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## Requirements for Grain Dealers: *Oregon*



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# A National Agricultural Law Center Research Publication

## Requirements for Grain Dealers: Oregon

### Fast Find:

- 1) Licensing:
- 2) Bonding: [OR. Rev. Stat. Ann. § 578.110](#)
- 3) Auditing: [OR. Rev. Stat. Ann. §§ 578.190; .251; 576.351](#)
- 4) Indemnity Fund:
- 5) Failure/Liquidation:
- 6) Prompt Payment: [OR. Rev. Stat. Ann. § 576.705](#)
- 7) Penalties: [OR. Rev. Stat. Ann. §§ 578.255; .260; .990](#)
- 8) Lien:

**OR. Rev. Stat. Ann. Tit. 47, Ch. 576;**

**OR. Rev. Stat. Ann. Tit. 47, Ch. 578**

*Current through laws of the 2023 Regular Session of the 82nd Legislative Assembly, which convened January 17, 2023 and adjourned sine die June 25, 2023, pending classification of undesignated material and text revision by the Oregon Reviser.*

### **576.006. Definitions**

As used in ORS 576.006 to 576.022:

- (1) “Department” means the State Department of Agriculture of the State of Oregon.
- (2) “Farm products” means all agricultural, floricultural, vegetable and fruit products of the soil, livestock and meats, poultry, eggs, dairy products, and any and all products which have their situs of production on the farm.
- (3) “Food products” means any and all products either in a natural or processed state used by human or animal as food.

### **576.009. Establishment of Agricultural Development Division**

There is established within the State Department of Agriculture an Agricultural Development Division which shall have the powers and duties conferred by ORS 576.006 to 576.022, and as specified by the Director of Agriculture. The Agricultural Development Division shall consist of a market development service and a commodity development service.

### **576.013. Market development and commodity development services; purpose**



(1) The purpose of the market development service of the Agricultural Development Division shall be to assist in the establishment and development of new markets and to maintain or expand existing domestic and foreign markets for farm and food commodities produced or processed in this state. The purpose of the commodity development service of the Agricultural Development Division shall be to assist in the development and improvement of farm and food commodities and their values and uses.

(2) In furthering the purpose of the market development service, the State Department of Agriculture may:

(a) Collect and disseminate information relating to the availability, quality and uses of farm and food commodities produced or processed in this state, including participation in demonstrations, fairs and exhibits;

(b) Serve as an intermediary between prospective purchasers and sellers of farm and food commodities produced or processed in this state as to source of supply and demand;

(c) After notice to and with the approval of the Governor, represent the state in matters of legislation or rulemaking affecting the establishment, development, maintenance or expansion of markets for farm and food commodities produced or processed in this state;

(d) Cooperate with and aid producers, processors, distributors and prospective purchasers of farm and food commodities in establishing, or improving and maintaining, an efficient system of production, processing, distribution and marketing of farm and food commodities;

(e) Investigate delays, embargoes, conditions and practices, charges and rates in the marketing, transportation and handling of farm and food commodities produced or processed in this state, and when an investigation discloses a probable violation of state or federal law, make recommendations to the proper state or federal authorities for appropriate action;

(f) Engage in negotiations with common and contract carriers and initiate or participate in the prosecution of proceedings before agencies engaged in freight rate regulation within or without this state in matters relating to the establishment of new freight rates, the modification of existing freight rates or to unjust, unreasonable or discriminatory rates or practices affecting the cost of transportation, production or processing of farm or food commodities produced or processed in this state;

(g) Investigate the advisability and need for establishment of terminal, regional, assembly, dock and other distributing facilities for the delivery, sale and distribution of farm and food commodities at or near the point of purchase or use, and advise and cooperate with public or private agencies or organizations in promoting the



establishment, construction or acquisition of the facilities for public use and make recommendations as to their operations;

(h) Accept grants from public or private agencies, organizations or persons, with any grant treated as a trust fund, separate and distinct from the General Fund, within the meaning of ORS chapters 291 and 293;

(i) Consult with other states in development of joint programs for the establishment, development, maintenance or expansion of domestic and foreign markets on a mutual basis;

(j) Cooperate with the Oregon Business Development Department of this state in foreign and domestic marketing matters of common interest; and

(k) Enter into agreements with public and private entities in new or existing markets to assist the establishment, development, maintenance or expansion of those markets and provide for sampling, testing, certification or other procedures or processes to facilitate the movement of, or optimize the value of, farm and food products.

(3) In furthering the purpose of the commodity development service, the department may:

(a) Collect and disseminate information relating to new or alternate crop production, processing and marketing feasibilities to producers of farm and food commodities;

(b) Assist the commodity commissions in carrying out mutual or joint scientific research efforts and mutual or joint development of the commercial values and new and additional uses of their commodities; and

(c) Accept grants from public or private agencies, organizations or persons, with any grant treated as a trust fund, separate and distinct from the General Fund, within the meaning of ORS chapters 291 and 293.

(4) Nothing in ORS 576.006 to 576.022 shall authorize, or modify the limitations on authority under ORS 561.170 for, the Agricultural Development Division, or its staff to:

(a) Engage in any commercial transaction involving farm or food commodities as purchaser, seller, broker or dealer; or

(b) Acquire or own any farm or food commodities or real property associated with them.

### **576.019. Prohibition of discrimination**

In the performance of duties, under ORS 576.006 to 576.022, no official or employee of the State Department of Agriculture shall discriminate against any farm or food product, or against any producer, processor, distributor or dealer of any such products.



## **576.022. Authority of Oregon State University not affected**

Nothing in ORS 576.006 to 576.022 shall be construed to limit, alter, repeal or duplicate the existing authority and functions of Oregon State University enumerated in ORS 561.362 and full effect shall be given to the provisions of ORS 561.364 and 561.366. The State Department of Agriculture may call upon Oregon State University for such technical and statistical information as it may need and as the university may be able to provide.

## **576.024. Statistical information to be obtained for economic studies of livestock industry**

(1) It is necessary for the economy of this state, the livestock industry and the welfare of the consuming public that the department obtain statistical information for economic studies of the livestock industry including the volume of production of livestock in this state; the channels into which such livestock is marketed; the total consumption of meat in this state; the types and quantities consumed and the sources thereof; and such other information as is pertinent to reveal additional potential markets for livestock produced in this state.

(2) In order to carry out and maintain this continuing study, the department is authorized during business hours to inspect the records of places or businesses which handle, store or sell meat animals, or meat as defined in ORS 619.010 to 619.071, 619.370 and 619.993.

(3) The department, after public hearing under ORS chapter 183, may require periodic reporting from the places or businesses described in this section and require the furnishing to the department of the data or information which may be needed in continuing the comprehensive study as authorized in this section.

## **576.035. Establishment of food product market news services**

Oregon State University, acting through the Federal Cooperative Extension Service of the university, shall cooperate with the Agriculture Marketing Service of the United States Department of Agriculture and with the appropriate offices of adjoining states to establish and maintain a food product market news service in the Klamath Basin and provide such services for the central Oregon and Malheur areas.

## **576.051. Definitions**

As used in ORS 576.051 to 576.455, unless the context requires otherwise:

(1) “Commercial channels” means the sale of the commodity for which a commodity commission is established for use as food, industrial, agricultural or chemurgic use, when sold to any commercial buyer or to any person who resells the commodity or any product derived therefrom.

(2) “Commission” means a commodity commission established under ORS 576.051 to 576.455.



(3) “Commodity” means any distinctive type of agricultural, horticultural, viticultural, vegetable, animal or seafood product, or any class, variety or utilization thereof, in a natural or processed state, including bees and honey but not including timber or timber products. The Director of Agriculture may determine what types or subtypes of commodity may be classed together as a commodity for the purposes of ORS 576.051 to 576.455.

(4) “Department” means the State Department of Agriculture.

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

(6) “First purchaser” means any person who buys the commodity for which a commission is established from the producer in the first instance, or handler who received the commodity in the first instance from the producer for resale or processing.

(7) “Handler” means any producer, processor, distributor or other person engaged in the handling or marketing of or dealing in the commodity for which a commission is established, whether as an owner, agent, employee, broker or otherwise.

(8) “Producer” means a person that engages in, or has engaged in, the business of growing, producing or procuring within this state, or in the rivers or offshore waters of this state except the Columbia River, a commodity for market or for delivery or transfer to others owning or holding title to the commodity. “Producer” includes a landowner, landlord, tenant, sharecropper, boat skipper or other person that participates in the growing, producing or procuring of a commodity and receives a share of the commodity.

(9) “Regional commission” means a commission that functions only within a specified area of this state consisting of one or more entire counties.

### **576.053. Short title**

ORS 576.051 to 576.455 and 576.991 (2) may be known and cited as the Commodity Commission Act.

### **576.054. Legislative findings**

(1) The Legislative Assembly finds that:

(a) Commodity industries are vital elements of the state economy.  
Commodity industries:

(A) Are sources of substantial employment for the citizens of this state;

(B) Produce needed tax revenues for the support of state and local government;

(C) Encourage responsible stewardship of valuable land and marine resources; and



(D) Produce substantial quantities of necessary food for the state, nation and world.

(b) Commodity commissions support commodity industries and enhance and preserve the economic interests of the state.

(c) Commodity commissions function in the same manner as a broad range of other programs established by the Legislative Assembly that are funded by the public through fees assessed according to the relationship of the fee payer to a particular program.

(d) Commodity commissions are not established to benefit individual persons engaged in commodity industries, but are intended to improve the overall conditions for the particular commodity for which a commission is established and thereby benefit the overall economy of the state and all the citizens of the state.

(e) Mandated cooperative efforts engaged in by commodity commissions are a proven, effective method to avoid economic waste and maintain stable agricultural markets.

(f) It is in the public interest that:

(A) Support for Oregon's commodity industries be clearly expressed;

(B) Adequate protection be given to commodities and commodity uses, activities and operations; and

(C) Each commodity be promoted individually and as part of a stabilized comprehensive industry by increasing consumption of commodities in this state and the United States and internationally.

(2) It is the intent of the Legislative Assembly that commodity commissions do the following for the purpose of serving commodity industries and the citizens of this state:

(a) Participate in the formulation and implementation of public policy through expressive activities.

(b) Reflect a continuing commitment by the state to commodity industries that are integral to the economy of this state.

(c) Represent a policy of support for persons engaged in commodity industries and for their critical role in the economy of this state, especially the economy of rural areas.

(d) Provide benefits to entire commodity industries and all the citizens of this state.

(e) Enhance the image of Oregon commodities for the purpose of increasing the overall demand for those commodities. To achieve



that purpose, the Legislative Assembly intends that commodity commissions operate primarily to create a more receptive environment for commodities and for the individual efforts of persons engaged in commodity industries and thereby complement individual, targeted and specific activities.

(f) Use mandatory cooperative efforts to complement state, federal and international laws and programs.

(g) Protect the citizens of this state by educating them regarding the quality, care and methods used in the production of Oregon commodities.

(h) Increase knowledge regarding the healthful qualities and dietetic value of Oregon commodities.

(i) Support and engage in research programs and activities that benefit the planting, production, harvesting, handling, processing, marketing and use of Oregon commodities.

#### **576.062. Commodity commissions declared state commissions**

The following commodity commissions are established as state commissions:

- (1) The Oregon Dairy Products Commission.
- (2) The Oregon Hazelnut Commission.
- (3) The Oregon Dungeness Crab Commission.
- (4) The Oregon Salmon Commission.
- (5) The Oregon Albacore Commission.
- (6) The Oregon Sheep Commission.
- (7) The Oregon Potato Commission.
- (8) The Oregon Blueberry Commission.
- (9) The Oregon Clover Seed Commission.
- (10) The Oregon Fine Fescue Commission.
- (11) The Oregon Hop Commission.
- (12) The Oregon Mint Commission.
- (13) The Oregon Processed Vegetable Commission.
- (14) The Oregon Raspberry and Blackberry Commission.
- (15) The Oregon Ryegrass Growers Seed Commission.
- (16) The Oregon Strawberry Commission.
- (17) The Oregon Sweet Cherry Commission.





(18) The Oregon Tall Fescue Commission.

(19) The Oregon Trawl Commission.

### **576.066. Duties, functions, and powers of department**

(1) The State Department of Agriculture shall:

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

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

(c) Carry out the assigned organizational procedures under ORS 576.051 to 576.455, including the appointment and removal of members of the commission;

(d) Review budgets submitted to the Director of Agriculture by a commodity commission under ORS 576.416; and

(e) Adopt rules to carry out the provisions of ORS 576.051 to 576.455.

(2) The department shall review, and may approve or disapprove, plans and projects recommended by a commodity commission for commodity promotion, advertising and research and for the dissemination of consumer and commodity industry information. In reviewing plans and projects recommended by a commodity commission, the department shall consider whether the plan or project information is:

(a) Factual;

(b) Not disparaging to other commodities; and

(c) Consistent with the purposes of ORS 576.051 to 576.455.

### **576.206. Commodity commission; temporary members**

(1) Upon the establishment of a commodity commission, the Director of Agriculture shall appoint five temporary members to the commission. In appointing the temporary members, the director shall give consideration to any recommendations by other commodity commissions, commodity growers and commodity grower associations. A majority of the temporary members must be producers of the commodity that is the subject of the commission and at least one member must be a handler of the commodity.

(2) The temporary members shall adopt rules for the commission in accordance with ORS chapter 183, including but not limited to rules establishing the number and geographic representation of the commissioners and rules providing for the removal of commissioners. The terms of the temporary members expire on



the date that one or more commissioners are appointed under subsection (3) of this section. A qualified temporary member is eligible for appointment to a term on the commission under subsection (3) of this section.

(3) Except as provided in ORS 576.225 (3), the director shall appoint the commissioners for a commodity commission in accordance with the rules adopted under subsection (2) of this section. In appointing the commissioners, the director shall give consideration to any recommendations by other commodity commissions, commodity growers and commodity grower associations.

(4) A majority of the commissioners must be producers of the commodity that is the subject of the commission. At least one commissioner must be a handler of the commodity. One commissioner must be a member of the public not associated with the production or handling of the commodity. All commissioners other than handlers and the member of the public must be producers.

(5) The term of a commissioner appointed under subsection (3) of this section is four years unless a shorter term is established by commission rule. A commissioner is eligible for reappointment unless otherwise provided by commission rule. Before the expiration of a commissioner's term, the director shall appoint a successor to assume office upon expiration of the term. If there is a vacancy on a commission for any cause, the director shall appoint a person to the unexpired term.

(6) The commission shall select one member to serve as chairperson and another member to serve as vice chairperson, with such duties and powers as the commission deems appropriate to those offices.

(7) A temporary member of a commission or a commissioner is entitled to compensation and expenses in the manner and amounts provided in ORS 292.495. Claims for compensation earned and expenses incurred in performing the functions of the commission shall be paid out of funds available to the commission.

### **576.215. Ex officio members of commission**

The Director of Agriculture and the Dean of the College of Agricultural Sciences of Oregon State University, or their respective official representative, shall be ex officio members of a commodity commission, without right to vote. When a commission is established for a seafood commodity, the chairperson of the State Fish and Wildlife Commission or the official representative of the chairperson shall also be an ex officio member of the commission, without right to vote. ORS 576.206 and 576.225 to 576.255 do not apply to ex officio members.

### **576.225. Commission members; qualifications; amendment of rules**

(1) A member of a commodity commission must, during the term of office of the member:



- (a) Be a citizen of the United States.
- (b) Be a bona fide resident of the state.
- (c) Have an active interest in the positive development and economic growth of the commodity industry in Oregon.

(2) A producer member of a commission must have paid an assessment adopted by the commission, if any, on the commodity in each of the preceding three calendar years. A handler member of a commission must have collected an assessment adopted by the commission, if any, on the commodity in each of the preceding three calendar years.

(3) In addition to any other authority of a commodity commission to adopt rules under ORS 576.304, at any time following the initial appointment of all commissioners for a commodity commission under ORS 576.206 (3), and subject to ORS 576.215, the commission may amend the rules adopted by the temporary commission members under ORS 576.206 (2) to change the number and geographic representation of the commissioners. Any rule amendment adopted under this subsection shall apply to commissioner appointments made by the Director of Agriculture after the effective date of the rule amendment.

#### **576.245. Commission members no longer active producers or handlers**

The Director of Agriculture shall immediately declare the office of any appointed producer or handler member of a commodity commission vacant whenever the director finds that such member has ceased to be an active producer or handler in this state, has become a resident of another state or is unable to perform the duties of office.

#### **576.255. Commission members; removal**

(1) The Director of Agriculture may remove any member of a commodity commission for inefficiency, neglect of duty or misconduct in office, after a public hearing and after serving upon the member a copy of the charges against the member, together with a notice of the time and place of the hearing, at least 10 days prior to such hearing. At the hearing the member shall be given an opportunity to be heard in person or by counsel and shall be permitted to present evidence to answer the charges and explain the facts alleged against the member.

(2) In every case of removal, the director shall file in the office of the Secretary of State a complete statement of all charges against the member, the findings of the director and a record of the entire proceedings held in connection with the charges.

#### **576.265. Commission members; expenses**

(1) A commodity 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).

(2) Members, officers and employees of a commodity 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.

### **576.275. Establishment of meeting place**

A commodity commission may establish a meeting place anywhere within this state the commission selects, but the selection of the location must be guided by consideration for the convenience of the majority of those persons most likely to have business with the commission or be affected by the acts of the commission. This section does not prohibit a commission from participating in meetings outside this state for purposes of advancing the work of the commission.

### **576.285. Organization and meetings of commission**

A commodity commission shall meet as soon as practicable for the purposes of organizing. It shall elect a chairperson and a secretary-treasurer from among its members. It shall adopt a general statement of policy for guidance, and shall transact such other business as is necessary to start the work of the commission. Thereafter, the commission shall meet regularly once each six months, and at such other times as called by the chairperson. The chairperson may call special meetings at any time, and shall call a special meeting when requested by two or more members of the commission.

### **576.304. Commodity commission; powers and duties**

A commodity commission may:

- (1) Appoint all subordinate officers and employees of the commission, prescribe their duties and fix their compensation.
- (2) Levy assessments under ORS 576.325.
- (3) Borrow money in amounts that do not exceed estimated revenues from assessments for the year.
- (4) Enter into contracts for carrying out the duties of the commission.
- (5) Subject to ORS 30.260 to 30.300, sue and be sued in the name of the commission.
- (6) Request that the Attorney General prosecute in the name of the State of Oregon suits and actions for the collection of assessments levied by the commission.
- (7) Study state and federal legislation with regard to tariffs, duties, reciprocal trade agreements, import quotas and other matters



affecting commodity industries and the state. A commission may represent and protect the interests of a commodity industry regarding any legislation, proposed legislation or executive action affecting the commodity industry.

(8) Participate in federal and state hearings or other proceedings concerning regulation of the manufacture, distribution, sale or use of pesticides as defined in ORS 634.006 or other chemicals that are of use or potential use to producers of a commodity. This subsection does not authorize a commodity commission to regulate the use of pesticides.

(9) To the extent consistent with the duties of the commission, participate in and cooperate with local, state, national and international private organizations or governmental agencies that engage in work similar to that of a commodity commission.

(10) Provide mechanisms for maintaining and expanding existing markets and developing new domestic and foreign markets for a commodity, including but not limited to:

- (a) Public relations programs;
- (b) Media relations programs;
- (c) Paid print, electronic and position advertising;
- (d) Point of sale promotion and merchandising;
- (e) Paid sales promotions and coupon programs; and
- (f) Activities that prevent, modify or eliminate trade barriers that obstruct the free flow of a commodity to market.

(11) Conduct and fund research to:

- (a) Enhance the commercial value of a commodity and products derived from the commodity;
- (b) Discover the benefits to public health, the environment or the economy of consuming or otherwise using a commodity;
- (c) Develop better and more efficient production, harvesting, irrigation, processing, transportation, handling, marketing and uses of a commodity;
- (d) Control or eradicate hazards to a commodity, including but not limited to hazards from animals, pests and plants;
- (e) Develop viable alternatives for the rotation of crops;
- (f) Determine new or potential demand for a commodity and develop appropriate market development strategies for capturing that demand; and



(g) Measure the effectiveness of marketing, advertising or promotional programs.

(12) Gather, publicize and disseminate information that shows the importance of the consumption or other use of a commodity to public health, the environment, the economy and the proper nutrition of children and adults.

(13) Further the purposes of this section by funding scholarships for or providing financial assistance to persons or entities interested in a commodity.

(14) Adopt rules in accordance with ORS chapter 183 for carrying out the duties, functions and powers of the commission.

### **576.306. Power of commission to contract with independent contractors**

(1) A commodity commission may contract with an independent contractor for the performance of administrator or other services. However, the commission may not contract with an independent contractor to perform the discretionary functions of the commission. As used in this subsection, “discretionary functions” does not include collecting assessments, scheduling meetings, processing payments or other administrative duties, tasks or projects assigned by the commodity commission. ORS 279.835 to 279.855 and ORS chapters 240, 279A, 279B and 279C do not apply to the commission in obtaining services under this subsection, except that a contract for such services may not take effect until approved by the State Department of Agriculture as provided in subsection (6) of this section.

(2) The commission may rent space or acquire supplies and equipment from any contractor as described in subsection (1) of this section. ORS chapters 276, 278, 279A, 279B, 279C and 283 and ORS 276A.206, 279.835 to 279.855 and 283.085 to 283.092 do not apply to such rentals or acquisitions.

(3) Except as provided in this section, a contractor described in subsection (1) of this section shall be considered an independent contractor and not an employee, eligible employee, public employee or employee of the state for purposes of Oregon law, including ORS chapters 236, 238, 238A, 240, 243, 291, 292, 316 and 652.

(4) A contractor described in subsection (1) of this section shall be considered an independent contractor and not a worker for purposes of ORS chapter 656 and ORS 670.600.

(5) A contractor described in subsection (1) of this section may not be considered a public official, public officer, state officer or executive official for purposes of Oregon law, including ORS chapters 236, 244, 292, 295 and 297 and ORS 171.725 to 171.785.

(6) The State Department of Agriculture shall review the contract described in subsection (1) of this section for the adequacy of the clauses pertaining to statement of work, starting and ending dates,



consideration, subcontracts, funds authorized in the budget, amendments, termination, compliance with applicable law, assignment and waiver, access to records, indemnity, ownership of work product, nondiscrimination, successors in interest, attorney fees, tax certification or merger or any other clause the department deems necessary.

(7) The Oregon Department of Administrative Services, in consultation with the State Department of Agriculture, shall adopt rules necessary for the screening and selection of independent contractors under this section.

(8) Except as provided in subsection (7) of this section, the State Department of Agriculture may promulgate any rules necessary for the administration and enforcement of this section.

### **576.307. Provisions for services, facilities and materials**

(1) Upon request by a commodity commission, the Oregon Department of Administrative Services may:

(a) Purchase or otherwise provide for acquiring or furnishing supplies, materials, equipment and services, other than personal services, that the commission requires and for independent contractors to furnish professional services to the commission.

(b) Provide for printing and multiple duplication work for the commission under ORS 282.010 to 282.050, except for printing and binding that advertises or promotes agricultural or manufactured products.

(c) Provide for services to the commission for disposing of surplus, obsolete or unused supplies, materials and equipment under ORS 279A.280.

(d) Provide for central telephone service and central mail or messenger services to the commission under ORS 283.140.

(e) Provide motor vehicles for use by members, officers and employees of the commission under ORS 283.305 to 283.350.

(2) A commission shall pay to the Oregon Department of Administrative Services an amount for services the department performs under subsection (1) of this section that the department determines is adequate to reimburse the department for the costs necessary to perform the services.

(3) At the commission's request, the Oregon Department of Administrative Services may design and supervise the installation of an accounting system for the commission. The commission shall pay to the Oregon Department of Administrative Services an amount for services the department performs under this subsection that the department determines is adequate to reimburse the department for the costs necessary to perform the services.



### **576.309. Commission furnishing services, facilities and materials to other state agencies**

A commodity commission may elect to furnish services, facilities and materials to other commodity commissions, the Oregon Wheat Commission, the Oregon Beef Council or other state agencies and officers under ORS 283.110 to carry out the purposes of ORS 576.051 to 576.455. Upon requisition by the commission, any other commodity commission, the Oregon Wheat Commission, the Oregon Beef Council or any other state agency or officer may furnish services, facilities and materials to the commission under ORS 283.110.

### **576.311. Exemption from financial administration laws**

Except as otherwise provided in ORS 576.051 to 576.455, ORS 291.026, 291.201 to 291.222, 291.232 to 291.260, 291.322 to 291.334, 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 a commodity commission or to the administration and enforcement of ORS 576.051 to 576.455.

### **576.315. Acceptance by commission of gifts and grants**

A commodity commission may accept grants, donations or gifts, from any source for expenditures for any purposes consistent with the powers conferred on the commission.

### **576.317. Intellectual property; definition and provisions**

(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) A commodity commission established under ORS 576.051 to 576.455 may, consistent with the purposes of the commission, develop intellectual property that relates to a commodity or assists in the implementation, maintenance or development of commission programs. A commodity 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. A commodity commission developing intellectual property shall 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 a commodity commission as a result of the commission’s 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 pursuant to ORS 576.375. Moneys deposited under this section are continuously appropriated to the commodity commission possessing the account for the purpose of carrying out the duties, functions and powers of the commission.





### **576.320. Exemption from state personnel compensation plans and office space regulation**

(1) Wages or salaries of employees of a commodity commission established under ORS 576.051 to 576.455 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) A commodity commission established under ORS 576.051 to 576.455 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 each commodity commission established under ORS 576.051 to 576.455 an assessment or fee to reimburse the department for supervisory or administrative functions the department is required by law to perform with regard to commodity commissions. The department shall establish the amount of the assessment or fee by rule.

### **576.322. Commodity commissions having members not properly qualified; legislative declaration; ratification of rules and appointments**

(1) As used in this section, “commodity commission” means a commission established under ORS 576.051 to 576.455.

(2) The Legislative Assembly declares that any action taken prior to May 13, 2013, by a commodity commission having one or more members who were not properly qualified at the time to serve on the commodity commission due to rules regulating the number or geographic representation of commodity commission members is valid and lawful to the same extent that the action would have been valid and lawful if the commodity commission had at the time of the action been in conformance with rules regulating the number and geographic representation of commodity commission members.

(3) Notwithstanding ORS 576.206 or 576.304 or any rules adopted under ORS 576.206, the Legislative Assembly ratifies and declares valid any rule adopted by a commodity commission prior to May 13, 2013, that created, amended or abolished a rule or other requirement regulating the number or geographic representation of the commodity commission members.

(4) Notwithstanding ORS 576.206 or any rules adopted under ORS 576.206 regarding the number or geographic representation of commodity commission members, the Legislative Assembly ratifies and validates the appointment prior to May 13, 2013, of any commodity commission members who would have qualified for the appointment if no applicable rules regulated the number or geographic representation of the commodity commission members. This subsection does not require the reinstatement of any member removed from a commodity commission prior to May 13, 2013, for any reason.



## 576.325. Assessments; levy and collection

(1) As used in this section, “industry average unit price” means the average unit price for the raw commodity within the industry. Unless provided otherwise, “industry average unit price” includes prices that are calculated using a one-year, two-year or three-year average and data from the most recent complete year or years preceding the year of determination.

(2)

(a) A commodity commission may assess, levy and collect an assessment, the amount of which the commission shall determine, on all units or animals of the commodity grown or produced in this state, or procured from this state’s rivers or the offshore waters, but not the Columbia River, for handling within this state, and sold in commercial channels. A commission may not apply an assessment to a transaction that occurred prior to the effective date of the commission rule adopting the assessment.

(b) A 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 the commodity.

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

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

(3) The amount of the assessment provided for in subsection (2) of this section is limited as follows:

(a) If a commission assesses on a unit basis, the assessment may not exceed one and one-half percent of the industry average unit price. The commission may determine the industry average unit price by considering data and estimates of the United States Department of Agriculture, Oregon State University or other reliable sources.

(b) If a commission assesses on a percentage of dollar value basis, the assessment may not exceed one and one-half percent of the dollar value received by a producer for the raw commodity. If the dollar value received by a producer is not otherwise determinable, the commission may establish the dollar value based on the industry average unit price for that year for the raw commodity.

(4) Notwithstanding subsection (3) of this section:

(a) The maximum assessment by the Oregon Clover Seed Commission may not exceed one and one-half percent of the industry average unit price for products within the same market category, if assessed on a unit basis.



(b) The maximum assessments by the Oregon Albacore Commission and the Oregon Tall Fescue Commission may not exceed three percent of the industry average unit price if assessed on a unit basis or three percent of the value received by a producer for the raw commodity if assessed on a percentage of dollar value basis.

(c) The maximum assessment by the Oregon Sweet Cherry Commission for fresh, brined, canned and frozen cherries may not exceed four percent of the respective industry average unit prices for fresh, brined, canned and frozen cherries if assessed on a unit basis.

(d) The maximum assessment by the Oregon Processed Vegetable Commission on a commodity may not exceed 0.5 percent of the industry average unit price for that commodity if assessed on a unit basis or 0.5 percent of the dollar value received by a producer for the commodity if assessed on a percentage of dollar value basis.

(e) The maximum assessment by the Oregon Hop Commission may not exceed two percent of the industry average unit price if assessed on a unit basis.

(f) The assessment by the Oregon Sheep Commission may not be less than \$0.50 or more than \$1 per head. The commission may not increase the assessment by more than \$0.10 during any 12-month period. Notwithstanding subsection (2) of this section, the commission may levy the assessment on any sheep produced and sold in this state regardless of the disposition of the sheep and regardless of whether the sale is a casual sale. This paragraph does not allow the commission to apply an assessment to a transaction that occurs prior to the effective date of the rule adopting the assessment.

(5) A commission shall assess and levy an assessment under subsections (2) to (4) of this section to the producer at the time and in the manner provided 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 required by the commission under ORS 576.335.

(6) Notwithstanding subsection (5) of this section, a commission may assess, levy and collect an assessment from a first purchaser at the time and in the manner provided by the commission by rule. Except as provided in subsection (8) of this section, the assessment may not exceed the limits described in subsections (3) and (4) of this section.

(7) A regional commission may assess, levy and collect an assessment only on the commodity produced in the counties in which the regional commission functions.

(8) Notwithstanding subsections (3) and (4) of this section, a commodity commission may assess, levy and collect an assessment



in excess of the limits described in subsections (3) and (4) of this section pursuant to a federal marketing order or agreement.

(9) A person who believes that the amount of an assessment is incorrect may apply to the commission for a refund not later than 60 days after the person pays the assessment.

### **576.327. Exemptions from assessment**

(1) A commodity commission may, by rule, establish exemptions from assessment based on:

- (a) Commodity quantities;
- (b) Types of commodity sale; and
- (c) Types of commodity producer.

(2) When adopting a rule for exemptions under subsection (1) of this section, a commission must consider:

- (a) Laws and rules of the United States and other states relating to commodity commissions, boards and marketing orders;
- (b) The practices, procedures and customs unique to the production, handling, processing and trading of a particular commodity and to the producers and growers of that commodity; and
- (c) The cost of collecting the particular assessment and practical problems relating to collection.

(3) A producer or handler that is exempted from assessment, but required to submit reports to a commission, is subject to ORS 576.351.

### **576.335. Person responsible for collecting assessment; duty to report**

(1) A person responsible for collecting an assessment for a commodity commission shall make a report to the commission at the time and in the manner required by the commission.

(2) A person responsible for collecting an assessment for a commission who fails to deduct an assessment at the time of sale shall report and pay the assessment to the commission. A producer required to report and pay an assessment is subject to this section.

### **576.345. Producer to reports sales and pay assessment**

(1) When a first purchaser 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 purchaser on forms provided by the appropriate commodity 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 on all or a part of the production of the commodity that normally would be performed by another person as first purchaser, the producer shall report sales of the commodity from the production of the producer on forms provided by the appropriate commodity 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.

### **576.351. Records of assessment payments**

(1) Each person required to pay or collect an assessment on a commodity under ORS 576.051 to 576.455 shall keep accurate records sufficient to enable a commodity commission to determine by inspection and audit the accuracy of assessments paid or due to the commission and of reports made or due to the commission.

(2) For purposes of determining the accuracy of assessments paid or due to a commission, the commission or a person authorized by the commission may:

(a) Make an inspection during normal business hours of the business premises of a person required to pay or collect an assessment; and

(b) Audit the records of a person required to pay or collect an assessment.

(3) For purposes of determining the accuracy of assessments paid or due to a commission, the commission may issue a subpoena for the production of any books, records or documents related to the payment or collection of an assessment to a person required to pay or collect the assessment.

(4) If an audit determines that a person is delinquent in the payment or collection of an assessment, the person shall pay the cost of the audit, not to exceed an amount equal to the delinquent assessment.

### **576.355. Delay in transmittal of funds**

(1) In addition to the penalties prescribed in ORS 576.991, any person who delays transmittal of funds beyond the time set by a commodity commission shall pay a penalty 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) A 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, a commission may establish a penalty or interest rate that is consistent with that order or agreement.

### **576.365. Refusal to relinquish assessment moneys**

(1) If any person responsible for the transmittal of assessment moneys to a commodity commission fails to relinquish assessment moneys



collected, the person shall pay a penalty equal to twice the amount of the unrelinquished assessment moneys.

(2) A 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 ORS 576.051 to 576.455.

(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 a 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.

#### **576.370. Disputed assessment amounts**

(1) A commodity producer may dispute the amount of a commodity assessment levied against the producer on a unit basis under ORS 576.325 if the total assessment levied against the producer during an assessment period established by commodity commission rule exceeds the total dollar value received by the producer for the raw commodity during that assessment period multiplied by the maximum lawful assessment percentage.

(2) A commodity producer who disputes the amount of a commodity assessment as provided under subsection (1) of this section must file any challenge to the assessment with the appropriate commodity commission no later than 60 days after the close of the assessment period. The challenge must be on a form provided by the State Department of Agriculture. A commodity commission shall process a challenge under this section as provided by rules adopted under subsection (4) of this section.

(3) A commodity producer filing a challenge under this section bears the burden of proving the total dollar value received by the producer during the assessment period. If the producer acts as a handler or processor for all or part of the producer's commodity production, the producer also bears the burden of proving that the prices paid to the producer are equivalent to prices paid in arm's-length transactions. A commodity commission shall refund the amount of the assessment that the producer proves is in excess of the total dollar value received by the producer for the raw commodity during the assessment period multiplied by the maximum lawful assessment percentage.

(4) The department shall adopt necessary and proper uniform rules for commodity commissions to carry out this section. The department



rules shall include, but need not be limited to, procedures for the filing, processing and formal or informal resolution of challenges and for determining commodity prices paid in arm's-length transactions. A commodity commission shall adopt rules establishing assessment periods and may adopt supplemental rules that do not conflict with the rules of the department.

### **576.375. Payments to authorized agents**

(1) Moneys a person collects or receives from the assessment levied under the authority of ORS 576.325 and other moneys a commodity commission receives must be paid to the authorized agent of the commission and promptly deposited into an account established by the commission in accordance with ORS 295.001 to 295.108. All moneys in the account are continuously appropriated to the commission that makes the deposit for the purpose of carrying out the commission's duties, functions and powers.

(2) Moneys may not be withdrawn from or paid out of the account except upon order of the commission, and upon checks or other orders upon such accounts signed by the secretary- treasurer or such other member of the commission as the commission designates and countersigned by such other member, officer or employee of the commission as the commission designates. The commission shall keep a receipt, voucher or other written record, showing clearly the nature and items covered by each check or other order.

(3) Subject to approval by the Director of Agriculture, a commission may invest moneys the commission collects or receives. Investments a 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.

(4) Interest earned from any moneys a commission invests under subsection (3) of this section is available to the commission in a manner consistent with the commission's annual budget.

### **576.385. Bond or letter of credit required**

Any person authorized by a commodity commission to receive or disburse moneys as provided in ORS 576.375 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. The bond or letter of credit must be in favor of the commission and the State of Oregon, in an amount equal to the maximum amount of moneys the commission determines the person will have subject to control at any one time and upon such conditions as the commission shall prescribe. The commission shall pay the cost of the bond or letter of credit.



### **576.392. Cancellation of uncollectible assessment**

A commodity 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.

### **576.395. Commission to keep records and accounts**

Each commodity 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.

### **576.410. “Fiscal year” defined**

As used in ORS 576.413 to 576.445, “fiscal year”:

- (1) Except as provided in subsection (2) of this section, means the 12-month period commencing on July 1 and ending on June 30.
- (2) If adopted by a commodity commission rule that has taken effect as provided under ORS 576.413, means the 12-month period commencing on January 1 and ending on December 31.

### **576.413. Commodity commission; change to fiscal year beginning January 1; requirements; transition period**

(1) A commodity commission may adopt a rule allowing the commission to operate using a fiscal year that begins January 1 and ends December 31 each year. A commission shall consult with the Director of Agriculture and the Department of Justice prior to adopting a rule described in this section. A rule described in this section may not take effect unless:

- (a) The commission obtains any necessary approvals from taxing authorities to use a fiscal year that begins January 1 and ends December 31 when reporting information;
- (b) The commission submits a recommendation regarding any plans and projects for the transition period of July 1 to December 31 to the director for review and approval as described in ORS 576.066; and
- (c) Notwithstanding the annual basis requirement in ORS 576.416 (1), the commission prepares, submits for public comment, adopts and receives approval for a budget for the transition period as provided under ORS 576.416 (2) to (7).

(2) A recommendation submitted under ORS 576.066 regarding plans and projects for the transition period must be separately stated and presented for separate review and approval from any recommendation submitted under ORS 576.066 regarding plans and projects for the subsequent fiscal year.

(3) A budget prepared for a transition period must be submitted for public comment, adopted and approved separately from the budget prepared for the subsequent fiscal year. ORS 576.416 and this subsection do not prohibit a commission from submitting a transition period budget and





fiscal year budget for separate public comment or adoption at the same public meeting.

(4) This section does not authorize the use of a fiscal year that begins January 1 and ends December 31 by any entity that:

(a) Receives funding from the State Treasury; or

(b) Is subject to budget review or modification by the Legislative Assembly.

#### **576.416. Commodity commission; budget**

(1) A commodity commission shall adopt a budget on an annual basis using classifications of expenditures and revenues required by ORS 291.206. The budget is not subject to review by the Legislative Assembly or to future modification by the Emergency Board or the Legislative Assembly.

(2) A commission shall follow generally accepted accounting principles and keep financial and statistical information as necessary to completely and accurately disclose the financial operations of the commission as may be required by the Secretary of State. In addition, the budget must show the estimated receipts and expenditures by or under the authority of the commission under ORS 576.051 to 576.455 for the fiscal year for which the budget is adopted. The budget also must show the actual receipts and expenditures by or under the authority of the commission for the fiscal year preceding the fiscal year in which the proposed budget is prepared, if any, and the estimated receipts and expenditures by or under the authority of the commission for the fiscal year in which the budget is prepared, if any.

(3) Estimated receipts and expenditures for the fiscal year for which the budget is adopted must be fully itemized and be prepared and arranged to clearly show each item of receipts and expenditures. To the extent practicable, the items of receipts and expenditures must be arranged under major groups or categories that are the same as the most recent classifications of revenue and expenditures established pursuant to ORS 291.206.

(4) The budget shall contain only one estimate for emergency or other expenditures that are unforeseen at the time the budget is prepared.

(5) A commission shall call and hold at least one public meeting upon the proposed budget. In selecting a time and place for a meeting, a commission shall be guided by consideration for the convenience of the majority of the producers of the commodity. At a meeting, any person has a right to be heard with respect to the proposed budget.

(6) At least 14 days prior to the date of a meeting under subsection (5) of this section, a commission shall publish notice at least once in a newspaper of general circulation in this state. The notice must set forth the purpose, time and place of the meeting and state that a copy of the



proposed budget is available for public inspection at the place of business of the commission or at another convenient location.

(7) After a budget has been adopted, a commission shall submit to the Director of Agriculture a copy of the budget and an affidavit setting forth the pertinent facts relating to the preparation and adoption of the budget. The director shall examine the budget and the affidavit within 15 days and, if the director determines that the estimated receipts and expenditures in the budget are in conformity with the authority of the commission and other applicable statutory requirements and that the facts set forth in the affidavit indicate that the budget was prepared and adopted in accordance with the law, the director shall certify those determinations on the copy of the budget and make the budget final. If the director determines that the budget fails to meet the requirements in any respect, the director shall immediately notify the commission of the particular failures. The commission shall promptly take all practicable measures to remedy the failures and shall resubmit a copy of the budget to the director for examination. The director shall retain the certified copy of the final budget and make the budget available for public inspection during normal business hours of the State Department of Agriculture.

(8) A commission shall prepare an annual financial statement of commission revenues and expenses and shall make the statement available for public review. A commission shall provide a copy of the statement to the department no later than 30 days after the end of the state fiscal year. Upon request of the Secretary of State, a commission shall provide a copy of the statement to the secretary.

#### **576.420. Expenditures must comply with budget procedure**

An expenditure of moneys for a fiscal year may not be made or incurred by or under the authority of a commodity commission under ORS 576.051 to 576.455 unless the commission complies with ORS 576.416.

#### **576.440. Limitation on expenditures**

(1) Except as otherwise provided in subsection (2) of this section, an expenditure of moneys for a fiscal year may not be made or incurred by or under the authority of a commodity commission under ORS 576.051 to 576.455:

(a) In excess of the total amount of expenditures estimated for the fiscal year in the budget adopted for the fiscal year or in excess of the total amount of expenditures estimated for the major group or category of the expenditure for the fiscal year in the budget adopted for the fiscal year.

(b) For any purpose different than that indicated by the major group or category of the expenditure in the budget adopted for the fiscal year.

(2) An expenditure of moneys for a fiscal year unforeseen at the time the budget is prepared may not be made or incurred by or under the authority of the commission under ORS 576.051 to 576.455 in excess of the amount



of unforeseen expenditures estimated as provided in ORS 576.416.

#### **576.445. Unforeseen expenditures**

(1) Subject to ORS 576.440 (2), expenditures of moneys for a fiscal year unforeseen at the time the budget of a commodity commission is prepared may be made or incurred by order of the commission. The order must indicate the amount and purpose of the expenditure and why the expenditure was unforeseen. At least one copy of the order must be filed in the office of the commission and available for public inspection during normal business hours of the commission.

(2) The commission shall send a copy of the order to the Director of Agriculture. The director shall examine the order and the budget to which the order relates. The director shall certify the order if the director determines that the form of the order is in accordance with law, that the facts set forth in the order and the budget to which the order relates indicate that the order is in accordance with law, and that the proposed unforeseen expenditure is appropriate to accomplish the goals and needs of the commission. The director shall immediately notify the commission if the director determines that the order is defective because of a failure to comply with ORS 576.416, because the final budget or the preparation or adoption of the final budget is defective or because estimated expenditures are not in conformity with statutory requirements. The commission shall promptly take all practicable steps to remedy the defects. The director shall retain the certified copy of the order and make the copy available for public inspection during normal business hours of the State Department of Agriculture.

#### **576.455. Abolishment of commodity commission; refund of assessment**

(1) Unless the Legislative Assembly orders a refund pursuant to subsection (2) of this section, if the Legislative Assembly abolishes a commodity commission, any moneys remaining in the possession of the abolished commission on the effective date of the abolishment are transferred to Oregon State University and are continuously appropriated to the university for research benefiting producers of the commodity that was subject to assessment by the abolished commission.

(2) The Legislative Assembly may order in an Act dissolving a commodity commission that any moneys remaining in the possession of the abolished commission on the effective date of the abolishment be refunded on a proportional basis to the persons who paid assessments to the commodity commission during the assessment year in which the commodity commission was abolished.

#### **576.595. Sales deemed sales in commercial channels**

Any sale of a commodity by a grower or producer is a sale in commercial channels for the purposes of ORS 576.051 to 576.455 and 576.991 (2).

#### **576.610. Definitions**



As used in ORS 576.610 to 576.650, unless the context requires otherwise:

- (1) “Agricultural commodity” means any agricultural, horticultural or viticultural product, but does not include milk, timber or timber products.
- (2) “Department” means the State Department of Agriculture.
- (3) “Director” means the Director of Agriculture.
- (4) “Handler” means any person who purchases an agricultural commodity and thereafter grades, packs, cans, freezes, distills, crushes or otherwise preserves or changes the form of the commodity for the purpose of marketing the commodity.
- (5) “Producer” means a person engaged in the business of growing, raising or otherwise producing an agricultural commodity for sale or an association of such persons organized under ORS chapter 62.
- (6) “Representative group of producers” means those producers who produced, in the previous crop season, more than 59 percent of the amount of the commodity handled by each separate handler with whom such producers are involved in a dispute.

### **576.620. Mediation services**

In addition to such other duties as may be prescribed by law, the State Department of Agriculture shall perform mediation services for producers and handlers involved in agricultural marketing disputes in the manner provided in ORS 576.610 to 576.650. Subject to any applicable provision of the State Personnel Relations Law, the Director of Agriculture may appoint such employees as the director considers necessary to perform the mediation services required by ORS 576.610 to 576.650. In addition to or in place of any permanent employees appointed to perform mediation services, the director may appoint persons, on a temporary basis, to perform such services. Such temporary employees serve at the pleasure of the director, and need not be members of the classified service, as defined in ORS 240.210. The director may set the hours, salaries, expense allowances and other terms and conditions of employment of such temporary employees. Any person designated to act for the director in a mediation proceeding shall be a disinterested person who is not a producer or handler of the commodity involved in the dispute, or interested in the ownership or management of such a producer or handler.

### **576.630. Producers requesting mediation**

Whenever a representative group of producers of an agricultural commodity are unable to reach an agreement on price or other marketing term with a handler, either side may request in writing mediation assistance from the State Department of Agriculture in settling the dispute. Not later than 10 days after receiving such a request for assistance, the department shall meet with the parties to the dispute and shall assist the parties in attempting to reach a settlement.

### **576.640. Promulgation of rules**



In accordance with ORS chapter 183, the State Department of Agriculture may promulgate rules to carry out ORS 576.610 to 576.650.

### **576.650. Cooperation by state agencies**

All governmental agencies and officers shall cooperate with the State Department of Agriculture and furnish such information and advice as the department considers necessary for the performance of its mediation services.

### **576.700. Definitions**

As used in ORS 576.700 to 576.710:

- (1) “Commodity” has the meaning for that term provided in ORS 576.051.
- (2) “Processor” means any person who purchases, offers to purchase or contracts to purchase in this state any commodity from a producer or an agent of a producer for the purpose of packaging, processing or marketing such commodity. “Processor” does not include any cooperative, formed pursuant to ORS chapter 62.
- (3) “Producer” means any person other than a processor who produces a commodity in this state for commercial purposes.
- (4) “Meat animal” has the meaning for that term provided in ORS 603.010.

### **576.705. Payment for commodities required within 30 days of delivery**

Notwithstanding any other provision of law:

- (1) In the absence of a contract providing otherwise, any processor who purchases a commodity from a producer shall make full payment therefor not later than the 30th day after the day the processor takes delivery of the harvested commodity.
- (2) Any processor who fails to make payment as required by subsection (1) of this section shall pay, in addition to the amount due, interest thereon at the rate of one percent per month.

### **576.710. Applicability of ORS 576.705**

ORS 576.705 does not apply to any processor:

- (1) That purchases from a producer seed that requires cleaning and germination tests;
- (2) That arranges for the production of agricultural seed under a contract that is subject to ORS 576.718 or 576.721;
- (3) Of sugar beets whose contract with a producer for sale of the crop provides for profit sharing;
- (4) Of fish or seafood products; or



(5) Of meat animals.

### **576.991. Penalties**

(1) Violation of the provisions of ORS 576.024 is a Class B violation.

(2) Violation of any provision of ORS 576.051 to 576.455 is a Class C misdemeanor.

### **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.

### **578.020. Legislative findings and declarations**

(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.

### **578.025. State Department of Agriculture; powers and duties regarding Oregon Wheat Commission**

(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.

### **578.030. Creation of Oregon Wheat Commission**

(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 nonpublic 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.

#### **578.040. Members; qualifications**

(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 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.

#### **578.045. Member disqualification**

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.

#### **578.060. Removal of members; compensation of members**

(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.

#### **578.070. Officers**



The Oregon Wheat Commission shall elect a chairperson, vice chairperson and secretary-treasurer from among its members.

#### **578.080. Commission meetings**

- (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.

#### **578.090. Commission's powers and duties**

- (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.



### **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.

### **578.105. Intellectual property; development; proceeds**

(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.

### **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.

### **578.120. Administrator; duties and salary**

(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.

### **578.130. Office**

The Oregon Wheat Commission may establish and maintain an office at any place within this state that the commission selects.

### **578.135. Administrative requirements**

(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.

### **578.151. Budget; submission of 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.

### **578.155. Deposit of moneys; investments; withdrawal of moneys**

(1) 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 in accordance with ORS 295.001 to 295.108.

(2) Subject to approval by the Director of Agriculture, the commission may invest moneys the commission collects or receives. Except as provided in subsection (3) 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.

(3) In addition to or in lieu of investments described in subsection (2) 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.

(4) 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.

(5) 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.

#### **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.

#### **578.170. Exemption of Commission from 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 291.334, 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.

#### **578.181. Cancellation of uncollectible assessment**

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.

#### **578.190. Books, 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.



## 578.211. Assessments

(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.

#### **578.216. Refund of assessment**

(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 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.

#### **578.221. Grain producers; reporting of 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.

#### **578.251. Recordkeeping requirement**

(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.

#### **578.255. Persons delaying transmittal of assessment moneys; civil penalty**



(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.

### **578.260. Persons failing to relinquish assessment moneys collected; civil penalty; 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.

### **578.990. Penalties**

Violation of any of the provisions of this chapter is a Class C misdemeanor.

