

Chapter 624 Department of Agriculture, Oregon Alfalfa Seed Commission

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DIVISION 1

PROCEDURAL RULES

624-001-0000

Procedure for Notice of Intended Rulemaking

So as to provide a reasonable opportunity for interested persons to be notified of the Commission's proposed administrative actions, the Commission shall give notice of its proposed adoption, amendment or repeal of any administrative rule in the following manner:

(1) By causing the notice to be published in the Secretary of State's Bulletin, referred to in ORS 183.360, at least 21 days before the effective date of the rule;

(2) By mailing a copy of the notice to persons on the Oregon Alfalfa Seed Commission's mailing list established pursuant to ORS 183.335(7), at least 28 days before the effective date of the rule;

(3) By mailing a copy of the notice to the legislators specified in ORS 183.335(14) at least 49 days before the effective date of the rule; and

(4) By mailing or furnishing a copy of the notice to:

(a) The Associated Press;

(b) Association with an interest in the Commission's rulemaking and publications whose readers have an interest in the Commission's activities; and

(c) Newspapers in primary production regions of the commodities represented by the commission.

Stat. Auth.: ORS 183.341(4) & 576.305(12)

Stats. Implemented: ORS 183.341(4)

Hist.: ASC 2-1990(Temp), f. & cert. ef. 8-21-90; ASC 1-1996, f. & cert. ef. 2-1-96; OASC 1-2001, f. & cert. ef. 2-15-01

DIVISION 10

REPORTING AND PAYMENT OF ASSESSMENTS

624-010-0000

Definitions

(1) "Person" means any individual, corporation, association, partnership or joint stock company.

(2) "Commission" means the Oregon Alfalfa Seed Commission.

(3) "Casual Sale" means any casual sale or sales of Alfalfa seed made by the producer direct to the consumer where the total accumulated sales during a calendar year is not more than 100 pounds.

(4) "First Purchaser" means any person who buys alfalfa seed from the producer in the first instance, or handler who receives alfalfa seed in the first instance from the producer for resale or processing.

(5) "Producer" is a person growing or producing within this state or procuring within the state, its rivers or the offshore waters, but not the Columbia River, for commercial handling within the state, a commodity for market, or receiving a share thereof as landowner, landlord, tenant, sharecropper, boat skipper or otherwise.

(6) "Handler" is any producer, processor, distributor or other person engaged in handling or marketing of or dealing in the commodity, whether as owner agent, employee, broker or otherwise. A handler must have collected the commission assessment, if any, each of the preceding three calendar years.

(7) Alfalfa Seed consists of the varieties *Medicago sativa* L., *Medicago falcata* L., and *Medicago variamedia* and includes all varieties, both certified and common seed.

(8) "Net Paid for Weight" means all sales or bartered pounds paid for.

Stat. Auth.: ORS 576

Stats. Implemented: ORS 576.305

Hist.: ASC 1-1990, f. & cert. ef. 7-11-90; OASC 1-2001, f. & cert. ef. 2-15-01; OASC 1-2004, f. 1-15-04 cert. ef. 1-16-04

624-010-0010

Assessments

(1) Any first purchaser shall deduct and withhold an assessment of 35 cents (\$.35) per cwt or three and one-half hundredths cents (\$.0035) per pound from the price paid to the producer thereof, after July 1, 1990, for all alfalfa seed produced in Oregon (See definition of "First Purchaser.").

(2) All casual sales of Alfalfa Seed shall be exempt from the assessment.

Stat. Auth.: ORS 576

Stats. Implemented: ORS 576.305

Hist.: ASC 1-1990, f. & cert. ef. 7-11-90; OASC 1-2001, f. & cert. ef. 2-15-01

624-010-0020

Reports and Payment of Assessment Monies

(1) First purchasers and handlers must submit completed and signed assessment reports on commission approved forms. Assessment reports will include all purchases by or deliveries to a first purchaser or handler of alfalfa seed. Assessment reports are due in the commission office by 5:00 p.m. on the 15th day of the month, on a monthly or quarterly period, at the handler's option. If reporting on a quarterly basis, the deadlines are:

(a) January, February, March report by April 15th;

(b) April, May, June report by July 15th;

(c) July, August, September report by October 15th;

(d) October, November, December report by January 15th.

(2) When a first purchaser or handler has completed, signed, and forwarded a report covering his final purchase of alfalfa seed for the crop season, he may mark such report in large letters "Final Report For This Crop Season." No further reports are necessary by such first purchaser unless or until additional purchases are made.

(3) When a first purchaser lives or has his office in another state, or is a federal or governmental agency, the producer shall report to this Commission all sales made to such purchaser as required by section (1) of this rule and shall pay the assessment directly to the

Commission, unless such first purchaser voluntarily makes the proper deduction and remits the proceeds to this Commission.

(4) At the time that reports are due, the Commission from the first purchaser or first handler, as required in section (1) of this rule, the first purchaser or first handler shall attach and forward payment to the Commission for the assessment due as set forth in each such report. The forms shall be signed by the first purchaser and completely filled out, and shall include, in addition to all other required information and figures, the name and complete mailing address of each producer, the crop year, the pounds and amount of assessment deducted and withheld.

(5) Any producer who performs the handling or processing functions of all or part of his production of the commodity, which normally would be performed by another person as the first purchaser thereof, shall report his sales of such commodity of his own production on forms provided by, and pay the assessment monies directly to the Commission, unless the first purchaser from such producer voluntarily makes proper deduction and remits the proceeds to the Commission. Examples would be the sale by a producer direct to another producer.

Stat. Auth.: ORS 576

Stats. Implemented: ORS 576.305

Hist.: ASC 1-1990, f. & cert. ef. 7-11-90; OASC 1-2001, f. & cert. ef. 2-15-01;

OASC 1-2004, f. 1-15-04 cert. ef. 1-16-04

624-010-0030

Penalties

(1) Penalty for delaying transmittal of assessment monies. In addition to the penalties prescribed in ORS 576.991, any first purchaser or other person who delays transmittal of funds beyond the time set by the Commission will pay 10 (ten) percent of the amount due and one and one-half (1 1/2%) percent interest per month on the unpaid balance of the assessment.

(2) A commission may waive the penalty and interest described above upon showing of good cause.

Stat. Auth.: ORS 576 & 2003 OL Ch. 604

Stats. Implemented: ORS 576.305

Hist.: ASC 1-1990, f. & cert. ef. 7-11-90; OASC 1-2004, f. 1-15-04 cert. ef. 1-16-04

624-010-0040

Effective Date of Assessment

The assessment to be withheld and paid by a first purchaser or handler, as required by ORS Chapter 576 and OAR 624-010-0010, the reports required by him or delivery on or after July 1, 1990, of an alfalfa seed produced in Oregon.

Stat. Auth.: ORS 576

Stats. Implemented: ORS 576.305

Hist.: ASC 1-1990, f. & cert. ef. 7-11-90

624-010-0050

Refund of Parts of Assessment Used for Advertising and Product Promotion

(1) Any producer or first purchaser who has paid an assessment pursuant to OAR 624-010-0010 may apply to the Commission for a refund of that portion of the assessment that has been used for advertising and product promotion during the preceding fiscal year. Notwithstanding the foregoing, applications will only be accepted for refunds for assessment paid after January 16, 2004, the effective date of the administrative rule authorizing refunds. An application for refund under this rule must be submitted within 30 days after the close of the preceding fiscal year.

(2) Refund applications under this rule shall be made on forms provided by the Commission. Refund applications must include proof of payment of the assessment, together with any interest and penalties. Proof of payment may include any of the following: settlement sheets, copies of checks, credit card statements, or receipts for cash payments.

(3) Refund applications under this rule, together with proof of payment, must bear the notarized signature of the person seeking the refund, certifying the truth of the information contained in the application. If the refund is sought by a business entity (such as a corporation or partnership), the application must bear the notarized signature of a person authorized to make the application on the business

entity's behalf. If the refund is sought by a person or entity for an assessment that they paid on behalf of a producer, the application shall include a signed, notarized statement from the producer assenting to the application.

(4) Refund applications under this rule that are incomplete, contain erroneous information, or are otherwise deficient will be returned to the person seeking the refund with an explanation of the deficiency. The Commission may request additional information if necessary to evaluate the refund request.

(5) The Commission will either pay refunds within 60 days of the end of the fiscal year or return the application as incomplete, inaccurate, or otherwise deficient.

(6) Any person aggrieved by a decision to deny refund, or to provide a refund in less than the amount sought, may appeal. Appeals shall be in writing, filed with the Executive Director within 30 days of the date of the decision complained of, and shall specifically state all reasons for the appeal and the relief sought.

(7) When the Commission gives notice of its annual budget hearing, it will include a specific statement of the amount proposed to be budgeted for advertising and product promotion, if any.

Stat. Auth.: 2003 OL Ch. 604 & ORS 576

Stats. Implemented: 2003 OL Ch. 604

Hist.: OASC 1-2004, f. 1-15-04 cert. ef. 1-16-04

624-010-0060

Definitions

(1) For purposes of 624-010-0050, "advertising and product promotion" means any action taken to present a favorable image of Oregon alfalfa seed to the general public or to the food and agriculture industry for the purpose of improving the competitive position of alfalfa seed and stimulating the sale of alfalfa seed.

(a) Without limiting the generality of the foregoing, "advertising and product promotion" includes:

(A) Providing information to consumers that is designed to enhance the image or sale of alfalfa seed;

(B) Consumer Education;

(C) Nutrition Education; and

(D) Providing funding to another person or entity to carry out any of the above.

(b) Advertising and product promotion does not include the act of carrying out or conducting research, as defined in subsection (5) of this rule, or the communication of the results of research finding to peers through scientific journals, but may include the communication of the results of research findings if the purpose of that communication is to enhance the image or sale of alfalfa seed.

(2) Consumer Education. The term "Consumer Education" means any program or action utilizing or funding public relations, advertising or other means devoted to educating the general public of alfalfa seed.

(3) First Purchaser, Handler, Purchaser. The terms "First Purchaser," "Handler," and "Purchaser" have the meanings given in Oregon Laws 2003, Chapter 604.

(4) Nutrition Education. The term "Nutrition Education" means any program or action intended to broaden the understanding of sound nutritional principles including the role of alfalfa seed in a balanced diet;

(5) Research. "Research" means any type of test, study, or analysis. Research may include research concerning how to enhance the image or sale of alfalfa seed, as well as research concerning use, production, product development, quality, nutrition, or other characteristics of alfalfa seed.

Stat. Auth.: 2003 OL Ch. 604 & ORS 576

Stats. Implemented: 2003 OL Ch. 604

Hist.: OASC 1-2004, f. 1-15-04 cert. ef. 1-16-04

DIVISION 30

COMMISSION MAKE-UP, TERMS, QUALIFICATIONS, TERM LIMITS, REMOVAL FROM OFFICE

624-030-0010

Number of Commissioners, Terms

The Oregon Alfalfa Seed Commission will consist of five (5) commissioners appointed by the Director of the Oregon Department

of Agriculture for a term or three years or, if for a term following a prior term for that person, ending three years from the date of expiration of any prior term.

Stat. Auth.: ORS 576.206

Stats. Implemented: ORS 576

Hist.: OASC 1-2004, f. 1-15-04 cert. ef. 1-16-04; OSAC 1-2008, f. 7-8-08, cert. ef. 7-15-08

624-030-0020

Qualifications of Commissioners

(1) For purposes of this rule:

(a) A “producer” is a person growing or producing within this state or procuring within the state, its rivers or the offshore waters, but not the Columbia River, for commercial handling within the state, a commodity for market, or receiving a share thereof as landowner, landlord, tenant, sharecropper, boat skipper or otherwise. A producer must have paid the commission assessment, if any, on the commodity in each of the preceding three calendar years.

(b) A “handler” is any producer, processor, distributor or other person engaged in handling or marketing of or dealing in the commodity, whether as owner, agent, employee, broker or otherwise. A handler must have collected the commission assessment, if any, each of the preceding three calendar years.

(2) Members of the Oregon Alfalfa Seed Commission will have the following qualifications, which will continue during the term of office of the member:

(a) There will be no public member of the Oregon Alfalfa Seed Commission as long as partial refund is offered.

(b) A majority of the members will be producers;

(c) At least one member will be a handler;

(d) All members who are not a handler or the public member will be producers.

Stat. Auth.: 2003 OL Ch. 604 & ORS 576

Stats. Implemented: 2003 OL Ch. 604 & ORS 576

Hist.: OASC 1-2004, f. 1-15-04 cert. ef. 1-16-04

624-030-0030

Removal of Commissioners

The Commission may recommend that the Director of the Department of Agriculture remove a commissioner from office, and declare the position vacant for the following reasons:

(1) Two consecutive unexcused absences, or other neglect of duty in office;

(2) Use of the commission appointment for financial gain or to avoid financial detriment;

(3) Unauthorized use or disclosure of confidential information;

(4) Conduct in violation of Oregon government standards and practices laws;

(5) Misappropriation or misuse of commission funds;

(6) Failure to satisfy one or more qualifications for appointment.

(7) Not working for the positive economic benefit of the commodity.

Stat. Auth.: 2003 OL Ch. 604 & ORS 576

Stats. Implemented: 2003 OL Ch. 604 & ORS 576

Hist.: OASC 1-2004, f. 1-15-04 cert. ef. 1-16-04

624-030-0040

Chair and Other Officers

Annually, at the first regular meeting of the Commission at the beginning of the new fiscal year, the Commission will elect from its members a Chair and a Vice Chair who will serve until their successors are elected and qualified.

Stat. Auth.: 2003 OL Ch. 604 & ORS 576

Stats. Implemented: 2003 OL Ch. 604 & ORS 576

Hist.: OASC 1-2004, f. 1-15-04 cert. ef. 1-16-04

DIVISION 40

COMMISSIONER PER DIEM AND REIMBURSEMENT

624-040-0010

Per Diem Compensation

(1) Subject to the availability of funds in the budget of the commission, the Oregon Alfalfa Seed Commission must pay any

member of the commission, other than a member who is employed in full-time public service, compensation for each day or portion thereof during which the member is actually engaged in the performance of official commission duties.

(2) The rate of compensation is limited to \$30 per day, pursuant to ORS 292.495(1).

(3) In order to receive compensation, a member must submit to the Oregon Alfalfa Seed Commission a written claim for compensation by the 10th day of the calendar month following the month for which the member seeks compensation. The member must specify the amount of time the member spent on official commission duties as well as the nature of the duties performed for any day or portion thereof for which the member claims compensation.

Stat. Auth.: ORS 292.495, 576.206 & 576.416

Stats. Implemented:

Hist.: OASC 1-2008, f. 7-8-08, cert. ef. 7-15-08

624-040-0020

Reimbursement of Travel and Other Expenses

(1) Subject to sections (2)–(6) of this rule, a member of the Oregon Alfalfa Seed Commission, including a member employed in full-time public service, may receive actual and necessary travel and other expenses actually incurred in the performance of the member’s official duties.

(2) In order to receive reimbursement of actual and necessary travel and other expenses, a member must submit to the Oregon Alfalfa Seed Commission a written itemized claim for reimbursement supported by receipts, invoices or other appropriate documentation for travel and other expenses by the 10th day of the calendar month following the month in which the member incurred the expense. The claim for reimbursement must include the following information for each expense:

(a) Date on which the member incurred the expense; and

(b) Nature of the expense; and

(c) Amount of the expense.

(3) An expense that exceeds \$200.00 dollars must be authorized by the Oregon Alfalfa Seed Commission before a member incurs the expense.

(4) For the purposes of this rule, “travel and other expenses” are limited to reasonable expenses. An expense is reasonable if:

(a) It is an actual expense incurred by a member in carrying out official commission business, which is within the member’s scope of responsibilities; and

(b) The expense is necessary to enable the member to carry out official commission business.

(5) For the purposes of this rule, “travel and other expenses” includes:

(a) Meals.

(b) Overnight lodging.

(c) Transportation.

(d) Postage.

(e) Cost of attending an event or phone calls associated with promotion of a commodity, such as a festival, stock show, county fair or state fair.

(6) For the purposes of this rule, “travel and other expenses” does not include:

(a) Attendance at a sporting event, concert, theatrical performance, movie, or dance venue, including such events that occur at a fair, festival or stock show.

(b) In-room movie rental.

(c) Long distance telephone charges at a place of lodging that are not associated with Oregon Alfalfa Seed Commission business.

(d) Use of a gym or health club.

(e) Cost of a gift for a host, business associate, commission member or employee, or family member.

(f) Alcoholic beverages.

Stat. Auth.: ORS 292.495, 576.206, 576.265, 576.311, 576.416 & 576.440

Stats. Implemented:

Hist.: OASC 1-2008, f. 7-8-08, cert. ef. 7-15-08

624-040-0030

Reimbursement for Hiring a Substitute

(1) As used in OAR 624-040-0020, “other expenses” includes expenses incurred by a member of the Oregon Alfalfa Seed Commission in employing a substitute to perform duties, including personal duties, normally performed by the member, which the member is unable to perform because of the performance of official duties and which, by the nature of such duties, cannot be delayed without risk to health or safety.

(2) The amount that a member may be reimbursed for expenses incurred in employing a substitute must not exceed \$25 per day, pursuant to ORS 292.495(3).

Stat. Auth.: ORS 292.495

Stats. Implemented:

Hist.: OASC 1-2008, f. 7-8-08, cert. ef. 7-15-08