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SHEMIA FAGAN
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CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 647
DEPARTMENT OF AGRICULTURE
OREGON PROCESSED VEGETABLE COMMISSION

FILED

09/21/2021 10:19 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Per Diem Compensation and Expense Reimbursement for Oregon Processed Vegetable Commission Members

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/01/2021 3:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Jennifer Fletcher
503-702-5707
opvcresearch@gmail.com

PO Box 55401
Portland, OR 97238

Filed By:
Jennifer Fletcher
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 12/01/2021

TIME: 1:40 PM

OFFICER: Jennifer Fletcher

ADDRESS: Zoom Video Conferencing
4333 NE 49th Ave
Portland, OR 97218

SPECIAL INSTRUCTIONS:

Contact opvcresearch@gmail.com for
Zoom Video Conferencing link before
12/01/2021.

NEED FOR THE RULE(S):

These rules are required in order to ensure that the Oregon Processed Vegetable Commission complies with House Bill 2992 (2021), which changed certain requirements for per diem compensation and expense reimbursement for members of state boards and commissions.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

HB 2992 (2021) is available at
<https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB2992/Enrolled>.

Oregon Accounting Manual Policy 40.10.00 is available at
<https://www.oregon.gov/das/Financial/Acctng/Documents/40.10.00.pdf>.

FISCAL AND ECONOMIC IMPACT:

The Oregon Processed Vegetable Commission is likely to be fiscally impacted by these rules because these rules will increase the per diem compensation amount and will require the Commission to pay per diem compensation to all “qualified members” (a term defined in HB 2992 and in these rules), regardless of whether funds are available in the Commission’s budget therefore.

Prior to the passage of HB 2992 (2021), the Oregon Processed Vegetable Commission paid \$30 to a commissioner for each day or part thereof during which the commissioner was engaged in the performance of official duties. Payment of the \$30 per diem was subject to the availability of funds therefor in the Commission’s budget.

Under these proposed rules, the Oregon Processed Vegetable Commission will pay to a commissioner per diem compensation equal to the per diem paid to members of the Legislative Assembly under ORS 171.072 (currently, \$151) for each day or part thereof during which the commissioner is engaged in the performance of official duties. For “qualified members” of the Commission—that is, members who are not in full-time public service and who had an adjusted gross income in the previous tax year of less than \$50,000 as reported on an income tax return other than a joint income tax return, or less than \$100,000 as reported on a joint income tax return—the Oregon Processed Vegetable Commission is required to pay per diem compensation and to reimburse actual and necessary travel or other expenses actually incurred in the performance of the member’s official duties, unless the qualified member declines per diem compensation and/or expense reimbursement. For non-qualified members, payment of per diem compensation remains subject to the availability of funds therefor in the Commission’s budget.

It is not possible to estimate the fiscal and economic impact of these rules on the Commission because that impact will depend on (1) how many commissioners are “qualified members” during any given year, and (2) how many of the commissioners decline to accept per diem compensation and/or expense reimbursement.

The provisions for expense reimbursement remain largely the same, and are not expected to generate a fiscal or economic impact on the Commission substantially different from what the Commission experienced under its pre-HB 2992 expense reimbursement rules.

No units of local government or members of the public will be fiscally or economically impacted by these rules.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

The only state agency economically affected by these rules is the Oregon Processed Vegetable Commission.

These rules do not impose any costs on small businesses, because there are no small businesses subject to these rules.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not involved in the development of these rules because they are not economically impacted by these rules.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

HB 2992 and the statutes governing the Oregon Processed Vegetable Commission afford limited flexibility to the Oregon Processed Vegetable Commission. The purpose of these rules is to ensure that the Commission complies with those statutory requirements.

RULES PROPOSED:

647-040-0000, 647-040-0010, 647-040-0020, 647-040-0100, 647-040-0110, 647-040-0120, 647-040-0130, 647-040-0140

REPEAL: 647-040-0000

RULE SUMMARY: The Per Diem Compensation rule written in 2008 that is no longer valid with the passage of HB2992.

CHANGES TO RULE:

~~647-040-0000~~

~~Per Diem Compensation~~

~~(1) Subject to the availability of funds in the budget of the commission, the Oregon Processed Vegetable 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 Processed Vegetable Commission a written claim for compensation by the 15th 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.~~

~~Statutory/Other Authority: ORS 292.495, 576.206, 576.416.~~

~~Statutes/Other Implemented:~~

REPEAL: 647-040-0010

RULE SUMMARY: The Reimbursement of Travel and Other Expenses rule written in 2008 that is no longer valid with the passage of HB2992.

CHANGES TO RULE:

~~647-040-0010~~

~~Reimbursement of Travel and Other Expenses~~

~~(1) Subject to sections (2)–(6) of this rule, a member of the Oregon Processed Vegetable 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 Processed Vegetable Commission a written itemized claim for reimbursement supported by receipts, invoices or other appropriate documentation for travel and other expenses by the 15th 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 2,000 dollars must be authorized by the Oregon Processed Vegetable 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 and shipping.¶¶~~

~~(e) Office supplies necessary to operate a trade show exhibit.¶¶~~

~~(f) Cost of attending an event associated with promotion of a commodity, such as a trade show.¶¶~~

~~(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) Snacks and beverages offered for sale by a place of lodging.¶¶~~

~~(d) Long distance telephone charges at a place of lodging.¶¶~~

~~(e) Use of a gym or health club.¶¶~~

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

~~(g) Alcoholic beverages.~~

Statutory/Other Authority: ORS 292.495, 576.206, 576.265, 576.311, 576.416, 576.440

Statutes/Other Implemented: ORS 292.495, 576.206(7), 576.265

REPEAL: 647-040-0020

RULE SUMMARY: Reimbursement for Hiring a Substitute rule written in 2008 that is no longer valid with the passage of HB2992.

CHANGES TO RULE:

~~647-040-0020~~

~~Reimbursement for Hiring a Substitute~~

~~(1) As used in OAR 647-040-0010, "other expenses" includes expenses incurred by a member of the Oregon Processed Vegetable 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).~~

~~Statutory/Other Authority: ORS 292.495.~~

~~Statutes/Other Implemented: ORS 292.495, 576.206(7)~~

ADOPT: 647-040-0100

RULE SUMMARY: OAR 647-040-0100 provides relevant definitions for per diem compensation and expense reimbursement.

CHANGES TO RULE:

647-040-0100

Definitions

(1) "Actual and necessary" means that a travel or other expense:

(a) Is an actual expense incurred by a member in carrying out official duties; and

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

(2) "Member" means any individual appointed by the Director of Agriculture to serve on the Oregon Processed Vegetable Commission.

(3) "Non-qualified member" means a member other than a qualified member.

(4) "Other expenses" includes, but is not limited to, expenses incurred by a member of the Oregon Processed Vegetable Commission in employing a substitute to perform duties, including personal, 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. No member shall be reimbursed for expenses incurred in employing a substitute in excess of \$25 per day.

(5) "Official duties" includes:

(a) Attendance at an Oregon Processed Vegetable Commission meeting or subcommittee meeting;

(b) Substantial preparation for an Oregon Processed Vegetable Commission meeting or subcommittee meeting;

(c) Attendance at a conference or other activity as a representative of the Oregon Processed Vegetable Commission, either at the request of the chair of the Oregon Processed Vegetable Commission or as authorized in advance by a vote of the Oregon Processed Vegetable Commission; and

(d) Legislative testimony.

(6) "Qualified member" means a member who is not in full-time public service and who had an adjusted gross income in the previous tax year:

(a) Of less than \$50,000, as reported on an income tax return other than a joint income tax return; or

(b) Of less than \$100,000, as reported on a joint income tax return.

(7) "Travel and other expenses" includes meals, overnight lodging, transportation, postage, and the cost of attending, as a representative of the Oregon Processed Vegetable Commission, an event associated with marketing, promoting, researching, or representing the commodity, such as a trade show, stock show, county fair, state fair, conference, or training. "Travel and other expenses" does not include:

(a) Attendance at a sporting event, concert, theatrical or dance performance, or movie, including such events that occur at a trade show, festival, stock show, county fair, state fair, conference, or training;

(b) In-room movie rental;

(c) Telephone charges that are not associated with Oregon Processed Vegetable Commission business;

(d) Use of a gym or health club;

(e) Cost of a gift for a host, business associate, family member, or Oregon Processed Vegetable Commission member, employee, or contractor; or

(f) Alcoholic beverages.

Statutory/Other Authority: 576.265, 576.304

Statutes/Other Implemented: 576.265, 292.495

ADOPT: 647-040-0110

RULE SUMMARY: OAR 647-040-0110 describes the obligation to pay per diem compensation and expense reimbursement to qualified members of the Oregon Processed Vegetable Commission.

CHANGES TO RULE:

647-040-0110

Qualified Members

(1) In accordance with the procedures set forth in OAR 647-040-0130 and OAR 647-040-0140, the Oregon Processed Vegetable Commission shall provide to a qualified member of the Oregon Processed Vegetable Commission:¶

(a) Per diem compensation equal to the per diem paid to members of the Legislative Assembly under ORS 171.072, for each day or portion thereof during which the qualified member is actually engaged in the performance of official duties; and¶

(b) Reimbursement of actual and necessary travel or other expenses actually incurred in the performance of a member's official duties within the limits provided in Oregon Accounting Manual Policy 40.10.00.¶

(2) A qualified member of the Oregon Processed Vegetable Commission may decline to accept compensation or reimbursement of expenses related to the qualified member's service on the Oregon Processed Vegetable Commission.

Statutory/Other Authority: 576.265, 576.304

Statutes/Other Implemented: 576.265, 292.495

ADOPT: 647-040-0120

RULE SUMMARY: OAR OAR 647-040-0120 describes the obligation to pay per diem compensation and expense reimbursement to non-qualified members of the Oregon Processed Vegetable Commission.

CHANGES TO RULE:

647-040-0120

Non-Qualified Members

(1) In accordance with the procedures set forth in OAR 647-040-0130, and only if there are funds available in the budget for such compensation, the Oregon Processed Vegetable Commission shall provide to a non-qualified member of the Oregon Processed Vegetable Commission who is not employed in full-time public service per diem compensation equal to the per diem paid to members of the Legislative Assembly under ORS 171.072, for each day or portion thereof during which the non-qualified member is actually engaged in the performance of official duties.¶

(2) In accordance with the procedures set forth in OAR 647-040-0140, the Oregon Processed Vegetable Commission shall provide to a non-qualified member of the Oregon Processed Vegetable Commission reimbursement of actual and necessary travel or other expenses actually incurred in the performance of a non-qualified member's official duties within the limits provided in Oregon Accounting Manual Policy 40.10.00.¶

(3) A non-qualified member of the Oregon Processed Vegetable Commission may decline to accept compensation or reimbursement of expenses related to the non-qualified member's service on the Oregon Processed Vegetable Commission.

Statutory/Other Authority: 576.265, 576.304

Statutes/Other Implemented: 576.265, 292.495

ADOPT: 647-040-0130

RULE SUMMARY: OAR OAR 647-040-0130 describes the procedures for claiming per diem compensation.

CHANGES TO RULE:

647-040-0130

Procedures for Payment of Per Diem Compensation

A member must submit a written claim for compensation to the Oregon Processed Vegetable Commission no later than the 15th day of the calendar month following the month for which the member seeks compensation. For example, a claim for compensation for May 1 and May 10 must be submitted by June 15. The member must specify the amount of time the member spent performing official duties, as well as the nature of the official duties performed, for any day or portion thereof for which the member claims compensation.

Statutory/Other Authority: 576.265, 576.304

Statutes/Other Implemented: 576.265, 292.495

ADOPT: 647-040-0140

RULE SUMMARY: OAR OAR 647-040-0140 describes the procedures for claiming expense reimbursement.

CHANGES TO RULE:

647-040-0140

Procedures for Expense Reimbursement

(1) A member must submit a written, itemized claim for reimbursement of actual and necessary travel or other expenses to the Oregon Processed Vegetable Commission no later than the 15th day of the calendar month following the month in which the member incurred the expense. For example, a claim for compensation for May 1 and May 10 must be submitted by June 15. The claim for reimbursement must include the following information for each expense:¶

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

(b) Nature of the expense; and¶

(c) Amount of the expense.¶

(2) An expense that exceeds \$2,000 must be authorized by the Oregon Processed Vegetable Commission before the member incurs the expense.

Statutory/Other Authority: 576.265, 576.304

Statutes/Other Implemented: 576.265, 292.495