Chapter 578

2003 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 wheat for use as food, feed, seed, or any industrial or chemurgic use, when sold to any commercial buyer, dealer, processor, cooperative, or to any person, public or private, who resells any wheat or product produced from wheat.

(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 wheat from the grower in the first instance, or any lienholder, public or private, who may possess wheat from the grower under any lien.

(5) "Grower" means any landowner personally engaged in growing wheat; a tenant of the landowner personally engaged in growing wheat; and both the owner and the tenant jointly; and includes a person, partnership, association, corporation, cooperative, trust, sharecropper, and any and all other business units, devices and arrangements.

(6) "Sale" includes any pledge or mortgage of wheat, after harvest, to any person, public or private. [Amended by 1977 c.198 §25]

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 wheat is an agricultural industry that contributes to the economic welfare of Oregon.

(c) Because a surplus of wheat 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 wheat be found in order to provide profitable enterprises for wheat growers and to provide employment for labor and industry dependent upon wheat.

(2) The purpose of this chapter is to promote the public health and welfare by providing means for the protection and stabilization of the wheat industry in this state. [Amended by 2003 c.604 §87]

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 the appointment and removal of members of the commission;

(d) Review budgets submitted to the Director of Agriculture 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, and may approve or disapprove, plans and projects recommended by the commission for wheat promotion, advertising and research and for the dissemination of consumer and wheat industry information. In reviewing plans and projects recommended by the commission, the department shall consider whether 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]

Note: The amendments to 578.025 by section 83, chapter 604, Oregon Laws 2003, become operative March 1, 2009. See section 84, chapter 604, Oregon Laws 2003. The text that is operative on and after March 1, 2009, is set forth for the user's convenience.

578.025. The State Department of Agriculture shall:

(1) 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;

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

(3) Carry out the assigned organizational procedures under this chapter, including the appointment and removal of members of the commission;

(4) Review budgets submitted to the Director of Agriculture by the commission; and

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

578.030 Oregon Wheat Commission; members. (1) There hereby is created the Oregon Wheat Commission consisting of eight members. The Director of Agriculture shall appoint six voting commission members for terms of four years. One member appointed by the director must be a member of the public not associated with the production or handling of wheat and having an active interest in the positive economic development of the wheat industry. In making the other five appointments of voting members

of the commission the director shall take into consideration any nominations or recommendations made to the director by growers or growers' organizations.

(2) 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 ex officio members, without vote, of the commission. [Amended by 1959 c.596 §35; 1977 c.198 §26; 1995 c.79 §315; 2003 c.604 §88]

Note: The amendments to 578.030 by section 89, chapter 604, Oregon Laws 2003, become operative March 1, 2009. See section 90, chapter 604, Oregon Laws 2003. The text that is operative on and after March 1, 2009, is set forth for the user's convenience.

578.030. (1) There hereby is created the Oregon Wheat Commission consisting of seven members. The Director of Agriculture shall appoint five voting commission members for terms of four years. In making the appointments of voting members of the commission the director shall take into consideration any nominations or recommendations made to the director by growers or growers' organizations.

(2) 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 ex officio members, without vote, of the commission.

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 other than the member of the public must be citizens residing in this state, who have been actually engaged in growing wheat in this state for at least five years.

(2) Three of the members shall be residents of and have farming operations in that part of the Columbia Basin comprising the following counties: Umatilla, Morrow, Gilliam, Sherman, Wasco and Jefferson. One of the members shall be a resident of and have a farming operation in the territory comprised of the other counties lying east of the summit of the Cascade Mountains. One member shall be a resident of and have a farming operation in the territory lying west of the summit of the Cascade Mountains. [Amended by 2003 c.604 §92]

Note: The amendments to 578.040 by section 93, chapter 604, Oregon Laws 2003, become operative March 1, 2009. See section 94, chapter 604, Oregon Laws 2003. The text that is operative on and after March 1, 2009, is set forth for the user's convenience.

578.040. (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 must be citizens residing in this state, who have been actually engaged in growing wheat in this state for at least five years.

(2) Three of the members shall be residents of and have farming operations in that part of the Columbia Basin comprising the following counties: Umatilla, Morrow, Gilliam, Sherman, Wasco and Jefferson. One of the members shall be a resident of and have a farming operation in the territory comprised of the other counties lying east of the summit of the Cascade Mountains. One member shall be a resident of and have a farming operation in the territory lying west of the summit of the Cascade Mountains.

578.050 [Repealed by 2003 c.604 §109]

578.060 Removal of members; compensation of members. (1) A member is removable by the Director of Agriculture for cause after being given a copy of written charges and an opportunity to be heard publicly. In addition to all other causes, ceasing to be a resident of this state or to be actually engaged in growing wheat therein is sufficient cause for removal.

(2) Members, officers and employees of the Oregon Wheat Commission shall receive their actual and necessary travel and other expenses incurred in the performance of their official duties. 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]

578.070 Chairperson and secretary of commission. The Oregon Wheat Commission shall elect a chairperson and may employ a secretary who is not a member of the commission.

578.080 Meetings of commission. (1) The Oregon Wheat Commission shall meet at least once every three months 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]

578.090 Duties and powers of commission. (1) Consistent with the general purposes of this chapter, the Oregon Wheat Commission shall establish the policies to be followed in the accomplishments of such 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 find new markets for wheat and wheat products.

(c) To give, publicize and promulgate reliable information showing the value of wheat and wheat products for any purpose for which it is found useful and profitable.

(d) To make public and encourage the widespread national and international use of the special kinds of wheat and wheat products produced from the special varieties of wheat grown in Oregon.

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

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

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

(h) To establish a reasonable per diem allowance, in addition to expenses under ORS 578.060, to members of the commission while actually engaged in the performance of their official duties, including necessary travel time.

(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. [Amended by 1959 c.596 §37; 1977 c.198 §28; 2003 c.604 §96]

578.100 Commission accepting 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 wheat 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]

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; salary. The Oregon Wheat Commission shall appoint an administrator, who shall devote full time to the administration of this chapter. The administrator is an ex officio member, without vote, of the commission. 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. The administrator shall be paid the salary fixed by the commission. [Amended by 1959 c.596 §40]

578.130 Establishment of administrator's office. For the convenience of the majority of those most likely to be affected in the administration of this chapter, the administrator, upon recommendation of the Oregon Wheat Commission, may establish and maintain an office for the administrator, at any place the commission selects.

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; deposit, withdrawal and investment of moneys. 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) Receive, deposit, invest, expend and budget 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)]

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 wheat 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 wheat.

(c) All casual sales of wheat 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 wheat is stored in this or another state.

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

(4) Notwithstanding subsection (2) of this section, 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 wheat and has priority over other liens or encumbrances on the wheat except liens created by a statute of this state.

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

(a) Wheat quantities;

(b) Types of wheat sale; and

(c) Types of wheat producer. [2003 c.604 §76 (enacted in lieu of 578.210)]

Note: Section 70, chapter 604, Oregon Laws 2003, provides:

Sec. 70. The Legislative Assembly validates and ratifies all actions by the Oregon Wheat Commission,

and by the officers and employees thereof, taken pursuant to statutory authority after the creation of the commission by ORS 578.030 and prior to the effective date of this 2003 Act [July 22, 2003]. [2003 c.604 §70]

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 commission to refund all or part of an assessment on wheat upon request of the person paying the assessment. A rule adopted under this subsection may not provide for the commission to refund less than the portion of the assessment used by the commission for advertising and product promotion.

(2) If the commission adopts rules pursuant to subsection (1) of this section, plans and projects recommended by the commission are exempt from State Department of Agriculture review and approval or disapproval under ORS 578.025 (2). [2003 c.604 §77]

Note: The amendments to 578.216 by section 78, chapter 604, Oregon Laws 2003, become operative March 1, 2009. See section 79, chapter 604, Oregon Laws 2003. The text that is operative on and after March 1, 2009, is set forth for the user's convenience.

578.216. In addition to any refund permitted under ORS 578.211, the Oregon Wheat Commission may adopt rules that provide for the commission to refund all or part of an assessment on wheat upon request of the person paying the assessment. A rule adopted under this subsection may not provide for the commission to refund less than the portion of the assessment used by the commission for advertising and product promotion.

578.220 [Repealed by 2003 c.604 §109]

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)]

578.990 Penalties. Violation of any of the provisions of this chapter is punishable, upon conviction, by a fine of not less than $25 nor more than $500, or by imprisonment in the county jail for not less than 30 nor more than 90 days, or by both. Justice courts have concurrent jurisdiction with circuit courts in all prosecutions under this chapter.