

Chapter 616. General and Miscellaneous Provisions

UNIT PRICING

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

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

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

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

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

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

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

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

(b) That is part of a chain system or contracts with a supplier or cooperative that utilizes common purchasing, warehousing or distribution facilities, if the chain, cooperative or supplier has computer hardware for inventory control, ordering or pricing labels.

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

(4) “Unit retail price” means the retail price of the contents of a package of any consumer commodity, expressed in terms of the retail price of such contents per single whole unit of weight, volume, measure or count, computed to the nearest 10th of a cent when less than \$1 and to the nearest cent when \$1 or more. [1977 c.181 §3; 1979 c.827 §1; 2007 c.71 §185]

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

(1) Fresh fruits and vegetables.

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

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

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

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

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

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

(8) Patent or proprietary medicines.

(9) Products sold through coin-operated vending machines or products sold by manual distribution from mobile catering units to individual consumers. [1977 c.181 §4; 1979 c.777 §57; 1979 c.785 §6; 1979 c.827 §4; 2009 c.175 §7]

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

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

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

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

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

616.875 Rules; retail establishments presumed subject to unit pricing until exempted by department. (1) In accordance with any applicable provision of ORS chapter 183, the State Department of Agriculture may promulgate rules for the administration and enforcement of the provisions of ORS 616.850 to 616.890.

(2) A retail establishment or department thereof shall be considered to have gross annual receipts from the sale of consumer commodities of \$1.5 million or more as described in ORS 616.850 (2), unless the establishment demonstrates to the department that it does not. The determination of the director shall be deemed a final order not in a contested case for purposes of judicial review under ORS chapter 183. [1977 c.181 §8; 2009 c.175 §8]

616.880 Written warning notice for minor violation. Nothing in ORS 616.850 to 616.890 shall be construed as requiring the State Department of Agriculture to cite incidental or minor violations of ORS 616.860 to 616.870 whenever the department believes that the public interest will be served adequately in the circumstances by issuance of an alleged written warning notice. Each such notice issued shall include the name and address of the grocery store or food market, the date of the notice issuance, a description of the alleged violation and a statement of the penalties for a continued course of violation. [1977 c.181 §9; 2009 c.175 §9]

616.885 [1977 c.181 §10; 1991 c.734 §54; renumbered 616.996 in 2001]

616.890 Short title. ORS 616.850 to 616.890 may be cited as the Unit Pricing Law. [1977 c.181 §2; 2009 c.175 §10]

616.900 [1989 c.1025 §8; 1991 c.734 §55; 2001 c.320 §9; repealed by 2001 c.320 §10]

616.990 [Subsection (2) of 1959 Replacement Part renumbered as part of 561.990; subsection (3) enacted as 1961 c.637 §16; 1965 c.107 §3; subsection (10) enacted as 1971 c.176 §9; repealed by 1973 c.227 §26]

PENALTIES

616.992 General criminal penalty. The violation of any provisions of this chapter or of any rule adopted under this chapter is a Class B misdemeanor for a first offense, and a Class A misdemeanor for a second or subsequent offense. [1973 c.227 §28; 2009 c.11 §79; 2009 c.175 §1]

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

616.996 [Formerly 616.885; repealed by 2009 c.175 §6]

616.997 Civil penalties; rules; hearing; disposition of moneys. (1) In addition to any penalty available under ORS 561.190, 616.992 or 616.994, the State Department of Agriculture may impose a civil penalty for a violation of this chapter or of rules, regulations or standards adopted under this chapter. For the purposes of this section, each day a violation continues after the period of time established for compliance shall be considered a separate violation unless the department finds that a different period of time is more appropriate to describe a specific violation event.

(2) The department may adopt rules establishing a schedule of civil penalties that may be imposed under this section. Civil penalties imposed under this section may not exceed \$10,000 for each violation.

(3) When the department imposes a civil penalty under subsection (1) of this section, the department shall impose the penalty in the manner provided by ORS 183.745, except that the written application for a hearing must be received by the department no later than 10 days after the date of mailing or personal service of the notice of civil penalty.

(4) Moneys received by the department from civil penalties imposed under this section shall be deposited in the General Fund to the credit of the Department of Agriculture Account. [2009 c.175 §12]