

Chapter 578

2013 EDITION

Oregon Wheat Commission

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

(1) “Commercial channels” means the sale of grain for use as food, feed or seed, or any industrial or chemurgic use, when sold to any commercial buyer, dealer, processor or cooperative, or to any person, public or private, who resells any grain or product produced from grain.

(2) “Commission” means the Oregon Wheat Commission.

(3) “Director” means the Director of Agriculture.

(4) “First purchaser” means any person, corporation, association or partnership that buys grain from the producer in the first instance, or any lienholder, public or private, who may possess grain from the producer under any lien.

(5) “Grain” means barley, canola, corn, flaxseed, mustard, oats, rye, soybeans, grain sorghum, triticale, wheat and any other cereal grain for which standards are established or followed by the State Department of Agriculture.

(6) “Producer” means:

(a) Any landowner personally engaged in growing grain;

(b) A tenant of the landowner personally engaged in growing grain;

(c) Both the owner and the tenant jointly; and

(d) Any other person, partnership, association, corporation, cooperative, trust, sharecropper or other business units, devices or arrangements engaged in growing grain.

(7) “Sale” includes any pledge or mortgage of grain, after harvest, to any person, public or private. [Amended by 1977 c.198 §25; 2011 c.181 §6; 2013 c.93 §6]

578.020 Legislative findings; purpose of chapter. (1) The Legislative Assembly finds and declares that:

(a) It is in the interest of all the people that the abundant natural resources of Oregon be protected, fully developed and uniformly distributed.

(b) The growing of grain is an agricultural industry that contributes to the economic welfare of Oregon.

(c) Because a surplus of grain is grown in this state and, during recurrent years, that surplus has been in excess of all available markets, it is necessary that additional markets for grain be found in order to provide profitable enterprises for producers and to provide employment for labor and industry dependent upon grain.

(2) The purpose of this chapter is to promote the public health and welfare by providing means for the protection and stabilization of industry for grain produced in this state. [Amended by 2003 c.604 §87; 2011 c.181 §7; 2013 c.93 §7]

578.025 Department oversight of commission; rules. (1) The State Department of Agriculture shall:

(a) Monitor the practices or methods used or proposed for use by the Oregon Wheat Commission in carrying out the goals and needs disclosed by the budget of the commission;

(b) Promote cooperation among the commission, commodity commissions and the Oregon Beef Council and assist in the interchange of information and experience among those entities;

(c) Carry out the assigned organizational procedures under this chapter, including providing input to the Director of Agriculture for carrying out the duties of the director regarding the appointment and removal of members of the commission;

(d) Review budgets submitted to the director by the commission; and

(e) Adopt rules to carry out the provisions of this chapter.

(2) Except as provided in ORS 578.216, the department shall review plans and projects recommended by the commission for the promotion of grain, and for advertising and research and the dissemination of consumer and industry information for grain. The department shall conduct the review to ensure that the plan or project information is:

(a) Factual;

(b) Not disparaging to commodities; and

(c) Consistent with the purposes of this chapter. [2003 c.604 §§82,83; 2009 c.193 §§3,4; 2011 c.181 §8; 2013 c.93 §8]

578.030 Oregon Wheat Commission; members; appointment process; rules. (1)

There hereby is created the Oregon Wheat Commission. The Director of Agriculture shall appoint not fewer than six and not more than eight voting commission members for terms of four years. Except as provided in ORS 578.216, one member appointed by the director must be a member of the public.

(2) The commission, by a rule approved by a majority of the nonpublic members appointed under subsection (1) of this section, may create not more than two additional voting member positions on the commission. A person appointed to a commission position created under this subsection must be a representative of the wheat industry. The director shall appoint members to any positions created under this subsection for a term of

two years. A person may not serve a total of more than four terms as a member appointed under this subsection. Notwithstanding any term of appointment, a member position created under this section may be eliminated by a rule approved by a majority of the non-public board members appointed under subsection (1) of this section.

(3) In making appointments of voting members to the commission the director:

(a) Shall make all applications by qualified persons available to wheat grower organizations for review and ranking; and

(b) Prior to making appointments, shall take into consideration rankings and any recommendations made by wheat grower organizations.

(4) The director, or a duly authorized representative of the director, and the Dean of the College of Agricultural Sciences of Oregon State University, or a duly authorized representative of the dean, shall be nonvoting members of the commission. [Amended by 1959 c.596 §35; 1977 c.198 §26; 1995 c.79 §315; 2003 c.604 §§88,89; 2009 c.193 §§5,6]

578.040 Qualifications of members. (1) The voting members of the Oregon Wheat Commission shall be selected and appointed because of their ability and disposition to serve the state's interest and their knowledge of the state's natural resources. Voting members appointed under ORS 578.030 (1) must be United States citizens residing in this state.

(2) A nonpublic member appointed under ORS 578.030 (1) must have been actually engaged in growing wheat in this state for the five year period immediately prior to being appointed to the commission. Of the nonpublic members appointed under ORS 578.030 (1):

(a) Not less than three shall be residents of and have farming operations in that part of the Columbia Basin comprising Umatilla, Morrow, Gilliam, Sherman, Wasco and Jefferson Counties.

(b) Not less than one shall be a resident of and have a farming operation in the territory lying east of the summit of the Cascade Mountains and not described in paragraph (a) of this subsection.

(c) Not less than one shall be a resident of and have a farming operation in the territory lying west of the summit of the Cascade Mountains.

(3) A public member shall be a person who is not associated with the production or handling of wheat and who has an active interest in the positive economic development of the wheat industry.

(4) A member appointed to a position added under ORS 578.030 (2) must be an

owner or employee of a business entity that is engaged in the handling or processing of wheat produced in Oregon and have an active interest in the positive economic development of the wheat industry. [Amended by 2003 c.604 §§92,93; 2009 c.193 §§7,8]

578.045 Declaration of vacancy when member ceases to qualify. If the Director of Agriculture finds that an appointed member of the Oregon Wheat Commission has ceased to qualify under ORS 578.040 for membership on the commission, the director shall immediately declare the position of that member vacant. [2009 c.193 §2]

578.050 [Repealed by 2003 c.604 §109]

578.060 Removal of members; compensation of members; rules. (1)(a) A member is removable by the Director of Agriculture as provided in ORS 578.045 or for neglect of duty or misconduct in office.

(b) The director may remove a member only after serving the member with a copy of the charges against the member and conducting a public hearing. The director shall serve the member with the copy of the charges and notice of the time and place of the public hearing at least 10 days before the date of the hearing. At the public hearing, the member may be represented by counsel and may present and respond to evidence regarding the charges.

(c) If the director finds after a public hearing that there is cause to remove a member, the director shall send the member a notice under ORS 183.415 stating the director's intent to remove the member. If the member does not timely file a request for a contested case hearing, or if the director finds after a contested case hearing that there is cause to remove the member, the director may issue an order removing the member. When the order becomes final by operation of law, the director shall file with the Secretary of State a copy of the charges, all records and findings for the public hearing and any contested case hearing, and a copy of the order.

(2) The Oregon Wheat Commission may adopt rules establishing the amount of payment that a member of the commission receives under ORS 292.495 (1) for each day or portion of a day during which the member is actually engaged in the performance of official duties. The amount may exceed, but not be less than, the amount of payment that would otherwise be provided under ORS 292.495 (1).

(3) Members, officers and employees of the commission shall receive their actual and necessary travel and other expenses incurred in the performance of their official duties. Subject to any limitations described under

ORS 292.495 (2), the commission shall adopt uniform and reasonable rules governing the incurring and paying of such expenses. [Amended by 1959 c.596 §36; 1977 c.198 §27; 2009 c.193 §9; 2011 c.9 §79; 2011 c.181 §9]

578.070 Officers of commission. The Oregon Wheat Commission shall elect a chairperson, vice chairperson and secretary-treasurer from among its members. [Amended by 2009 c.193 §10; 2013 c.93 §9]

578.080 Meetings of commission. (1) The Oregon Wheat Commission shall meet at least four times each year regularly and at such other times as called by the chairperson. The chairperson may call special meetings of the commission at any time.

(2) The commission may participate in meetings outside this state for the purpose of advancing the work of the commission. [Amended by 2003 c.604 §95; 2009 c.193 §11]

578.090 Duties and powers of commission; rules. (1) Consistent with the general purposes of this chapter, the Oregon Wheat Commission shall establish the policies to be followed in accomplishing those purposes.

(2) In the administration of this chapter, the commission has the following duties, authorities and powers:

(a) To conduct a campaign of research, education and publicity.

(b) To lease, purchase or own the real or personal property deemed necessary in the administration of this chapter.

(c) To adopt rules as described in ORS 578.060 regarding the payment of per diem allowance and expenses of commission members while actually engaged in the performance of official duties, including necessary travel time.

(d) To find new markets for grains and grain products.

(e) To give, publicize and promulgate reliable information showing the value of grains and grain products for any useful and profitable purpose.

(f) To make public and encourage the widespread national and international use of Oregon grains and grain products.

(g) To investigate and participate in studies of the problems peculiar to the grain producers in Oregon.

(h) To take such action as the commission deems necessary or advisable in order to stabilize and protect the grain industry of the state and the health and welfare of the public.

(i) To levy assessments.

(3) In addition to exercising the powers listed in subsection (2) of this section, the commission may exercise the same powers

that a commodity commission may exercise under ORS 576.304 (1) and (3) to (14) or 576.306. [Amended by 1959 c.596 §37; 1977 c.198 §28; 2003 c.604 §96; 2007 c.71 §179; 2009 c.193 §12; 2011 c.181 §10; 2013 c.93 §10]

578.100 Acceptance of grants, donations and gifts. The Oregon Wheat Commission may accept grants, donations and gifts of funds from any source for expenditure for any purposes consistent with this chapter which may be specified as a condition of any grant, donation or gift. [Amended by 1959 c.596 §38]

578.105 Intellectual property; rules. (1) As used in this section, “intellectual property” means patents, copyrights, trademarks, inventions, discoveries, processes, ideas and other similar property, whether or not they are patentable or copyrightable.

(2) The Oregon Wheat Commission may, consistent with the purposes of the commission, develop intellectual property that relates to grain or assists in the implementation, maintenance or development of commission programs. The commission may take all necessary and proper actions relating to the development of an intellectual property, including but not limited to entering into contracts and other agreements and owning, managing, disposing of or using the intellectual property. The commission may adopt rules to govern the ownership, management, disposal and use of intellectual property and other activities of the commission relating to intellectual property.

(3) Moneys received by the commission as a result of the ownership, management, disposal or use of intellectual property, or other activities of the commission relating to intellectual property, must be deposited to an account established and maintained by the commission. [2003 c.604 §85; 2011 c.181 §11; 2013 c.93 §11]

578.110 Bond or letter of credit required of person authorized to receive or disburse commission moneys. The administrator and any other person authorized to receive or disburse moneys received by the Oregon Wheat Commission shall file with the commission a fidelity bond executed by a surety company authorized to do business in this state, or an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, in either case in favor of the commission and the State of Oregon, in such amount equal to the maximum amount of moneys the commission determines such person will have subject to the control of the person at any one time and upon such conditions as the commission shall prescribe. The cost of the bond or letter of credit shall be paid by the commission. [Amended by 1959 c.596 §39; 1991 c.331 §87; 1997 c.631 §501]

578.120 Appointment of administrator; duties; compensation. (1) The Oregon Wheat Commission shall appoint an administrator, who may be an employee of the commission. If the administrator is an employee of the commission, the administrator shall be an unclassified employee for purposes of ORS chapter 240. An administrator serves at the pleasure of the commission.

(2) The administrator is a nonvoting member of the commission.

(3) The administrator shall proceed immediately to prepare the plans and general program necessary and adequate to carry out the policies that are adopted by the commission.

(4) The administrator shall be compensated in the amount fixed by the commission. [Amended by 1959 c.596 §40; 2009 c.193 §13]

578.130 Location of commission office. The Oregon Wheat Commission may establish and maintain an office at any place within this state that the commission selects. [Amended by 2009 c.193 §14]

578.135 Commission employees not subject to state personnel compensation plans; commission not subject to office space regulation; fees for administrative services; rules. (1) Wages or salaries of employees of the Oregon Wheat Commission are not subject to personnel compensation plans for state employees established by the Oregon Department of Administrative Services under ORS 240.235 to 240.250.

(2) The commission is not required to utilize office space furnished or obtained by the Oregon Department of Administrative Services as provided in ORS chapter 276.

(3) The State Department of Agriculture may charge and collect from the commission an assessment or fee to reimburse the department for supervisory or administrative functions the department is required by law to perform with regard to the commission. The department shall establish the amount of the assessment or fee by rule. [2003 c.604 §86]

578.140 [Repealed by 2003 c.604 §109]

578.150 [1959 c.596 §47; repealed by 2003 c.604 §71 (578.151 enacted in lieu of 578.150)]

578.151 Preparation of commission budget; annual financial statements; expenditures. The Oregon Wheat Commission shall:

(1) Adopt a budget, obtain budget approval and submit financial statements in the same manner as a commodity commission acting under ORS 576.416.

(2) Expend moneys in the same manner as a commodity commission acting under ORS 576.375, 576.420, 576.440 and 576.445. [2003 c.604 §72 (enacted in lieu of 578.150); 2013 c.93 §12]

578.155 Deposit of moneys; investments; withdrawals. (1) As used in this section:

(a) "Depository" has the meaning given that term in ORS 295.001.

(b) "Financial institution" has the meaning given that term in ORS 706.008.

(2) Moneys that a person collects or receives from an assessment levied by the Oregon Wheat Commission and other moneys that the commission receives must be paid to the authorized agent of the commission and, except as provided under subsection (3) of this section, promptly deposited into an account established by the commission in a depository that is insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. In a manner consistent with the requirements of ORS 295.001 to 295.108, the chairperson and vice chairperson of the commission shall ensure that sufficient collateral secures any amount of funds on deposit that exceeds the limits of the Federal Deposit Insurance Corporation's or the National Credit Union Share Insurance Fund's coverage.

(3) The commission may deposit moneys into an account established by the commission in a financial institution that is not a depository if the amount on deposit is at all times fully insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or another appropriate federal regulatory body responsible for insuring amounts on deposit with the financial institution for the benefit of depositors.

(4) Subject to approval by the Director of Agriculture, the commission may invest moneys the commission collects or receives. Except as provided in subsection (5) of this section, investments the commission makes are:

(a) Limited to investments described in ORS 294.035;

(b) Subject to the investments maturity date limitations described in ORS 294.135; and

(c) Subject to the conduct prohibitions listed in ORS 294.145.

(5) In addition to or in lieu of investments described in subsection (4) of this section, the commission may invest in the investment pool described in ORS 294.805. For purposes of ORS 294.805 to 294.895, the commission is a public corporation and the secretary-treasurer of the commission is a local government official.

(6) Interest earned from any moneys a commission deposits or invests under this

section is available to the commission in a manner consistent with the commission's annual budget.

(7) Moneys may not be withdrawn from or paid out of an account established by the commission except upon order of the commission, and upon checks or other orders on the account that are signed by the secretary-treasurer or by another commission member designated by the commission and countersigned by the chairperson or vice chairperson or by another member designated by the commission. The secretary-treasurer of the commission shall keep a receipt, voucher or other written record, showing clearly the nature and items covered by each check or other order. [2013 c.93 §5]

578.160 Services, facilities and materials furnished to and received from other state agencies. (1) ORS 576.307 is applicable to the Oregon Wheat Commission.

(2) The Oregon Wheat Commission may elect to furnish services, facilities and materials to commodity commissions created under ORS 576.051 to 576.455, the Oregon Beef Council or other state agencies and officers under ORS 283.110. [1959 c.596 §49; 2003 c.604 §97]

578.170 Commission exempt from certain financial administration laws. Except as otherwise provided in this chapter, ORS 291.026, 291.201 to 291.222, 291.232 to 291.260, 291.322 to 291.336, 292.210 to 292.250, 293.260 to 293.280, 293.295 to 293.346 and 293.590 to 293.640 do not apply to the Oregon Wheat Commission or to the administration and enforcement of this chapter. [1959 c.596 §50]

578.180 [1959 c.596 §83; repealed by 2003 c.604 §73 (578.181 enacted in lieu of 578.180)]

578.181 Cancellation of uncollectible assessments; subsequent collection. The Oregon Wheat Commission may cancel an uncollectible assessment consistent with ORS 293.240. Subsequent collection of debt written off under ORS 293.240 is governed by ORS 293.245. [2003 c.604 §74 (enacted in lieu of 578.180)]

578.190 Records and accounts of commission. The Oregon Wheat Commission shall keep accurate books, records and accounts of all its dealings which shall be open to inspection and audit by the Secretary of State. [1959 c.596 §§46,84; 1973 c.794 §32]

578.210 [Amended by 1959 c.596 §41; 1975 c.174 §1; 1981 c.58 §1; 1991 c.972 §1; repealed by 2003 c.604 §75 (578.211 enacted in lieu of 578.210)]

578.211 Levy and collection of assessment; commission rules regulating sales activities; disputes over assessment amounts; assessment rules. (1)(a) The Oregon Wheat Commission may assess, levy and collect an assessment, the amount of which the commission shall determine, on all

units of grain grown or produced in this state and sold in commercial channels. The commission may not apply an assessment to any transaction that occurred prior to the date that the commission order assessing the assessment was entered.

(b) The commission may assess, levy and collect a differential assessment, the amount of which the commission shall determine, based on the intended use, type or variety of grain.

(c) All casual sales of grain made by the producer direct to the consumer are exempt from the assessment.

(d) The commission may, by rule, define and regulate handling, processing and casual sales.

(2) The commission shall assess and levy an assessment under subsection (1) of this section to the producer at the time and in the manner prescribed by the commission by rule. The commission is the owner of a collected assessment. A person who collects an assessment holds the assessment in trust for the benefit of the commission and the state and shall remit the assessment in the time and manner prescribed by the commission by rule. The assessment shall be deducted as provided by this section whether the grain is stored in this or another state.

(3) A lienholder who possesses grain under the lien shall deduct the assessment from the proceeds of the claim secured by the lien when the grain is pledged or mortgaged.

(4) Notwithstanding subsection (2) of this section and subject to ORS 578.221, the commission may assess and levy an assessment and collect an assessment from a first purchaser at the time and in the manner prescribed by the commission by rule.

(5) A person who believes that the amount of an assessment is incorrect may apply to the commission within 60 days after paying the assessment for a refund of the excess amount paid.

(6) An assessment under this section is a lien on the grain and has priority over other liens or encumbrances on the grain except liens created by a statute of this state.

(7) The commission may, by rule, establish exemptions from assessment based on:

(a) Grain quantities;

(b) Types of grain sale; and

(c) Types of grain producer. [2003 c.604 §76 (enacted in lieu of 578.210); 2011 c.181 §12; 2013 c.93 §13]

578.216 Authority of commission to adopt rules authorizing refunds; effect.

(1) In addition to any refund permitted under ORS 578.211, the Oregon Wheat Commission may adopt rules that provide for the com-

mission to refund all or part of an assessment on grain upon request of the person paying the assessment.

(2) If the commission adopts rules pursuant to subsection (1) of this section that provide for a refund to be at least equal in amount to the portion of the assessment on grain that is used by the commission for advertising and product promotion:

(a) Plans and projects recommended by the commission are exempt from State Department of Agriculture review under ORS 578.025 (2); and

(b) The commission may vote to eliminate the public member position on the commission. [2003 c.604 §§77,78; 2009 c.193 §§15,16; 2011 c.181 §13; 2013 c.93 §14]

578.220 [Repealed by 2003 c.604 §109]

578.221 Producer payment of assessment and reporting for certain sales. (1) If a first purchaser of grain lives or has an office in another state or is a federal or other governmental agency, the producer shall report all sales made to the first purchaser on forms provided by the Oregon Wheat Commission and pay the assessment moneys directly to the commission, unless the first purchaser voluntarily makes the proper deduction and remits the proceeds to the commission.

(2) If a producer performs the handling or processing functions for all or a part of grain production that normally would be performed by another person as first purchaser, the producer shall report sales of the grain from the production of the producer on forms provided by the commission and pay the assessment moneys directly to the commission, unless the first purchaser voluntarily makes the proper deduction and remits the proceeds to the commission. [2013 c.93 §2]

578.230 [Amended by 1955 c.156 §1; 1959 c.596 §42; 2003 c.14 §353; repealed by 2003 c.604 §109]

578.240 [1959 c.596 §44; 1967 c.451 §27; repealed by 2003 c.604 §109]

578.250 [1959 c.596 §85; repealed by 2003 c.604 §80 (578.251 enacted in lieu of 578.250)]

578.251 Records of person required to pay assessment; inspections and audits.

(1) A person required to pay an assessment to the Oregon Wheat Commission shall keep records in the same manner as required by ORS 576.351 for a person required to pay an assessment to a commodity commission.

(2) The commission or a person authorized by the commission may inspect and audit records, issue subpoenas and require payment for the cost of audits in the same manner as a commodity commission or person authorized by a commodity commission under ORS 576.351. [2003 c.604 §81 (enacted in lieu of 578.250)]

578.255 Penalty for delaying transmittal of assessment moneys. (1) In addition to the penalty established in ORS 578.990, any person who delays transmittal of assessment moneys beyond the time set by the Oregon Wheat Commission shall pay a civil penalty to the commission of 10 percent of the amount due and shall also pay one and one-half percent interest per month on the unpaid balance of the assessment.

(2) The commission may waive the penalty and interest described in subsection (1) of this section upon a showing of good cause.

(3) Notwithstanding subsection (1) of this section, if an assessment is collected pursuant to a federal marketing order or agreement, the commission may establish a penalty or interest rate that is consistent with that order or agreement. [2013 c.93 §3]

578.260 Penalty for failure to relinquish collected assessment moneys; civil action or other remedies. (1) If a person responsible for the transmittal of assessment moneys to the Oregon Wheat Commission fails to relinquish assessment moneys collected, the person shall pay a civil penalty to the commission equal to twice the amount of the unrelinquished assessment moneys.

(2) The commission may commence a civil action or utilize any other available legal or equitable remedy to collect an assessment or civil penalty, obtain injunctive relief or obtain specific performance under this chapter.

(3) If the person responsible for the transmittal of assessment moneys is a corporation, all directors and officers of the corporation are personally liable for a failure to relinquish the assessment moneys collected by the corporation.

(4) If the commission obtains a favorable judgment in an action or suit under subsection (2) of this section, the court shall award the commission costs and reasonable attorney fees.

(5) Unless the person required to pay an assessment and the person responsible for collecting the assessment are related businesses, the commission may not collect from the person required to pay the assessment any amount deducted by the person responsible for collecting the assessment and due and owing to the commission. [2013 c.93 §4]

578.990 Penalties. Violation of any of the provisions of this chapter is a Class C misdemeanor. [Amended by 2011 c.597 §239]