, expose for sale, offer for sale or knowingly transport fluid milk in containers:

(a) Which has been produced and processed by a person who has not first obtained a license to use a state grade designation on fluid milk produced or processed by him.

(b) Which is not labeled on the container or container cap with the name and address of the producer, distributor, nonprocessing distributor or producer-distributor of the milk and the applicable state grade; except that containers of unpasteurized fluid milk shipped by producers to a milk plant for pasteurization and which are identified by shipper name or number shall not be required to be so labeled.

(2) No person shall bottle unpasteurized fluid milk except on the premises where it is produced.

(3) No producer or a producer-distributor shall sell or offer for sale fluid milk during the period while such producer's or producer-distributor's license to use a grade designation on fluid milk has been suspended under ORS 621.120.

(4) No distributor shall knowingly purchase fluid milk from any person whose license to use a grade designation has been suspended under ORS 621.120.

(5) No distributor shall knowingly purchase fluid milk from any person who has not received a license under ORS 621.072.

(6) Each container of fluid milk sold, exposed for sale, or offered for sale, by a nonprocessing distributor shall be labeled on the container or on the container cap with either the name and address of the distributor or producer-distributor processing and bottling the fluid milk or with a code number, assigned by the department, identifying such distributor or producer-distributor. [Amended by 1955 c.714 §14]

621.117 Distributor or producer-distributor may sell only milk that is pasteurized or from herd free of known disease; exception. No distributor or producer-distributor shall sell, offer or expose for sale any fluid milk for human consumption which has not been pasteurized or produced by a herd free of known disease, except that when not more than one reactor animal appears when the herd is tested for brucellosis, milk may still be sold if the animal is slaughtered and herd retested as provided in ORS chapter 596 and regulations promulgated thereunder and no additional reactors appear. If one or more additional reactors appear in successive tests, no milk may be sold from this herd until the herd regains a brucellosis-free status. [1955 c 714 §9(3), 1957 c.346 §3; 1969 c 152 §5, 1975 c 299 §1]

621.118 Pasteurization equipment; supervision by licensed pasteurizer operator. (1) Where pasteurization equipment is used by a distributor or producer-distributor, the pasteurization process shall be under the direct supervision of a pasteurizer operator licensed under ORS 621.266, and the provisions of ORS 621.261, 621.266 and 621.276 apply to such pasteurizer operator and the pasteurization process. If the pasteurizer operator fails to comply with the regulations promulgated by the department under ORS 621.261, his license may be revoked or suspended or otherwise limited.

(2) No distributor or producer-distributor shall operate or permit the operation of any pasteurization equipment except under the direct personal supervision of a person licensed as a pasteurizer operator under ORS 621.266. [1955 c.714 §9(1), (2)]

621.119 Falsely representing milk pasteurized prohibited. No person shall falsely represent by word, design, device or by any other means that any fluid milk has been pasteurized. [1955 c.714 §9(4)]

621.120 Suspension of grade use privilege. (1) In addition to the powers conferred on the department pursuant to ORS 621.055 to 621.115, the department may suspend the privilege of any person to use a grade designation on containers of fluid milk produced or distributed by the person. The power of suspension may be exercised by the department for any violation of ORS 621.055 to 621.120, or of the regulations promulgated under the authority of those sections.

(2) No suspension shall be for a period longer than 10 days; except that in all cases the department shall assure itself that the violation for which the suspension was imposed has been corrected by the person against whom it was imposed before the suspension is lifted.

(3) No suspension shall be imposed unless the department has, within the six months immediately preceding the violation for which the suspension is to be imposed, first notified in writing the person to be suspended that a further violation of the same character will be grounds for suspension by the department. The notice of suspension shall be in writing and shall state length of the suspension and the reason for the suspension.

(4) The provisions of ORS 183.310 to 183.550 do not apply to suspensions imposed under authority of this section, however, appeal shall be in the manner provided by ORS 183.480 to 183.550. Nothing in this subsection shall be construed to deprive any person of the right to present any defense the person may have to a criminal prosecution instituted for violation of ORS 621.055 to 621.115, nor shall it deprive the person of the right to a declaratory judgment in a proper case. [Amended by 1961 c 425 §14, 1979 c 320 §4]

621.124 Milk not to be sold if from diseased animals or from animals that have not been tested or retested for brucellosis. (1) As used in this section "test" means a test for brucellosis performed by a veterinarian in a manner approved by the department.

(2) The tests required by this section shall only be made by state, assistant state or deputy state veterinarians employed or appointed by the department, or veterinarians employed by the United States Department of Agriculture.

(3) No person shall sell, offer or expose for sale any fluid milk with knowledge that such milk has been produced from a herd of cows or goats one or more of which are infected with brucellosis at the time the milk was produced, or with knowledge that all animals in such herd have not been tested or retested for brucellosis. [1957 c 346 §5 (enacted in lieu of 621 125)]

621.125 [Amended by 1955 c 14 §1, repealed by 1957 c 346 §4 (621 124 enacted in lieu of 621.125)]

DAIRY PRODUCTS PLANTS

621.151 Title of ORS 621.151 to 621.291. ORS 621.151 to 621.291 shall be known and may be cited as the Oregon Dairy Products Plant Act. [1953 c 686 §30]

621.152 Definitions for ORS 621.151 to 621.291. As used in ORS 621.151 to 621.291, unless the context requires otherwise:

(1) "Contract milk hauler" means a person who, under the terms of a contract or agreement for hire or pay, accepts and transports bulk milk from the premises of milk producers, receiving or transfer stations to milk or other dairy products plants.

(2) "Cream" means that portion of milk which consists of milk fat.

(3) "Dairy products" means butter, all known varieties of cheese, frozen desserts and frozen dessert mixes containing milk, cream or nonfat milk solids; and evaporated, condensed, concentrated, powdered, dried or fermented milk, whey, cream or skimmed milk processed for human consumption.

(4) "Dairy products plant" means:

(a) Any establishment in which milk is received, processed or used in manufacturing dairy products for human consumption.

(b) Any place or premises in or at which milk is received or collected.

(c) Any contract milk hauler, or person having mobile equipment, including bulk tank truck, used in the transportation of milk or cream.

(d) Any nonprocessing cooperative, corporation, association or person serving as a marketing agent for producers.

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

(6) "Disease-free herd" shall mean a herd of cows or goats which is not an infected herd as defined in this subsection. "Infected herd" shall mean a herd of cows or goats in which a reactor animal has been discovered by any of the tests authorized by law, and which has not regained its disease-free status following such slaughter of reactor animals and retesting of the herd as may be prescribed by the department pursuant to ORS chapter 596 or other applicable law.

(7) "Licensee" means a person licensed to operate a dairy products plant pursuant to the provisions of ORS 621.151 to 621.291.

(8) "Milk" means the lacteal secretion of cows or goats.

(9) "Milk hauler or receiver" means a person who, in the course of employment, accepts bulk milk or milk products from a producer, milk plant, receiving or transfer station, and transports such commodity to a milk or dairy products plant.

(10) "Pasteurize" means the process established by the department pursuant to ORS 621.261, by which each particle of milk, cream or any dairy product is treated, usually by heat, for the purpose of destroying or rendering harmless bacterial organisms, including pathogenic organisms and viruses.

(11) "Producer" means a person who produces milk to be sold to a dairy products plant.

(12) "Unreasonable amount of sediment" means milk or cream which contains more than two and one-half milligrams of sediment as measured by the sediment standards established by the United States Department of Agriculture or similar method approved by the department. [1953 c 686 §1, 1957 c 346 §7, 1963 c 80 §1, 1969 c 164 §4, 1971 c.769 §2; 1981 c.523 §4]

621.155 [Repealed by 1953 c 686 §37]

621.156 Applicability of graders and plant provisions to fluid milk; and dairy products. ORS 621.079, 621.081, 621.084, 621.117, 621.118, 621.119, 621.201, 621.206, 621.216, 621.226 and 621.266, are applicable to the statutes relating to both fluid milk as defined in ORS 621.055 and dairy products as defined in ORS 621.152. [1953 c 686 §29, 1955 c 714 §6, 1971 c.769 §3, 1979 c 320 §5]

621.160 [Repealed by 1953 c.686 §37]

621.161 Operation of dairy products plant without license prohibited. No person shall engage in any of the activities in the operation of a dairy products plant unless that person has a valid dairy products plant license. A separate plant license shall be obtained for each plant operated by a person at which dairy products are processed. No person

shall be required to obtain a license while acting as a milk hauler or receiver, or for receiving or transfer stations operated in conjunction with a processing plant. [1953 c 686 §2, 1971 c.769 §4]

621.165 [Repealed by 1953 c 686 §37]

621.166 Application for dairy products plant license; fee; expiration. (1) Application for a dairy products plant license shall be made to the department on forms furnished by it. Except as provided in subsection (3) of this section, each application shall be accompanied by a license fee of $60. If a dairy products plant is also required to obtain an additional type of license under ORS 621.055 to 621.291, the combined license fees shall be adjusted in accordance with the provisions of ORS 621.072 (4).

(2) The license and each annual renewal shall be valid until June 30 next following its issuance.

(3) In addition to any other license fees required by this chapter, each person, cooperative, corporation or association acting as a dairy products plant as defined in ORS 621.152 (4)(a) and (b) who also performs the activities of a contract milk hauler as defined in ORS 621.152 (1), and each contract milk hauler shall submit an application accompanied by a license fee not to exceed the following:

(a) $10 for one mobile milk tanker; and

(b) $7.50 for each additional mobile milk tanker.

(4) The licensing provisions of this section shall not apply to any mobile milk tanker owned and operated by any person, cooperative, corporation or association acting as a dairy products plant while transporting dairy products, as defined in ORS 621.152 (3) from such dairy products plant to wholesale or retail outlets for the purpose of sale thereof.

(5) For the purposes of this section "mobile milk tanker" means each individual tank or container used to transport fluid milk, milk or milk products. [1953 c 686 §3; 1967 c.254 §2, 1971 c 769 §5, 1979 c.320 §6]

621.170 [Repealed by 1953 c 686 §37]

621.171 Issuance of license; renewal; suspension; revocation. (1) The department shall issue the dairy products plant license when it determines that the dairy products plant to be operated by the applicant is in compliance with the provisions of ORS 621.151 to 621.291 and the regulations issued under its authority.

(2) The department may refuse to issue or renew or may revoke or suspend the license of any person who fails to comply with the provisions of ORS 621.151 to 621.291 and the regulations promulgated under it. [1953 c.686 §4]

621.175 [Repealed by 1953 c.686 §37]

621.176 Standards of construction for dairy products plants. For the purpose of assuring that the handling and processing of dairy products is conducted in a sanitary environment which will protect dairy products handled, processed or stored from contamination, the department shall prescribe minimum standards of construction for dairy products plants, including but not limited to, the following:

(1) Floors, walls, ceilings.

(2) Doors and windows.

(3) Lighting and ventilation.

(4) Toilet and lavatory facilities.

(5) Water supply.

(6) Separation and partitioning of rooms for carrying on the several handling, processing and storage functions. [1953 c.686 §5]

621.180 [Repealed by 1953 c 686 §37]

621.181 Standards of sanitation for operation of dairy products plant. The department shall prescribe minimum standards of sanitation for the operation of dairy products plants including, but not limited to, the following:

(1) Washing, cleaning, maintenance and condition of floors, walls and ceilings of all rooms directly connected with the handling, processing and storage of dairy products, and the equipment used therein, including mobile equipment used in transportation of milk or cream from farm to plant or between plants.

(2) Health and cleanliness of personnel.

(3) Cleanliness and sanitation of surrounding premises.

(4) Disposal of all waste and sewage material.

(5) Insect and rodent control. [1953 c.686 §6]

621.185 [Repealed by 1953 c 686 §37]

621.186 Sanitation of equipment. (1) The cans or other containers in which milk and milk products are stored, received, transported or delivered by any person shall be

thoroughly washed, sterilized and dried after emptying and before being used again.

(2) Subsection (1) of this section is applicable to utensils, apparatus or equipment used by a licensee for any purpose other than that of handling milk and milk products.

(3) The inside surfaces of any equipment, apparatus or container which comes in contact with milk or its products shall be smooth, readily cleanable, free from open seams, cracks, crevices and rust spots. [1953 c.686 §7]

621.190 [Repealed by 1953 c 686 §37]

621.191 [1953 c.686 §8; repealed by 1969 c 152 §6]

621.193 Standards for farm bulk storage facilities. In accordance with any applicable provisions of ORS 183.310 to 183.550, the department shall promulgate rules prescribing standards of construction and sanitation for bulk storage tanks, equipment, buildings and other facilities used by producers to store milk that is to be sold to a dairy products plant. Such standards of construction and sanitation are for the purpose of insuring the wholesomeness of dairy products, and may include, but are not limited to:

(1) Size, location, construction and sanitation of bulk storage tanks, equipment, buildings and other facilities.

(2) Lighting and ventilation.

(3) Water supply.

(4) Cooling equipment. [1969 c 164 §2]

621.195 [Repealed by 1953 c 686 §37]

621.196 [1953 c 686 §9; repealed by 1969 c 152 §6]

621.198 Prohibition against use or dealing with user of nonstandard bulk storage facilities. (1) No producer shall store milk that is to be sold to a dairy products plant, in bulk storage tanks, equipment, buildings or other facilities that do not conform to the standards prescribed pursuant to ORS 621.193.

(2) No licensee shall receive or purchase milk from a producer, that is stored in bulk storage tanks, equipment, buildings or other facilities that do not conform to the standards prescribed pursuant to ORS 621.193. [1969 c 164 §3]

621.200 [Repealed by 1953 c.686 §37]

621.201 Grades and standards of quality for milk and cream. (1) The department shall establish by rule, as provided in ORS 183.310 to 183.550, official state grades and standards of quality applicable to all milk and official state standards of quality applicable to the several grades of cream. The several grades of cream shall be known, in descending order of quality, as: Premium grade, first grade and second grade. Separate reasonable grades and standards shall be established for milk and separate reasonable standards shall be established for each grade of cream. The grades and standards shall be based upon:

(a) Bacteriological examination or test of milk by the method known as the methylene blue test, or by other reliable methods.

(b) Sediment content.

(c) Acid content.

(d) Flavor.

(e) Odor.

(f) Condition of cleanliness.

(g) Wholesomeness.

(2) The grades and standards for milk and the standards for the grades of cream may from time to time be changed by the department as provided in subsection (1) of this section. [1953 c.686 §10, 1955 c 118 §1; 1979 c.91 §1]

621.205 [Repealed by 1953 c 686 §37]

621.206 Licensee to employ grader. Each licensee shall employ a grader who shall accurately and impartially grade all milk purchased by the licensee from producers before it is commingled with other milk or otherwise loses its identity. [1953 c 686 §11, 1979 c.320 §12]

621.210 [Repealed by 1953 c 686 §37]

621.211 Test for sediment in milk and cream. A test to determine the amount and nature of sediment in milk or cream shall be made by a grader on the first milk or cream purchased or received from a producer. If the test reveals no unreasonable amount of sediment, no further sediment test need be made on the milk or cream purchased or received from that producer during the following 30 days, but at least one test for sediment content shall be made each 30 days on milk or cream purchased or received from each producer. However, a grader may make a sediment test of milk or cream any time the grader has reason to believe it contains an unreasonable amount of sediment or that such test otherwise is advisable. [1953 c.686 §15; 1979 c.320 §16]

621.215 [Repealed by 1953 c.686 §37]

621.216 Record of grade of milk and cream graded. The grader shall make a true written record of the grade of all milk graded by the grader. The record shall also show the name of the producer, the date of delivery and of grading, and the quantity involved. The record shall be delivered to and retained by the licensee for 30 days and shall be available for inspection by the producer of the milk and by the department. [1953 c 686 §12; 1979 c 320 §14]

621.220 [Repealed by 1953 c 686 §37]

621.221 Price differential between grades. (1) A price differential between the several grades of milk and cream shall be maintained by the licensee for all milk and cream purchased by the licensee directly from the producer. The differential shall be computed as provided in subsection (2) of this section. The producer of milk or cream purchased by a licensee shall be paid on the basis of the applicable grades.

(2) The price differential between the several grades of milk shall not be less than five percent of the price paid for milk of the next highest grade. The price differential between the several grades of cream shall be not less than three cents per pound of butterfat between premium and first grade cream and not less than five cents per pound of butterfat between first grade and second grade cream.

(3) The licensee shall post in a conspicuous place, at each place where milk or cream is received by the licensee for purchase, the prices currently being paid for the several grades of milk or cream. The department may inspect at reasonable times and in a reasonable manner those books, records and accounts of any dairy products plant that relate to the payments made by the licensee to producers for milk or cream purchased by the licensee to determine whether or not the payments have been made in compliance with the provisions of this section. [1953 c.686 §13, 1955 c.118 §2]

621.225 [Repealed by 1953 c 686 §37]

621.226 Condemnation of unlawful milk or cream. (1) Whenever a grader determines that any milk or cream is unlawful, he shall immediately affix to its container a condemnation tag. Condemnation tags shall be in such form as prescribed by the department. The grader shall also thoroughly mix with the condemned milk or cream some harmless coloring matter.

(2) As used in this section the term "unlawful milk or cream" means:

(a) Milk or cream which contains dirt, filth, oil or other foreign matter which may render them, or dairy products from them, unfit for human consumption.

(b) Milk or cream which is stale, cheesy, rancid, putrid, decomposed or actively foaming.

(c) Milk or cream which contains an unreasonable amount of sediment of any kind. [1953 c 686 §14]

621.230 [Repealed by 1953 c.686 §37]

621.231 Weighing, sampling and testing for milk fat content. (1) All milk and cream purchased from producers not subject to subsection (4) of this section by the licensee shall be accurately tested by the licensee for its milk fat content by means of the method known to the industry as the "Babcock Test," or any equally accurate and efficient test approved by the department.

(2) Each delivery of cream not subject to subsection (4) of this section shall be weighed, sampled and tested at time of delivery.

(3) Each delivery of milk not subject to subsection (4) of this section shall be weighed and sampled at time of delivery and shall be tested by means of an individual sample or a composite sample made up from a representative sample from each delivery of milk. The composite sample shall be made at intervals not to exceed 16 days.

(4) When milk is sampled on the farm from a bulk milk storage tank for testing, the sampling frequency shall be established by regulations promulgated by the department. [1953 c 686 §18, 1959 c.144 §1]

621.236 Regulations regarding weighing, sampling and testing. (1) The department shall promulgate regulations relating to the weighing, sampling and testing of milk and cream on the following:

(a) The procedure and method of conducting the test required by ORS 621.231 (1), including the proper equipment to be used to assure uniformity and accuracy.

(b) The method of identification and preservation of samples of milk and cream.

(c) The method and frequency of weighing and sampling milk and cream.

(d) The making and preservation of records of the amount, grade and test of milk and cream received from individual producers.

(2) Subsection (1) of this section shall not be construed as a limitation on the authority of the department to make other necessary regulations. [1953 c.686 §19; 1959 c 144 §2]

621.241 Right of producer to be present at weighing, sampling or testing and to have own tests made. The producer of milk or cream, or the producer's agent, has the right to be present while the licensee weighs, samples or tests the milk or cream, and to take samples of the milk or cream and have them privately tested. At the request of any producer, a dairy products plant shall notify him of the time and place where the milk or cream will be weighed, sampled or tested. [1953 c 686 §20]

621.246 Liability of licensee for inaccurate weighing, sampling, testing or recording; attorney fees. If a producer is damaged by an inaccurate weighing, sampling or testing of milk or cream by a licensee or by the inaccurate recording of the results of any test, the producer may, if action or suit is brought therefor, in addition to damages, recover a reasonable attorney fee at trial and on appeal to be fixed by the court. [1953 c 686 §21, 1981 c 897 §72]

621.251 Authority of department to take charge of weighing, sampling and testing upon noncompliance by licensee. The department, in lieu of revoking the license of any licensee, and with the licensee's written consent, may take charge of the weighing, sampling and testing of the milk or cream received or purchased by the licensee. In this event, the department shall employ competent personnel of its own choice to perform the required weighing, sampling or testing. The salary and necessary expenses of such personnel shall be paid by the department, who shall be reimbursed by the licensee each month. The department shall continue in charge of the weighing, sampling and testing of the milk or cream received or purchased by the licensee until such time as the department is satisfied that the licensee will and can comply with all the provisions of ORS 621.151 to 621.291. When the department is so satisfied, control of the weighing, sampling and testing shall be returned to the licensee. [1953 c 686 §22]

621.255 [Repealed by 1953 c 686 §37]

621.256 Pasteurization to be supervised by licensed pasteurizer operator. In all dairy products plants where pasteurization equipment is operated, the pasteurization process shall be under the direct supervision of a pasteurizer operator licensed under ORS 621.266. [1953 c 686 §16]

621.260 [Repealed by 1953 c.686 §37]

621.261 Regulations regarding equipment used in pasteurization process. The department shall promulgate regulations prescribing the equipment to be used in the pasteurization of dairy products and the manner of cleaning and maintaining the equipment. When the department authorizes the use of heat as a method of pasteurization, it shall prescribe the necessary regulations for the use of recording thermometers or other devices for determining the time and temperature reached during the pasteurization process. [1953 c 686 §17]

621.265 [Repealed by 1953 c.686 §37]

621.266 Pasteurizer operator license; fee. (1) All applications for a license as a pasteurizer operator shall be made to the department on forms provided by it. Any licenses issued by the department under this section may be restricted in their application to the person licensed so as to authorize the holder to engage only in a limited line of activity commensurate with the holder's ability.

(2) The applicant shall be required to pass a reasonable written examination and give a practical demonstration of ability of the applicant to carry out the duties required under the license. Each application for a license shall be accompanied by a fee of $25.

(3) The fee shall not be refunded for any reason. The license shall be valid for the lifetime of the person to whom it is issued, except as provided in ORS 621.276. [1953 c 686 §23; 1963 c 48 §4, 1971 c.773 §10, 1979 c.320 §7]

621.270 [Repealed by 1953 c 686 §37]

621.271 [1953 c 686 §24, repealed by 1979 c 320 §19]

621.275 [Repealed by 1953 c.686 §37]

621.276 Licensees to show knowledge of and ability to comply with changes in laws or regulations. (1) When any amendment is made in the laws of this state or new regulations are promulgated relating to a change in the grades of milk or the operation of pasteurizing equipment, the department

may require any person licensed by the department to demonstrate knowledge and familiarity with such amendments or changes and ability to comply with them.

(2) Any person who becomes subject to the provisions of this section has not less than 30 nor more than 60 days to meet such additional requirements. If, at the expiration of 60 days, the person licensed has not demonstrated knowledge and ability in respect to such additional requirements, the license to grade milk shall be suspended automatically. [1953 c 686 §25, 1979 c 320 §13]

621.280 [Repealed by 1953 c 686 §37]

621.281 Suspension or revocation of licenses issued under ORS 621.266. If any person licensed under ORS 621.266 fails, neglects or refuses to fully and faithfully comply with any provisions of ORS 621.151 to 621.291 required of persons so licensed, his license may be revoked or suspended, or otherwise limited. [1953 c 686 §26]

621.285 [Repealed by 1953 c.686 §37]

621.286 Prohibitions. (1) No person shall operate or permit the operation of any pasteurization equipment except under the direct personal supervision of a person licensed as a pasteurizer operator under ORS 621.266.

(2) No licensee shall sell, offer or expose for sale any milk or cream which has not been pasteurized or produced by a disease-free herd, except to another licensee for the manufacture of dairy products.

(3) No person shall knowingly sell, offer or expose for sale any milk or cream which has not been pasteurized or produced by a disease-free herd, except to a licensee for the manufacture of dairy products.

(4) No licensee shall sell, offer or expose for sale any dairy product processed or manufactured by the licensee unless all of the milk or cream constituents have been pasteurized and produced by a disease-free herd.

(5) No person shall knowingly sell, offer or expose for sale any dairy product unless all of the milk or cream constituents of such product have been pasteurized and produced by a disease-free herd.

(6) Excepting cottage cheese, the pasteurization requirement of subsections (4) and (5) of this section shall not apply to cheese which has been aged for at least 60 days from the date of manufacture, which date must appear on the cheese or its container.

(7) No person shall falsely represent by word, design, device, or by any other means that any milk, cream or dairy product has been pasteurized.

(8) No licensee shall fail, neglect or refuse to provide for the grading of all milk and cream transported, received or purchased by the licensee as required by ORS 621.151 to 621.291.

(9) No person shall fail, neglect or refuse to file the report required by ORS 621.191.

(10) No person shall alter, remove or tamper with any condemnation tag affixed by the department pursuant to the provisions of ORS 621.226.

(11) No licensee or grader shall:

(a) Negligently sample, weigh or test any milk or cream.

(b) Fraudulently manipulate any weight, sample or test of milk or cream.

(c) Make a false entry or record of the weight, or test of milk or cream on any statement, record or invoice. [1953 c 686 §28, 1969 c 152 §1, 1971 c 743 §402, 1971 c 769 §6, 1979 c 320 §17]

621.290 [Repealed by 1953 c 686 §37]

621.291 Applicability of ORS 621.151 to 621.286 to cities having their own system of inspection and grading. (1) Nothing in ORS 621.151 to 621.286 shall be construed as prohibiting any incorporated city from enacting and enforcing an ordinance establishing a system of continuous inspection of dairy products and dairy products plants or from grading or degrading any dairy or dairy products or barring the same from sale within the city, provided that any such ordinance shall provide a system of inspection equal at least to the system of inspection of dairy products or dairy products plants established by ORS 621.151 to 621.286 and the regulations promulgated under its authority, and that the grading of any dairy products or dairy products plants as provided by ordinance shall be at least equal to that employed by the State Department of Agriculture.

(2) The department shall investigate not less than twice each year the enforcement by a city having a system of inspection and grading to determine whether or not such system of inspection and grading is being enforced. Whenever the department shall find that it is not being enforced or that the standards are

not at least equal to those of the department, the department shall give written notification of such findings to the chief enforcement officer of the city and shall file a copy of such written notice with the city auditor, clerk or recorder as the case may be. If the department thereafter shall find, not less than 30 days after the date of such notice, that the system of inspection and grading is not being enforced or is not at least equal to that of the department, then the inspection and grading by the department shall become applicable to all persons and establishments theretofore operating under the municipal system; provided, however, that any dairy product may be degraded or barred from sale in any municipality by local action in the event of an epidemic of disease, or is found to carry pathogenic bacteria, or if such degrading or barring from sale is necessary for the preservation of the life or health of the inhabitants of such city. [1953 c 686 §36]

621.293 [1971 c.769 §8; repealed by 1979 c 320 §19]

621.295 [Repealed by 1953 c 686 §37]

621.297 Certification of milk and dairy product testing laboratories; fee. (1) Milk and dairy industry laboratories or other commercial laboratories capable of analyzing milk and dairy products, may be certified by the department to perform, by officially recognized methods, certain analyses of milk and dairy products. Certification shall be made by the department's chief laboratory officer and shall be for those tests and analyses specified in ORS 621.055 to 621.120 or regulations thereunder, and may be limited by the department to a specific test, to a specific method, and to specific products.

(2) Each laboratory certified by the department pursuant to subsection (1) of this section, shall pay to the department on or before July 1 of each year it is certified, a fee not to exceed $100 to assist in payment of the cost of inspection of certified laboratories by the department. The department shall establish by regulation the amount of such fee due under this subsection considering its costs of inspection and other relevant expenses. [1971 c 769 §9]

ICE CREAM AND OTHER FROZEN DESSERTS

621.305 Definitions for ORS 621.305 to 621.369. As used in ORS 621.305 to 621.369:

(1) "Animal fats" means those fats derived from animal sources, except milk fat.

(2) "Consumer" means any person who purchases frozen desserts for consumption but not for resale.

(3) "Freezer head" means that part of a machine or unit wherein the food is prepared by freezing while stirring.

(4) "Frozen dessert mix" includes the unfrozen, blended ingredients, in liquid or powdered form, from which the particular frozen desserts defined and standardized in ORS 621.311 are made by freezing the mix ingredients to a solid or semisolid consistency.

(5) "Frozen desserts" include any food product as defined and standardized in ORS 621.311.

(6) "Machine" means the freezer or any other device by which the liquid ingredients for frozen desserts are frozen to a solid or semisolid consistency.

(7) "Milk products" means the milk from bovine animals or goats or any constituent part of such milk, either liquid or dried, and includes milk, cream, skim milk, milk fat, butter, butter oil, plastic cream, buttermilk, condensed buttermilk, dry buttermilk or any combination of such products.

(8) "Milk shake base" means a semisolid frozen dessert dispensed through a freezer head for use in preparing milk shakes.

(9) "Person" includes any individual, partnership, corporation or association regularly engaged in the commercial preparation or sale of any commodity covered by ORS 621.305 to 621.369.

(10) "Retailer" or "a person selling at retail" or words of similar import mean any person who freezes or makes frozen desserts for sale to or for use by a consumer, including frozen desserts served in connection with any meal, but not including railroad dining cars or any hospital, school or institution or fraternal, social or religious organization which prepares and serves food to its patients, students, members or guests.

(11) "Vegetable fats" means those fats derived from vegetable sources.

(12) "Wholesaler" or "a person selling at wholesale" or words of similar import mean

any person, other than a retailer, engaged in the business of freezing or making frozen desserts for sale. [Amended by 1953 c 684 §12; 1959 c 343 §1, 1961 c 459 §1; 1965 c 45 §1; 1979 c 320 §8]

621.310 [Amended by 1953 c 684 §12; repealed by 1961 c.360 §1 (621 311 enacted in lieu of 621 310)]

621.311 Definitions and standards of identity for frozen desserts. (1) As authorized by ORS 616.230 and 632.900 to 632.935, the department shall establish definitions and standards of identity for frozen desserts including ice cream, ice milk, sherbet, dietetic or dietary frozen desserts, mellorine, water ice and milk shake base.

(2) In addition to other guideposts and standards, the department in establishing definitions and standards for frozen desserts shall take into consideration the following:

(a) List of ingredients.

(b) Percentage of butterfat.

(c) Percentage of animal fat or vegetable fat content of mellorine.

(d) Percentage of total milk solids content.

(e) Percentage of total food solids content.

(f) Weight per gallon.

(g) Flavor and color labeling. [1961 c.360 §2 (enacted in lieu of 621 310); 1965 c.45 §2]

621.315 Standard weight and measure of packages and containers of frozen desserts. Frozen desserts sold in other than individual serving devices, shall be sold in terms of gallons, quarts or pints weighing not less than 4.5 pounds per gallon, or less than 36 ounces per one-half gallon, or less than 18 ounces per quart, or less than nine ounces per pint. If the average weight of 10 units, e.g. 10 quarts, or any lot of frozen dessert of the same brand and flavor equals or exceeds the minimum weight established for such units by this section, the requirements shall be deemed to have been met; provided, no individual unit shall be more than five percent of the required unit weight under the minimum weight established for such unit. All packages and final delivery containers shall be labeled with the size of the container in terms of pints, quarts or gallons. [Amended by 1953 c.684 §12]

621.320 Labeling requirements for frozen desserts. (1) Frozen desserts sold in package form or final delivery containers shall be labeled with:

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

(b) The size of the container in terms of pints, quarts or gallons.

(c) The number of international units (I.U.) of vitamin "A" contained in the frozen dessert, when such dessert has been artificially enriched by the addition of vitamin "A."

(2) Packages and final delivery containers of frozen desserts identified and standardized in ORS 621.311, which are filled in the presence of the purchaser at retail shall be exempted from the labeling requirements of this section if a sign in boldface type not less than three-eighths inch high is displayed in plain view of the purchaser containing all the information required by that section to be on the label.

(3) Except as otherwise provided in this section, the provisions of the Federal Fair Packaging and Labeling Act, 15 U.S.C. subsections 1451 et seq., shall apply to frozen desserts. [Amended by 1953 c 684 §12; 1961 c 360 §3, 1969 c.152 §2; 1979 c.320 §9]

621.325 Additional labeling required for frozen desserts. (1) In addition to the labeling required by ORS 621.320, each package or final delivery container of frozen desserts which are identified or standardized under ORS 621.311, shall be conspicuously labeled with the words "ice cream," "ice milk" or "sherbet" as the case may be, in bold faced type.

(2) In addition to the labeling requirements of ORS 621.320 and subsection (1) of this section, frozen dietetic or dietary desserts identified and standardized in ORS 621.311 shall be conspicuously labeled "Dietary or Dietetic Frozen Dessert."

(3) In addition to the labeling requirements of ORS 621.320, each package or final delivery container containing mellorine shall be labeled with the word "mellorine" in bold faced type not smaller than the largest lettering appearing on the package or container, followed by the words "containing vegetable fat" or "containing animal fat" in letters not less than three-eighths of an inch high. [Amended by 1953 c.684 §12, subsection (3) enacted as 1953 c.684 §7; 1961 c.360 §4]

621.330 Labeling containers of frozen dessert mix. All containers of frozen dessert mix shall be conspicuously labeled as to the contents of the container, the name and address of the manufacturer or distributor and the "pull" date. [Amended by 1953 c.684 §12; 1979 c.320 §10]

621.335 Licenses to freeze and sell frozen desserts. (1) A person engaged in the business of both freezing and selling frozen desserts, either at wholesale or retail, shall obtain a license from the department to carry on such business as provided in this section. A separate license shall be obtained for each wholesale or retail establishment operated by such person.

(2) A license to freeze and sell frozen desserts shall be issued by the department to any applicant upon payment to the department of the proper license fee which shall be computed as follows:

(a) A person engaged in the business of freezing and selling frozen desserts at wholesale or both at wholesale and retail, shall pay a license fee of $20 for a single freezer head and $10 for each additional freezer head used by such person in such business.

(b) A person engaged in the business of freezing and selling frozen desserts at retail only, shall pay a license fee of $15 for a single freezer head and $2.50 for each additional freezer head used by such person in such business.

(3) The license shall be valid for a term of one year from the date of its issuance unless sooner revoked or suspended. A license is personal to the applicant and is not transferable. [Amended by 1959 c 343 §2; 1967 c 254 §3]

621.340 Selling frozen dessert with excessive bacteria count prohibited. No person shall sell or offer for sale at retail a frozen dessert which has a bacteria count in excess of 75,000 per gram. No wholesaler shall sell, offer for sale or have in his possession with intent to sell a frozen dessert or frozen dessert mix to a retailer thereof which has a bacteria count in excess of 50,000 per gram. Frozen desserts in which cultured milk is an ingredient shall not be required to meet any minimum bacteria count standards. [Amended by 1953 c 684 §12, 1969 c.152 §3]

621.345 Sale or offering for sale of misrepresented product prohibited. No person shall sell or offer for sale any product representing it to be a frozen dessert unless the product conforms to the standard of identity for such product established by ORS 621.311. [Amended by 1953 c 684 §12]

621.348 Possession of misrepresented product prohibited. No manufacturer, packer or wholesale distributor of frozen dessert or frozen dessert mix shall have in his possession with intent to sell the same:

(1) A frozen dessert labeled in terms of pints, quarts or gallons which does not meet the weight requirements established for such units by ORS 621.315.

(2) A product represented to be a frozen dessert or frozen dessert mix unless such product conforms with the standard of identity for such frozen dessert or frozen dessert mix as established by ORS 621.311. [1953 c.684 §12]

621.350 Sale or offer for sale of improperly labeled frozen dessert prohibited. No person shall sell or offer for sale a frozen dessert which is not labeled as required by ORS 621.305 to 621.369. [Amended by 1953 c 684 §12]

621.352 Mellorine to be sold only in properly labeled factory-filled containers. No person shall sell mellorine except in prepackaged factory-filled containers or wrappers labeled as required in ORS 621.325. [1953 c.684 §12]

621.355 Selling frozen dessert without license prohibited. No person shall freeze and sell a frozen dessert or any product representing it to be a frozen dessert unless such person has first obtained a license to both freeze and sell frozen desserts.

621.357 Use of certain words in sale or advertising of mellorine prohibited. No person shall use the word "cream," "creamy," "milk," "dairy" or their derivatives or phonetic equivalents in connection with the sale, offering for sale or the advertising for sale of mellorine; provided, however, this shall not be construed to prevent the use of such words when a part of an assumed business name or corporate name which is in use on January 1, 1953. [1953 c.684 §12]

621.360 Sale of imitation frozen dessert prohibited. No person shall sell or offer for sale any food which simulates or imitates by appearance, taste or texture, or general composition, a frozen dessert unless such product conforms to the standards of identity established for frozen desserts by ORS 621.311. [Amended by 1953 c.684 §12]

621.365 Reducing percentage of milk fat. No person, except a manufacturer of frozen dessert mix, shall reduce the percentage by weight of milk fat in a frozen dessert mix by the addition of any milk product.

621.367 Seizure or embargo of frozen desserts or frozen dessert mixes which are improperly labeled or below minimum weight. The department may seize or embargo the movement of any frozen dessert or frozen dessert mix which either is not properly labeled or does not meet the minimum weight requirements as provided in ORS 621.305 to 621.369. Any such seizure or embargo shall be subject to the provisions of ORS 561.605 to 561.630 and 561.990 (5). [1953 c 684 §12]

621.368 Revocation of licenses. The department may revoke a license issued pursuant to ORS 621.305 to 621.369 for a violation of ORS 621.305 to 621.369 by the licensee. [1953 c.684 §12]

621.369 Possession of frozen dessert or frozen dessert mix as prima facie evidence of intent to sell. In any proceeding instituted for a violation of ORS 621.305 to 621.369 in which possession with intent to sell a frozen dessert or frozen dessert mix is an issue, possession by the accused of such dessert or dessert mix in containers of the size and type commonly used by him in selling such product shall be prima facie evidence of intent to sell. [1953 c 684 §12]

621.370 [Repealed by 1963 c.48 §5]

CONDENSED OR EVAPORATED MILK; IMITATION MILK AND DAIRY PRODUCT SUBSTITUTES

621.405 Definitions and standards for condensed or evaporated milk. (1) No person shall within this state manufacture for sale, have in his possession with the intent to sell, offer or expose for sale, or sell any condensed or evaporated milk unless it conforms to the definitions and standards established by the department pursuant to subsection (2) of this section.

(2) The department shall establish definitions and standards of identity, quality and fill of container for condensed and evaporated milk. In establishing such definitions and standards the department shall take into consideration:

(a) Such definitions and standards as established in other states; and

(b) Such definitions and standards as established by the Federal Government under the authority of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 301, et seq., as amended. [Amended by 1975 c.304 §6]

621.410 Requisites of milk used in manufacture of condensed or evaporated milk. (1) No person shall manufacture for sale, or sell or exchange, or expose or offer for sale or exchange, any condensed or evaporated milk, or any substance containing any milk or milk products and designed or intended to be used or capable of being used for or as a substitute for condensed or evaporated milk, unless the milk used in the manufacture thereof is pure, clean, fresh, healthful, unadulterated and wholesome milk.

(2) No person shall manufacture for sale, or sell or expose, or offer for sale or exchange, any condensed or evaporated milk containing any vegetable fat.

621.415 [Repealed by 1963 c.165 §1 (621.416 enacted in lieu of 621.415)]

621.416 "Milk" and "imitation milk" defined. (1) As used in this section "milk" means the lacteal secretion of cows and goats.

(2) As used in this chapter "imitation milk product" means:

(a) Any compound of milk and edible oil or fat not natural milkfat, with or without other ingredients, or

(b) Any product not milk,

which compound or product is made to have or has the appearance, taste, texture or general composition similar to that of a fluid milk product for which a standard of identity has been established by the department under the provisions of ORS 621.060 and which may reasonably be mistaken for a fluid milk product. [1963 c.165 §2 (enacted in lieu of 621.415); 1969 c 149 §1]

621.418 Standards for imitation milk products; sale of nonstandard imitation milk prohibited. (1) The department shall establish official state standards of quality and identity for imitation milk products in the manner prescribed in ORS 632.900 to 632.935.

(2) In establishing standards of quality and identity for imitation milk products, the department shall consider, in addition to other factors:

(a) The composition and purity of the product ingredients;

(b) The nutritional value of the fats, nonfat solids, vitamins, minerals or other ingredients affecting the food value of the product;

(c) The degree of sanitation maintained for buildings, equipment and personnel involved in the production, processing and distribution of the product.

(3) No person shall sell or offer for sale any imitation milk product which does not conform to a standard of quality and identity established by the department. [1969 c 149 §§3, 4]

621.420 Sale of imitation milk in eating places; posting notice. (1) No person shall render, manufacture, sell, offer, expose or have or possess with intent to sell, or use, or serve to the patrons of any restaurant, lunch counter, eating house, hotel or dining car, any imitation milk product except in compliance with ORS 621.416 to 621.425.

(2) Restaurants, lunch counters, eating houses and hotels using or serving imitation milk product shall:

(a) Post in a prominent place on the interior wall of their lunch counters and dining rooms in plain view of all patrons a legible notice in bold letters not less than one inch high the words "imitation milk" or "imitation ————" (with the blank being filled in with the specific name of the milk product corresponding thereto) "used and served here."

(b) Plainly and legibly type or print on the menu furnished the patron the same words required for display under paragraph (a) of this subsection. [Amended by 1963 c 165 §3]

621.425 Labeling containers of imitation milk. (1) Every bottle, can or other container used in the sale or offer for sale of an imitation milk product shall be separately and conspicuously labeled with the trade name, if any, of the product, and as an imitation milk or an imitation ———— (with the blank being filled in with the name of the milk product corresponding thereto). The colors of the letters of such wording shall be in contrast to the background color, if any, in order to be easily readable. The label shall plainly state all the ingredients of the compound or mixture.

(2) The department after public hearing and pursuant to ORS 183.310 to 183.550 is authorized by regulation to carry out the intent and purpose of subsection (1) of this section, including but not limited to establishing the size of the required wording on container caps or on other places or positions on such containers. [Amended by 1963 c 165 §6, 1969 c 152 §4]

621.429 Labeling of machine vending imitation milk products. (1) As used in this section, "vending machine" includes any self-service device offered for public use that, upon insertion of a coin, coins, currency or token, or by other means, dispenses unit servings of food or beverage, either in bulk or package, without the necessity of replenishing the device between each vending operation.

(2) No person shall sell, offer for sale or expose for sale by or through the use of a vending machine any imitation milk product without placing on the vending machine, next to the words describing the food or beverage being offered or exposed for sale, a plainly visible sign stating the imitation milk product being served with such other food or beverage such as "Imitation half and half used with coffee" or "Imitation cream served with cereal." The words shall be legible, bold letters so as to easily be read by the general public. [1963 c 165 §5]

621.430 [Repealed by 1963 c 165 §8]

621.435 Substitute dairy products; use in trade name or advertisement of words indicating product to be genuine. (1) No person engaged in the business, in whole or in part, of manufacturing, selling, offering for sale, advertising or otherwise dealing in or with any product used or intended or designed to be used as a substitute for or imitation of milk, butter, cheese or any other pure dairy or milk product, shall use as a part of his trade or corporate name, or as a name or description of his product, or use in or on his labels, packages, containers or advertising matter or sales literature thereto relating, any of the following names: "Milk," "butter," "cream," "creamery," "churn," "cheese," "cow" or "dairy," except as used in connection with imitation milk products.

(2) No such person shall use any pictorial or other representations resembling any of the objects named in subsection (1) of this section in or on the labels, packages, containers, advertising matter or literature referred to in subsection (1) of this section or any of the objects named in subsection (1) of this section in such a manner as to imply that the product is made of milk as defined herein.

(3) This section shall not be construed to forbid a true statement of or concerning the ingredients or composition of a product or of the contents of a package or container, when the statement is not misleading or in any way

deceptive, or to forbid or caution against the use of such product.

(4) This section does not apply to products manufactured in this state for the purpose of shipping out of the state and not offered for sale in this state. [Amended by 1963 c 165 §7]

621.440 Person selling imitation dairy products to keep sales book record. Every person who sells oleomargarine, butterine, renovated or process butter or any imitation butter, or other imitation dairy products in this state, shall keep a sales book in which all sales made to hotels, restaurants and public dining rooms shall be entered at the time of the sale. The sales book shall state the amount sold and the date of sale, together with the name and address of the purchaser. The sales book shall be open to the inspection of all authorized officers, employes and deputies of the department at all times.

621.445 Restrictions on serving colored butter substitute in public eating place. (1) In any public eating place serving meals for compensation at which a butter substitute colored to imitate butter is served, the owner or manager shall:

(a) Cause the butter substitute to be served in triangular pats or triangular bricks only.

(b) Post in a prominent place on the interior wall of the eating place a notice in bold letters not smaller than three inches high by two inches wide containing the words: "Butter substitute served here."

(c) Plainly type or print the same words on each menu furnished the patrons.

(2) The administration and enforcement of this section is vested in the department.

621.455 [Repealed by 1953 c.686 §37]

621.460 [Repealed by 1953 c 686 §37]

621.465 [Repealed by 1953 c 686 §37]

621.470 [Repealed by 1953 c 686 §37]

621.475 [Repealed by 1953 c 686 §37]

621.480 [Repealed by 1953 c 686 §37]

621.485 [Repealed by 1953 c 686 §37]

621.490 [Repealed by 1953 c 686 §37]

621.495 [Repealed by 1953 c 686 §37]

621.500 [Repealed by 1953 c 686 §37]

621.505 [Repealed by 1953 c 686 §37]

621.555 [Repealed by 1965 c 107 §7]

621.560 [Repealed by 1965 c 107 §7]

621.565 [Repealed by 1965 c 107 §7]

621.570 [Repealed by 1965 c 107 §7]

621.575 [Repealed by 1965 c.107 §7]

621.580 [Repealed by 1965 c 107 §7]

621.585 [Repealed by 1965 c 107 §7]

621.590 [Repealed by 1965 c 107 §7]

621.595 [Repealed by 1965 c 107 §7]

621.600 [Repealed by 1965 c 107 §7]

621.605 [Repealed by 1959 c 79 §1]

621.610 [Repealed by 1959 c 79 §1]

621.655 [Repealed by 1955 c.81 §1]

CONTAINERS

621.656 Definitions for ORS 621.656 to 621.666. As used in ORS 621.656 to 621.666:

(1) "Container" includes milk and cream cans, farm milk tanks, milk tank trucks, milk storage tanks, pasteurizing vats, cheese vats, butter churns, butter tubs, cheese hoops and any other receptacle designed for use or used as a container of fluid milk, milk or dairy products.

(2) "Dairy products" means dairy products as defined in ORS 621.152.

(3) "Fluid milk" means fluid milk as defined in ORS 621.055.

(4) "Milk" means milk as defined in ORS 621.152. [1955 c.714 §2]

621.660 [Repealed by 1955 c 81 §1]

621.661 Condemnation of unfit container and its contents. (1) The State Department of Agriculture shall condemn any container which it finds is unfit for use as such by reason of dirt, rust, open seams or any other condition which would or may contaminate fluid milk, milk or dairy products or otherwise render them unfit for human use or consumption. The department shall provide by appropriate rule for the method of plainly identifying condemned containers which shall include affixing a tag to, or marking on, the container a notice of the fact of condemnation and a brief statement of the reasons therefor.

(2) It shall be conclusively presumed that any fluid milk, milk or dairy product in a container which has been condemned by the department and which bears a condemnation tag or marking is unfit for human consumption. The department shall condemn such

fluid milk, milk or dairy product. The condemnation shall be carried out by thoroughly mixing with the contents of the container a harmless coloring matter prescribed by the department. The department may authorize licensed pasteurizer operators and graders to make the condemnation.

(3) If the container can be repaired, or the reason for the condemnation otherwise removed, the condemnation of the container may be lifted by the department. The department may authorize licensed pasteurizer operators and graders to lift the condemnation of a container when appropriate repairs have been made or the reason for the condemnation otherwise removed. [1955 c 714 §3, 1979 c 320 §18]

621.665 [Repealed by 1955 c.81 §1]

621.666 Prohibition against unauthorized removal of condemnation tag or marking or use of container or its contents. (1) No person except an authorized employe or agent of the State Department of Agriculture shall remove any condemnation tag or marking from a container.

(2) No person shall place any fluid milk, milk or dairy product in any container bearing a condemnation tag or marking.

(3) No person shall use the contents of any container which has been condemned in the manufacture, processing or bottling of any fluid milk, milk or dairy products. [1955 c.714 §4]

621.670 [Repealed by 1955 c.81 §1]

621.675 [Repealed by 1955 c 81 §1]

621.680 [Repealed by 1955 c.81 §1]

621.685 [Repealed by 1953 c 423 §2]

621.690 [Repealed by 1955 c.81 §1]

621.695 [Repealed by 1955 c.50 §1]

621.700 [Repealed by 1955 c.50 §1]

621.705 [Repealed by 1955 c 50 §1]

621.710 [Repealed by 1955 c 50 §1]

621.715 [Repealed by 1955 c 50 §1]

TESTING FOR MILK FAT CONTENT

621.720 Testing for milk fat content required. The State Department of Agriculture shall establish and maintain procedures, systems and plans to carry out and enforce the intent and purposes of ORS 621.720 to 621.754. The department shall make available to producers and other persons engaged in the milk industry, department laboratory facilities, equipment, materials and services to provide official testing, retesting or duplicate testing of milk for its milk fat content by means of the method known to the industry as the "Babcock Test" or any equally accurate and efficient test approved by the department. [1965 c 474 §2]

621.730 Department to provide testing; contracts of purchase not to be terminated; remedy; attorney fees. (1) Within the availability of funds to be collected under ORS 621.720 to 621.754, the department shall maintain laboratory facilities and purchase necessary equipment and materials to carry out ORS 621.720 to 621.754.

(2) Any producer or other person engaged in the milk industry is authorized to request the department to provide and furnish official testing, retesting or duplicate testing of milk.

(3) No milk handler, dealer, licensee or purchaser of milk shall terminate or threaten to terminate the purchase of milk from a producer, or take or threaten to take other retaliatory action against a producer or seller of milk, because such producer or seller has exercised rights and privileges as authorized in this section. In addition to any action the department is authorized to take against any person taking such retaliatory steps or procedures, the producer or seller of milk may also maintain an action for damages against the same person. The prevailing party in such action shall be entitled to reasonable attorney fees at trial and on appeal.

(4) The department shall establish reasonable fees for enforcing and carrying out ORS 621.720 to 621.754, in such amounts as are necessary to reimburse it for the furnishing of services and materials as required thereunder. [1965 c.474 §3, 1979 c 499 §24, 1981 c 897 §73]

621.740 Liability for payment of fees. (1) The producer or person requesting official testing and related testing services from the department, as authorized under ORS 621.720 to 621.754, is responsible for and shall pay the fees established thereunder to the department under the rules established by the department.

(2) If the producer or person requesting such services is selling milk to a first handler as defined and prescribed in ORS chapter 583, or to a licensee under ORS 621.151 to 621.291,

the department may forward an itemized statement for services rendered, to the person requesting the services and also to the first handler or licensee. The first handler or licensee shall pay the itemized amount to the department and shall deduct such amount from the producer or other person selling milk in the same manner and under the same procedures as set forth in ORS 583.046. Any first handler or licensee who refuses to withhold and pay the amount to the department, shall pay such amount to the department.

(3) Nothing in this section shall be construed as relieving the producer or person requesting the services from being primarily responsible for payment to the department. The department, notwithstanding this section, may take all actions necessary to collect the amount due against the producer or person requesting the services. [1965 c 474 §4]

621.750 Rules for testing. (1) In establishing and maintaining the procedures, systems or plans to carry out the official testing and related testing services to be furnished to all segments of the milk industry, after public hearing and under the provisions of ORS 183.310 to 183.550, the department shall promulgate rules relating thereto including but not limited to the following:

(a) Any producer may request the department to make an official milk fat content test of the milk he is selling to a dealer, milk handler or purchaser of milk. Official sample test periods used by the department shall correspond to the testing periods used by the handler, licensee or purchaser. At the time samples of the producer's milk for the testing period involved are taken by the licensed sampler for such dealer, handler or purchaser of milk under this chapter, each sample shall be split. One portion of the split sample shall be placed in a separate container furnished and approved by the department. The container shall be sealed as required by the department and signed or initialed by both the producer and the licensed sampler of the purchaser. The split sample shall be forwarded by the purchaser to the department at the producer's expense under rules prescribed relating thereto. The department shall combine the samples for the period involved and make the official test requested of the composite group of samples. The department shall forward a copy of the test to the producer and a copy shall be mailed to the dealer, handler or purchaser of milk as of the time and date prescribed by the department. If the test performed and carried out by the department varies by more than one-tenth of one percent from the test made by the dealer, handler or purchaser, such dealer, handler or purchaser within the time prescribed by the department shall adjust and make proper payments to the producer based upon the official tests made by the department.

(b) The department shall prescribe for similar official testing for milk fat to be made available to any other person subject to this chapter and ORS chapter 583, including the seller or purchaser of milk, as prescribed by the department.

(2) It is recognized that the provisions of this section are only guideposts and standards for department use. The department shall provide the materials and services necessary to give all segments of the milk industry the facilities and services necessary to carry out the intent and purpose of ORS 621.720 to 621.754, at a reasonable cost. [1965 c.474 §5]

621.754 ORS 621.720 to 621.754 supersede conflicting statutes. The provisions of ORS 621.720 to 621.754 are in addition to and not in lieu of the provisions of ORS chapter 583 and other provisions of this chapter. If the provisions of ORS 621.720 to 621.754 are in conflict, they supersede the provisions of ORS chapter 583 and other provisions of this chapter. [1965 c 474 §6]

621.755 [Repealed by 1953 c 686 §37]

621.760 [Repealed by 1953 c.686 §37]

621.765 [Repealed by 1953 c 686 §37]

621.770 [Repealed by 1953 c.686 §37]

621.775 [Repealed by 1953 c 686 §37]

621.785 [Repealed by 1953 c.686 §37]

621.790 [Repealed by 1953 c 686 §37]

PENALTIES

621.990 Penalties. (1) Violation of any provision of ORS 621.405, 621.440 or 621.445 is punishable, upon conviction, by a fine of not more than $1,000, or by imprisonment in the county jail for not more than one year, or both; but, upon a second conviction, violation of the provisions listed above in this subsection is punishable by a fine of not more than $1,000, or by imprisonment in the county jail for not more than one year, or both. Justice courts, district courts and municipal courts sitting as justice courts have concurrent juris-

diction with the circuit courts of all prosecutions arising under the provisions listed above in this subsection. The district attorney may institute prosecutions for violations of those provisions by information, or the prosecutions may be instituted by indictment or by complaint verified before any magistrate. In all prosecutions under those provisions, the fines collected shall be transmitted by the officer collecting them to the State Treasurer and the fines so remitted shall become a part of the General Fund of the state.

(2) Violation of any provision of ORS 621.055 to 621.120 or of any rule or regulation lawfully promulgated pursuant to those sections, is punishable, upon conviction, by a fine of not more than $100. Justice courts and district courts have concurrent jurisdiction with circuit courts of violations of ORS 621.055 to 621.120.

(3) Violation of ORS 621.124 (2) or failure to cause the retests required by ORS 621.124 (3) to be made is punishable, upon conviction, by a fine of not more than $100.

(4) Violation of any of the provisions of ORS 621.151 to 621.286 is a misdemeanor.

(5) Violation of any provision of ORS 621.305 to 621.369 or any rule or regulation lawfully promulgated thereunder is punishable, upon conviction, by a fine of not more than $500. Justice courts and district courts shall have concurrent jurisdiction with circuit courts, of all criminal actions instituted for such violations.

(6) Violation of ORS 621.410 is punishable, upon conviction, by a fine of not more than $100, or by imprisonment in the county jail for not more than 30 days, or both; and each subsequent violation of ORS 621.410 by a person having been previously convicted of a violation of that section is punishable, upon conviction, by a fine of not more than $500, or by imprisonment in the county jail for not more than six months, or both.

(7) Violation of any provision of ORS 621.416 to 621.429 is punishable, upon conviction, by a fine of not more than $1,000 and the cost.

(8) Violation of ORS 621.435 is punishable, upon conviction, by a fine of not more than $500, together with the necessary expenses and costs incurred in the prosecution of the case.

(9) Violation of ORS 621.666 is a misdemeanor.

(10) Violation of ORS 621.740 is punishable, upon conviction, by a fine of not more than $2,500, or by imprisonment in the county jail for not more than six months, or both.

(11) Violation of ORS 621.193 or 621.198 is a misdemeanor.

(12) Violation of ORS 621.418 (3) is a misdemeanor. [Amended by 1953 c 684 §12, subsection (4) enacted as 1953 c.686 §31; subsection (9) of 1963 Replacement Part enacted as 1955 c.714 §5; 1965 c.107 §4, subsection (10) enacted as 1965 c.474 §7, subsection (11) enacted as 1969 c 164 §6, subsection (12) enacted as 1969 c 149 §5]