

Gustavo J. Cruz, Jr.
Chair

Marcelino Alvarez
Commissioner

Felisa Hagins
Commissioner

Michi Slick
Commissioner

**Serena Stoudamire
Wesley**
Commissioner

Keith Wilson
Mayor

Shea Flaherty Betin
Interim Executive
Director

This document represents the official meeting record of the May 14, 2025, Prosper Portland Board of Commissioners (Board) meeting held in person and via Zoom. The full video recording of this meeting can be found at:

<https://www.youtube.com/live/IWn3Fzbz6JA?si=z4DXhZn-GO9nVUFf>

1. Call to Order and Roll Call

Chair Gustavo Cruz called the Board meeting to order at approximately 3:01 p.m. Pam Feigenbutz, Board recording secretary, called the roll:

| | |
|---------------------------------------|------------------|
| Chair Gustavo Cruz | PRESENT |
| Commissioner Marcelino Alvarez | PRESENT |
| Commissioner Felisa Hagins | PRESENT via ZOOM |
| Commissioner Michi Slick | PRESENT |
| Commissioner Serena Stoudamire Wesley | PRESENT via ZOOM |

Chair Cruz read the following statement: “As required by State law, Prosper Portland has provided an opportunity for the public to access and attend this meeting in person; there is also a YouTube live stream video of the meeting, and the public has had the opportunity to arrange in advance to provide virtual testimony. At this time, the public may provide written testimony to the Commission by emailing ProsperCommissioners@ProsperPortland.us.”

2. Commissioner Reports

Commissioner Alvarez

- Nothing to report

Commissioner Slick

- Nothing to report

Commissioner Hagins

- Nothing to report

Commissioner Stoudamire Wesley

- Nothing to report

Chair Cruz

- Nothing to report

3. Interim Executive Director Report, Chabre Vickers for Shea Flaherty Betin

- Joined Office of Government Relations staff for the Portland Metro Chamber’s annual Washington D.C. fly-in
- Thursday, May 8, staff from Prosper Portland attended the annual Oregon Association of Minority Entrepreneurs lunch event
- Wednesday, May 7, Prosper Portland’s Lisa Abuaf spoke at Portland State University’s grand opening of the new Science and Education Center Building
- Noted that the application process for three Tax Increment Finance district Community Leadership Committees in East Portland is now open
- Invited folks to meet Prosper Portland’s Office of Small Business team at a series of weekly launch events as we celebrate Small Business Month
- Acknowledged and thanked the entire Prosper Portland team for their work in preparing the Fiscal Year 2025-26 Proposed Budget

4. Meeting Minutes

Chair Cruz called for a motion to approve the April 9, 2025, Board meeting minutes. Commissioner Slick moved, and Commissioner Stoudamire Wesley seconded the motion.

AYES: Alvarez, Cruz, Hagins, Slick, Stoudamire Wesley
NAYS: None

5. Public Comment for Items Not on Agenda

Veronica Porras requested grants be modified to support micro factory producers. (See Attachment 1.)

CONSENT AGENDA

6. Action Item: Resolution 7604 - Action Item: Approving a Modification to the Proposed Terms of a Commercial Property Loan Program Loan and a Small Business Loan Program Loan to Creativehomies HQ, LLC. and Creative Homies, LLC to Finance Construction and Working Capital Needs of a Project at 433 NW 4th Avenue

Chair Cruz called for a motion to approve Resolutions No. 7604, Commissioner Alvarez moved, and Commissioner Stoudamire Wesley seconded the motion.

AYES: Alvarez, Cruz, Hagins, Slick, Stoudamire Wesley
NAYS: None

REGULAR AGENDA

7. Action Item: Resolution 7605 - Adopting Budget Amendment No. 4 for the Fiscal Year Beginning July 1, 2024, and Ending June 30, 2025; and Making Appropriations

Prosper Portland staff presenting this item:

Courtney Cohn, Interim Principal Budget Analyst

With this action, the Board amended the current fiscal year (FY) 2024-25 budget as follows:

1. Adjusted funding from City Council's Spring Technical Adjustment Ordinance (TAO) to decrease funding for City of Portland (City) Recreational Cannabis Tax (RCT) in order to balance to the revised forecast;
2. Updated revenues including loan repayments and property related income based on current forecasts;
3. Trued up actual tax increment finance (TIF) debt proceeds;
4. Carried forward economic development, infrastructure and property redevelopment budgets that are projected to spend out in future years;
5. Increased housing budget in Interstate Corridor and North Macadam TIF districts based on the Portland Housing Bureau year-end projections; and
6. Increased transfers, moving program income into the Strategic Investment Fund (SIF) and additional interest earnings out of SIF to support a shift in funding administrative expenditures.

Ms. Cohn reviewed the budget monitoring process, changes in resources, expenditures and other requirements.

Chair Cruz called for a motion to approve Resolutions No. 7605, Commissioner Hagins moved, and Commissioner Slick seconded the motion.

AYES: Alvarez, Cruz, Hagins, Slick, Stoudamire Wesley
NAYS: None

8. Information Item: Update on City of Portland Housing Production Strategy

Invited Guests presenting this item:

Tom Armstrong, Supervising Planner, Bureau of Planning & Sustainability
Patricia Diefenderfer, Chief Planner, Bureau of Planning & Sustainability
Josh Roper, Policy & Planning Director, Portland Housing Bureau

The City of Portland Bureau of Planning & Sustainability (BPS) and Portland Housing Bureau (PHB) staff provided an update on the 2024 Housing Production Strategy (HPS). Statewide Planning Goal 10 requires the City of Portland (the City) to inventory buildable lands and ensure there is enough zoned land to accommodate their housing needs over the next 20 years and requires the City to update its Housing Needs Analysis every six years. In addition to supporting housing production, the Housing Needs Analysis and HPS highlights community priorities and helps craft stabilization strategies to keep vulnerable communities in their homes.

BPS and PHB staff provided a broad overview of the HPS and offered the opportunity for questions and discussion with the Board.

Commissioner Hagins inquired about the gap per income level and point of contact to navigate all the way through the permit system.

Mr. Armstrong noted the gap information is in the housing needs analysis and requires a deep study. Mr. Armstrong noted he would be back to Commissioner Hagins regarding a point of contact.

Commissioner Slick requested to know who oversees all the housing development in Portland and knits everything together.

Commissioner Slick and Hagins both emphasized the need for one individual to knit these groups together.

Ms. Diefenderfer stated they will take this request to Deputy City Administrator Donnie Oliveira for a cross-bureau coordinator.

At approximately 4:26, Chair Cruz adjourned the Prosper Portland Board meeting and convened the Executive Session.

The Executive Session is held to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed” per Oregon Revised Statutes 192.660(2)(h) and “to conduct deliberations with persons designated by the governing body to negotiate real property transactions” per ORS 192.660(2)(e)

Commissioner Alvarez departed and continued participating via Zoom.

Commissioner Hagins departed the meeting at 4:51.

9. Adjourn There being no further business, Chair Cruz adjourned the Board meeting at approximately 5:00 p.m.

Approved by the Prosper Portland Commission on June 18, 2025



Pam Feigenbutz, Recording Secretary

From: [VERONICA PORRAS](#)
To: [Prosper-SM Commissioners](#)
Subject: May 14th Public Comment for Items not on Agenda - Board of Commissioners meeting
Date: Friday, May 9, 2025 9:31:56 AM
Attachments: [Outlook-horizontal.png](#)
[Outlook-wk33ikhn.png](#)
[Bureau of Development Services - Permit Records - Sketch Layout.PDF](#)
[11 NE MLK.pdf](#)
[OAR 603 DIV 25 Food Establishments.pdf](#)

You don't often get email from veronica@incownito.com. [Learn why this is important](#)

Hello,

My name is Veronica Porras Owner of Incownito. I would like to submit my public testimony for items not on the agenda for the May 14th Board of Commissioners meeting.

My Testimony is the following:

Greetings Board of Commissioners. My name is Veronica Porras and I am the Owner of Incownito. My public testimony is about developing support and building infrastructure for micro factory dairy producers.

We make a 1-2-1 low sugar replacement of regular ice cream using rare sugars Allulose, Tagatose, Heavy Cream, Whole Milk and other natural flavorings. We are a small batch wholesale ice cream start-up where our business plan is to be a micro factory local distributor of wholesale ice cream for the Portland Metro Geographic area. We had the opportunity to sample our ice cream at My People's Market April 22nd where Prosper Portland Business Liaisons Jon Bebe and Yvonne Smoker got to sample our ice cream along with Governor Tina Kotek. All were impressed with the flavor and texture and could not tell that it was low sugar and tasted like regular ice cream. The challenges we face to get our product to market is that the infrastructure to build a micro factory is nonexistent. The grants that Prosper Portland offers tend to center on retail fronts and The TIF districts tend to support retail fronts. There is not a category for micro factory for dairy producers who don't want to be a scoop shop. Furthermore, due to the regulation of ice cream production, you can't use a shared kitchen with other non-dairy food items. There is no shared kitchen available for just dairy producers in Portland. When reviewing the grants that Prosper Portland offers, The PIP grant is the closest that would match to our needs, however, renovations for a micro factory are higher than the 50/50 match. My ask is that Prosper Portland structure their TIF districts and grants that micro factory dairy producers be added to the type of businesses a TIF district would support. I'm meeting with a contractor Monday to get a quote for the 11 NE MLK Blvd (which is in a TIF district) for cost renovations for a micro factory. Attached is a rough sketch of what it may look like and the OAR for Food

Establishments that we need to follow to be a micro factory ice cream manufacturer. If Oregon can have micro-breweries for beer, we can have the same for ice cream. Thank you for your consideration and the opportunity to be heard.

**Regards,
Veronica Porras**

**Veronica Porras
Founder
Incownito - Lose The Sugar Keep The Cow
503-486-0223 cell - Please NOTE new Phone Number
1717 SW Park Ave
Apt 1208
PORTLAND, OR 97201
<https://www.incownito.com>**



FOR LEASE

THE FAIR-HAIRED DUMBBELL

11 NE MARTIN LUTHER KING JR. BLVD.
PORTLAND, OR 97214

+/-1,524 RSF

HIGH-VISIBILITY RETAIL SPACE

+/-775 RSF

MICRO RESTAURANT SPACE

PLEASE CALL FOR RATES

DANA SOLOF, MBA
dana@ecacre.com

503.205.0610



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ETHOS COMMERCIAL ADVISORS LLC | 1111 NE FLANDERS ST, SUITE 201 | PORTLAND, OR 97232

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The Fair-Haired Dumbbell offers efficient and attractive modern creative office space in a highly-recognizable, newly constructed building. Three to four sides of exposure in each suite provide light and views. Sky bridges connect floors and add outdoor space.

LOCATION

The Burnside Bridgehead boasts some of the most innovative companies and cutting-edge office space in Portland. The Fair-Haired Dumbbell has it all including numerous nearby food, drink, and entertainment options, multiple modes of public transportation, free-way access, nearby parking, downtown proximity, and an ultra-collaborative environment.

HIGHLIGHTS

- 2nd generation retail space
- Neighborhood parking available
- Public transit accessible – 4 bus lines and the street car
- Secure bicycle parking and tenant shower facilities
- Shared outdoor spaces
- ADA restroom
- Full HVAC

2nd Generation / Restaurant / Retail Space

Neighborhood Parking Available

Shared Outdoor Spaces

Join Crema and Interior Alchemy



Walk Score
81



Transit Score
86



Bike Score
98



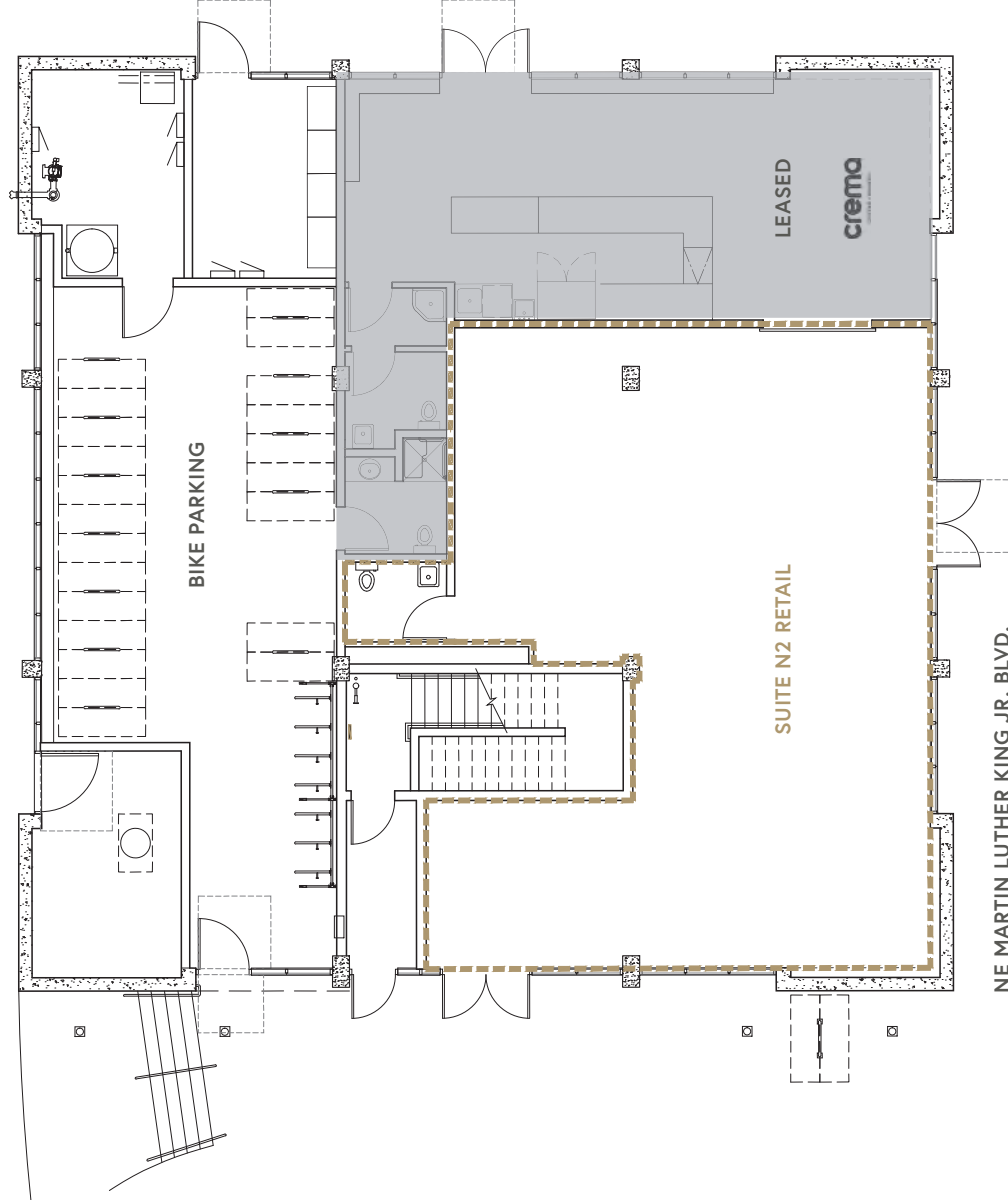
SUITE 1S MICRO RESTAURANT +/-775 RSF

- Fully functional micro-restaurant or commissary kitchen
- Type 1 hood, grease interceptor
- Small seating area or additional prep space
- ADA restroom
- Kitchen equipment list available upon request



SUITE N2 RETAIL +/-1,524 RSF

- Turn-key 2nd-gen retail space
- Large windows with highly visible frontage
- Within 1-mile radius: 92k daytime workers and 27k population
- +/-20k cars / day on NE MLK Jr. Blvd and NE Burnside Street



THIS DRAWING IS NOT TO SCALE AND IS FOR ILLUSTRATIVE PURPOSES ONLY.





27,501

Population



\$80,110

Average Household Income



92,487

Daytime Employment



20,832 ADT

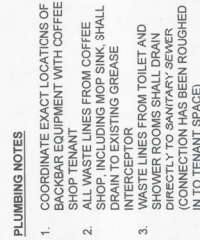
Traffic Counts



These Plans and Specifications
Shall be kept on the Work
Under Construction

BES Pollution Prevention:
BES Fats Oils Grease (FOG) Rules require grease interceptors in all food service establishments. Per rule requirements, grease interceptors must be maintained in an efficient operating condition that ensures periodic removal of FOG from all FOG traps for more information.

BES Pollution Prevention:
Reviewed for Compliance with BES
Fats/Oils Grease (FOG) Rule Requirements
By: H. Clark Date: 1/29/18



Plumbing Permit Required
City of Portland
Bureau of Development Services

THE FAIR-HAired DUMBELL
TENANT IMPROVEMENT
11 NE MLK BLVD., PORTLAND OR 97232
NORTH BUILDING - GROUND FLOOR
WHL
GRU
LL
DEVELOPMENT CO

PLUMBING + HVAC PLAN

SHEET

A-6

SCALE: 1/8" = 1'-0"

0' 2' 4' 8'

N

Department of

Agriculture

Chapter 603

Division 25 FOOD ESTABLISHMENT STANDARDS AND STANDARDS FOR RETAIL FOOD SERVICE ACTIVITIES

603-025-0010 **Definitions**

In addition to the definitions set forth in ORS Chapter 616, the following shall apply:

(1) "Bulk Food" means unpackaged or unwrapped, processed or unprocessed food in aggregate containers from which quantities desired by the consumer are withdrawn, but does not include fresh fruits, fresh vegetables, nuts in the shell, salad bar ingredients or potentially hazardous foods.

(2) "Corrosion-Resistant Materials" means those materials that maintain acceptable sanitary surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of usage.

(3) "Display Area" means a location, including physical facilities and equipment, where bulk food is offered for customer self-service.

(4) "Distressed Merchandise" means any food which has had the label lost or destroyed, or which has been subjected to possible damage due to accident, fire, flood, adverse weather, or to any other similar cause, and which may have been thereby rendered unsafe or unsuitable for human or animal consumption or use.

(5) "Easily Cleanable" means readily accessible and of such material, fabrication and finish that residues may be effectively removed by normal cleaning methods.

(6) "Employee" means any person working in a food establishment.

(7) "Equipment" means all display cases, storage cases, tables, counters, shelving, refrigerators, sinks, food processing preparation and packaging equipment, and any other items used in the operation of a food establishment.

(8) "Farm mix-type facility" means an establishment that is a farm and that engages in both activities that are exempt from registration under section 415 of the Federal Food, Drug, and Cosmetic Act and activities that require the establishment to be registered.

(9) "Food Source" means food shall be in a sound condition and safe for human consumption and shall be produced in compliance with applicable laws relating to food safety.

(10) "Food-Contact Surfaces" means those surfaces of equipment and utensils with which food normally comes into contact, and those surfaces from which food may drain, drip, or splash back onto surfaces normally in contact with food.

(11) "Food Processing" means the cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, freezing or otherwise manufacturing a food or changing the physical characteristics of a food, and the packaging, canning or otherwise enclosing of such food in a container, but does not mean the sorting, cleaning or water-rinsing of a food.

(12) "Food Retailing" or "Operating a Retail Food Store" means the preparing, packaging, storing, handling or displaying of food for sale at retail to the consumer or user, and may include produce trimming, processed meat slicing, cheese slicing, preparing gutted and filleted fish, and providing retail customer services to change the form of food such as juice squeezing or peanut grinding (if more than one of these customer services is made available, the

activities shall then be considered food processing rather than food retailing).

(13) "Food Service Establishment" means any place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided, whether consumption is on or off the premises and whether or not there is a charge for the food, and includes a delicatessen that offer prepared foods in individual service portions, but does not include a private home where food is prepared or served for individual family consumption, a retail food store, a food vending machine location or a supply vehicle.

(14) "Food Storage Warehouse" means any building or place where food is stored as a commercial venture or business, or stored in connection with or as a part of a commercial venture or business, but does not include a home, restaurant, rooming house, hotel or similar place where food is stored to be used or consumed by the owner or served to employees, customers, or guests, nor an establishment licensed by the department under other laws.

(15) "Hazardous Substance" means a substance or mixture of substances which is toxic, corrosive, an irritant, flammable, which generates pressure through heat, decomposition or other means, which has been designated by the U.S. Food and Drug Administration as a strong sensitizer or a radioactive material, or which may cause substantial personal injury or substantial illness during or as a proximate result of any reasonable foreseeable handling or use, including reasonably foreseeable ingestion by children.

(16) "Hermetically Sealed Container" means a container which is designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its contents after processing.

(17) "Kitchenware" means all multi-use utensils other than tableware.

(18) "Non-Salvageable Merchandise" means distressed merchandise which cannot be safely or practically reconditioned.

(19) "Operator" means any person having the direct and primary responsibility for the construction, maintenance and operation of a food establishment.

(20) "Packaged" means bottled, canned, cartoned, bagged or completely wrapped.

(21) "Physical Facilities" means the structure and interior surfaces of a food establishment including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.

(22) "Plant" means the building or buildings or parts thereof, used for or in connection with the manufacturing, packaging, storing, labeling or holding of food for humans, dogs or cats.

(23) "Potentially Hazardous Food" means any food that consists whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms, but does not include food which has a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.

(24) "Product Module" means a food-contact container (multi-use or single-service) designed for customer self-service of bulk food by either direct or indirect means.

(25) "Reconditioning" means any appropriate process or procedure by which distressed merchandise can be brought into compliance with all federal or state requirements so as to make it suitable for consumption or for use as human or animal feed.

(26) "Retail Fruit and Vegetable Stand" means any place where fresh fruits or vegetables are offered for sale at retail to the user or consumer.

(27) "Safe Materials" means articles manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food, if they are food additives or color additives (as defined in

Section 201(s) or (t) of the Federal Food, Drug, and Cosmetic Act), are used in conformity with the federal regulations adopted under Section 409 or 706 of the Federal Food, Drug, and Cosmetic Act, and if they are not food additives or color additives, are used in conformity with other applicable regulations of the U.S. Food and Drug Administration.

(28) "Safe Temperatures" as applied to potentially hazardous food, means air temperatures of 41°F or below and 130°F or above.

(29) "Salvage Dealer" or "Salvage Distributor" means any person who is engaged in selling or distributing salvaged merchandise.

(30) "Salvage Processing Facility" means an establishment engaged in the business of reconditioning distressed merchandise.

(31) "Salvage Processor" means any person who operates a salvage processing facility.

(32) "Salvaged Merchandise" means reconditioned distressed merchandise, and "salvageable merchandise" means distressed merchandise capable of being reconditioned.

(33) "Sanitize" or "Sanitization" means effective bactericidal treatment of physically clean surfaces of equipment and utensils by a process which has been approved by the department as being effective in reducing microorganisms, including pathogens, to a safe level.

(34) "Sealed" means free of cracks or other openings that permit the entry or passage of moisture.

(35) "Servicing Area" means a designated location equipped for cleaning, sanitizing, drying, refilling product modules, or preparing bulk food.

(36) "Single-Service Articles" means items used by the retailer or consumer such as cups, containers, lids, packaging materials, bags and similar articles, intended for contact with food and designed for one-time use, but does not include single use articles, such as No. 10 cans, aluminum pie pans, bread wrappers and similar articles, into which food has been packaged by the manufacturer.

(37) "Supplier" means any person who transfers distressed merchandise to a salvage processor.

(38) "Tableware" means multi-use eating and drinking utensils.

(39) "Transportation" means the movement of food, the delivery of food from one location to another location while under the control of an operator.

(40) "Utensil" means any food-contact implement used in the storage, preparation, transportation, or dispensing of food.

(41) "Vehicle" means any truck, trailer, car, bus, railcar, aircraft, boat, ship or barge by which food is transported from one location to another.

(42) "Warewashing" means the cleaning and sanitizing of food-contact surfaces of equipment and utensils.

(43) "Wholesome" means food found in sound condition, clean, free from adulteration and otherwise suitable for human consumption.

Statutory/Other Authority: ORS 561, 616 & 619

Statutes/Other Implemented: ORS 616.230

History:

[DOA 12-2018, amend filed 03/12/2018, effective 03/12/2018](#)

DOA 6-2006, f. & cert. ef. 3-10-06

DOA 29-2002, f. 12-23-02, cert. ef. 1-1-03

DOA 13-1999, f. & cert. ef. 6-15-99

AD 21-1990, f. & cert. ef. 11-27-90

AD 2-1987, f. & ef. 1-30-87

603-025-0020

General Standards of Food Establishment Construction and Maintenance

(1) **Buildings:** Food establishment structures shall be suitable in size, construction, and design to facilitate maintenance and sanitary operations for food preparation or distribution purposes.

(2) **Surroundings:** The grounds around a food establishment that are under the control of the operator shall be free from conditions which may result in contamination of food, including the following:

(a) Improperly stored equipment, litter, waste, or refuse, and uncut weeds or grass, within the immediate vicinity of the establishment structures that may constitute an attractant, breeding place or harborage for rodents, insects, birds and other pests;

(b) Excessively dusty roads, yards or parking lots that may constitute a source of contamination in areas where food is exposed; or

(c) Inadequately drained areas that may constitute a source of contamination of food products through seepage or food-borne filth, or by providing a breeding place for insects or microorganisms.

(3) **Floors:** Floors in a food establishment shall be easily cleanable, smooth, and of tight construction. All new constructed, or reconstructed, floors shall be of nonabsorbent materials. When subject to flood-type cleaning, floors in new construction shall be sloped to drain and be provided with drains in compliance with state plumbing code standards. Joints at wall-floor junctions shall be covered and tight. The floors shall be kept clean and in good repair, and sweeping compounds (dust arrestors) shall be used when dry-sweeping floors.

(4) **Walls and Ceilings:** The surface of walls and ceilings of all display, storage and processing rooms in a food establishment shall be reasonably smooth and easily cleanable. All walls and ceilings shall be kept clean, in good repair and of a light color.

(5) **Doors and Windows:** All openings to the outside in a food establishment shall have tight-fitting doors, windows and effective screens. Properly operating air screens are acceptable. All doors used by the public shall be self-closing.

(6) **Lighting:** Adequate lighting shall be provided in handwashing areas, dressing and locker rooms, toilet rooms, all areas where food or food ingredients are examined, processed or stored, and areas where equipment and utensils are cleaned. Light bulbs, fixtures, skylights or other glass fixtures suspended over exposed food in any step of preparation shall be of the safety type or the food otherwise protected to prevent contamination in case of breakage.

(7) **Ventilation:** Adequate ventilation or control equipment shall be provided in order to minimize odors and noxious fumes or vapors (including steam) in areas where they may contaminate food. The ventilation or control equipment shall not create conditions that may contribute to food contamination by airborne contaminants, and shall be constructed and installed to comply with the State Fire Marshal codes.

(8) **Water Supply:** The water supply shall be sufficient for the operation intended and shall be derived from a source of adequate pressure and volume, be safe, be of sanitary quality, and comply with the State Plumbing Code. Running water at a suitable temperature and under needed pressure shall be provided in all areas where the processing of food, the cleaning of equipment, utensils or containers, or employee sanitary facilities takes place. Water used for washing, rinsing or conveying of food products shall be of adequate quality, and water shall not be re-used for washing, rinsing, or conveying products in a manner that may result in contamination of food products. There shall be no cross-connections between a safe water supply and any unsafe or questionable water supply. All private water supplies shall be inspected and approved before the water can be used. Where applicable, and for the manufacture of ice, a water supply shall comply with all requirements of the Oregon Drinking Water Quality Act, ORS 448.119 to 448.285, and the administrative rules adopted thereunder, OAR 333-061-0010 to 333-061-0095.

(9) **Toilet and Handwashing Facilities:** The toilet and handwashing facilities shall be plumbed to comply with the State Plumbing Code. The toilet and handwashing facilities must be adequate, clean, in good repair, and conveniently located. The door to the toilet room shall be tight, self-closing, and shall not open directly into any room where foods are exposed for sale. The toilet room shall be completely enclosed and any window openings screened to prevent entrance of insects. All handwashing facilities shall have hot and cold running water, a wash basin, soap, single-service towels, and a waste container. A handwashing notice shall be posted in each toilet room and handwashing facilities. Handwashing facilities shall be provided convenient to food packaging and preparation area.

(10) **Waste Disposal:** All liquid wastes resulting from cleaning and rinsing utensils, equipment and floors, from flush toilets, and from handwashing facilities, refrigeration devices and air conditioners, shall be disposed of into a public sewage system or by a method approved by the State Department of Environmental Quality or local health department having jurisdiction. All garbage and rubbish containing food wastes shall, prior to disposal, be kept in leak-proof, nonabsorbent, and easily cleanable containers, and be stored so as to be inaccessible to vermin. The containers, unless kept in a special vermin-proofed room or enclosure, shall be covered with tight-fitting lids. Disposable containers with leak proof liners may be used. Containers shall be provided for trash or rubbish. The establishment shall be free of unnecessary litter and rubbish, such as paper, empty containers or other material, that might serve as a place for rodent harborage or other vermin. The containers, and the room or area in which such containers are stored, shall be thoroughly cleaned and sanitized and shall be disposed of at regular intervals so as not to constitute being a nuisance or health hazard.

(11) **Vermin Control:** All reasonable measures shall be taken to protect the establishment against the entrance, breeding or presence of rodents, birds, flies, roaches, weevils and other vermin. Unwrapped food display items shall be covered when an aerosol method of applying approved pesticides is being used for vermin control in the establishment.

(12) **Personnel Cleanliness:**

(a) No person known to be affected with any disease in a communicable form, known to be a carrier of a communicable disease, known to be afflicted with boils, infected wounds or open sores, or known to have acute respiratory infection, shall work in any area of an establishment in any capacity in which there is a likelihood of the person contaminating food or food-contact surfaces with pathogenic organisms, or of transmitting disease to other individuals. The operator of an establishment, when he knows or has reason to believe that any employee has contacted any disease in a communicable form transmissible through food, or has become a carrier of such disease, shall immediately notify the county health officer or the department. The department may require a

person engaged in the production, manufacture, packing, storage or distribution of food products to be examined by a physician if there is reasonable cause to believe that such person is affected by communicable or infectious disease;

(b) All persons, while working in direct contact with food preparations, food ingredients or contact surfaces shall:

(A) Wear clean and suitable outer garments, maintain a high degree of personal cleanliness, and conform to hygienic practices, while on duty so as to the extent necessary to prevent contamination of food products;

(B) Wash their hands thoroughly (and sanitize if necessary to prevent contamination by undesirable microorganisms) in a handwashing facility before starting work, after each absence from the work station, and at any other time when the hands may have become soiled or contaminated;

(C) Remove all unsecure jewelry or jewelry that cannot be sanitized, during periods when food is manipulated by hand;

(D) If gloves are used in food handling, they should be of an impermeable material (except where their usage would be inappropriate or incompatible with the work involved) and maintained in an intact, clean and sanitary condition;

(E) Wear hairnets, headbands, caps or other effective hair restraints for both head and facial hair;

(F) Not store clothing or other personal belongings, eat food, drink beverages, or use tobacco in any form, in areas where food or food ingredients are exposed or in areas used for washing equipment or utensils;

(G) Take any other precautions required to prevent contamination of foods with microorganisms or foreign substances (including perspiration, hair, cosmetics, tobacco, chemicals or medicants).

(c) The establishment shall be responsible for the education of personnel, the training of food

handlers and supervisors, and the appointment of competent supervisory personnel.

(13) Dressing and Locker Room Facilities: A room or enclosure separate from food display, packaging and preparation areas in an establishment shall be provided where employees may change clothes, store outer garments and eat lunches. Dressing rooms and lunch rooms shall be kept clean, in good repair and be provided with covered waste receptacles.

(14) Protection of Stored Foods Against Contamination: No dogs, cats, fowl, birds or other type animal shall be permitted in an establishment except for guide-dogs for blind or deaf persons, as authorized by ORS 346.620 and 346.650. All hazardous substances shall be stored in an area separate from food products so as to preclude any possible contamination of the stored foods. Rodenticides shall be placed in covered bait boxes, if necessary, to prevent spillage or possible contamination of stored food and danger to employees. The bait boxes shall be properly labeled with a warning notice. All rodenticide baits shall be applied so as to prevent contamination of stored food products. All pesticides used for control of vermin shall be of approved type and applied so as to protect stored foods from contamination and shall be applied in accordance with labeled instructions. Cleaning materials, pesticides, rodenticides or any other hazardous substances used in the operation of an establishment shall be stored in properly labeled containers, in a closed closet or cabinet, with a hazardous substance warning notice on the door. When a licensed pest control service is employed, it shall deliver to the establishment a diagram of the bait station locations and the rodenticides in use, or advise an employee of the establishment who has been designated by the operator to be responsible for the pest control program. There shall be no overhead waste drainpipes or other piping that may cause undue condensation problems unless equipped with protective shields to preclude possible contamination of foods stored below. Storage methods shall be used which will minimize deterioration and prevent contamination of stored food products. Shelves, cabinets, dunnage and pallets shall be used, if necessary, to protect stored food products from contamination or deterioration. Construction of shelving, cabinets, and storage methods shall

permit ready access to cleaning and sanitary inspection. Bagged animal feeds shall be stored so as not to be intermingled with the storage of human food products. Storage on separate pallets is acceptable. Fixtures, ducts, pipes and catwalks shall not be suspended over working areas so that drip or condensate may contaminate foods, raw materials or food-contact surfaces. Only the toxic materials that are required to maintain sanitary conditions, for use in laboratory testing procedures, for maintenance and operation of equipment, or for manufacturing or processing operations, shall be used or stored in the establishment. These materials shall only be used in a manner and under conditions as will be safe for their intended uses.

(15) Transportation of Foods: All cars, trucks or other vehicles used in the transportation of food products shall be kept in a clean condition at all times. Refuse, dirt and waste products subject to decomposition shall be removed daily. Food products shall be handled so as to protect them from deterioration or contamination by hazardous substances while in transit.

(16) Protection of Food Quality: Potentially hazardous foods in food establishments shall be stored or displayed at a safe temperature in keeping with good manufacturing practices so as to insure that the food will reach the consumer in a condition that is safe and fit for human consumption. All refrigerated food display cases, food storage refrigerators and walk-in coolers shall be equipped with an accurate, visible thermometer located in the warmest storage areas. Frozen food shall be kept frozen and shall be stored in storage or display facilities capable of maintaining and having an air temperature of 0°F. or below, except during defrost cycles and brief periods of loading or unloading. All refrigerated food display cases, food storage refrigerators and walk-in coolers shall be kept clean and in good repair. Refrigerated food display cases shall not be filled above the load line.

(17) Labeling of Food Containers and Packages: Labels on closed food containers and packages shall be clearly legible and contain all the information required by the provisions of ORS Chapter 616, the administrative rules adopted thereunder, and the Federal Fair Packaging and Labeling Act.

(18) **Distressed Merchandise:** Distressed merchandise shall not be offered for sale for human food unless reconditioned and inspected by the department to determine if it complies with the requirements of the 1984 Model Food Salvage Code, Chapters 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, and the labeling and placard requirements of OAR 603-025-0160 and 603-025-0170.

(19) **Variance clause:** Upon written petition by the owner of a food establishment, the department may grant a variance to those sections of OAR 603-025-0020, 0030 or 0150 that regulate the physical facilities, equipment standards, and food source requirements when:

(a) No health or sanitation hazard would exist as a result of this action; and

(b) The variance is consistent with the intent of these regulations.

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 561, 616 & 619

Statutes/Other Implemented: ORS 616.700

History:

DOA 29-2002, f. 12-23-02, cert. ef. 1-1-03

DOA 13-1999, f. & cert. ef. 6-15-99

AD 21-1990, f. & cert. ef. 11-27-90

AD 2-1987, f. & ef. 1-30-87

603-025-0030

Retail Food Code

(1) In addition to the provisions of OAR 603-025-0020 a retail food establishment shall comply with the Oregon Department of Agriculture Retail Food Code, 2013. [Code not included. See ED. NOTE.]

(2) **Retail Fruit and Vegetable Stands and Similar Outlets:** Retail fruit and vegetable stands, and other similar unusual food sales outlets, are also subject to these retail food establishment provisions, except as follows:

(a) Fruit and vegetable stands located on a farmers own property, wherein only fruits and vegetables grown by the owner are sold, and no

food processing is being done, are exempt from licensing;

(b) Food establishments that are exempt under OAR 603-025-0215 to 603-025-0275 (Farm Direct Marketing Rules), are exempt from licensing;

(c) Other fruit and vegetable stands may be exempted from certain retail food establishment requirements where the department determines that public health principles will not be compromised.

(3) **New Establishment Construction or Remodeling:**

(a) Prior to undertaking construction of a new retail food establishment, and as a condition to obtaining a license to operate the establishment, a copy of the construction plans and specifications, together with a statement of an expected completion date, shall be submitted to the department for review and comment as to sanitation and food maintenance;

(b) Prior to undertaking remodeling of an existing establishment in order to expand or add food processing or food service facilities, a copy of the construction plans and specifications, together with a statement of an expected completion date, shall be submitted to the department for review and comment as to sanitation and food maintenance.

[ED. NOTE: Code referenced is available from the agency.]

Statutory/Other Authority: ORS 561, 616 & 619

Statutes/Other Implemented: ORS 616.700

History:

DOA 30-2012, f. 12-17-12, cert. ef. 1-1-13

DOA 6-2006, f. & cert. ef. 3-10-06

DOA 29-2002, f. 12-23-02, cert. ef. 1-1-03

AD 21-1990, f. & cert. ef. 11-27-90

AD 2-1987, f. & ef. 1-30-87

603-025-0080

Foods Subject to Pull Date Labeling

Unless otherwise provided, the following perishable foods shall be open date labeled with the pull date:

- (1) Processed or cured meat and meat products including wieners, bologna, luncheon meat, liver sausage, salami, braunschweiger, hams and ham products, and bacon (tuck or vacuum packed).
- (2) Fluid milk and cream products for which a standard of identity has been established under ORS Chapter 621, cottage cheeses, yogurts, cheeses with a moisture content of more than 50 percent, sour creams, and party dips.
- (3) Bakery products as defined in subsection (2) of ORS 625.010, pastries, cookies, or crackers having a moisture content of 16 percent or more.
- (4) Eggs in shell.
- (5) Vegetable, macaroni, or potato salads that use mayonnaise or other acidic dressing as an ingredient or dressing, puddings, sandwiches, and other ready-to-eat products.
- (6) Fowl, including chickens, fryers, turkeys, ducks, geese, and other domesticated birds.
- (7) Fresh or raw packaged meat products, whether whole, ground, chopped or fabricated.
- (8) Fresh sausage products.
- (9) Fresh seafood products.
- (10) Fresh fish products (not breaded or precooked).

Statutory/Other Authority: ORS 561 & 616
Statutes/Other Implemented: ORS 616.835
History:

AD 7-1987, f. & ef. 1-30-87
AD 1013(3-74), f. 1-18-74, ef. 7-1-74; AD 1045(35-74)(Temp), f. & ef. 9-16-74 - 1-13-75; AD 1058(4-75), f. 4-21-75, ef. 5-11-75; AD 27-1977, f. & ef. 11-30-77; AD 6-1984, f. & ef. 4-17-84; Renumbered from 603-023-0555

603-025-0090

Foods Exempt from Labeling

The following foods shall be exempt from the open date labeling requirements:

- (1) Candies, nuts, non-alcoholic beverages (soft drinks), and other fruit juices.
- (2) Sterile dairy products; processed or natural cheddar cheese or other hard cheese varieties; margarine; butter and whipped butter.
- (3) Pastries, cookies, and crackers having less than 16 percent moisture content; bread sticks; croutons; melba toast; stuffing mixes and other dry bakery products; bakery products otherwise required to be open date labeled which are sold or offered for sale at the same location where prepared or baked (in-store bakeries) and not commingled or displayed with bakery products required to be open date labeled.

Statutory/Other Authority: ORS 561.190 & 616.835

Statutes/Other Implemented: ORS 616.835

History:

AD 2-1987, f. & ef. 1-30-87
AD 1013(3-74), f. 1-18-74, ef. 7-1-74;
Renumbered from 603-023-0570

603-025-0100

Form of Labeling

- (1) The required open date shall be affixed, stamped, or imprinted on each retail package and on all closed shipping containers with the name of the month either by number (1 through 12) or three-letter abbreviation (January through December), followed by the numerical (1 through 31) day of said month. The year need not be stated except on foods having a projected shelf life of six months or more. In the event the month is designated numerically, it shall be separated from the day of the month by a space, a dash, or asterisk.

(2) In lieu of the requirements of section (1) of this rule, bakery products, fresh or raw meat products, fresh seafood products, and fresh fish products with a shelf life of seven days or less may be labeled with a two digit numerical (1 through 31) day of the then current month.

Statutory/Other Authority: ORS 561.190 & 616.835

Statutes/Other Implemented: ORS 616.835

History:

AD 2-1987, f. & ef. 1-30-87
AD 1013(3-74), f. 1-18-74, ef. 7-1-74; AD 6-

1984, f. & ef. 4-17-84; Renumbered from 603-023-0575

603-025-0110

Labeling Placement

(1) The open date shall be affixed, stamped, or imprinted in a size, manner, and style clearly and easily legible and visible to the consumer.

(2) The open date shall not overlay other labeling matter or be of such a color as to be difficult to distinguish from such other labeling matter.

Statutory/Other Authority: ORS 561.190 & 616.835

Statutes/Other Implemented: ORS 616.835

History:

AD 2-1987, f. & ef. 1-30-87

AD 1013(3-74), f. 1-18-74, ef. 7-1-74;

Renumbered from 603-023-0580

603-025-0120

Identification After Pull Date Expiration

Food required to be labeled with a pull date, and after the expiration of such pull date is found to be fit for human consumption, may be sold or offered for sale at retail if:

(1) It is segregated from like foods with unexpired pull dates, either by sorting and separating in the same retail display shelf or cabinet from like foods with unexpired pull dates, or by removal to a separate retail display shelf or cabinet.

(2) Each individual package is labeled or a conspicuous and visible placard is posted immediately adjacent to any display of such food, stating that the pull date of such food has expired. Any label or placard so utilized shall be in legible, boldface type in distinct contrast to the label or placard color.

Statutory/Other Authority: ORS 561.190 & 616.835

Statutes/Other Implemented: ORS 616.835

History:

AD 2-1987, f. & ef. 1-30-87

AD 1013(3-74), f. 1-18-74, ef. 7-1-74;

Renumbered from 603-023-0585

603-025-0130

Label Pull Date Information

Upon the request of the department, a person required to label a perishable food with a pull date shall obtain from the food manufacturer, processor or packager recommending the pull date, data from recognized scientific sources substantiating the establishment and use of the recommended date.

Statutory/Other Authority: ORS 561 & 616

Statutes/Other Implemented: ORS 616.835

History:

AD 2-1987, f. & ef. 1-30-87

AD 6-1984, f. & ef. 4-17-84; Renumbered from 603-023-0590

603-025-0140

Food Storage Warehouses

In addition to the provisions of OAR 603-025-0020, a food storage warehouse shall comply with the following:

(1) Cold Storage: Each cold storage room in a food storage warehouse shall be equipped with an accurate and easily visible thermometer with the sensing element at least five feet above the floor.

(2) Morgue: The operator of a food storage warehouse shall provide an area for the accumulation and holding of all damaged foods or foods which are or may be unwholesome. The operator shall maintain a program of timely and proper disposal of damaged or unwholesome foods to prevent development of insanitary conditions or vermin breeding places and rodent harborage.

Statutory/Other Authority: ORS 561 & 616

Statutes/Other Implemented: ORS 616.700

History:

AD 2-1987, f. & ef. 1-30-87

603-025-0150

Food Processing Establishments

In addition to the provisions of OAR 603-025-0020, a food processing establishment shall comply with the following:

(1) Construction and Repair of Equipment and Utensils: All plant equipment and utensils shall be suitable for their intended use, so designed and of such material and workmanship as to be adequately cleanable, and properly maintained. The design, construction and use of such equipment and utensils shall preclude the adulteration of foods with lubricants, fuel, metal fragments, contaminated water or any other contaminants. All equipment shall be installed and maintained so as to facilitate the cleaning of the equipment and of all adjacent spaces. Aisle or working spaces between equipment and between equipment and walls shall be unobstructed and of sufficient width to permit employees to perform their duties without contamination of food or food contact surfaces with clothing or personal contact.

(2) Sanitary Maintenance and Methods:

(a) Separate rooms shall be provided for those operations which may cause contamination of food products with undesirable microorganisms, chemicals, filth or other extraneous material. Building, fixtures and other physical facilities of the establishment shall be kept in good repair and in a sanitary condition. Cleaning operations shall be conducted so as to minimize the danger of contamination of food and food-contact surfaces. Detergents, sanitizers and other supplies employed in cleaning and sanitizing procedures shall be free of significant microbiological contamination and shall be safe and effective for their intended uses. Cleaning and sanitizing agents shall be subject to approval by the department;

(b) All utensils and product-contact surfaces of equipment shall be cleaned as frequently as necessary to prevent contamination of food and food products. Nonproduct-contact surfaces of equipment used in the operation of food plants should be cleaned as frequently as necessary to minimize accumulation of dust, dirt, food particles, and other debris. Single-service articles (such as utensils intended for one-time use, paper cups, paper towels, etc.) should be stored in appropriate containers and handled, dispensed, and disposed of in a manner that prevents contamination of food or food-contact surfaces. Where necessary to prevent the introduction of undesirable microbiological organisms into food products, all utensils and product-contact surfaces of equipment used in

the plant shall be cleaned and sanitized prior to such use and following any interruption during which such utensils and contact surfaces may have become contaminated. Where such equipment and utensils are used in a continuous production operation, the contact surfaces of such equipment and utensils shall be cleaned and sanitized on a predetermined schedule using adequate methods for cleaning and sanitizing. Sanitizing agents shall be effective and safe under conditions of use. Any facility, procedure, machine or device may be acceptable for cleaning and sanitizing equipment and utensils if it is established that such facility, procedure, machine, or device will routinely render equipment and utensils clean and provide adequate sanitizing treatment;

(c) All cleaned and sanitized portable equipment and utensils with product-contact surfaces should be stored in such a location and manner that product-contact surfaces are protected from splash, dust, and other contamination;

(d) Adequate and convenient facilities for handwashing and, where appropriate, hand sanitizing shall be provided at each location in the plant where good sanitary practices require employees to wash or sanitize and dry their hands. Such facilities shall be furnished with running water at a suitable temperature for handwashing, effective hand cleaning and sanitizing preparations, sanitary towel service or suitable drying devices and, where appropriate, easily cleanable waste receptacles;

(e) All operations in the receiving, inspecting, transporting, packaging, segregating, preparing, processing and storage of food shall be conducted in accordance with adequate sanitation principles. Overall sanitation of the plant shall be under the supervision of an individual assigned responsibility for this function. All reasonable precautions, including the following, shall be taken to assure that production procedures do not contribute contamination such as filth, harmful chemicals, undesirable microorganisms, or any other objectionable material to the processed product:

(A) Raw material and ingredients shall be inspected and segregated as necessary to insure that they are clean, wholesome, and fit for processing into human food and shall be stored under conditions that will protect against

contamination and minimize deterioration. Raw materials shall be washed or cleaned as required to remove soil or other contamination;

(B) Containers and carriers of raw ingredients shall be inspected on receipt to assure that their condition has not contributed to the contamination or deterioration of the products. When ice is used in contact with food products, it shall be made from potable water and shall be used only if it has been manufactured in accordance with adequate standards and stored, transported, and handled in a sanitary manner;

(C) Food processing areas and equipment shall not be used to process animal feed or inedible products unless human food will not be contaminated thereby;

(D) Processing equipment shall be maintained in a sanitary condition through frequent cleaning, including sanitization where necessary. If necessary, equipment shall be taken apart for thorough cleaning. All food processing, including packaging and storage, shall be conducted under such conditions and controls as are necessary to minimize the potential for undesirable bacterial or other microbiological growth, toxin formation, or deterioration or contamination of the processed product or ingredients. This may require careful monitoring of such physical factors as time, temperature, humidity, pressure, flow-rate and such processing operations as freezing, dehydration, heat processing, and refrigeration to assure that mechanical breakdowns, time delays, temperature fluctuations and other factors do not contribute to the decomposition or contamination of the processed products;

(E) Chemical, microbiological, or extraneous material testing procedures shall be utilized where necessary to identify sanitation failures or food contamination, and all foods and ingredients that have become contaminated shall be rejected, treated or processed to eliminate the contamination where this may be properly accomplished;

(F) Packaging processes and materials shall not transmit contaminants or objectional substances to the products, shall conform to any applicable food additive rules, and shall provide adequate protection from contamination;

(G) Coding of products sold or otherwise distributed from a manufacturing, processing, packing or repacking activity should be utilized to enable positive lot identification so as to facilitate the segregation of specific food lots that may have become contaminated or otherwise unfit for their intended use. Records shall be retained for a period of time that exceeds the shelf life of the product, but need not be retained for more than two years.

(3) Processing Requirement for Retail Sale of Dehydrated Prunes: Dehydrated prunes shall not be sold at retail or offered or displayed for sale at retail, unless they have been subjected to heat treatment by water or steam to at least 180°F. long enough to remove adhering material and to obtain a uniform desired texture.

Statutory/Other Authority: ORS 561, 307.453, 307.455, 307.457, 307.459 & 2015 HR 3125 & 78th Or. Legis. Assemb.

Statutes/Other Implemented: ORS 307.459 & 616.700

History:

DOA 2-2016, f. & cert. ef. 2-9-16
AD 2-1987, f. & ef. 1-30-87; DOA 19-2005(Temp), f. 12-23-05, cert. ef. 1-3-06 thru 5-31-06; DOA 13-2006, f. & cert. ef. 6-21-06

603-025-0151

Property Tax Exemption for Qualified Machinery and Equipment

(1) The Oregon Department of Agriculture is authorized to certify qualified machinery and equipment for the purposes of ORS 307.453–307.457.

(2) Definitions: For the purposes of this section, the definitions in ORS chapter 307.455 apply, unless the context requires otherwise. In addition, the following definitions apply.

(a) "Newly acquired property" means new or used machinery and equipment that is first purchased or leased by a food processor not more than two years (24 months) prior to placing it into service. Leased equipment may be exempt only if the food processor is responsible for the payment of the property taxes under the terms of the lease agreement. Newly acquired property does not include existing equipment that has been refurbished or reconditioned in the time frame provided by this rule.

(b) "Placed into service" means the date the machinery and equipment is first used or in such condition that it is readily available and operational for its intended commercial use. It does not include property that is being tested or is in the process of being erected or installed on the January 1 assessment date.

(c) "Real Market Value of the Property" for the purpose of determining the late filing penalty pursuant to ORS 307.455, means the invoice cost of the machinery and equipment, installation, engineering, and miscellaneous costs including machinery process piping, foundations, power wiring, interest during installation, and freight.

(3) The process for application and determination of certification for qualified machinery and equipment is as follows:

(a) Any food processor requesting certification must make a request for certification in writing on a form provided by the Oregon Department of Agriculture. Certification request forms are available on the Oregon Department of Agriculture web site and the Oregon Department of Revenue web site, or are available by mail from either agency upon request.

(b) Upon receiving a completed certification request form, the Food Safety Program of the Oregon Department of Agriculture may schedule a visit to the processing site for the purpose of inspecting and verifying the eligibility of machinery requested for certification as qualified machinery or equipment.

(c) After inspecting the food processing equipment requested to be certified, the Oregon Department of Agriculture shall make a determination as to property that is qualified for certification. This determination of certification shall be in writing and include a schedule of all machinery or equipment the Oregon Department of Agriculture has certified.

(4) Following certification, a food processor seeking continued exemption as described at ORS 307.455 must annually verify that equipment previously certified still constitutes qualified machinery or equipment as follows: By January 30th of each year following certification a food processor must submit to the Oregon Department of Revenue a signed form that

includes a schedule of all equipment previously certified and provides sufficient information to the Oregon Department of Revenue such that it can determine whether previously-certified machinery or equipment continues to meet certification requirements.

(5) The Oregon Department of Agriculture may inspect any equipment or machinery previously certified for the purposes of determining continued certification pursuant to ORS 307.455.

(6) If a food processor seeks to add additional machinery or equipment not previously certified to its annual certification verification list then the food processor must apply for certification of this additional equipment pursuant to the process for certifying qualified machinery or equipment provided in these rules.

(7) Denial of certification of certain property by the Oregon Department of Agriculture is a contested case for the purpose of ORS Chapter 183.

Statutory/Other Authority: ORS 561, 307.453, 307.455, 307.457, 307.459 & 2015 HR 3125 & 78th Or. Legis. Assemb.

Statutes/Other Implemented: ORS 307.459 & 616.700

History:

DOA 2-2016, f. & cert. ef. 2-9-16

603-025-0152

Certification Fees

(1) Certification Fees. The Department may fix, access, and collect, or cause to be collected, fees on food processors for the certification of qualified equipment and machinery. The fees must be in an amount reasonably necessary to cover the costs of the certification and of administration of the certification program. These fees must be paid prior to the Department's submittal of the firm's exemption forms to the Oregon Department of Revenue.

(2) The following fees and charges are established for the administration and certification of machinery and equipment. The fees may be charged and assessed regardless if machinery and equipment is qualified for the exemption. The scale of fees may vary

according to the location of the qualified machinery and equipment.

(3) The cost of such services may include:

(a) A charge of service at the rate of \$95 per hour;

(b) Travel time at the rate of \$95 per hour;

(c) Mileage, lodging, and per diem reimbursed rates established by the Department of Administrative Services (DAS); and

(d) Application fees for the certification of Machinery and Equipment of \$100 for each request for certification received by the Department.

Statutory/Other Authority: ORS 561, 307.453, 307.455, 307.457, 307.459 & 2015 HR 3125 & 78th Or. Legis. Assemb.

Statutes/Other Implemented: ORS 307.459 & 616.700

History:

DOA 2-2016, f. & cert. ef. 2-9-16

603-025-0160

Package Labeling Requirements

The label of any food that has been salvaged, as defined in subsection (16) of ORS 616.250, shall comply with the following:

(1) The term "salvaged" shall appear on the principal display panel in the case of any food packaged in a firm (box, carton, or can) container, and either on the principal display panel or upon a firmly attached tag in the case of any food packaged in a soft (bag or sack) container. The labeling requirements shall only apply to the individual immediate container in which the food is packaged for retail or institutional sale, and shall only apply to the food containers actually requiring salvage activities. The term "salvaged" shall be conspicuous and of easily legible bold face print or type in distinct contrast to other matter on the label.

(2) In the event the salvager is other than an agent for the original manufacturer, packer, or distributor, the name and business address of the salvager shall appear in the manner and

location prescribed in section (1) of this rule and shall include the city, state, and zip code.

Statutory/Other Authority: ORS 561.190, 616.230 & 616.700

Statutes/Other Implemented: ORS 616.230 & 616.700

History:

AD 7-1987, f. & ef. 1-30-87

AD 1053(42-74), f. 12-20-74, ef. 1-11-75;

Renumbered from 603-023-0180

603-025-0170

Bulk Placard Requirements

If in bulk display form for wholesale or retail sale (rather than packaged form) any food that has been salvaged, as defined in subsection (16) of ORS 616.250, shall be conspicuously and prominently displayed immediately adjacent to such bulk display. Such placard shall be of easily legible bold face print or type, of such color contrast that it may be easily read, and shall contain the statements required by OAR 603-025-0180.

Statutory/Other Authority: ORS 561.190, 616.230 & 616.700

Statutes/Other Implemented: ORS 616.230 & 616.700

History:

AD 2-1987, f. & ef. 1-30-87

AD 1053(42-74), f. 12-20-74, ef. 1-11-75;

Renumbered from 603-023-0185

603-025-0180

Responsibility

The responsibility for the salvage labeling required by OAR 603-025-0180 or 603-025-0170 shall be:

(1) If in bulk display form, the person selling or offering to sell such food at wholesale or retail.

(2) If salvaged within the State of Oregon, the person selling or offering to sell at retail or for institutional use.

(3) If salvaged outside of the State of Oregon, the first person selling or offering to sell such food at wholesale or retail within the State of Oregon.

Statutory/Other Authority: ORS 561.190, 616.230 & 616.700

Statutes/Other Implemented: ORS 616.230 & 616.700

History:

DOA 29-2002, f. 12-23-02, cert. ef. 1-1-03
AD 1053(42-74), f. 12-20-74, ef. 1-11-75;
Renumbered from 603-023-0190; AD 2-1987, f. & ef. 1-30-87

603-025-0190

Standards of Identity, Additives, Pesticide Standards, Food Labeling, Good Manufacturing Practice, Low Acid Canned Foods, and Acidified Foods

As provided in ORS 616.230, 616.780, 621.060, 621.311, 621.405, 625.160, and 635.045, the rules governing food identity, food color additives, food additives, pesticide tolerances, and labeling of or in food adopted by the Food and Drug Administration of the U.S. Department of Health and Human Services, are hereby adopted as the rules governing this subject matter in Oregon. In addition the Good Manufacturing Practices, Fish and Fishery Products, Low Acid Canned Foods, Acidified Foods and other federal programs contained in the Code of Federal Regulations as specified below are adopted. The adopted federal programs and standards are those set forth in the 2015 version, Title 21, Chapter 1, Parts 1, 7, 70, 73, 74, 81, 82 and 100 through 199, of the Code of Federal Regulations.

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 561.190, 561.605, 561.620 & 616.230

Statutes/Other Implemented: ORS 561.605 - 561.620 & 616.230

History:

DOA 12-2015, f. & cert. ef. 12-2-15
DOA 9-2013, f. & cert. ef. 9-4-13
DOA 6-2006, f. & cert. ef. 3-10-06
DOA 29-2002, f. 12-23-02, cert. ef. 1-1-03
DOA 4-2000, f. & cert. ef. 1-18-00
DOA 13-1999, f. & cert. ef. 6-15-99
AD 17-1997, f. & cert. ef. 10-23-97
AD 17-1993, f. & cert. ef. 11-26-93
AD 2-1987, f. & ef. 1-30-87

603-025-0200

Establishments Utilizing Domestic Kitchen Facilities

(1) In addition to the provisions of OAR 603-025-0020 a food establishment in an area which is part of a domestic kitchen shall comply with the provisions of section (2) of this rule.

(2)(a) All domestic kitchen doors or openings to other rooms of the building or structure shall be kept closed during the processing, preparing, packaging, or handling of commercial foods;

(b) No person other than the food establishment licensee, or one under the direct supervision of such licensee, shall directly engage in the processing, preparing, packaging, or handling of commercial foods and no other person shall be allowed in the domestic kitchen during such periods of operation;

(c) No infants or small children shall be allowed in the domestic kitchen during the processing, preparing, packaging, or handling of commercial foods;

(d) No pets shall be allowed in the structure or building in which the domestic kitchen is located;

(e) No processing, preparing, packaging, or handling of commercial foods shall be carried on in a domestic kitchen while other domestic activities are being carried on in such domestic kitchen, including, but not limited to, family meal preparation, serving, eating, dishwashing, clothes washing and ironing, cleaning of floors, walls, cabinets and appliances, or entertaining guests;

(f) Each domestic kitchen shall include and be provided with the following:

(A) A separate closed storage space for ingredients, finished product containers, and labels for commercial foods;

(B) Separate refrigerated facilities for storage of perishable products or ingredients utilized in the processing, preparing, or handling of commercial foods;

(C) A separate storage area for household cleaning materials and other chemicals or toxic substances.

(g) Medical supplies or equipment shall not be stored or allowed in the domestic kitchen;

(h) All domestic kitchens shall be available for inspection by the department between the week-day hours of 8 a.m. to 5 p.m., and the department shall, if it deems it advisable or necessary, inspect such premises on Saturdays or holidays or other times commercial foods are being processed, prepared, packaged, or handled.

Statutory/Other Authority: ORS 561.190 & 616.700

Statutes/Other Implemented: ORS 616.700

History:

AD 2-1987, f. & ef. 1-30-87

AD 978(11-72), f. 8-28-72, ef. 9-15-72;

Renumbered from 603-023-0396

603-025-0215

Purpose

This administrative rule recognizes farm direct marketing, including consignment between farm direct marketers, as a modern and accepted method of producing and selling food products, and maintains the integrity of food safety principles as required by state and federal laws. These legislative mandates are accomplished by exempting from licensure and inspection only those that raise their own products, that limit their food processing activities to only those identified by the Legislature as permissible without a license, and that sell to an end user a limited amount of products produced without a license and regulatory oversight.

Statutory/Other Authority: ORS 561.190, 616 & (Enrolled HB 2336)

Statutes/Other Implemented: ORS 616.230 & (Enrolled HB 2336)

History:

DOA 14-2012, f. & cert. ef. 6-1-12

603-025-0225

Definitions

For purposes of this chapter:

(1) "Acidic foods" means a bottled, packaged or canned food product that meets any of the following requirements:

(a) Having a naturally occurring equilibrium pH of 4.6 or below; or

(b) Having been lacto-fermented to decrease the equilibrium pH of the food to 4.6 or below; or

(c) Having a water activity (aw) greater than 0.85 and having been acidified to decrease the equilibrium pH of the food to 4.6 or below.

(2) "Address" means physical street address, city, county, state, and zip code.

(3) "Agricultural producer" means a person, including family members and employees, who grows, raises, and harvests agricultural products to the point at which the products are ready for sale.

(4) "Approved" means conforming to scientific principles, applicable federal laws, and generally recognized industry standards that protect public health.

(5) "Approved source" means a source that is licensed and inspected by a recognized regulatory authority, and whose license is in good standing.

(6) "Commingle" means to mix, pool, or combine agricultural products of more than one agricultural producer prior to the sale of the products.

(7) "Consign" means to send a farm direct product to market to be sold by a farm direct marketer who did not produce the product. Ownership of consigned products remains with the agricultural producer who produced the product until the product is sold to an end user.

(a) Consignment agreements are limited to farm direct marketers who are from the same county or from adjoining counties.

(b) A farm direct marketer is prohibited from representing that products offered for sale on consignment are his/her own.

(c) Farm direct products that may be consigned to a farm direct marketer are limited to:

(A) Fruits, vegetables, edible flowers and herbs that are fresh, or cured or dried as a part of routine post-harvest handling;

(B) Unshelled nuts that are raw, cured or dried in the shell; and

(C) Honey that has not been combined with any other ingredient.

(d) Shell eggs may be consigned only to a farm direct marketer who is a licensed egg handler.

(8) "Cure" means to ripen naturally or by controlled environmental storage whereby the taste, smell, texture, or appearance of the product is altered without causing the product to become adulterated or processed to an extent that the product changes significantly from its original form. Examples of agricultural products that may be cured include, but are not limited to: garlic, potatoes, and sweet potatoes.

(9) "Department" means the Oregon Department of Agriculture.

(10) "Farm direct marketer" means an agricultural producer that sells farm direct products or producer processed products directly to the retail consumer.

(11) "Farm direct product" means an agricultural product grown, raised and harvested by an agricultural producer to the point at which the product is ready for direct, retail sale.

(12) "Fresh" means not altered by processing. "Fresh" excludes potentially hazardous foods, including but not limited to, raw seed sprouts of all kinds, raw melons that have been cut in any way, and raw tomatoes that have been cut in any way.

(13) "Lacto-fermented" means food processed by lactobacilli whereby the lactic acid content of the food decreases the equilibrium pH to 4.6 or below. Examples of lacto-fermented products include sauerkraut and kimchi.

(14) "Major food allergens" means the eight most common food allergens defined in the Food Allergen Labeling Protection Act of 2004 (FALCPA). The major food allergens that may be used under the farm direct marketing rules are peanuts, tree nuts, soy and wheat.

(15) "Principal ingredients" means the farm direct products that comprise a producer-processed product except for: herbs, spices, salt, vinegar, pectin, lemon or lime juice, honey, and sugar. For example, jalapeño peppers produced by a farm direct marketer would be a principal ingredient in pepper jelly, and tomatoes, onions, peppers, and garlic would be principal ingredients in salsa.

(16) "Producer-processed products" means farm direct products for which an agricultural producer has performed every step necessary to prepare the farm direct products for sale, including but not limited to: processing, bottling, canning and packaging. Every step necessary to prepare the farm direct products for sale will be conducted in a facility located where the farm direct products were grown.

(17) "Retail consumer" means the end user of a product. "Retail consumer" excludes: restaurants, grocery stores, schools, daycare centers, caterers, and other institutions, such as, prisons, hospitals, and nursing homes.

(18) "Water activity" means the measure of free moisture in a product and is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature.

Statutory/Other Authority: ORS 561.190, 616 & (Enrolled HB 2336)

Statutes/Other Implemented: ORS 616.230 & (Enrolled HB 2336)

History:
DOA 14-2012, f. & cert. ef. 6-1-12

603-025-0235

Farm Direct Marketer Exemption

(1) Agricultural products sold by farm direct marketers that are exempt from the licensing requirements in Section (3) are limited to:

(a) Fruits, vegetables, edible flowers and herbs that are:

(A) Fresh; or

(B) Cured or dried by the agricultural producer as part of routine post-harvest handling.

(b) Dried or cured fruits, vegetables, edible flowers and herbs for which drying or curing is not part of routine post-harvest handling, if:

(A) All principal ingredients are grown by the agricultural producer; and

(B) The product is labeled with a list of ingredients and the name and address of the agricultural producer that produced the ingredients.

(c) Shelled nuts and unshelled nuts cured or dried by an agricultural producer as part of routine post-harvest handling;

(d) Shell eggs;

(e) Honey, only when not combined with other ingredients;

(f) Whole, hulled, crushed or ground grain, legumes and seeds, if of a type customarily cooked before eating;

(g) Parched or roasted grains, if of a type customarily cooked before eating;

(h) Popcorn, nuts, peppers and corn on the cob, if those items are:

(A) Roasted at the place of purchase,

(B) By a farm direct marketer,

(C) After purchase, and

(D) Not sold for immediate consumption.

(2) Producer-processed products sold by farm direct marketers that are exempt from the licensing requirements in Section (3) are limited to:

(a) Fruit-based syrups, fruit in syrup, preserves, jams, jellies, processed fruits and processed vegetables that meet all of the following conditions:

(A) They are producer-processed products;

(B) They are acidic foods;

(i) Products having a naturally occurring equilibrium pH of 4.6 or below will be processed in a clean, healthful and sanitary manner;

(ii) Products having been lacto-fermented to decrease the equilibrium pH of the food to 4.6 or below will be processed in a clean, healthful and sanitary manner;

(iii) Products having a water activity (aw) greater than 0.85 and having been acidified to decrease the equilibrium pH of the food to 4.6 or below will be processed in a clean, healthful and sanitary manner using:

(I) A published process and product formulation that has been approved by a recognized process authority. Examples of published processes and product formulations that have been approved by a recognized process authority can be found in:

(I-a) United States Department of Agriculture Complete Guide to Home Canning, 2009 Revision;

(I-b) Pacific Northwest Extension publications. The Pacific Northwest Extension publications are produced cooperatively by Oregon State University, Washington State University, and the University of Idaho; or

(I-c) So Easy to Preserve, 5th Edition, which is offered by the University of Georgia Cooperative Extension.

(II) Any process and product formulation that has been submitted to, and approved by a recognized process authority. A recognized process authority may be contacted through the Oregon State University, Department of Food Science and Technology Extension Service.

(C) They are labeled with:

(i) A product identity;

(ii) Net weight;

(iii) An ingredient statement that also includes properly declared major food allergens; and

(iv) The name and address of the agricultural producer that produced the principal ingredients and processed the product.

(D) During the preceding calendar year, had annual sales of producer-processed products that in total did not exceed \$20,000.

(i) Bottling, packaging and canning supplies will be made from food grade materials.

(ii) Ingredients other than the principal ingredients are limited to herbs, spices, salt, vinegar, pectin, lemon or lime juice, honey and sugar, and will be:

(I) From an approved source; or

(II) Farmed or produced by the agricultural producer.

(b) Producer-processed products that are exempt from licensure do not include any raw juices.

(3) The provisions of ORS 585.010 to 585.220 (Agricultural Marketing and Warehousing) and ORS 616.695 to 616.755 (Sanitary Regulations for Food and Food Establishments) do not apply to the following:

(a) A farm direct marketer;

(b) A consigning agricultural producer; and

(c) The location(s) used by a farm direct marketer or a consigning agricultural producer to prepare, store, sell, expose for sale, or offer for sale the farm direct marketer's own or consigned agricultural products identified in Sections (1) and (2).

(4) The farm direct marketer exemptions provided in Section (3) may be revoked by the Department when it determines that:

(a) The location used by a farm direct marketer is not maintained in a clean, healthful and sanitary condition, or

(b) A farm direct marketer failed to ensure the condition and safety of the food it processed for direct sale.

Statutory/Other Authority: ORS 561.190, 616 & (Enrolled HB 2336)

Statutes/Other Implemented: ORS 616.230 & (Enrolled HB 2336)

History:

DOA 14-2012, f. & cert. ef. 6-1-12

603-025-0245

Consignment Sales

(1) Consigning agricultural producers exempt under OAR 603-025-0235(3)(b) are limited to sales of the following types of agricultural products:

(a) Fruits, vegetables, edible flowers and herbs that are:

(A) Fresh; or

(B) Cured or dried by an agricultural producer as part of routine post-harvest handling.

(b) Unshelled nuts cured or dried in the shell by an agricultural producer as part of routine post-harvest handling;

(c) Shell eggs, if the agricultural producer selling the consigned eggs is an egg handler licensed under ORS 632.715 (Egg Handler's License);

(d) Honey, only when not combined with other ingredients.

(2) A consigning agricultural producer will provide a farm direct marketer with documentation to be clearly and conspicuously posted during the sale of the products on consignment. The documentation will include:

(a) The name of the consigning agricultural producer;

(b) The product consigned by the consigning agricultural producer;

(c) The address of the consigning agricultural producer.

(3) A farm direct marketer will maintain separate sales logs for products sold on consignment.

(a) Sales logs will include, but are not limited to, the following information:

(A) The name of the consigning agricultural producer;

(B) The contact information of the consigning agricultural producer, including the address and phone number;

(C) Item(s) sold on consignment; and

(D) Quantity of item(s) sold on consignment.

Statutory/Other Authority: ORS 561.190 & (Enrolled HB 2336)

Statutes/Other Implemented: ORS 616.700, 616.835 & (Enrolled HB 2336)

History:

DOA 14-2012, f. & cert. ef. 6-1-12

603-025-0255

Prohibitions; Department Enforcement

(1) A farm direct marketer will not:

(a) Sell, offer for sale, or expose for sale foods that are adulterated or misbranded under

ORS 616.205 to 616.385 (Sale of Adulterated, Misbranded or Imitation Foods);

(b) Receive, accept, possess, sell, offer for sale, or expose for sale food from a consigning agricultural producer that is adulterated or misbranded under ORS 616.205 to 616.385 (Sale of Adulterated, Misbranded or Imitation Foods);

(c) Commingle products;

(d) Knowingly sell or offer for sale foods covered by the farm direct sales exemption to a person that is not a retail consumer;

(A) An agricultural producer extracting only their own honey from 20 or fewer hives and licensed

honey producers are exempt from this requirement.

(e) Sell foods other than those covered by the farm direct sales exemption found at OAR 603-025-0235 without an appropriate license.

(2) The Department may require a farm direct marketer or the entity in control of the location used by farm direct marketers to obtain and maintain a license under ORS 585.010 to 585.220 (Agricultural Marketing and Warehousing), 616.695 to 616.755 (Sanitary Regulations for Food and Food Establishments) for failure to maintain the location in a clean, healthful and sanitary condition in accordance with rules adopted under ORS 616.700 (Department to Enforce Sanitation Requirements for Food and Food Establishments).

Statutory/Other Authority: ORS 561.190 & 616.700 (Enrolled HB 2336)

Statutes/Other Implemented: ORS 616.835 & (Enrolled HB 2336)

History:

DOA 14-2012, f. & cert. ef. 6-1-12

603-025-0265

Labeling Requirements

(1) The principal display panel of a producer-processed product as defined by OAR 603-025-0225(15) will contain in a prominent location the following statements in legible, all capital, and bold-face type no less than one-eighth inch:

(a) "THIS PRODUCT IS HOMEMADE AND IS NOT PREPARED IN AN INSPECTED FOOD ESTABLISHMENT" and

(b) "NOT FOR RESALE."

(2) The principal display panel of shell eggs, grain, legumes, seeds and honey described under

OAR 603-025-0235(1)(d) to (g) and 603-025-0245(1)(c) and (d) will contain in a prominent location the following statements in legible, all capital, and bold-face type no less than one-eighth inch:

(a) "THIS PRODUCT IS NOT PREPARED IN AN INSPECTED FOOD ESTABLISHMENT" and

(b) "NOT FOR RESALE."

(c) An agricultural producer extracting only their own honey from 20 or fewer hives and licensed honey producers are exempt from the labeling requirements in (a) and (b).

(3) All bottled, packaged and canned food products described under OAR 603-025-0235 will be labeled with all of the following:

(a) A product identity, which is a truthful or common name of the product that is contained in the package;

(b) The net weight of the product. Net weight or volume must be in both the US lbs./oz. and metric scale. For example, "Net Wt. 12 oz. (340 g)" for a dry product and "Net Wt. 32 fl. Oz (1 QT) 946 ml" for a liquid product;

(c) An ingredient statement that properly declares all major food allergens. All ingredients will be listed in descending order of predominance by weight or volume; and

(A) Major food allergens allowed in producer-processed products under this rule are peanuts, tree nuts, soy and wheat;

(B) Major food allergens will be labeled:

(i) Using the appropriate major food allergen in parenthesis within the ingredient list after the common or usual name of the ingredient derived from that major food allergen, for example, if a product contained semolina, the ingredient list could read: semolina (wheat); or

(ii) Using a "Contains" statement to summarize the allergen information in a statement at the end of, or immediately adjacent to, the ingredient list.

(d) The address of the agricultural producer that produced the principal ingredients and bottled, packaged or canned the food products.

(4) When Oregon or the Federal Government has adopted a standard of identity for any

labeled product covered by the farm direct marketer exemption, that product will specifically meet those standards of identity found in ORS Chapters 616 (Food and Other Commodities) and 632 (Agricultural and Horticultural Products) and in OAR 603-025-0190 (Standards of Identity).

Statutory/Other Authority: ORS 561, 616 & (Enrolled HB 2336)

Statutes/Other Implemented: ORS 616.835 & (Enrolled HB 2336)

History:

DOA 14-2012, f. & cert. ef. 6-1-12

603-025-0275

Producer-Processed Foods Records

(1) Raw materials, packaging materials, and finished products that are not in compliance with United States Food and Drug Administration (FDA) regulations may be considered adulterated.

(2) Processing and production records for products having a water activity (aw) greater than 0.85 and having been acidified to decrease the equilibrium pH of the food to 4.6 or below will show that the process and product formulations comply with all critical factors mandated by a recognized process.

(a) To demonstrate compliance with acceptable equilibrium pH measurements, batch-by-batch records of pH meter calibration and batch-by-batch records of finished product testing will be maintained.

(A) Finished product testing will be performed following the requirements of the 2010 version of 21 CFR 114.90(a) and (b) (Methodology). A pH meter or potentiometer is the primary instrument used in determining product pH. Colorimetric methods including, but not limited to, indicator solutions and indicator paper may be used if the equilibrium pH of the product is 4.0 or lower.

(b) Processing and production records will be associated with production dates and batches.

(c) Any deviation from an approved process and the corrective action taken to remedy the deviation will be recorded and maintained.

(A) A product produced with a processing deviation will:

(i) Not be sold for human consumption; or,

(ii) Be permitted for sale for human consumption if the product is reprocessed to rectify the deviation in a manner approved by a recognized process authority.

(3) Farm direct marketers will maintain sales records of products subject to OAR 603-025-0235(2). Sales records will include, but need not be limited to, the following information:

(a) Product(s) sold;

(b) Price;

(c) Quantity sold;

(d) Current, rolling total of year-to-date sales.

(4) Copies of all records required by these administrative rules (OAR 603-025-0225 through 0275) will be retained at the processing facility or other reasonably accessible location for a period of three years from the date of manufacture.

(a) Records will be made available to the Department upon request.

(b) Failure to provide records to the Department upon request may result in the revocation of the farm direct marketer exemption.

Statutory/Other Authority: ORS 616.700 & (Enrolled HB 2336)

Statutes/Other Implemented: (Enrolled HB 2336)

History:

DOA 14-2012, f. & cert. ef. 6-1-12

603-025-0315

Definitions

In addition to the definitions set forth in OAR 603-025-0010 the following shall apply:

(1) "Baked goods" include bread, rolls, cakes, pies, doughnuts, cookies, biscuits, crackers and all similar goods, to be used for human food.

(2) "Confectionary items" mean candy or sweets, including, but not limited to: salted caramel, fudge, marshmallow bars, chocolate covered marshmallows, and hard candy.

(3) "Department" means the Oregon Department of Agriculture.

(4) "End user" means a person, who is a member of the public, who takes possession of food, and is not functioning in the capacity of an operator of a food establishment, and does not offer the food for resale.

(5) "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.

(6) "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 the adjacent ground that is also used in carrying on the business of the establishment. The department may prescribe additional areas or places that may not be contiguous or adjacent to the above area or establishment, but 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.

(7) "Food handler training program" means a food handler training program offered by the Oregon Health Authority or designated agent of the Oregon Health Authority, or offered by a local public health authority or designated agent of the local public health authority that has been approved by the Oregon Health Authority.

(8)(a) "Marijuana" means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae.

(b) "Marijuana" does not include industrial hemp, as defined in ORS 571.300.

(9) "Marijuana items" means marijuana, cannabinoid products, cannabinoid concentrates, and cannabinoid extracts.

(10) "Person(s)" means the individual(s) responsible for food preparation that are present during the commercial operation of an exempt residential kitchen.

(11) "Potentially hazardous" means requiring temperature control due to the capacity to support the rapid and progressive growth of infectious microorganisms or the growth of toxic microorganisms. Potentially hazardous baked goods and confectionary items foods include, but are not limited to:

(a) Food containing fresh, frozen or dried meat (including jerky);

(b) Food made with fish or shellfish products;

(c) Food that requires any type of refrigeration after production, such as, but not limited to: cream, custard, or meringues.

(d) Pies, cakes, or pastries with cream, custard, or cream cheese icings or fillings;

(e) Focaccia-style breads made with vegetables or cheese; and

(f) Candied fresh fruit products including caramel and candy apples.

(12) "Residential dwelling" means a home or area within a rental unit, in which a person or persons make their primary residence.

(13) "Total gross sales of food" means the total annual retail sale value of all food produced under this exemption and sold by the person or persons operating an exempt residential kitchen.

Statutory/Other Authority: ORS 561

Statutes/Other Implemented: ORS 561

History:

DOA 12-2016, f. & cert. ef. 5-19-16

603-025-0320

License and Inspection Exemption

(1) ORS 616.695 to 616.755 do not apply to a food establishment if:

(a) The food establishment is located in a residential dwelling;

(b) The food establishment sells food only to the end user of the product;

(c) The foods prepared at the food establishment for public distribution are not potentially hazardous and do not contain marijuana or marijuana items;

(d) The foods prepared at the food establishment for public distribution are sold only to the end user of the product, and are:

(A) Baked goods; or

(B) Confectionary items;

(e) The food establishment complies with the provisions of OAR 603-025-0020 and 603-025-0150;

(f) The annual gross sales of foods prepared at the food establishment do not exceed \$20,000; and

(g) Each person involved in the preparation of food at the food establishment for public distribution has successfully completed a food handler training program and holds a certificate issued pursuant to ORS 624.570 and OAR chapter 333 division 175.

(2) A person may not sell foods prepared in an exempt residential kitchen:

(a) On the Internet; or

(b) To a commercial entity or institution, including, but not limited to a:

(A) Restaurant;

(B) Grocery store;

- (C) Caterer;
- (D) School;
- (E) Day care center;
- (F) Hospital;
- (G) Nursing home; or
- (H) Correctional facility.

(3) Records:

(a) A person operating an exempt residential kitchen must maintain accurate records of annual sales and the types of food produced by the food establishment;

(b) A person must maintain all records for at least three years; and

(c) A person must make all records available for inspection by the Department upon request.

(4) The Department may require that a baked good or confectionary item be assessed by the Department to ensure that it is not potentially hazardous.

(5) Any area or room of a residential dwelling may be used for food preparation, packaging, storage, or handling of permitted food products if it is constructed and maintained in a clean, healthful, and sanitary condition.

Statutory/Other Authority: ORS 561
Statutes/Other Implemented: ORS 561
History:
DOA 12-2016, f. & cert. ef. 5-19-16

603-025-0325
Labeling

(1) The principal display panel of food prepared in an exempt residential kitchen must contain the following statement, "This product is homemade and is not prepared in an inspected food establishment."

(2) The principal display label must also include:

(a) The business name, phone number, and address for the food establishment;

(b) The name of the product;

(c) The ingredients of the product in descending order by weight;

(d) The net weight or net volume of the product;

(e) Any applicable allergen warnings as specified in The Food Allergen Labeling & Consumer Protection Act of 2004 (FALCPA); and

(f) If the label provides any nutrient content claim, health claim or other nutritional information, product nutritional information as described in Title 21, Part 101 of the Code of Federal Regulations (2015).

Statutory/Other Authority: ORS 561
Statutes/Other Implemented: ORS 561
History:
DOA 12-2016, f. & cert. ef. 5-19-16

603-025-0330
Revocation of Exemption

The Department may require a food establishment that is operating as an exempt residential kitchen to become licensed under ORS 616.695 to 616.755 if the food establishment refuses to comply with Department rule requiring that the food establishment be constructed and maintained in a clean, healthful, and sanitary manner or if the food establishment is producing potentially hazardous foods.

Statutory/Other Authority: ORS 561
Statutes/Other Implemented: ORS 561
History:
DOA 12-2016, f. & cert. ef. 5-19-16

603-025-0410
Requirements for Dungeness Crab

Domoic acid is a natural toxin that can accumulate in certain shellfish and fish species and cause amnesic shellfish poisoning, a serious illness, in consumers. In Oregon, a monitoring and response system for

recreationally and commercially harvested shellfish and Dungeness crab is in place to protect public health and manage the risk of domoic acid contamination.

The Oregon Department of Agriculture (ODA) analyzes Dungeness crab and crab viscera samples gathered from the waters of this state and the Pacific Ocean off Oregon for domoic acid. The Oregon Department of Fish and Wildlife (ODFW) is responsible for opening and closing the crab fishery as well as requiring restrictions and reporting on crab harvest and landing.

(1) Application.

(a) These rules apply to commercial fishing and commercial landings regulated by ODFW pursuant to Oregon Revised Statutes (ORS) Chapter 509, to licensed food processors regulated by ODA pursuant to ORS Chapter 616, and to any person, wholesaler or food processor that purchases or receives crab taken from the waters of this state or the Pacific Ocean off Oregon.

(b) These rules were developed to address domoic acid, but other natural toxins may be addressed in a similar manner using the best available science on the measures necessary to protect public health.

(2) Definitions. For the purposes of these rules, unless the context requires otherwise;

(a) "Biotoxin management zone" means one or more harvest areas that, in order to protect public health from domoic acid concerns, has been either closed to crab harvest or where take of crab for commercial purposes has been prohibited unless it is in accordance with Sections 5 and 6 of these rules. Biotoxin management zones may include areas with sample results above and below biotoxin thresholds in order to provide a buffer to protect public health.

(b) "Crab sample set" means all whole crab collected for pre-season testing, routine monitoring, or during a restriction or closure, during a specific sample gathering event from multiple depths within a harvest area.

(c) "Crab" means Dungeness crab (*Cancer magister* or *Metacarcinus magister*) harvested and sold for commercial purposes from waters of this state or the Pacific Ocean off Oregon.

"Eviscerate" or "Evisceration" means the common processor's action of removing and discarding the entire intestinal tract, hepatopancreas, all associated abdominal organs.

(e) "HACCP Plan" means a hazard analysis critical control point plan as described in 21 CFR §123.6 (2016).

(f) "Harvest area" means a section of waters of this state or the Pacific Ocean off Oregon delineated for crab traceability purposes. Harvest area boundaries will be delineated on a map available from ODFW.

(g) "Land", "Landed" or "Landing" means either of the following:

(A) For fisheries where food fish were taken by use of a vessel, "land, landed or landing" means to begin transfer of food fish from a vessel. Once transfer begins, all food fish on board the vessel are counted as part of that landing.

(B) For fisheries where food fish were taken without use of any vessel, "land, landed or landing" means to begin transfer of food fish from a harvester to a wholesale fish dealer, wholesale fish bait dealer, or food fish canner, under which the following provisions apply:

(i) When the harvester and the wholesale fish dealer, wholesale fish bait dealer, or food fish canner are the same person or entity, transfer occurs when the food fish arrive at the licensed premises of the wholesale fish dealer, wholesale fish bait dealer, or food fish canner; and

(ii) Once transfer begins, all food fish from the harvest area are counted as part of that landing.

(h) "Processor" means any person engaged in commercial, custom, or institutional processing of fish or fishery products, in Oregon, in another state, or in a foreign country. A processor includes any person engaged in the production of any foods that are to be used in market or consumer tests.

(i) "Processing" means handling, storing, preparing, heading, eviscerating, freezing, changing into different market forms, manufacturing, preserving, packing, labeling, dockside unloading or holding.

(j) "Sell" includes to offer or possess for sale, barter, exchange or trade.

(k) "Wholesaler" means any person who buys crab that is subject to these rules for resale to retailers, other merchants, or industrial, institution, and commercial users for resale or business use.

(3) Procedures for pre-season domoic acid testing and decision making based on test results

(a) Prior to the opening of the crab fishing season, the ODA will oversee the collection of crab sample set(s) from each harvest area or landing port and test for domoic acid.

(b) ODA will oversee the collection of viscera and meat samples from each crab in each sample set. Viscera samples will be tested first and meat samples will be held and tested if viscera levels are detected at or above 30 ppm.

(c) Opening of a harvest area at the beginning of the crab season without restrictions will require domoic acid test results below 30 ppm in the viscera for all crab in the crab sample set from that harvest area.

(d) If razor clam test results show levels of 20 ppm or higher in the respective harvest area or other indicators show a potential biotoxin concern, ODA may recommend collection of 2 consecutive crab sample sets at least 7 days apart or other frequency at ODA's discretion. ODA will recommend unrestricted opening of the crab fishery only after test results indicate domoic acid levels below 20 ppm in the meat and 30 ppm in the viscera for all crab in each sample set.

(e) If one or more crab tests show a result of domoic acid at or above 30 ppm in the viscera and below 20 ppm in the meat, then ODA will designate one or more harvest areas as biotoxin management zones through temporary rule and recommend to ODFW to not open the biotoxin management zone(s), or to open the biotoxin

management zone(s) only in accordance with provisions in Section 5 and Section 6 of these rules.

(4) Procedures for in-season crab sampling and testing for domoic acid and decision making based on test results

(a) ODA will oversee the collection of crab sample set(s) every 2 to 4 weeks for domoic acid testing in a harvest area during the season if domoic acid levels at or above 20 ppm are detected in razor clams or another indicator species. If no samples are obtained from a harvest area for 4 weeks during the crab fishing season, ODA may recommend to ODFW to close the fishery in the harvest area or for evisceration restrictions to be placed on crab caught from that area.

(b) Viscera and meat samples will be collected from each crab within each sample set. Viscera samples will be tested first and meat samples will be held and tested if viscera levels are detected at or above 30 ppm.

(c) If any single crab meat sample result is 20 ppm or above, ODA will designate one or more harvest areas as biotoxin management zones through temporary rule and recommend to ODFW the harvesting and landing of crab from that biotoxin management zone be prohibited starting from the date the affected crab sample was harvested. Any crab already harvested and landed from that zone starting from the harvest date of the affected crab sample will be considered adulterated and under no case may be sold or donated. ODA will only recommend prohibitions in the biotoxin management zone(s) be removed following 2 additional sample sets that show domoic acid test results from all meat at below 20 ppm. The 2 sample sets must be gathered at least 7 days from the initial sample set and also must be at least 7 days apart. A shorter time frame between sample sets may be allowed at the discretion of the agencies.

(d) If one or more crab tests show a result of domoic acid at or above 30 ppm in the viscera and below 20 ppm in the meat:

(i) ODA will designate one or more harvest areas as biotoxin management zones through temporary rule and recommend to ODFW to either prohibit take of crab for commercial

purposes in the biotoxin management zone(s) or to prohibit take of crab for commercial purposes in the biotoxin management zone(s) that is not in accordance with Section 5 and Section 6.

ODA will lift the biotoxin management zone(s) designation and recommend the ODFW harvest restrictions be removed only after 2 additional sample sets show domoic acid test results from all viscera at below 30 ppm. The 2 sample sets must be gathered at least 7 days from the initial sample set and also must be at least 7 days apart. A shorter time frame between sample sets may be allowed at the discretion of the agencies.

(5) Considerations for minimizing public exposure to elevated levels of domoic acid in Dungeness crab. If 1 or more crab tests show a result of domoic acid at or above 30 ppm in the viscera and below 20 ppm in the meat, ODA will consider the following factors in its recommendation to ODFW to close biotoxin management zone(s) or to constrain sales of crab harvested from the biotoxin management zone(s).

(a) Whether all crab landed from the biotoxin management zone prior to the date of the sample results are traceable through a mechanism that specifies the harvest area(s) in which the crab were taken, the amount of crab landed, the date the crab were landed, and the amount sold to and contact information for each entity that purchased the crab.

(b) The extent of traceability of live crab by harvest area from the first point of sale until the final seller who sells the product to the consumer.

(6) Prohibition on uneviscerated crab sales to consumers. If pre-season or in-season testing conducted as described in Sections 3 and 4 of these rules detects domoic acid at or above 30 ppm in crab viscera but below 20 ppm in the meat in 1 or more harvest areas, and the conditions in Section 5 are met and ODA recommends the biotoxin management zone(s) open or remain open with prohibitions on uneviscerated crab sales, no person, processor, or wholesaler shall donate, hold, offer for sale or sell Dungeness crab from the biotoxin

management zone unless the following conditions are met.

(a) The crab is conveyed or sold to a food processing establishment licensed by ODA or to a licensed food processor that eviscerates and processes crab consistent with subsection (6)(e).

(b) The crab is conveyed or sold to a wholesaler that in turn sells all crab subject to these rules to a food processor that is licensed by ODA or to a licensed processor.

(c) In no case may uneviscerated crab be conveyed, sold or donated to retailers or directly to consumers unless it is processed as described in subsection (6)(d).

(d) Food processors or wholesalers are prohibited from selling or offering for sale to retailers or to consumers crab as described in this section unless:

(i) The licensed processor conducts its activities consistent with a seafood HACCP plan; and

(ii) The crab is eviscerated.

(e) If any of the landed crab in a landing from a fishing vessel came from a biotoxin management zone, the entire landing shall be subject to the requirements of this section. Landings for which the harvest area is unspecified shall be subject to the requirements of this section. Failure of a producer or wholesaler to notify processors that crab originated from a biotoxin management zone and so must be processed consistent with this section before it is donated, held, offered for sale or sold to consumers will be considered a violation of ORS 616.215(1).

(7) Penalties. Whenever it is found that any crab as described in subsection (6) is sold, offered for sale, or donated to any person in a manner that is inconsistent with these rules, the crab is considered adulterated food, and the holding, or offering for sale of crab is prohibited as provided in ORS 616.215(1). If any person violates these rules, ODA may proceed with any lawful remedy including:

(a) Seeking the district attorney to institute proceedings in the proper courts to be prosecuted in the manner required by law;

(b) Enjoining violations of law in a summary proceeding;

(c) Embargo, seizure or detention consistent with the provisions of ORS 561.605 – 630;

(d) Civil penalties up to \$10,000 for each violation as provided in ORS 616.997.

Statutory/Other Authority: ORS 616.215, ORS 616.225, ORS 616.235, ORS 561.190

Statutes/Other Implemented: ORS 616.215 & 616.235

History:

[DOA 19-2017, adopt filed 11/20/2017, effective 11/20/2017](#)

603-025-0500

License Fees and Categories for Food Establishments

Except as otherwise provided in ORS 616.695 to 616.755, a person may not operate a “food establishment,” as defined in ORS 616.695(2), without first obtaining and thereafter maintaining a license from the department. Pursuant to ORS 616.706, the department may establish license fees for food establishments based on the license applicant’s annual gross dollar volume of sales of covered operations in Oregon. The annual license fees for food establishments are as follows:

(1) Retail food establishment, as defined in OAR 603-025-0010(11) (annual gross dollar volume of sales):

(a) \$0-\$5,000: \$139.00

(b) \$5,001 - \$50,000: \$139.00

(c) \$50,001 - \$500,000: \$279.00

(d) \$500,001 - \$1,000,000: \$335.00

(e) \$1,000,001 - \$5,000,000: \$502.00

(f) \$5,000,001 - \$10,000,000: \$613.00

(g) Greater than \$10,000,000: \$725.00

(2) Food storage warehouse, as defined in OAR 603-025-0010(13) (annual gross dollar volume of sales):

(a) \$0 - \$5,000 - \$111.00

(b) \$5,001 - \$50,000 - \$111.00

(c) \$50,001 - \$500,000 - \$139.00

(d) \$500,001 - \$1,000,000 - \$139.00

(e) \$1,000,001 - \$5,000,000 - \$139.00

(f) \$5,000,001 - \$10,000,000 - \$139.00

(g) Greater than \$10,000,000 - \$167.00

(3) Food processing establishment, as defined in OAR 603-025-0010(10) (annual gross dollar volume of sales):

(a) \$0 - \$5,000 - \$335.00

(b) \$5,001 - \$50,000 - \$335.00

(c) \$50,001 - \$500,000 - \$474.00

(d) \$500,001 - \$1,000,000 - \$557.00

(e) \$1,000,001 - \$5,000,000 - \$725.00

(f) \$5,000,001 - \$10,000,000 - \$836.00

(g) Greater than \$10,000,000 - \$948.00

(4) Farm mixed-type facility, as defined in OAR 603-025-0010(8) (annual gross dollar volume of sales):

(a) \$0 - \$5,000 - \$335.00

(b) \$5,001 - \$50,000 - \$335.00

(c) \$50,001 - \$500,000 - \$474.00

(d) \$500,001 - \$1,000,000 - \$557.00

(e) \$1,000,001 - \$5,000,000 - \$725.00

(f) \$5,000,001 - \$10,000,000 - \$836.00

(g) Greater than \$10,000,000 - \$948.00

(5) Domestic kitchen establishment, as defined in OAR 603-025-0200(1): \$195.00

Statutory/Other Authority: ORS 561 & 616
Statutes/Other Implemented: ORS 616.706
History:

[DOA 12-2018, adopt filed 03/12/2018, effective 03/12/2018](#)

603-025-0510

New License Payments; Food Establishment License Expiration; Operating without a License

(1) New license payments must be received within 14 calendar days of the department's initial approval inspection or a change of ownership. If a new license payment is not received within 14 calendar days of the initial approval inspection or a change of ownership, the establishment will be considered operating without a license.

(2) Each license shall expire on June 30 next following the date of issuance.

(3) The department will collect a delinquent renewal penalty for any license fee if the licensee fails to renew the license before the 60th calendar day after the license expiration date.

(4) The delinquent renewal penalty shall be 30 percent of the license fee.

(5) The department will send a notice to all licensees who fail to renew their license by the 30th calendar day after their license expires, that a delinquent renewal penalty will be collected if their license fee is not paid before the 60th calendar day after the license expires.

(6) The department will send a notice to all licensees who have failed to renew their license by the 60th calendar day after their license expires, that a delinquent renewal penalty must

be paid in addition to the license fee before the license is renewed.

(7) The department will waive the delinquent renewal penalty if:

(a) The licensee's failure to renew the license prior to the 60th calendar day was caused entirely or in part by a department error or omission; or

(b) The licensee notifies the department in writing prior to the 60th calendar day after the license has expired, that the licensee will not engage in the licensed activity any time during the current license period. However, if the licensee resumes the licensed activity during the current license period, the licensee must pay both the license renewal fee and the delinquent renewal penalty.

(8) The delinquent renewal penalty will be assessed in addition to any other penalty or liability, provided by law, for engaging in an activity licensed by the department without obtaining and maintaining a valid license.

(9) A previously licensed food establishment will be considered to be operating without a license if the establishment fails to renew the license by the 90th calendar day after the license expires.

Statutory/Other Authority: ORS 561 & 616
Statutes/Other Implemented: ORS 561.300 & 616.706

History:

[DOA 12-2018, adopt filed 03/12/2018, effective 03/12/2018](#)

603-025-0900

Purpose

The Oregon Department of Agriculture Food Safety Program licenses and inspects all facets of Oregon's food distribution system, except restaurants, to ensure food is safe for consumption. Education and technical assistance are vital to the prevention, correction, and abatement of food safety violations, and are preferred over regulatory action. However, regulatory action may be necessary to deter violations of food safety laws and rules, to educate persons about the consequences of such violations, and to compel compliance with

food safety laws for the protection of consumers. The Department intends to initiate civil penalty actions when educational measures, technical assistance, warning letters, compliance agreements or other remedial measures fail to achieve compliance.

Statutory/Other Authority: ORS 561.190, 616.997 & 632.995

Statutes/Other Implemented: ORS 616.997 & 632.995

History:

DOA 2-2013, f. & cert. ef. 2-7-13

603-025-0910

Definitions

As used in OAR 603-025-0920 through 603-025-0930, unless otherwise required by the context, the following terms will be construed to mean:

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

(2) "Interference" means hindering or impeding an activity or process, which includes, but is not limited to any harassment, unreasonable delay, threat, concealment, deceit, or obstruction.

(3) "Major," with respect to violations, means an incident, or series of incidents that cause a reasonable probability that serious adverse health consequences or death will occur.

(4) "Minor," with respect to violations, means an incident, or series of incidents that are not likely to cause adverse health consequences.

(5) "Moderate," with respect to violations, means an incident, or series of incidents that may cause temporary or medically reversible adverse health consequences, or where the probability of serious adverse health consequences is remote.

(6) "Repeat violation" means the recurrence of the same violation for each 24-hour period after a notice of noncompliance or assessment of civil penalty was issued within the preceding three years. It does not include a violation if the previous notice is the subject of a pending appeal or if the notice has been withdrawn or successfully appealed.

(7) "Same," with respect to violations, means an identical recurrence, exact repetition, or a continuation of a previous violation.

(8) "Violation" means the failure to comply with any requirement of ORS Chapter 616 or any rules adopted thereunder.

Statutory/Other Authority: ORS 561.190, 616.997 & 632.995

Statutes/Other Implemented: ORS 616.997 & 632.995

History:

DOA 2-2013, f. & cert. ef. 2-7-13

603-025-0920

Schedule of Civil Penalties

In addition to any penalty available under ORS 561.190, 616.992, 616.994, or 632.990 the Department may impose a civil penalty with respective amounts for:

(1) Violation of ORS 616.073(3), relating to sulfite use. Penalty — \$500 to \$5,000.

(2) The manufacture, sale or delivery, holding or offering for sale of any food that is adulterated or misbranded as explained in ORS 616.215(1). Penalties:

(a) Minor — \$500 to \$4,000;

(b) Moderate — \$4,001 to \$7,000; or

(c) Major — \$7,001 to \$10,000.

(3) The adulteration or misbranding of any food as explained in ORS 616.215(2). Penalties:

(a) Minor — \$500 to \$4,000;

(b) Moderate — \$4,001 to \$7,000; or

(c) Major — \$7,001 to \$10,000.

(4) The receipt in commerce of any food that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise as explained in ORS 616.215(3). Penalties:

(a) Minor — \$500 to \$4,000;

(b) Moderate — \$4,001 to \$7,000; or

(c) Major — \$7,001 to \$10,000.

(5) Violation of the labeling requirements of ORS 616.215(4). Penalties:

(a) Minor — \$500 to \$4,000;

(b) Moderate — \$4,001 to \$7,000; or

(c) Major — \$7,001 to \$10,000.

(6) The dissemination of any false advertisement as explained in ORS 616.215(5). Penalties:

(a) Minor — \$500 to \$4,000;

(b) Moderate — \$4,001 to \$7,000; or

(c) Major — \$7,001 to \$10,000.

(7) Interference with any inspection or investigation performed pursuant to ORS 616.286. Penalty — \$5,000 to \$10,000.

(8) 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 as explained in ORS 616.215(7). Penalties:

(a) Minor — \$500 to \$4,000;

(b) Moderate — \$4,001 to \$7,000; or

(c) Major — \$7,001 to \$10,000.

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

(a) Minor — \$500 to \$4,000;

(b) Moderate — \$4,001 to \$7,000; or

(c) Major — \$7,001 to \$10,000.

(10) The alteration, mutilation, destruction, obliteration or removal of the whole or any part

of the label of a food, if done while such article is held for sale and results in such article being misbranded as explained in ORS 616.215(9). Penalties:

(a) Minor — \$500 to \$4,000;

(b) Moderate — \$4,001 to \$7,000; or

(c) Major — \$7,001 to \$10,000.

(11) 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. Penalty — \$5,000 to \$10,000.

(12) 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 616.385, of any information acquired under the authority of ORS 616.205 to 616.385 concerning any method or process which is a trade secret entitled to protection. Penalties:

(a) Minor — \$500 to \$4,000;

(b) Moderate — \$4,001 to \$7,000; or

(c) Major — \$7,001 to \$10,000.

(13) Labeling or offering 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 stenolepis* as explained in ORS 616.217. Penalty — \$500 to \$5,000.

(14) Failure of a retail or wholesale food distributor to place a warning label on food containing diethylstilbestrol pursuant to ORS 616.333. Penalty — \$500 to \$5,000.

(15) Violation of rules promulgated under ORS 616.700, relating to sanitation requirements for food and food establishments. Penalties:

(a) Minor — \$500 to \$4,000;

(b) Moderate — \$4,001 to \$7,000; or

(c) Major — \$7,001 to \$10,000.

(16) Operating a food establishment without obtaining or maintaining a license as required in ORS 616.706. Penalties:

(a) Minor — \$500 to \$4,000;

(b) Moderate — \$4,001 to \$7,000; or

(c) Major — \$7,001 to \$10,000.

(17) Knowingly misrepresenting the annual gross dollar volume of sales of covered operations by that applicant within Oregon during the prior calendar year or, if the applicant maintains sales records on a fiscal basis, the prior fiscal year for the requirements of ORS 616.706. Penalty — \$1,000 to \$5,000.

(18) The unauthorized removal of a notice posted by the department under the authority of ORS 616.740. Penalties:

(a) Minor — \$500 to \$4,000;

(b) Moderate — \$4,001 to \$7,000; or

(c) Major — \$7,001 to \$10,000.

(19) The manufacture, sale or delivery, holding or offering for sale of any food that does not conform to a standard of identity when the Department has adopted a standard of identity food as explained in ORS 616.761 to 616.775. Penalties:

(a) Minor — \$500 to \$4,000;

(b) Moderate — \$4,001 to \$7,000; or

(c) Major — \$7,001 to \$10,000.

(20) Violation of ORS 616.785, relating to unenriched flours, macaroni, and noodle products. Penalty — \$500 to \$5,000.

(21) Interference with a lawful inspection under authority of ORS 616.790. Penalty — \$5,000 to \$10,000.

(22) Violation of the Open Date Labeling Laws of ORS 616.815, 616.820, 616.825 or 616.830 or the rules adopted under ORS 616.835, relating to open date labeling. Penalties:

(a) Minor — \$500 to \$4,000;

(b) Moderate — \$4,001 to \$7,000; or

(c) Major — \$7,001 to \$10,000.

(23) Violation of ORS 616.860, relating to unit pricing. Penalty — \$500 to \$5,000.

(24) A retail seller of packaged consumer commodities failing to 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. Penalty — \$500 to \$5,000.

Statutory/Other Authority: ORS 561.190, 616.997 & 632.995

Statutes/Other Implemented: ORS 616.997 & 632.995

History:

DOA 2-2013, f. & cert. ef. 2-7-13

603-025-0930

Penalty factors; procedure

(1) In imposing a penalty pursuant to the schedule adopted pursuant to ORS 616.997, the Department shall consider the following factors, which are listed in prioritized order:

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

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

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

(d) The economic and financial conditions of the person incurring the penalty, including any financial gains resulting from the violation.

(2) Each 24-hour period a violation continues after the period of time established for compliance will be considered a separate violation unless the Department finds a different period of time is more appropriate to describe the specific violation event.

(3) Repeat violations of OAR 603-025-0910 will be assessed as three times the penalty amount in OAR 603-025-0910, not to exceed \$10,000.

(4) A civil penalty imposed under this rule will comply with ORS 183.745, except that the written application for a hearing must be received by the department no later than 10 days after the mailing or personal service of the notice of civil penalty.

Statutory/Other Authority: ORS 561.190, 616.997 & 632.995

Statutes/Other Implemented: ORS 616.997 & 632.995

History:

[DOA 26-2018, minor correction filed 10/25/2018, effective 10/25/2018](#)