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**DIVISION 1**

**PROCEDURAL RULES**

**623-001-0000**

**Procedure for Notice of Intended Rulemaking**

Before adopting, amending or repealing any permanent rule, the Oregon Hazelnut Commission will give notice of the intended action:

- (1) In the Secretary of State's Bulletin, referred to in ORS 183.360, at least 28 days before the effective date of the rule;
- (2) By mailing a copy of the notice to persons on the Oregon Hazelnut 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) Associations with an interest in Commission's rulemaking and publications whose readers have an interest in Commission activities; and
  - (c) Newspapers in primary production regions of the commodities represented by the commission.

Stat. Auth.: ORS 183

Stats. Implemented:

Hist.: OFC 9, f. & ef. 7-20-76; HZL 1-2000, f. 12-8-00, cert. ef. 1-1-01

**DIVISION 10**

**SALE AND ASSESSMENT**

**623-010-0005**

**Casual Sale**

"Casual sale" means any sale or sales of hazelnuts made by the producer direct to the consumer where the total accumulated sales during a fiscal year is not more than two hundred and fifty (250) pounds, in-shell basis.

Stat. Auth.: ORS 576

Stats. Implemented:

Hist.: OFC 2, f. 8-6-59; HZL 1-2000, f. 12-8-00, cert. ef. 1-1-01

**623-010-0010**

**Assessment**

(1) Except as provided in section (2) of this rule, for all transactions occurring on or before October 31, 2011, involving hazelnuts grown in Oregon, the first purchaser shall deduct and withhold an assessment of \$.0055 per pound or \$11 per ton on merchantable weight in-shell hazelnuts and \$.01375 per pound or \$27.50 per ton on all shelled hazelnuts from the price paid the producer. Except as provided in section (2) of this rule, for all transactions occurring on or after November 1, 2011, involving hazelnuts grown in Oregon, the first purchaser shall deduct and withhold an assessment of \$.007 per pound or \$14 per ton on merchantable weight in-shell hazelnuts and \$.0175 per pound or \$35 per ton on all shelled hazelnuts from the price paid the producer.

(2) All casual sales of hazelnuts shall be exempt from said assessment.

(3) ORS 576.345: When a first purchaser lives or has his office in another state or is a federal or other governmental agency, the producer shall report all sales made to such purchaser on forms provided by and pay the tax assessment directly to the Commission, unless such first purchaser voluntarily makes the proper deduction and remits the proceeds to the Commission.

(4) Any producer who performs the handling or processing functions on all or a part of the production of hazelnuts, which normally would be performed by another person as the first purchaser thereof, shall report the sales on such self-produced hazelnuts on forms provided by and pay the assessment moneys directly to the Commission, unless the purchaser from such producer voluntarily makes the proper deduction and remits the proceeds to the Commission.

Stat. Auth.: ORS 576

Stats. Implemented: ORS 576

Hist.: OFC 2, f. 8-6-59; OFC 7, f. 5-10-65, ef. 7-1-65; OFC 8, f. 4-24-72, ef. 7-1-71; OFC 2-1980, f. & ef. 7-28-80; OFC 1-1982, f. & ef. 10-4-82; OFC 2-1984, f. & ef. 3-7-84; OFC 1-1985, f. 7-29-85, ef. 8-1-85; HZL 1-2000, f. 12-8-00, cert. ef. 1-1-01; HZL 1-2003, f. 9-30-03, cert. ef. 10-1-03; HZL 1-2004, f. & cert. ef. 7-30-04; HZL 1-2011, f. & cert. ef. 10-24-11

**623-010-0011**

**Payment of Assessments on Filbert Purchases**

First purchasers and handlers must submit completed and signed assessment reports on commission approved forms. Assessment reports shall include all purchases by or deliveries to a first purchaser or handler of hazelnuts. Assessment collections that total \$100 or more per month must be reported monthly. Assessments of less than \$100 per month must be reported quarterly. Monthly assessment reports are due in the commission office by 5:00 p.m. on the 20th day of the month following the calendar month in which the reported hazelnuts were sold. Quarterly assessment reports are due in the commission office by 5:00 p.m. on the 20th day of the reporting month specified below.

(1) January, February, March assessments of less than \$100 reported in April;

(2) April, May, June assessments of less than \$100 reported in July;

(3) July, August, September assessments of less than \$100 reported in October;

(4) October, November, December assessment of less than \$100 reported in.

Stat. Auth.: ORS 576

Stats. Implemented:

Hist.: OFC 4, f. 6-20-61, ef. 8-10-61; HZL 1-2000, f. 12-8-00, cert. ef. 1-1-01

**DIVISION 30**

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

**623-030-0010**

**Number of Commissioners, Terms**

The Oregon Hazelnut Commission will consist of eight members appointed by the Director of the Oregon Department of Agriculture for a term of 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.: 2003 OL Ch. 604 & ORS 576.  
Stats. Implemented: 2003 OL Ch. 604 & ORS 576  
Hist.: HZL 2-2003, f. & cert. ef. 12-8-03

**623-030-0020**

**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 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 Hazelnut Commission will have the following qualifications, which will continue during the term of office of the member:

(a) One member of the commission will be a member of the public with an active interest in the positive economic development, production and/or marketing of the commodity, but who is not associated with the production or handling of hazelnuts;

(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.

(3) In addition to the qualifications set forth in subsection (2) of this rule, the industry will strive to have broad geographic representation.

Stat. Auth.: 2003 OL Ch. 604 & ORS 576.  
Stats. Implemented: 2003 OL Ch. 604 & ORS 576  
Hist.: HZL 2-2003, f. & cert. ef. 12-8-03

**623-030-0030**

**Removal of Commissioners**

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

(1) Two 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.

Stat. Auth.: 2003 OL Ch. 604 & ORS 576.  
Stats. Implemented: 2003 OL Ch. 604 & ORS 576  
Hist.: HZL 2-2003, f. & cert. ef. 12-8-03

**DIVISION 40**

**COMMISSIONER PER DIEM AND REIMBURSEMENTS**

**623-040-0005**

**Per Diem Compensation**

(1) Subject to the availability of funds in the budget of the commission, the Oregon Hazelnut 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 Hazelnut 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: ORS 292.495, 576.206(7), 576.265  
Hist.: HZL 1-2007, f. & cert. ef. 12-3-07

**623-040-0010**

**Reimbursement of Travel and Other Expenses**

(1) Subject to sections (2)–(6) of this rule, a member of the Oregon Hazelnut 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 Hazelnut 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 expense.

(3) An expense that exceeds \$200 dollars must be authorized by the Oregon Hazelnut 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.

Stat. Auth.: ORS 292.495, 576.206, 576.265, 576.311, 576.416 & 576.440  
Stats. Implemented: ORS 292.495, 576.206(7), 576.265  
Hist.: HZL 1-2007, f. & cert. ef. 12-3-07

**623-040-0015**

**Reimbursement for Hiring a Substitute**

(1) As used in OAR 623-049-0010, “other expenses” includes expenses incurred by a member of the Oregon Hazelnut 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: ORS 292.495, 576.206(7)  
Hist.: HZL 1-2007, f. & cert. ef. 12-3-07