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Chapter 616

1989 EDITION

General and Miscellaneous Provisions

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DEFINITION

616.005 Definition. As used in this chapter, ORS 632.275 to 632.290, 632.450 to 632.490 and 632.900 to 632.985, the term "department" means the State Department of Agriculture.

ADMINISTRATION AND ENFORCEMENT OF FOOD, DRINK AND SANITATION LAWS GENERALLY

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

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

(2) The sanitation of establishments where food or drink is consumed on the premises where sold, or to sanitary practices used in such establishments, shall be performed by the Health Division. [Amended by 1983 c 740 §230]

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

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

(2) In order that maximum protection to the public health may result from the activities of the Health Division and the department, the Health Division shall notify the Director of Agriculture in writing of any contemplated survey which affects or may affect agricultural products which are under the regulation of the department. The notice shall cover in detail the scope of the survey under consideration, and the reasons therefor. However, this section shall not be construed as prohibiting such division from taking immediate action in any case where such action seems necessary in the interests of public health. The written notice is not required in the case of a survey instituted on the request of the Director of Agriculture.

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

616.025 [Amended by 1953 c.686 §37; 1965 c.107 §1; 1973 c.174 §17; repealed by 1973 c 227 §26]

616.030 [Repealed by 1953 c.686 §37]

616.035 [Repealed by 1953 c.686 §37]

616.040 [Repealed by 1953 c.686 §37]

616.045 [Repealed by 1953 c 686 §37]

616.050 [Repealed by 1953 c.686 §37]

616.055 [Repealed by 1973 c.227 §26]

616.060 [Repealed by 1973 c.227 §26]

616.062 [Repealed by 1953 c.686 §37]

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

616.070 [Repealed by 1973 c.227 §26]

REGULATION OF SULFITE USE

616.073 Policy on sulfite use. (1) The Legislative Assembly finds that sulfites used as an additive in fresh foods and foods to be consumed without cooking may have already caused the death of one Oregonian and may pose a threat to the health of thousands of Oregonians.

(2) The Legislative Assembly further finds that the presence of sulfites in fresh foods and foods to be consumed without cooking is not readily detectable by consumers of the food.

(3) It is therefore the policy of the State of Oregon to protect its citizens from the adverse effects of sulfites by:

(a) Prohibiting the use of sulfites in fresh foods and foods to be consumed without cooking by any restaurant licensed under

ORS 624.010 to 624.120 and 624.310 to 624.440; and

(b) Encouraging the use of an alternative to sulfites in food processing. [1985 c.519 §1]

Note: 616.073 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 616 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

616.075 [Repealed by 1969 c.131 §5]

616.077 Health Division rules; exception. (1) The Health Division shall adopt any rules necessary to implement the policy established in ORS 616.073. In developing such rules, the Health Division shall consult with food service advisory committees appointed pursuant to ORS 624.550.

(2) Rules adopted by the Health Division under subsection (1) of this section to implement the policy of the State of Oregon to prohibit the use of sulfites in fresh foods and foods to be consumed without cooking shall not apply to a food processing establishment licensed under ORS 616.695 to 616.755. [1985 c.519 §§2, 3]

Note: See note under 616 073.

616.080 [Amended by 1953 c.686 §37; 1965 c 107 §2, 1973 c.174 §18, repealed by 1973 c.227 §26]

616.085 [Repealed by 1953 c 686 §37]

616.090 [Repealed by 1973 c 227 §26]

616.095 [Amended by 1953 c.66 §2; part renumbered 561.605 to 561 620; part renumbered as part of 561.625]

616.100 [Renumbered as part of 561 625]

616.110 [Renumbered 561 630]

616.115 [Repealed by 1973 c 227 §26]

616.120 [Repealed by 1973 c.227 §26]

SALE OF ADULTERATED, MISBRANDED OR IMITATION FOODS

616.205 Definitions for ORS 616.205 to 616.426. As used in ORS 616.205 to 616.426 and 616.900, unless the context clearly indicates a different meaning:

(1) "Advertisement" includes all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of the food.

(2)(a) "Color additive" means a material which:

(A) Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

(B) When added or applied to a food or to the human body or any part thereof, is capable, alone or through reaction with other substance, of imparting color thereto. However, "color additive" does not include any material which has been exempted under the federal Act.

(b) The term "color" includes black, white and intermediate grays.

(c) Nothing in paragraph (a) of this subsection applies to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

(3) "Consumer commodity" means any food as defined by ORS 616.205 to 616.215, 616.225 to 616.256, 616.286, 616.295, 616.310, 616.315, 616.325, 616.330, 616.341, 616.350 to 616.366, 616.790 and 616.992 or by the federal Act.

(4) "Contaminated with filth" means the condition of any food not securely protected from dust, dirt and, as far as may be necessary by all reasonable means, from all foreign or injurious substances.

(5) "Director" means the Director of Agriculture.

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

(7) "Food" means:

(a) Articles used for food or drink, including ice, for human consumption or food for dogs and cats;

(b) Chewing gum; and

(c) Articles used for components of any such article.

(8) "Food additive" means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food, and including any source of radiation intended for any such use, if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures or experience based on common use in food to be safe under the conditions of its intended use. "Food additive" does not include:

(a) A pesticide chemical in or on a raw agricultural commodity;

(b) A pesticide chemical to the extent that it is intended for use, or is used in the

production, storage or transportation of any raw agricultural commodity; or

(c) A color additive.

(9) "Food establishment" means:

(a) Any room, building, structure or place, used or intended for use, or operated for storing, preparing, compounding, manufacturing, processing, freezing, packaging, distributing, handling or displaying food.

(b) The ground upon which such place or business is operated or used and so much ground adjacent thereto as is also used in carrying on the business of the establishment. The department may prescribe such additional area or places which, although they may not be contiguous or adjacent to the above area or establishment, may be included therein.

(c) Vehicles, machinery, equipment, utensils, tools, fixtures, implements and all other articles or items, used in operating or carrying on the business of a food establishment.

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

(11) "Label" means a display of written, printed or graphic matter upon the immediate container of any article. A requirement made under authority of ORS 616.205 to 616.215, 616.225 to 616.256, 616.286, 616.295, 616.310, 616.315, 616.325, 616.330, 616.341, 616.350 to 616.366, 616.790 and 616.992 that any word, statement or other information appears on a label has not been obeyed unless such word, statement or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article or unless such word, statement or information is easily legible through the outside container or wrapper.

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

(13) "Package" means any container or wrapping in which any consumer commodity is inclosed for use in the delivery or display of that consumer commodity to retail purchasers, but does not include:

(a) Shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers or processors, or to wholesale or retail distributors thereof; or

(b) Shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity.

(14) "Pesticide chemical" means any substance which, alone, in chemical combination or in formulation with one or more other substances is a "pesticide" as defined in ORS 634.006.

(15) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown or examined under normal and customary conditions of display for retail sale.

(16) "Raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing. [Amended by 1961 c.637 §1; 1973 c 227 §1, 1983 c.160 §2, 1983 c.740 §231; 1987 c.158 §120a]

616.210 "Selling of food" construed. The provisions of ORS 616.205 to 616.295 regarding the selling of food include the manufacture, production, processing, packing, exposure, offer, possession and holding of any such article for sale; and the sale, dispensing and giving of any such article, and the supplying or applying of any such articles in the conduct of any food establishment. [Amended by 1973 c.227 §2]

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

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

(2) The adulteration or misbranding of any food.

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

(4) The distribution in commerce of a consumer commodity if such commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to ORS 616.205 to 616.215, 616.225 to 616.256, 616.286, 616.295, 616.310, 616.315, 616.325, 616.350, 616.341, 616.350 to 616.366, 616.790 and 616.992 and of rules promulgated pursuant thereto. However, this prohibition does not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons:

(a) Are engaged in the packaging or labeling of such commodities; or

(b) Prescribe or specify by any means the manner in which such commodities are packaged or labeled.

(5) The dissemination of any false advertisement.

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

or to permit access to or the copying of any record, as authorized.

(7) The giving of a guaranty or undertaking which is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person from whom the person received in good faith the food.

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

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

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

(11) The use by any person to the person's own advantage, or disclosure, other than to the director or the authorized representative of the director or to the courts when relevant in any judicial proceeding under ORS 616.205 to 616.426 and 616.900, of any information acquired under the authority of ORS 616.205 to 616.426 and 616.900 concerning any method or process which is a trade secret entitled to protection. [Amended by 1973 c 227 §3]

616.217 Restriction on labeling or selling food fish product as halibut. No person shall label or offer for sale any food fish product designated as halibut, with or without additional descriptive words, unless such food fish product is Hippoglossus hippoglossus or Hippoglossus stenolepsis. [1967 c.413 §2]

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

616.225 Disposal of adulterated, misbranded, unsound or perishable food or consumer commodity. (1) Whenever a duly authorized representative of the department finds, or has probable cause to believe, that any food or consumer commodity is adulterated, or so misbranded as to be dangerous or fraudulent, within the meaning of ORS 616.205 to 616.295, the representative shall affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being adulterated or misbranded and has been detained, embargoed or seized, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by an authorized representative of the department. No person shall remove or dispose of such detained, embargoed or seized article by sale or otherwise without permission of the department.

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

(3) The department shall carry out the provisions of this section as provided in ORS 561.605 to 561.630. [Amended by 1973 c 227 §4]

616.230 Regulations fixing definitions and standards; conformity to federal regulations. (1) The department, by rule, shall establish definitions and standards of identity, quality and fill of container for the State of Oregon. In carrying out the provisions of this subsection, the department shall take into consideration definitions and standards established in other states and definitions and standards established pursuant to the federal Act.

(2) Whenever in the judgment of the department such action will promote honesty and fair dealing in the interest of consumers, the department shall promulgate rules establishing definitions and standards of identity, quality and fill of container for foods for which no such definitions or standards have been established under the federal Act. In addition, the department may promulgate rules supplementing or amending any rule under the federal Act which sets definitions and standards of identity, quality and fill of container for foods.

(3) Temporary permits for interstate shipment of experimental packs of food varying from the requirements of definitions and standards of identity under the federal Act are effective in this state under the conditions stated in such permits. In addition, the

department may issue additional permits when such permits are determined by the department to be necessary to the completion or conclusiveness of an otherwise adequate investigation and when the interests of consumers are safeguarded. Such permits shall be subject to any terms and conditions the department may prescribe. [Amended by 1973 c.227 §5, 1975 c.304 §5]

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

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

(b) If it bears or contains any added poisonous or added deleterious substance, other than a pesticide chemical in or on a raw agricultural commodity and other than a food additive or color additive, which is unsafe within the meaning of ORS 616.245, or it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of ORS 616.341 or if it is, bears or contains any food additive which is declared unsafe by the department under ORS 616.350. However, when a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under ORS 616.341, and such raw agricultural commodity has been subjected to processing, such as canning, cooking, freezing, dehydrating or milling, the residue of such pesticide chemical remaining in or on such processed food, notwithstanding ORS 616.341 and this section are not unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food when ready-to-eat, is not greater than the tolerance prescribed for the raw agricultural commodity.

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

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

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

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

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

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

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

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

(3)(a) If it is confectionery and has partially or completely imbedded therein any nonnutritive object. This paragraph does not apply in the case of any nonnutritive object if, in the judgment of the department, such object is of some practical functional value to the confectionery product and would not render the product injurious or hazardous to health.

(b) If it bears or contains any alcohol except alcohol not in excess of one-half of one percent by weight used solely as a flavoring.

(c) If it bears or contains any nonnutritive substance. This paragraph does not apply to a nonnutritive substance which is in or on confectionery if, in the judgment of the department, its use is of some practical functional value in the manufacture, packaging or storing of such confectionery and if the use of such substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of any provision of ORS 616.205 to 616.215, 616.225 to 616.256, 616.286, 616.295, 616.310, 616.315, 616.325, 616.330, 616.341, 616.350 to 616.366, 616.790 and 616.992. The department, for the purpose of avoiding uncertainty in the application of this subsection, may promulgate rules allowing or prohibiting the use of particular nonnutritive objects or substances.

(d) If it bears or contains any color additive which is determined unsafe pursuant to ORS 616.350. [Amended by 1959 c 301 §1; 1961 c.637 §2, 1973 c.227 §6; 1983 c.304 §1]

616.240 [Repealed by 1965 c.501 §10]

616.245 Adding poisonous or deleterious substance. Any poisonous or deleterious substance, other than a pesticide, added to any food except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice,

shall be deemed to be unsafe for purposes of the application of ORS 616.235 (1)(b); but when such substance is so required or cannot be so avoided, the department shall promulgate rules limiting the quantity therein or thereon to such extent as the department finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of ORS 616.235 (1)(b). While such a rule is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of ORS 616.235 (1)(a). In determining the quantity of such added substance to be tolerated in or on different articles of food, the department shall take into account the extent to which the use of such substances is required or cannot be avoided in the production of each such article and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances. [Amended by 1973 c 227 §7]

616.250 When food deemed misbranded. A food shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular, or fails to conform to ORS 616.325.

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

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

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

(5) If in package form:

(a) Unless it bears a label containing:

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

(B) An accurate statement of the net quantity of the contents in terms of weight, measure, volume or numerical count. The statement shall be separately and accurately stated upon the principal display panel of the label.

(b) The same reasonable variations allowed in ORS chapter 618 shall be permitted.

(c) Exemptions as to small packages shall be established by rules promulgated by the department.

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

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

(8) If it purports to be or is represented as a food for which a standard of quality has been prescribed by rule as provided by ORS 616.230 and its quality falls below the standards such rule specifies, a statement that it falls below such standard.

(9) If it is a food for which a standard or standards of fill of container have been prescribed by rule as provided by ORS 616.230, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such rule specifies, a statement that it falls below such standard.

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

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

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

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

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

(12) If it bears or contains any artificial flavoring, artificial coloring or chemical preservative, unless it bears labeling stating that fact. To the extent that compliance with the requirements of this subsection is impracticable, exemptions shall be established by rule promulgated by the department. This

subsection and subsections (7) and (10) of this section with respect to artificial coloring do not prohibit the use of harmless coloring matter in butter, cheese or ice cream. The provisions of this subsection with respect to chemical preservatives do not apply to a pesticide chemical when used in or on a raw agricultural commodity which is the product of the soil.

(13) If it is a raw agricultural commodity which is the product of the soil, bearing or containing a pesticide chemical applied after harvest, unless the shipping container of such commodity bears labeling which declares the presence of such chemical in or on such commodity and the common or usual name and the function of such chemical. However, no such declaration is required while such commodity, having been removed from the shipping container, is being held or displayed for sale at retail out of such container in accordance with the custom of the trade.

(14) If following the labeled directions or instructions on the product in using it as a food ingredient will result in the final food being adulterated or misbranded.

(15) If it is a color additive, unless its packaging and labeling are in conformity with the packaging and labeling requirements applicable to such color additive prescribed under the provisions of the federal Act.

(16) If it has been salvaged, unless it bears labeling or notification stating that fact. For the purposes of this subsection, "salvaged" means the reconditioning, repacking, relabeling, cleaning or culling of foods that have been damaged or adulterated as a result of fire, storm, flood, water, smoke, chemicals, radiation or commercial transit accident.

(17) If it purports to be or is represented as a food that is organically grown or processed and it fails to comply with ORS 616.406 and 616.421.

(18) If it purports to be or is represented as a food that is transitional and it fails to comply with ORS 616.406 to 616.421. [Amended by 1953 c.267 §2, 1973 c.227 §8; 1973 c.563 §1; 1983 c.740 §232; 1989 c.1025 §9]

616.255 [Repealed by 1973 c.227 §9 (616.256 enacted in lieu of 616.255)]

616.256 Labeling exemption for foods to be repackaged. The department may by rule exempt from any of the labeling requirements of ORS 616.205 to 616.426 and 616.900, food which is, in accordance with the practice of the trade, to be processed, labeled or repacked in substantial quantities at establishments other than those where originally processed or packed. Such exemptions shall be conditioned upon the fact that such food is not adulterated or misbranded under the provisions of ORS 616.205 to 616.426 and 616.900, upon the removal from such processing, labeling or repacking establishment. [1973 c.227 §10 (enacted in lieu of 616.255)]

616.260 [Repealed by 1973 c.227 §26]

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

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

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

616.280 [Repealed by 1961 c.637 §17]

616.285 [Repealed by 1973 c.227 §11 (616.286 enacted in lieu of 616.285)]

616.286 Inspection and investigation powers of department. (1) For purposes of enforcement of ORS 616.205 to 616.426 and 616.900, the department or any of its authorized representatives are authorized upon presentation of appropriate credentials to the owner, operator or agent in charge:

(a) To enter at reasonable times any food establishment or warehouse in which food is

being held for introduction into commerce or vehicle being used to transport, hold or introduce such food in commerce.

(b) To inspect at reasonable times and within reasonable limits such food establishment, warehouse or vehicle and all pertinent equipment, finished and unfinished materials, containers and labeling therein, and to obtain samples necessary to the enforcement of ORS 616.205 to 616.426 and 616.900.

(c) To have access to and to copy all records of carriers in commerce showing the movement in commerce of any food or the holding thereof during or after such movement, and the quantity, shipper and consignee thereof. Evidence obtained under the authority of this paragraph shall not be used in a criminal prosecution of the person from whom obtained and carriers shall not be subject to other provisions of ORS 616.205 to 616.426 and 616.900 by reason of their receipt, carriage, holding or delivery of food in the usual course of business as carriers.

(2) Upon completion of any inspection of a food establishment, warehouse or vehicle, and prior to leaving the premises, the authorized representative of the department making the inspection shall furnish to the owner, operator or agent in charge a written report setting forth any conditions or practices observed by such representatives which in the judgment of the representative indicate that any food in such establishment, warehouse or vehicle:

(a) Consists in whole or in part of any filthy, putrid or decomposed substance; or

(b) Has been prepared, packed or held, in whole or in part, under insanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered injurious to health.

(3) If the authorized representative of the department making any inspection of a food establishment, warehouse or vehicle has obtained samples in the course of such inspection, upon completion of the inspection and prior to leaving the premises, the representative shall furnish to the owner, operator or agent in charge a receipt describing the samples obtained, and shall tender or offer payment therefor.

(4) If samples are obtained as provided in subsection (3) of this section, and analyses are made of such samples for the purpose of ascertaining whether such food consists in whole or in part of any filthy, putrid or decomposed substance or is otherwise unfit for food, a copy of the results of such analyses shall be furnished by the department to the owner, operator or agent in charge. [1973 c.227 §12 (enacted in lieu of 616.285)]

616.290 [Repealed by 1973 c.227 §26]

616.295 Reports and information issuable by department. (1) The department may cause to be published from time to time reports summarizing all judgments, decrees and court orders which have been rendered under ORS 616.205 to 616.295, 616.305 to 616.315, and 616.992, including the nature of the charge and the disposition thereof.

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

(3) Nothing in this section shall be construed to prohibit the department from collecting, reporting and illustrating the results of its investigations. [Amended by 1973 c.227 §13]

616.300 [Repealed by 1953 c.686 §37]

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

616.310 Notice or warning of minor violations. Nothing in ORS 616.205 to 616.295, 616.305 to 616.315 and 616.992 shall be construed as requiring the department to report for the institution of proceedings under those sections minor violations of those sections whenever the department believes that the public interest will be served adequately in the circumstances by a suitable written notice or warning. [Amended by 1973 c.227 §14]

616.315 Jurisdiction of courts. Justice courts and district courts have concurrent jurisdiction with the circuit courts for the enforcing of the provisions of ORS 616.205 to 616.295, 616.305 to 616.315 and 616.992. [Amended by 1973 c.227 §15]

616.320 Short title. ORS 616.205 to 616.426 and 616.900 may be cited as the Oregon Food Law.

616.325 Consumer commodity labeling requirements; restrictions on consumer commodity distribution; rulemaking; conformance to federal standards. (1) All labels of consumer commodities shall conform to such requirements for the declaration of net quantity of contents as the department by rule may prescribe. In carrying out the provisions of this subsection, the department shall consider the requirements and exemptions provided in the federal Fair Packaging and Labeling Act, 15 U.S.C. 1451, et seq., as amended, and the rules promulgated pursuant thereto.

(2) The label of any package of a consumer commodity which bears a representation as to the number of servings of such commodity contained in such package shall bear a statement of the net quantity, in terms of weight, measure or numerical count, of each such serving.

(3) No person shall distribute or cause to be distributed in commerce any packaged consumer commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by subsection (1) of this section, but nothing in this subsection prohibits supplemental statements, at other places on the package, describing in nondeceptive terms the net quantity of contents. Such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight, measure or count that tends to exaggerate the amount of the commodity contained in the package.

(4) Whenever the department determines that rules containing prohibitions or requirements other than those prescribed by subsection (1) of this section are necessary to prevent the deception of consumers or to facilitate value comparisons as to any consumer commodity, the department shall promulgate rules with respect to that commodity which:

(a) Establish and define standards for the characterization of the size of a package inclosing any consumer commodity, which may be used to supplement the label statement of net quantity of contents of packages containing such commodity. This paragraph shall not be construed as authorizing any limitation on the size, shape, weight, dimensions or number of packages which may be used to inclose any commodity;

(b) Regulate the placement upon any package containing any consumer commodity or upon any label affixed to such commodity, of any printed matter stating or representing by implication that such commodity is offered for retail sale at a price lower than the ordinary and customary retail sale or that a retail sale price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents;

(c) Require that the label on each package of a consumer commodity bear the common or usual name of such consumer commodity, if any, and in case such consumer commodity consists of two or more ingredients, the common or usual name of each such ingredient listed in order of decreasing predominance. However, nothing in this paragraph requires that any trade secret be divulged; or

(d) Prevent the nonfunctional slack-fill of packages containing consumer commodities.

(5) For the purposes of paragraph (d) of subsection (4) of this section, a package is nonfunctionally slack-filled if it is filled to substantially less than its capacity for reasons other than protection of the contents of such package or the requirements of machines used for inclosing the contents in such package. The department may adopt any rules promulgated by the Federal Government pursuant to the federal Fair Packaging and Labeling Act, 15 U.S.C. 1451, et seq. [1973 c.227 §24; 1975 c.304 §15]

616.330 Alcoholic beverage exemption. ORS 616.205 to 616.215, 616.225 to 616.256, 616.286, 616.295, 616.310, 616.315, 616.325, 616.341, 616.350 to 616.366, 616.790, 616.992, rules adopted by the Health Division under ORS 616.077 (1) and this section do not apply to alcoholic beverages. [1973 c.227 §25a; 1985 c.519 §4]

Note: 616.330 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 616 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

616.333 Diethylstilbestrol use in food; label. (1) A retail or wholesale food distributor shall place a warning label on food containing diethylstilbestrol.

(2) The label shall state: "WARNING: This product contains diethylstilbestrol (DES), a synthetic hormone. Studies associate consumption of DES with vaginal cancer and male genital abnormalities."

(3) As used in this section, "food" means fruits, vegetables, meats, poultry, eggs, dairy products and other natural and processed products offered for sale for human or animal consumption. [1979 c.268 §4]

PESTICIDE CHEMICALS AND FOOD ADDITIVES

616.335 Definition for ORS 616.335 to 616.385. As used in ORS 616.205 and 616.335 to 616.385, "experts qualified by scientific training and experience to evaluate the safety of food additives" or similar phrases mean individuals with sufficient training and experience in biology, medicine, pharmacology, physiology, toxicology, veterinary medicine or other appropriate sciences to recognize and properly evaluate the behavior and effects of chemical substances upon the body of humans or animals when such substances are taken into the body as food additives. [1961 c.637 §14]

616.340 [1961 c.637 §4; repealed by 1973 c.227 §16 (616.341 enacted in lieu of 616.340)]

616.341 Use of poisons, pesticides or food additives restricted. Any added poi-

sonous or deleterious substance, any food additive, any pesticide chemical in or on a raw agricultural commodity or any color additive, with respect to any particular use or intended use, shall be considered unsafe for the purpose of application of ORS 616.235 unless there is in effect a rule promulgated pursuant to ORS 616.366 limiting the quantity of such substance, and the use or intended use of such substance conforms to the terms prescribed by such rule. While such rule relating to such substance is in effect, a food shall not, by reason of bearing or containing such substance in accordance with the rule, be considered adulterated within the meaning of ORS 616.235. [1973 c 227 §17 (enacted in lieu of 616.340)]

616.345 Rules and regulations governing use of pesticide chemicals. (1) The department shall promulgate regulations establishing tolerances for pesticide chemicals or exempting them from the necessity of a tolerance as provided by ORS 616.341 with respect to the presence in or on raw agricultural commodities of poisonous or deleterious pesticide chemicals and of pesticide chemicals which are not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals, as safe for use, to the extent necessary to protect the public health. In promulgating such regulations, or regulations authorized by ORS 616.355, the department shall give appropriate consideration to but not be limited by:

(a) The necessity for the production of an adequate wholesome and economic food supply.

(b) The other ways in which the consumer may be affected by the same pesticide chemical or by other related substances that are poisonous or deleterious.

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

(d) The opinions of recognized experts and governmental agencies in the field of pesticide chemicals.

(2) The department shall promulgate regulations exempting any pesticide chemical from the necessity of a tolerance with respect to use in or on all raw agricultural commodities when such tolerance is not necessary to protect the public health.

(3) Any person who has registered, or who has submitted an application for the registration of, an economic poison or pesticide with the department as required by law, may file with the department a petition as authorized by ORS 183.310 to 183.550, proposing the promulgation of a regulation establishing a tolerance for a pesticide chemical which constitutes, or is an ingredient of such economic poison or pesticide, or exempting the pesticide chemical from the requirement of a tolerance. The petition shall contain data showing:

(a) The name, chemical identity, and composition of the pesticide chemical;

(b) The amount, frequency, and time of application of the pesticide chemical;

(c) Full reports of investigations made with respect to the safety of the pesticide chemical;

(d) The results of tests on the amount of residue remaining, including a description of the analytical method used;

(e) Practicable methods of removing residue which exceeds any proposed tolerance;

(f) Proposed tolerances for the pesticide chemical if tolerances are proposed; and

(g) Reasonable grounds in support of the petition. Samples of the pesticide chemical shall be furnished to the department upon request. [1961 c 637 §5; 1975 c.304 §16]

616.350 Control of food additives. The department, for the protection of the health and life of animals or the people of this state, may take measures to control, limit or prohibit the use or intended use, or the presence of food additives. It may promulgate rules relating thereto. Such rules may prescribe for any reason as set forth in this section, that any food additive is unsafe within the meaning of ORS 616.235 (1)(b). In promulgating rules under the provisions of this section the authority of the department includes:

(1) Providing for an exemption from the operation of ORS 616.335 to 616.385 of the use or intended use of a specific food additive.

(2) Prescribing, with respect to one or more proposed uses of the food additive involved, the conditions under which such additive may be safely used including but not limited to, specifications as to the particular food or classes of food in or in which such additive may be used, the maximum quantity which may be used or permitted to remain in or on such food, the manner in which such additive may be added to or used in or on such food, and any directions or other labeling or packaging requirements for such additive deemed necessary to assure the safety of such use.

(3) Establishing and prescribing tolerances, if appropriate, to assure that the proposed use of a food additive will be safe. The department shall not:

(a) Fix such tolerance limitation at a level higher than it finds to be reasonably required to accomplish the physical or other

technical effect for which such additive is intended.

(b) Establish a rule for such proposed use if it finds upon a fair evaluation of the data before it, that such data does not establish that such use would accomplish the intended physical or other technical effect.

(4) Prescribing for the exemption from the requirements of this section any food additive, and any food bearing or containing such additive, intended solely for investigational use by qualified experts when in the opinion of the department, such exemption is consistent with the public health. [1961 c 637 §8, 1973 c.227 §18]

616.355 Enforcement procedure for violation of ORS 616.341, 616.345 or 616.350. (1) Whenever the department determines under the provisions of ORS 616.341, 616.345 or 616.350 the fact that a product or food does or may seriously endanger or affect the health or life of animals or people, by reason of the addition to or the application of a pesticide chemical or other poisonous or dangerous chemical, substance or material in or on such product or food, the department is authorized and is directed to take or carry out any measure, action or procedure necessary for the protection of the health or life of animals or people.

(2) The order, rules promulgated thereunder or amendments thereto, may include:

(a) Seizing, embargoing and quarantining such product or food in accordance with the applicable provisions of ORS 561.605 to 561.630.

(b) Prohibiting temporarily or permanently the sale, offer for sale or the disposing of such product or food.

(c) Requiring reconditioning, processing or reprocessing, relabeling or other procedures as set out in ORS 561.605 to 561.625 before such product or food may be sold, offered for sale or disposed of for consumption by animals or people.

(d) Requiring such product or food to be destroyed without indemnity if it is verified it is unfit or unsafe for consumption by animals or people. [1961 c.637 §6; 1973 c.227 §19, 1975 c.304 §17]

616.360 Standards for rules. In the promulgation of rules under ORS 616.341, 616.345, 616.350, 616.366 and 616.380, the department shall give appropriate consideration to:

(1) Measures and procedures required to protect the health and life of animals and the people of this state.

(2) The laws of other states.

(3) The laws of the United States. The department's rules shall conform in so far as practicable with, but shall not be more restrictive than, the laws and rules of the Federal Food and Drug Administration.

(4) The opinions of recognized experts and governmental agencies in the field of food additives. [1961 c.637 §9; 1973 c.227 §20]

616.365 [1961 c.637 §10; repealed by 1973 c.227 §21 (616 366 enacted in lieu of 616.365)]

616.366 Rules for use of poisons, pesticides, food or color additives; matters to be considered. (1) The department, whenever public health or other considerations in this state so require, is authorized to adopt, amend or repeal rules whether or not in accordance with rules promulgated under the federal Act, prescribing therein tolerances for:

(a) Any added, poisonous or deleterious substances;

(b) Food additives;

(c) Pesticide chemicals in or on raw agricultural commodities; or

(d) Color additives.

(2) Such authority includes but is not limited to:

(a) Zero tolerances, and exemptions from tolerances in the case of pesticide chemicals in or on raw agricultural commodities;

(b) Prescribing the conditions under which a food additive or a color additive may be safely used; and

(c) Exemptions where such food additive or color additive is to be used solely for investigational or experimental purposes.

(3) Such rules may be promulgated upon the department's own motion or upon the petition of any interested party requesting that such rules be promulgated. It is incumbent upon a petitioner to establish by data submitted to the department that a necessity exists for such rule, and that its effect will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the department to determine whether such rule should be promulgated, the department may require additional data be submitted and failure to comply with the request shall be sufficient grounds to deny the request.

(4) In adopting, amending or repealing such rules the department shall consider, among other relevant factors, the following which the petitioner, if any, shall furnish:

(a) The name and all pertinent information concerning such substance, including where available, its chemical identity and composition;

(b) A statement of the conditions of the proposed use including directions, recommendations and suggestions;

(c) Specimens of proposed labeling;

(d) All relevant data bearing on the physical or other technical effect and the quantity required to produce such effect;

(e) The probable composition of any substance formed in or on a food resulting from the use of such substance;

(f) The probable consumption of such substance in the diet of humans and animals taking into account any chemically or pharmacologically related substance in such diet;

(g) The safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of such substances for the use or uses for which they are proposed to be used, are generally recognized as appropriate for the use of animal experimentation data;

(h) The availability of any needed practicable methods of analysis for determining the identity and quantity of such substance in or on an article, any substance formed in or on such article because of the use of such substance, and the pure substance and all intermediates and impurities; and

(i) Facts supporting a contention that the proposed use of such substance will be a useful one. [1973 c.227 §22 (enacted in lieu of 616.365)]

616.370 [1961 c.637 §11; repealed by 1973 c.227 §26]

616.375 [1961 c.637 §12; repealed by 1973 c.227 §26]

616.380 Enforcement procedure for control of food additives. Whenever the department determines the fact that a product or food containing a food additive is or may seriously endanger or affect the health or life of animals or people, it may seize, embargo and quarantine such product or food, or take other necessary procedures or action as authorized by ORS 616.355 for the regulation and control of pesticide chemicals or other poisonous or dangerous chemicals. [1961 c.637 §13]

616.385 Public hearing required for regulations. All regulations promulgated under ORS 616.335 to 616.385 shall only be promulgated after public hearing and shall be in accordance with the applicable provisions of ORS 183.310 to 183.550. [1961 c.637 §15]

616.405 [Renumbered 632.900]

ORGANIC FOOD REGULATION

Note: Section 10, chapter 1025, Oregon Laws 1989, provides:

Sec. 10. (1) The State Department of Agriculture shall develop guidelines for certification of organic food.

(2) In January 1991, the Director of Agriculture shall report to the Sixty-sixth Legislative Assembly recommendations regarding certification of organic food [1989 c.1025 §10]

616.406 Definitions for ORS 616.406 to 616.421. As used in ORS 616.250 and 616.406 to 616.421, unless the context requires otherwise:

(1) "Complying product" means a product which complies with subsection (5), (6), (7) or (9) of this section.

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

(3) "Facility" means the place where the growing, production or processing of a complying food occurs.

(4) "Materials and practices list" means a list of materials to be allowed in the production of organic products. All other materials and practices shall be prohibited.

(5) "Organic" or any derivative thereof, such as "certified organic" or "organically grown" means an agricultural method:

(a) Which utilizes in either the growing or processing of agricultural products only those materials and practices permitted by inclusion in the permitted practices and materials list pursuant to ORS 616.426;

(b) Which utilizes soils, or any other growing medium, or under greenhouse conditions where no prohibited fertilizers have been applied for a period of at least 24 months prior to harvest, except that prior to January 1, 1991, a 12-month period prior to harvest shall be in effect;

(c) Where no prohibited herbicides, insecticides, fungicides, rodenticides, growth regulators or other prohibited products have been used for a minimum of 36 months prior to harvest, except that prior to January 1, 1991, a 24-month waiting period shall be in effect; and

(d) Where a crop and field history record is on file at the production facility, detailing the following management practices:

(A) Fertilizers, insecticides, herbicides, fungicides and all other products used in the growing, handling, storage and transportation processes.

(B) Types of crops grown.

(C) Crop rotations, use of animal or green manures, introductions of microorganisms, and pest and weed control methods.

(D) All sources of water.

(E) Soil tests showing nutrient and organic matter content of soils.

(6) "Organically grown livestock, poultry or fish" means an animal raised under the following conditions:

(a) Management of such animals in inclosures or waters with feeds and pastures which are in accordance with subsection (5) of this section.

(b) No prohibited drugs or antibiotics are used for a slaughter animal for a minimum of 12 months prior to slaughter or for the life of the animal, whichever is shorter.

(c) No prohibited drugs or antibiotics are used in the growing process for a minimum of 12 months prior to or during milking or egg laying, if either animal product is to be processed or used as an organic product.

(d) No prohibited growth stimulants, hormones or insecticides are used.

(e) No antibiotics, hormones or any other prohibited materials are added to feeds.

(7) "Organically processed food" means food grown in accordance with subsection (5) or (6) of this section and which in its processing has not been treated with prohibited preservatives, colorings, flavorings or any other prohibited additives.

(8) "Processing" means the cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, retail or wholesale prepping, freezing or otherwise manufacturing of a food or food product; or changing the physical characteristics of a food; and the packaging, canning or otherwise inclosing of such food in a container. "Processing" does not include sorting or cleaning with water only.

(9) "Transitional" or "transitional to organic" means an agricultural product, other than an animal product, which has been grown in accordance with subsection (5) of this section, excepting that a 12-month period shall be used instead of a 24-month or 36-month waiting period. [1989 c 1025 §2]

616.410 [Renumbered 632.905]

616.411 Food labeling restriction; effect of federal restrictions. No processed or nonprocessed food product shall be labeled as "organic," "organically grown," "transitional" or "transitional to organic" which has any pesticide residue in excess of 10 percent of federal Environmental Protection Agency tolerance levels, or where there is zero tolerance, 10 percent of the federal Food and Drug Administration action level or the current limit of quantitation used by the State Department of Agriculture laboratory, whichever is higher. [1989 c 1025 §3]

616.415 [Renumbered 632 910]

616.416 Conformance with federal requirements; use of specific terms on label; pesticide restriction. All complying foods must be labeled in accordance with a federal Food and Drug Administration code of food requirements, Title 21, part 101. In addition to the labeling requirements set forth in ORS 616.250, any label, display placard or advertising of complying food must comply with the following:

(1) The applicable product name complies with the terms of subsection (2) or (9) of this section with or without additional descriptive terms. The only allowable marketing terms are "organic," "organically grown," "certified organic," "certified organically grown," "transitional" and "transitional to organic." No other terms shall mean or imply "organic" or the use of the organic farming method, as described in ORS 616.406 to 616.421.

(2) No processed or nonprocessed food product shall be labeled as "organic," "organically grown," "transitional" or "transitional to organic" which has any pesticide residue in excess of 10 percent of federal Environmental Protection Agency tolerance levels, or where there is zero tolerance, 10 percent of the federal Food and Drug Administration action level, or the current limit of quantitation used by the State Department of Agriculture laboratory, whichever is higher.

(3) The terms "organic" or "organically grown" may be used without restriction on the principal display panel of a processed food product where all ingredients are grown in accordance with ORS 616.406 to 616.421. The terms "organic when available," "ecologically grown," "biologically grown," "wild" or other such terms may not be used as a substitute for "organic" on a purportedly organic food product.

(4) The terms "transitional" or "transitional to organic" may be used without restriction on the principal display panel of a processed food product if that product is a single or multi-ingredient food where all ingredients have been grown using methods that reduce chemical residues, in accordance with ORS 616.406 to 616.421.

(5) "Organic" or "organically grown" may be used on the principal display panel of a multi-ingredient food where some approved ingredients are not organically grown if the terms "organic" or "organically grown" clearly modify the organic ingredient or ingredients and the organic ingredients are part of the statement of identity of the product.

(6) "Transitional" or "transitional to organic" may be used on the principal display panel of a multi-ingredient food where some approved ingredients are not grown in compliance if the terms "transitional" or "transitional to organic" clearly modify the ingredient or ingredients and the complying

ingredients are a part of the statement of identity of the product.

(7) Food products which contain "organic" and "nonorganic" or "transitional" or "nontransitional" ingredients must restrict the type size of these modifying words to no larger than three-fourths of the type size of the product identity.

(8) The terms "organically grown," "organic," "transitional" or "transitional to organic" may be used on a product when less than one percent by weight of the total product is minor ingredients or additives which:

(a) Are from the minor ingredients and additives list of the materials and practices list pursuant to ORS 616.426 or section 6, chapter 1025, Oregon Laws 1989;

(b) Cannot be organically grown or produced without chemical residues, such as agar and carrageenin from sea algae; or

(c) Are vital to the product formulation, the organic ingredient is unavailable and the components are on the approved list.

(9) Complying processed foods must list all ingredients on the label and clearly delineate which ingredients comply with ORS 616.406 to 616.421.

(10) Packaging materials and processes of complying processed food must be free of fungicides, preservatives, fumigants, irradiation and any other contaminants. Aluminum, tin and solder shall not be used as packaging unless those substances are between pH 6.7 and 7.3. [1989 c.1025 §4]

616.420 [Renumbered 632 915]

616.421 Growers to compile and maintain records; guarantees; samples for testing. (1) The grower shall retain records described in ORS 616.406 (5)(d) for at least five years and make them available for audit by the department. Proprietary information shall be protected from unauthorized release. Such records shall be maintained in accordance with ORS 192.501 relating to trade secrets.

(2) A grower of organically grown livestock, poultry or fish shall retain records of all management practices described in ORS 616.406 (6), inputs of feed, including sources, medicines and diseases for at least five years and shall make them available for audit by the department at the livestock owner's facility. Proprietary information shall be protected from unauthorized release. Such records are to be used and maintained in accordance with ORS 192.501 relating to trade secrets.

(3) Any person selling, offering to sell, labeling, processing or advertising a complying product shall have on file and maintain for a period of two years from the date such complying product was received, the name and address of the person from whom such complying product was obtained, and the date thereof.

(4) Transfer of invoices or bills of lading between handlers and sellers of a product shall guarantee that the handler or seller has not compromised the integrity of the product labeled as a complying product under ORS 616.406 to 616.421.

(5) Upon the inspection, investigation or request of the department, any person growing, handling or selling crops, livestock, poultry, eggs or fish as "organic" or "transitional" shall provide the department with a sample of such articles or substance used for the purpose of verifying compliance with ORS 616.406 to 616.421.

(6) The laboratory test or analysis procedures and methods used for verification purposes shall be those recognized and accepted by, or specified by, the department.

(7) To assist the department with its audit function, each person in this state growing organic or transitional food products for the purpose of selling or offering to sell the products as organic or transitional food products shall notify the department of the grower's name and address. [1989 c.1025 §5]

616.425 [Renumbered 632 920]

616.426 Rules establishing accepted materials and practices. (1) In accordance with applicable provisions of ORS 183.310 to 183.550, the director shall adopt rules establishing a materials and practices list for complying products. Such rules shall establish:

(a) Fertilizers, soil amendments and growth promoters permitted to be used for complying products.

(b) Insect, mite and nematode pest controls permitted to be used for complying products.

(c) Fungus and disease pest controls permitted to be used for complying products.

(d) Weed pest controls permitted to be used for complying products.

(e) Materials and practices permitted to be used in the production of transplants and nursery stock for complying products.

(f) Animal pest controls permitted to be used for complying products.

(g) Post-harvest materials permitted to be used for complying products.

(h) Supplements to regular feed permitted to be used for complying products.

(i) Animal health products and practices permitted to be used for complying products.

(j) Minor ingredients and additives permitted to be used for complying products.

(2) In adopting rules pursuant to subsection (1) of this section, the director shall take into consideration the practices and materials permitted under section 6, chapter 1025, Oregon Laws 1989. [1989 c.1025 §11]

Note: Sections 6 and 13, chapter 1025, Oregon Laws 1989, provide:

Sec. 6. (1) All materials used for a complying product shall not contain pesticide residues in excess of 10 percent of federal Environmental Protection Agency tolerance levels, or where there is zero tolerance, 10 percent of the Food and Drug Administration action level or the current limit of quantitation used by the State Department of Agriculture laboratory, whichever is higher. Only mined forms of minerals are acceptable

(2) No fertilizer, soil amendment or growth promoter shall be used for a complying product other than:

(a) Alfalfa meal;

(b) Animal manures;

(c) Biodynamic preparations;

(d) Blood meal;

(e) Bone meal,

(f) Boron products;

(g) Chelates, but only if the chelating agent is from a permitted source;

(h) Cocoa bean hulls;

(i) Composts, fertilizing materials consisting of decayed plant or animal matter;

(j) Cottonseed meal;

(k) Diatomaceous earth;

(L) Dolomite;

(m) Enzymes, but only if derived microbiologically from permitted materials and not fortified with prohibited plant nutrients;

(n) Epsom salts;

(o) Fish emulsions, but not if fortified with prohibited plant nutrients;

(p) Fish meal;

(q) Gibberelic acid, but only if made without prohibited substances;

(r) Grape and other pomaces;

(s) Ground oyster, clam, lobster and crab shells;

(t) Guano, from bat or bird;

(u) Gypsum;

(v) Gypsum by-product,

(w) Hoof and horn meal;

(x) Humates, but only if derived from leonhardite, lignite or coal;

(y) Humic acid derivatives;

(z) Kelp extracts;

(aa) Kelp meal;

(bb) Kieserite;

(cc) Limestone;

(dd) Microbial soil inoculants;

(ee) Micronutrient sprays, but only if in chelated form from permitted sources;

(ff) Mushroom compost,

(gg) Organic mulches;

(hh) Peat moss;

(ii) Perlite;

(jj) Phosphate rock;

(kk) Potassium sulfate, but only if extracted from langbenite;

(LL) Pumice;

(mm) Sodium molybdate;

(nn) Sodium nitrate;

(oo) Soybean meal;

(pp) Sugar beet lime, but only if not fortified with urea;

(qq) Sulfate of iron;

(rr) Sulfate of zinc;

(ss) Sulfur;

(tt) Sul Po Mag (also known as K Mag),

(uu) Unprocessed mined minerals;

(vv) Vermiculite;

(ww) Wood ashes; and

(xx) Worm castings.

(3) No pest control for insects, mites and nematodes shall be used for a complying product other than:

(a) Bacillum thuringensis (Dipel, BT), but not if in a liquid form containing xylene;

(b) Beneficial insects, insects that during some of their life cycles reduce the population of an agricultural pest;

(c) Diatomaceous earth;

(d) Dormant oils;

(e) Elemental sulfur;

(f) Fiber row covers;

(g) Garlic;

(h) Herbal preparations, but only if not extracted with prohibited solvents;

(i) Insect extracts;

(j) Lime sulfur, including calcium polysulphide;

(k) Pheromones;

(L) Pyrethrums, but only if from a botanical source,

(m) Quassias;

(n) Rotenone;

(o) Ryania;

(p) Ryania/pyrethrum/rotenone blended products, but only if from botanical sources;

(q) Sabadilla;

(r) Sodium fluoaluminate, but only the mined form of the material;

(s) Soaps;

(t) Trapping substances;

(u) Tree seal, but not if containing prohibited chemicals or fungicides; and

(v) Virus sprays.

(4) No pest control for fungus or disease shall be used for a complying product other than:

(a) Arsenic, but only when used in pressure-treated lumber;

(b) Bordeaux mixtures;

(c) Boric acid, but not for use on edible plant parts;

(d) Chlorine;

(e) Copper hydroxide;

(f) Copper sulfate;

(g) Dormant oils, but only on woody plants as a dormant spray;

(h) Elemental sulfur, but only for foliar use as a fungicide or fertilizer and only if it is from a mined source;

(i) Hydrated lime, but only foliar application as a fungicide;

(j) Lime sulfur, but only foliar application as a fungicide,

(k) Summer oils, but only for cautious application on woody plants, and if not used as an herbicide,

(L) Treated seeds, and

(m) Tree seals, but not if containing prohibited chemicals or fungicides.

(5) No pest control for weeds shall be used for a complying product other than

(a) Flaming,

(b) Mechanical and cultural controls;

(c) Grazing;

(d) Mulches of organic materials;

(e) Plastics for mulch, row covers and solarization, and

(f) Weeder geese.

(6) No prohibited materials or practices shall be used in the production of transplants and nursery stock for complying products, except:

(a) On strawberry and caneberry transplants, and potato eyes,

(b) For bareroot nursery stock for perennials,

(c) Products from perennial stock which has been treated with a prohibited material shall not be labeled as a complying product until at least 12 months after planting or propagation of the stock; and

(d) The use of prohibited fertilizers on all other transplants, until January 1, 1991.

(7) No pest control for animals shall be used for a complying product other than·

(a) Deer and rabbit repellents, such as blood meal, rotten eggs, hair or predator scents;

(b) Rodent traps, and

(c) Quintox.

(8) No post-harvest material shall be used for a complying product other than.

(a) Carbon dioxide gas,

(b) Fruit waxes, but only if not containing prohibited fungicides or other prohibited substances,

(c) Petroleum oil spray adjuvants,

(d) Sand,

(e) Sawdust, and

(f) Soap and plant oil spray adjuvants, but not those containing prohibited pesticides.

(9) No supplements to regular feed shall be used for a complying product other than.

(a) Bone meal;

(b) Brewer's yeast;

(c) Fish liver oil;

(d) Magnesium oxide;

(e) Manufactured or herbal forms of selenium products;

(f) Manufactured vitamin and mineral products;

(g) Marl;

(h) Molasses;

(i) Natural mineral salts; and

(j) Seaweed.

(10) No animal health products and practices shall be used for a complying product other than:

(a) Acupuncture;

(b) Botanical ectopesticides, such as rotenone and pyrethrum;

(c) Cleaning agents, but only potassium permanganate, lye, alkali carbonates and caustic potash;

(d) Colostrum for newborns,

(e) Diatomaceous earth;

(f) Disinfection of tools, equipment and housing areas with lime, biodegradable soaps, diluted chlorine, copper sulfate or iodine;

(g) Feeding of whole milk replacer or formulated milk replacer which is free of prohibited materials,

(h) Herbal insect repellents,

(i) Homeopathy,

(j) Isolation, culling and good nutrition;

(k) Lime sulfur;

(L) Pasture rotation;

(m) Prohibited medications for breeding and slaughter stock, but only for specific, individually diagnosed disease conditions, if not in violation of paragraph (b) of subsection (6) of section 2 of this 1989 Act [616 406];

(n) The following prohibited anthelmintics for breeding stock during the postweaning, prebreeding interval for problems proven by fecal sample.

(A) Benzimidazoles;

(B) Ivermectin;

(C) Levamisole,

(D) Piperazine; and

(E) Pyrantel pamoate,

(o) Purchasing day-old livestock and poultry;

(p) Vaccination of slaughter stock for endemic problems, as recommended by the Oregon State University Extension Service;

(q) Vaccination in breeding stock for endemic problems, as recommended by the Oregon State University Extension Service; and

(r) Vector and intermediate host control, but not with prohibited substances.

(11) For purposes of subsection (8) of section 4 of this 1989 Act [646 416], no minor ingredients or additives shall be used for complying processed products, except:

(a) Sea salt;

(b) Honey;

(c) Maple products;

(d) Fermentation organisms,

(e) Aluminum-free leavening;

(f) Herbs;

(g) Spices;

(h) Pectins;

(i) Gelatins;

(j) Magnesium chloride and calcium chloride;

(k) Vinegar; and

(L) Natural flavoring and coloring. [1989 c 1025 §6]

Sec. 13. Section 6 of this Act is repealed on the date that rules adopted pursuant to section 11 of this Act [616.426] take effect. [1989 c.1025 §13]

616.430 [Renumbered 632 925]

616.435 [Renumbered 632.930]

616.440 [Renumbered 632.935]

616.445 [Amended by 1973 c.587 §1, renumbered 632.940]

616.450 [Renumbered 632.955]

616.455 [Renumbered 632.960]

616.460 [Renumbered 632.965]

616.465 [Renumbered 632.970]

616.470 [Renumbered 632.975]

616.475 [Renumbered 632.980]

616.480 [Amended by 1955 c.363 §14; renumbered 632.985]

616.505 [Renumbered 632.450]

616.510 [Renumbered 632.455]

616.515 [Renumbered 632.460]

616.520 [Renumbered 632.465]

616.525 [Renumbered 632.470]

616.530 [Renumbered 632.475]

616.535 [Renumbered 632.480]

616.540 [Renumbered 632.485]

616.545 [Renumbered 632.490]

616.550 [Repealed by 1963 c.461 §34]

616.605 [Amended by 1965 c.13 §1, 1971 c.318 §1, renumbered 632.275]

616.610 [Renumbered 632.280]

616.615 [Renumbered 632.285]

616.620 [Renumbered 632.290]

616.625 [Repealed by 1965 c.107 §7]

616.630 [Repealed by 1965 c.107 §7]

616.635 [Repealed by 1965 c.107 §7]

616.640 [Repealed by 1965 c.107 §7]

SANITARY REGULATIONS FOR FOOD AND FOOD ESTABLISHMENTS

616.695 Definitions for ORS 616.695 to 616.755. As used in ORS 616.695 to 616.755, unless the context requires otherwise:

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

(2) "Food establishment" means:

(a) Any room, building, structure or place, used or intended for use, or operated for storing, preparing, compounding, manufacturing, processing, freezing, packaging, distributing, handling, salvaging or displaying food.

(b) The ground upon which such place or business is operated or used and so much ground adjacent thereto as is also used in carrying on the business of the establishment. The department may prescribe such additional area or places which, although they may not be contiguous or adjacent to the above area or establishment, may be included therein.

(c) Vehicles, machinery, equipment, utensils, tools, fixtures, implements, and all other articles or items, used in operating or carrying on the business of a food establishment.

(3) "Food" means any article used, or intended to be used, for food, ice, drink, confection or condiment, whether simple or compound, or any part or ingredient thereof or in the preparation thereof, and for human consumption.

(4) "Salvaging" means the business of reconditioning, repacking, relabeling, cleaning or culling of foods that have been damaged or adulterated as a result of fire, storm, flood, water, smoke, chemicals or commercial transit accident. [1965 c.501 §1, 1975 c.389 §1, 1983 c.160 §3]

616.700 Department to enforce sanitation requirements for food and food establishments. The department shall enforce the provisions of ORS 616.695 to 616.755 and adopt rules necessary therefor in accordance with the applicable provisions of ORS 183.310 to 183.550, to insure and verify that:

(1) Food establishments are constructed and maintained in a clean, healthful and sanitary condition. This shall include floors, walls, ceilings, doors, windows, lighting and ventilation, toilet and lavatory facilities, water supply, separation or partitioning of rooms, health and cleanliness of personnel, cleanliness and sanitation of surrounding premises, disposal of all waste and sewage material, insect and rodent control, construction and sanitation of equipment and utensils, and prohibition of pets therein. However, ORS 616.695 to 616.755 shall not be applied to prevent licensing and operation of a food establishment solely because such establishment is in an area which is part of and not separate from a domestic kitchen if the establishment is upon investigation by the department found to be constructed and maintained in a clean, healthful and sanitary condition.

(2) Food establishments maintain time and temperature controls, indicating and recording thermometers and indicating pressure gauges for pressure cookers and retorts, minimum temperature and time period standards for cooking foods, and other facilities necessary to carry out the intent and purpose of ORS 616.695 to 616.755.

(3) Food dispensed, transported, sold, held for sale, stored, salvaged or displayed, is not filthy, decomposed, putrid, unsafe, contaminated, deleterious to health, unfit, unwholesome, unclean, insanitary or diseased. [1965 c.501 §2, 1971 c.131 §1; 1975 c.389 §2; 1983 c.740 §233]

616.705 [Repealed by 1965 c.501 §10]

616.706 Issuance, suspension and revocation of licenses; status; posting; cancellation; fees; how determined. (1) Except as otherwise provided in ORS 616.695 to 616.755, no person shall operate a food establishment without first obtaining and thereafter maintaining a license therefor. Application for a license shall be made to the department on forms prescribed by the de-

partment. Each license shall expire on June 30 next following its date of issuance.

(2) The department may, subject to the applicable provisions of ORS 183.310 to 183.550, suspend, revoke or refuse to issue a license if the licensee has violated any of the provisions of ORS 616.695 to 616.755 or regulations prescribed thereunder.

(3) A license is personal to the applicant and may not be transferred. A new license is necessary if the business entity of the licensee is changed, or if the membership of a partnership is changed, irrespective of whether or not the business name is changed.

(4) The license shall cover all operations of the person licensed thereunder, under one entity or ownership. With prior approval of the department, the location of a licensed food establishment, or any part thereof, may be moved without the requirement of a new license if there is no change in the ownership or business entity.

(5) The license shall be posted in a conspicuous place in the main office of the food establishment. Duplicate copies of the license shall be conspicuously posted in branch offices, warehouses and other places owned or operated by the licensee at locations other than the main office. A license is automatically canceled if the food establishment ceases or discontinues operations or business.

(6) The license fees shall be established by the department in accordance with ORS 183.310 to 183.550, and shall not be less than $25 nor more than $250 for each establishment. The license fees may be established at a specified amount for a retail food store, food warehouse, food processing establishment, or other food establishment, or may be established on the basis of the annual gross dollar volume of sales or services of each establishment in each of these four categories of food establishments. The license fees may be different for each category. In establishing the basis and amounts for the license fees the department shall consider, among other things, the number of establishments in each of the four categories of food establishments, the various annual gross dollar volumes of business of the establishments, the differences in activities carried on at the establishments, and the costs of administration and enforcement of this chapter. [1965 c.501 §3, 1975 c.389 §3; 1979 c.183 §2; 1982 s s.1 c.4 §4]

616.710 [Repealed by 1965 c 501 §10]

616.711 Where licenses not required; when ORS 616.695 to 616.755 not applicable. (1) No license or duplicate of a license, as prescribed in ORS 616.706, is necessary for food establishments where the principal activity is the receiving, storage, sorting, cleaning and packing of fresh fruits and vegetables.

(2) All provisions of ORS 616.695 to 616.755 other than licensing apply to food establishments set forth in subsection (1) of this section.

(3) The provisions of ORS 616.695 to 616.755 do not apply to:

(a) Restaurants, bed and breakfast facilities, commissaries, vending machines and mobile food and beverage units licensed under ORS 624.010 to 624.120, 624.310 to 624.440 or those which are exempted under ORS 624.330.

(b) Food service facilities not preparing food for distribution to the public or to institutional facilities licensed and regulated by the Health Division.

(c) Shellfish operations licensed under ORS chapter 622.

(d) A person processing, manufacturing or packaging food for family use or consumption.

(e) Commercial transit salvage operations not involving sale of food to the general public. [1965 c 501 §4; 1973 c.423 §1, 1975 c.389 §4; 1982 s s 1 c 4 §5, 1983 c 160 §4, 1987 c.226 §9]

616.715 [Repealed by 1965 c 501 §10]

616.716 When inspection required; ORS 616.695 to 616.755 in addition to other laws. (1) Except as provided in subsection (2) of this section, the department may inspect the applicant's food establishment and shall not issue a license until or unless such establishment is in compliance with the provisions of ORS 616.695 to 616.755 and regulations promulgated thereunder.

(2) All food establishments in operation on January 1, 1966, who have prior thereto filed an application and paid the license fee, shall be issued licenses without the necessity of prior department inspection required under subsection (1) of this section. Except as otherwise provided by law, such food establishments shall thereafter be in compliance with the provisions of ORS 616.695 to 616.755. Food establishments in operation on January 1, 1966, whose application and fee were not received by the department until on or after such date, and all new food establishments thereafter, shall be subject to the provisions of subsection (1) of this section.

(3) The provisions of ORS 616.695 to 616.755 are in addition to and not in lieu of all other laws relating to food and to food establishments. [1965 c.501 §5; 1975 c.389 §5]

616.720 [Repealed by 1965 c.501 §10]

616.721 Exemptions from ORS 616.695 to 616.755. (1) Except as provided in sub-

section (5) of this section, the provisions of ORS 616.695 to 616.755 do not apply to a food establishment that is subject to and is being inspected by a federal agency.

(2) To be exempt from the provisions of ORS 616.695 to 616.755 as set forth in subsection (1) of this section, a person shall file an application for such exemption on forms prescribed by the department.

(3) An applicant for renewal of a license, or any person operating under an exemption approved by the department, shall file an application for exemption with the department prior to December 15 of each year, covering the subsequent year of operation.

(4) An applicant to operate a new food establishment shall file an application and receive approval thereof, if any, prior to starting such business.

(5) Unless exempt from licensing as provided in ORS 616.711, food establishments exempt from certain provisions of ORS 616.695 to 616.755 as authorized in this section, shall be subject to the provisions of ORS 616.706 and shall be required to obtain and maintain licenses thereunder. [1965 c.501 §6; 1975 c.389 §6]

616.725 [Repealed by 1965 c.501 §10]

616.726 City regulation of food and food establishments authorized; department to examine city regulation for adequacy. (1) The provisions of ORS 616.695 to 616.755 do not prohibit any city from enacting and enforcing any ordinance establishing a system, program, inspection services and licensing thereunder, within the corporate limits or boundaries thereof, which carries out the purposes and intent of ORS 616.695 to 616.755, if the same is at least equal to the provisions of ORS 616.695 to 616.755 and regulations promulgated thereunder. A copy of each such ordinance, including any amendment thereof, shall be forwarded by the city to the department.

(2) Not less than once each two years the department shall investigate the ordinance and determine if it meets the requirements and standards of subsection (1) of this section and if such system, program and inspections thereunder are being properly carried out and enforced. If the department finds such program, system and inspections do not meet these requirements and standards, it shall give written notice of such finding to the chief administrative officer of the city.

(3) If the department thereafter finds, not less than 30 days after the date of giving notice, that such system, program and inspections continue to fail to be enforced properly or are not carrying out the intent and purposes of ORS 616.695 to 616.755, the department shall make a finding to that effect and thereupon the provisions of ORS 616.695 to 616.755 shall become applicable to all persons and food establishments within the corporate limits of such city. [1965 c.501 §7; 1975 c.389 §7]

616.730 [Repealed by 1965 c.501 §10]

616.731 Deposit and use of fees and money. The department shall deposit all fees paid to it under this chapter in the Department of Agriculture Service Fund. Such fees are continuously appropriated to the department for the purpose of administering and enforcing the provisions of this chapter. [1965 c.501 §8; 1975 c.389 §8, 1979 c.499 §20]

616.735 When insanitary conditions exist. A food establishment shall be considered unclean, unhealthful and insanitary if:

(1) Food in the food establishments is not protected from adulteration as defined in ORS 616.235, as required by the department;

(2) The refuse, dirt and waste products, subject to decomposition or fermentation incident to the operation of the food establishment are not removed as required by the department;

(3) All trunks, trays, boxes, baskets, buckets, or other receptacles, chutes, platforms, racks, troughs, shelves and all knives, saws, cleavers and other utensils and machinery used in operation of the food establishment are not thoroughly cleaned as required by the department;

(4) Proper toilet and lavatory facilities are not provided for employees, or not maintained and kept in a clean and sanitary condition; or

(5) The clothing and persons of operatives, employees, clerks or other persons therein employed are unclean. [Amended by 1975 c.389 §9]

616.740 Condemnation where insanitary conditions exist. (1) Whenever the department determines that any floor, sidewall, ceiling, locker, closet, furniture, receptacle, implements or machinery of any food establishment is kept in an unclean, unhealthful or insanitary condition, the department shall:

(a) Notify the owner or person in charge of such food establishment that such food establishment shall not be used for such purposes until it is put in a sanitary condition by making the changes ordered by the department in the notice; and

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

(2) The notice shall not be removed from any such food establishment until the same

has been put in a sanitary condition. A continued use of such food establishment without making the changes ordered, or unauthorized removal of the notice is a violation of this section. [Amended by 1975 c.389 §10]

616.745 Handling of food by diseased persons prohibited. (1) The Health Division may, by rule, define certain communicable diseases which may be spread to the public through the handling of food in food establishments.

(2) No owner or employer shall require, permit or suffer any person to work, nor shall any person work, in a food establishment who is affected with a disease described in subsection (1) of this section. [Amended by 1973 c 829 §55; 1975 c.389 §11]

616.750 Procedure where food handler suspected of disease. If the department for reasonable cause believes that any person working in any food establishment is affected with any infectious or contagious disease, the department may require the person to be examined by a competent physician and that the physician furnish the department with a certificate stating whether upon examination the physician has found the person to be affected with any infectious or contagious disease. If within five days after so required the person has not furnished the department with such a certificate by a competent physician, the person is guilty of a violation of ORS 616.745 and the department may apply to the circuit court to enjoin the person from continuing to work in the food establishment until the certificate is furnished. The circuit court hereby is authorized to issue the injunction. [Amended by 1975 c.389 §12]

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

616.760 [Repealed by 1965 c 501 §10]

616.765 [Repealed by 1965 c.501 §10]

616.770 [Repealed by 1965 c 501 §10]

STANDARDS OF QUALITY AND IDENTITY FOR FLOUR PRODUCTS

616.775 Definitions for ORS 616.775 to 616.790. As used in ORS 616.775 to 616.790 unless the context requires otherwise:

(1) "Bread," "rolls" and "buns" have the same meaning as they have in ORS 625.212.

(2) "Flour," "white flour," "wheat flour," "plain flour," "bromated flour," "self-rising flour," "self-rising white flour," "self-rising wheat flour," "phosphated flour," "phosphated white flour" and "phosphated wheat flour" have the same meaning as they have in the definitions and standards promulgated by the State Department of Agriculture pursuant to ORS 616.780 and 625.160.

(3) "Macaroni products," "vegetable macaroni products," "macaroni products made with nonfat milk," "noodle products" and "vegetable noodle products" have the same meaning as they have in the definitions and standards promulgated by the State Department of Agriculture pursuant to ORS 616.780.

(4) "Enriched" as applied to any of the flours, macaroni products and noodle products defined in subsections (2) and (3) of this section means the addition of the vitamins, minerals and other nutrients necessary to make that food conform to the definition and standards for enriched flour, enriched macaroni products and enriched noodle products promulgated by the State Department of Agriculture pursuant to ORS 616.780 and 625.160. [1971 c.176 §5; 1975 c 265 §3]

616.780 Standards of quality or identity for flours, macaroni and noodle products. The State Department of Agriculture shall adopt and promulgate standards of identity or standards of quality for flours, macaroni products and noodle products pursuant to the provisions of ORS 616.230 for those flours, macaroni products and noodle products for which definitions and standards have been promulgated by authority of the United States. The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated by authority of the United States and shall not be inconsistent with definitions and standards promulgated by such authority. The department shall periodically amend its definitions and standards so as to keep in harmony as far as practicable with the definitions and standards promulgated by authority of the United States. The other applicable provisions of ORS 616.205 to 616.426 and 616.900 shall apply to such flours, macaroni products and noodle products and to any standards of identity or quality promulgated hereunder. [1971 c 176 §4]

616.785 Sale of unenriched flours, macaroni or noodle products prohibited; certain products exempted. (1) It shall be unlawful for any person to manufacture, mix, compound, sell or offer for sale for human consumption any of the flours, macaroni products or noodle products specified in ORS 616.775 (2) and (3) unless they are enriched.

(2) Subsection (1) of this section shall not apply to flours sold to distributors, commercial bakers, or other processors if such flours will be:

(a) Resold to a distributor, commercial baker or other processor;

(b) Used in the manufacture, mixing or compounding of:

(A) Enriched flour, enriched macaroni products or enriched noodle products; or

(B) Enriched breads, enriched rolls or enriched buns as defined by ORS 625.212 (3); or

(c) Used in the manufacture of a nonbakery product such as specified in ORS 625.010 (2). [1971 c.176 §6]

616.790 Enforcement of ORS 616.775 to 616.790 by department; inspection; sampling; failure to permit inspection. (1) The State Department of Agriculture shall enforce ORS 616.775 to 616.790 and 616.992 and shall have, in connection therewith, all the powers conferred and imposed on it by law and any other powers necessary or proper to enable it to enforce these sections.

(2) For the purpose of ORS 616.775 to 616.790 and 616.992 the State Department of Agriculture, or such officers or employees of the department as are designated, is authorized:

(a) To take food samples for analysis;

(b) To conduct examinations and investigations;

(c) To enter at reasonable times any factory, mill, bakery, warehouse, shop or establishment where any flour, bread, rolls, buns, macaroni products or noodle products specified in ORS 616.780 are manufactured, processed, packed, sold or held, or any vehicle being used for the transportation thereof; and

(d) To inspect any such place or vehicle and any flours, breads, rolls, buns, macaroni products or noodle products specified in ORS 616.780, and all pertinent equipment, materials, containers and labeling.

(e) To make reasonable rules and regulations to carry out ORS 616.775 to 616.790, 616.992, 625.160, 625.212 and 625.215, subject to the applicable provisions of ORS 183.310 to 183.550. Such rules and regulations shall be published as provided by ORS 561.190.

(3) Refusal to furnish authorized officers and employees of the State Department of Agriculture, upon demand either personal or in writing, with a sufficient sample for analysis of any food product specified in subsection (2) of this section after tender of the market price therefor is prima facie evidence that such food is not enriched as required. [1971 c.176 §7; 1973 c.227 §25; 1975 c.265 §4]

OPEN DATE LABELING

616.800 Short title. ORS 616.800 to 616.835 and 616.994 may be cited as the Open Date Labeling Law. [1973 c.173 §2]

616.805 Definitions for ORS 616.800 to 616.835 and 616.994. As used in ORS 616.800 to 616.835 and 616.994, unless the context requires otherwise:

(1) "Food" means any substance used or intended to be used for human consumption as food, drink or condiment.

(2) "Open date" means a date clearly visible to retail consumers showing the pull date, packing date or other date described in ORS 616.835 (2).

(3) "Packing date" means the date specifying the time a perishable food was packaged in its final form for sale to the consumer.

(4) "Perishable food" means any food that may spoil or otherwise become unfit for human consumption because of its nature, type or physical condition. "Perishable food" includes, but is not limited to, fresh or processed meats, poultry, seafood, dairy products, bakery products, eggs in the shell, and foods that have been packaged or refrigerated. ORS 616.800 to 616.835 and 616.994 shall not apply to fresh fruits or vegetables or to foods that have been canned or frozen.

(5) "Pull date" means, whichever is earlier, the date specifying the time:

(a) The perishable food manufacturer, processor or packager recommends that a perishable food should be removed from retail sale, allowing the consumer time for normal home consumption or use under proper care and storage conditions; or

(b) A perishable food should no longer be offered for sale or sold as fresh. A perishable food shall be considered fresh only so long as significant changes in appearance, taste, odor, nutritional value, or other indicia of quality or fitness for human consumption have not taken place or are not likely to have taken place under generally accepted food handling practices for that particular food. [1973 c.173 §3]

616.810 Exemption for alcoholic beverages. ORS 616.800 to 616.835 and 616.994 do not apply to alcoholic beverages. [1973 c.173 §9]

616.815 Open date labeling required for packaged perishable food sold at retail. No person shall sell or offer for sale at retail any packaged perishable food unless the package bears a clearly marked, printed or stamped label showing the open date for the

perishable food in the package. Such label shall be so designed and placed as to be clearly visible to the consumer. [1973 c.173 §4]

616.820 Label required to be affixed to package not later than time of delivery to retail seller. (1) The perishable food manufacturer, processor or packager shall affix, print or stamp the label required by ORS 616.815 to the perishable food retail package and to all closed shipping cartons, containers or wrappers of such perishable food packages not later than the time of delivery of the perishable food packages to the retail seller.

(2) No perishable food manufacturer, processor or packager shall fail to comply with subsection (1) of this section. [1973 c.173 §5]

616.825 Sale of perishable food after expiration of pull date prohibited; exceptions; time for removal of packages with expired pull dates. (1) No person shall sell or offer for sale at retail any packaged perishable food after the expiration of the open pull date appearing on the label of the package or container unless:

(a) The package has been separated from packages of perishable food with open pull dates that have not expired;

(b) Each such package or group of packages is clearly identified in retail display as having an expired open pull date; and

(c) The food is fit for human consumption according to applicable state and federal law.

(2) Notwithstanding the provisions of this section, a vendor shall be allowed the first eight business hours after the expiration of the open pull date within which to remove all packages with an expired pull date. [1973 c.173 §6]

616.830 Altering labels or using nonconforming labels prohibited. No person shall:

(1) Alter, deface or remove the open date from any perishable food retail or shipping package carton, container or wrapper.

(2) Label any perishable food retail or shipping package carton, container or wrapper in a manner that does not conform to the rules promulgated pursuant to ORS 616.835. [1973 c.173 §7]

616.835 Rulemaking authority. In accordance with any applicable provision of ORS 183.310 to 183.550, the department, in consultation with the industries affected, shall promulgate rules to carry out ORS 616.800 to 616.835 and 616.994. Such rules shall include, but are not limited to:

(1) Establishing which particular foods are subject to ORS 616.800 to 616.835 and 616.994.

(2) Establishing which one or more of the following types of open date is to be used for particular groups or classes of perishable foods:

(a) The packing date.

(b) The pull date.

(c) The date on which fowl, including chickens, fryers, turkeys, ducks, geese and other domesticated birds, are killed or slaughtered to be processed into perishable food.

(3) Specifying the size, content and form of the labeling information required by ORS 616.800 to 616.835 and 616.994.

(4) Exempting from the operation of ORS 616.800 to 616.835 and 616.994 those perishable foods for which open date labeling would be:

(a) Impractical or not meaningful because of the size of the package or the nature of the perishable food;

(b) Possibly unconstitutional as interference with the free movement of goods in interstate commerce. [1973 c.173 §8]

UNIT PRICING

616.850 Definitions for ORS 616.850 to 616.890. As used in ORS 616.850 to 616.890, unless the context requires otherwise:

(1) "Consumer commodity" means any of the following items:

(a) Food, including all material, solid, liquid or mixed, whether simple or compound, used or intended for consumption by human beings or domestic animals normally kept as household pets, and all substances or ingredients to be added thereto for any purposes;

(b) Paper products, including napkins, towels, facial tissues, toilet tissues, disposable plates and cups;

(c) Wrapping products, including those made of paper, plastic and aluminum; and

(d) Soaps, detergents, cleaning aids, deodorizing aids, waxes and wax removers, disinfectants, polishes and polish removers, bleaches, scouring pads and all other laundry and household cleaning products.

(2) "Grocery store or food market" means any retail establishment or department thereof:

(a) That sells consumer commodities, the gross annual receipts from the sale of which is $1.5 million or more; and

(b) That is part of a chain system or contracts with a supplier or cooperative which utilizes common purchasing, warehousing or distribution facilities and the chain, cooperative or supplier has computer

hardware for inventory control, ordering or pricing labels.

(3) "Package" means any container or wrapping in which any consumer commodity is inclosed for use in the delivery or display of that consumer commodity to retail purchasers.

(4) "Unit retail price" means the retail price of the contents of a package of any consumer commodity, expressed in terms of the retail price of such contents per single whole unit of weight, volume, measure or count, computed to the nearest 10th of a cent when less than $1 and to the nearest cent when $1 or more. [1977 c.181 §3; 1979 c 827 §1]

616.855 Items exempt from unit pricing requirements. ORS 616.850 to 616.890 do not apply to:

(1) Fresh fruits and vegetables.

(2) Products sold in quantities of one avoirdupois ounce, or 28.35 grams or one fluid ounce, or less.

(3) Packaged consumer commodities that may be lawfully sold only upon the written or oral direction of a licensed practitioner. As used in this subsection, "practitioner" has the meaning for the term provided in ORS 689.005.

(4) Alcoholic beverages that are subject to the Federal Alcohol Administration Act.

(5) Tobacco, cosmetics and personal care products, hardware and household equipment.

(6) Products sold in one size limit only, or in such manner that the department determines that no comparison is meaningful.

(7) Consumer commodities sold for immediate consumption on the premises.

(8) Patent or proprietary medicines.

(9) Products sold through coin-operated vending machines or products sold by manual distribution from mobile catering units to individual consumers. [1977 c.181 §4; 1979 c.777 §57; 1979 c.785 §6; 1979 c.827 §4]

616.860 Unit pricing of packaged consumer commodities required; explanation to consumers. (1) Except as provided in ORS 616.855 and 616.865, no person shall sell or offer for retail sale at a grocery store or food market any packaged consumer commodity unless there is clearly displayed upon the commodity package or at a place in reasonable proximity to where the commodity is offered for sale a statement of the unit retail price of the commodity pursuant to ORS 616.870 and the total retail price of the commodity.

(2) If the tag, stamp, sign or label used to display the unit retail price is not affixed directly to the consumer commodity, the tag, stamp, sign or label shall also contain the brand name and the quantity or size of the product by weight, measure or count.

(3) Whenever the department adopts administrative rules under ORS 616.875 wherein formats and methods to explain unit pricing are prescribed, such explanations of the use of unit pricing shall be provided and displayed by each grocery store. [1977 c.181 §5; 1979 c.827 §2]

616.865 Temporary sale items exempt. When a packaged consumer commodity is sold or offered for sale at retail at a price lower than the price at which the commodity is regularly sold or offered for sale, the retail seller is exempt from the requirements of ORS 616.860 (1) as to such commodities unless the lower price is to be in effect for more than 30 consecutive business days. [1977 c 181 §6]

616.870 Prescribed pricing by units of measurement. Retail sellers of packaged consumer commodities shall express unit retail price statements in terms of the price per single whole unit of weight, volume, measure or count as prescribed by administrative rules adopted by the department under ORS 616.875 for particular consumer commodities or groups for consumer commodities. [1977 c.181 §7, 1979 c 827 §3]

616.875 Rules; retail establishments presumed subject to unit pricing until exempted by department. (1) In accordance with any applicable provision of ORS 183.310 to 183.550, the department may promulgate rules for the administration and enforcement of the provisions of ORS 616.850 to 616.890.

(2) A retail establishment or department thereof shall be considered to have gross annual receipts from the sale of consumer commodities of $1.5 million or more as described in ORS 616.850 (2), unless the establishment demonstrates to the department that it does not. The determination of the director shall be deemed a final order not in a contested case for purposes of judicial review under ORS 183.310 to 183.550. [1977 c.181 §8]

616.880 Written warning notice for minor violation. Nothing in ORS 616.850 to 616.890 shall be construed as requiring the department to cite incidental or minor violations of ORS 616.860 to 616.870 whenever the department believes that the public interest will be served adequately in the circumstances by issuance of an alleged written warning notice. Each such notice issued shall include the name and address of the grocery store or food market, the date of the notice issuance, a description of the alleged violation and a statement of the penalties for a continued course of violation. [1977 c.181 §9]

616.885 Civil penalty; judicial review. (1) Any person who pursues a continued course of violation of ORS 616.860 to 616.870 shall forfeit and pay to the General Fund of the State Treasury, a civil penalty, in an amount determined by the Director of Agriculture, of not more than $250 for each offense. The issuance of orders assessing civil penalties pursuant to ORS 616.850 to 616.890, the conduct of hearings and the judicial review thereof shall be as provided in ORS 183.310 to 183.550.

(2) Such civil penalty may be recovered in an action brought thereon in the name of the State of Oregon in any court of appropriate jurisdiction.

(3) In any court action with respect to a civil penalty, the court may review the penalty as to both liability and reasonableness of amount. [1977 c 181 §10]

616.890 Short title. ORS 616.850 to 616.890 may be cited as the Unit Pricing Law. [1977 c 181 §2]

PENALTIES

616.900 Civil penalty for organic food law violations. (1) In addition to any other liability or penalty provided by law, the Director of Agriculture may impose a civil penalty on a person for any violation of any provision of ORS 616.411 to 616.421.

(2) Any civil penalty imposed under subsection (1) of this section shall become due and payable when the person incurring the penalty receives a notice in writing from the director. The notice shall be sent by registered or certified mail and shall include:

(a) A reference to the particular sections of the statute, rule, standard or order involved;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed; and

(d) A statement of the right of the person to request a hearing.

(3) The person to whom the notice is addressed shall have 10 days from the date of mailing of the notice in which to make written application for a hearing before the director.

(4) All hearings shall be conducted pursuant to the applicable provisions of ORS 183.310 to 183.550.

(5) After public hearing, the director by rule shall adopt a schedule establishing the civil penalty that may be imposed under subsection (1) of this section. However, the civil penalty may not exceed $15,000 for each violation.

(6) A civil penalty imposed under subsection (1) of this section may be remitted or reduced upon such terms and conditions as the director considers proper and consistent with the public health and safety.

(7) In imposing a penalty pursuant to the schedule adopted pursuant to subsection (5) of this section, the director shall consider the following factors:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(b) Any prior violations of statutes, rules or orders pertaining to organic food.

(c) The immediacy and extent to which the violation threatens the public health or safety.

(d) The impact on the consumers and handlers of the product.

(8) If the person notified fails to request a hearing within the time specified in subsection (3) of this section, or if after a hearing the person is found to be in violation of a rule, an order may be entered by the director imposing a civil penalty.

(9) If the order is not appealed, the amount of the penalty is payable within 10 days after the order is entered. If the order is appealed and is sustained, the amount of the penalty is payable within 10 days after the court decision. The order, if not appealed or if sustained on appeal, shall constitute a judgment and may be filed with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record. The penalty provided in the order so recorded becomes a lien upon the title to any interest in real property in the county owned by the person against whom the order is entered. Execution may be issued upon the order in the same manner as execution upon judgment of a court of record.

(10) Judicial review of civil penalties imposed under subsection (1) of this section shall be as provided under ORS 183.480, except that the court may, in its discretion, reduce the amount of the penalty.

(11) All penalties recovered under subsection (1) of this section shall be deposited in the General Fund. [1989 c.1025 §8]

616.990 [Subsection (2) of 1959 Replacement Part renumbered as part of 561 990, subsection (3) enacted as 1961 c 637 §16; 1965 c 107 §3, subsection (10) enacted as 1971 c 176 §9, repealed by 1973 c 227 §26]

616.992 General criminal penalty. The first violation of any provisions of this chapter, ORS 632.275 to 632.290, 632.450 to 632.490 and 632.900 to 632.985 or of any rule

promulgated pursuant thereto is a Class B misdemeanor, and a Class A misdemeanor for a second or subsequent offense. [1973 c 227 §28]

616.994 Criminal penalty for open date labeling law violations. Violation of any provision of ORS 616.800 to 616.835 or of any rule promulgated pursuant thereto is a Class B misdemeanor. [1973 c.173 §10]

CHAPTER 617

[Reserved for expansion]