



# Oregon Sweet Cherry Commission

**Commissioner Handbook**

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## **MISSION STATEMENT**

The mission of the Oregon Sweet Cherry Commission (OSCC) is to enhance the image of the sweet cherry industry and to increase opportunities for profitability through promotion, education, research, and tracking and commenting on legislation and regulations in accordance with the laws and regulations governing the OSCC.

## **DEFINITIONS**

The following definitions are provided as they relate specifically to the role and function of the OSCC.

● **Promotion** refers to any action such as paid advertising, public relations, point of sale materials, and public speaking to advance the image and desirability of Oregon Sweet Cherry products, with the express intent of improving the public image of the industry, the competitive position, and stimulating sales in the marketplace. OSCC employs the marketing expertise of Northwest Cherry Growers to maintain and expand existing markets and developing new domestic and foreign markets for a commodity, including but not limited to:

Public relations programs;

Media relations programs;

Paid print, electronic and position advertising;

Point of sale promotion and merchandising;

Paid sales promotions and coupon programs.

● **Research** refers to studies relative to the effectiveness of market development and promotional efforts; studies relating to the nutritional value and quality of Oregon Sweet Cherry products, and new product development. Research also includes production physiology, pest management, breeding, and post-harvest which is of interest to the sweet cherry industry. OSCC partners with Washington State Tree Fruit Commission (WSTFC) to set priorities, gather research proposals and consider funding for projects that directly correlate to Cherry agriculture annually. Research is funded through assessment dollars collected. All available commissioners or designated Research Committee attends the two-day research summit and reports back to the commission. One full meeting is designated to the consideration and funding of proposed research projects.

● **Education** refers to nutritional data, supplies, how the industry operates, and other information designed to assist the consumer and others in evaluating and making decisions regarding the purchase, preparation, and use of Oregon Sweet Cherry products.

● **Government** refers to the tracking of and commenting on the laws and regulations that will affect the Oregon Sweet Cherry industry. OSCC has a Commodity Commission Oversight Manager that frequently attends commission meetings, oversees all administrative rules, and reviews contracts between the commission and anyone receiving \$1,000.00 or more annually from OSCC.

## **COMMODITY COMMISSION OVERVIEW AND AUTHORITY**

The Oregon Legislature established the commodity commissions under the general commodity commission statute, ORS 576.

The laws set forth the commodity commissions' legal responsibilities. The following summarizes a the most important responsibilities of commissioners.

- Maintaining and enforcing provisions of the commodity commission laws (ORS 576, 577, or 578).
- Electing a commission chairperson and secretary/treasurer to provide leadership and organization. Some commissions also elect a vice chairperson.
- Establishing basic objectives and broad policies that guide commission activities in generic (not branded) promotion, research, and education. Commissions adopt Administrative Rules, and a policy and procedures manual. A template is available from the Commodity Commission Oversight Program.
- Approving all financial matters: using proper financial procedures for year-end financial reports, contracting for, and reviewing results of commission audits at least once every five years, and managing and supervising expenditures under the commission's annual budget.
- Working with the commission staff on proper budgeting procedures. These include reviewing balance sheets and operating statements at each meeting, preparing annual budgets, estimating assessments and expenses for the next year, holding an annual budget hearing, and reviewing year-end financial reports.
- Monitoring and following up on assessment reports and delinquent accounts: for example, ensuring assessments are collected from the proper entities and collecting delinquent assessments with assistance from ODA and the Attorney General's office.
- Operating within the state public meeting and public records laws. The Oregon Attorney General's Public Records and Meetings Manual is posted online at <https://www.doj.state.or.us/oregon-department-of-justice/public-records/public-records-and-meetings-law/> The Commodity Commission Oversight Program manager can answer general questions in this area.
- In conjunction with each annual budget, developing and approving an operational plan that contains specific promotional programs, key messages, and all other elements listed in OAR 603-042-0015.
- Approving all commission-funded messages: promotional, educational, or related to research.

- Approving all commission contracts, task orders, financial assistance agreements, and other specific legal vehicles used to expend funds.
- Operating within the Oregon Government Standards and Practices law, commonly called Code of Ethics for Public Officials (ORS 244). Since ORS 244 is often revised, we encourage you to refer to the Guide for Public Officials. It's found on the home page at <https://www.oregon.gov/ogec>
- Perpetuating a sound commission through orientation and education of new members.
- Communicating with producers, handlers and the Oregon Department of Agriculture through personal visits, letters, e-mails, conferences, newsletters, minutes of meetings, websites, or other methods.
- Establishing and maintaining government relations to the extent allowed by law. A commission needs to represent and safeguard the interests of the commodity through activities in the political and economic fields. This can be achieved by keeping abreast of economic, social, and political activities that will potentially affect the producers, handlers, or industry it represents. Commissioners may consider legislation or executive action that directly affects that commodity. If the commission decides it is necessary to take a position on such a matter, the commission must approve a motion that states its specific position before the commission sends a letter or communicates about the matter.
- Approving job descriptions, recruitment, participating in interviewing and hiring of key personnel according to state policies.

### **COMMISSIONER APPOINTMENTS**

The 11 members of the OSCC are appointed by the Director of the Oregon Department of Agriculture (ODA) from names submitted by application and industry recommendation. Eight commissioners shall represent the producer sector of the industry, two shall be handlers, and one shall be a member of the public. When making appointments, the ODA Director will fill positions using the following criteria.

Commissioners shall represent the various interests of the sweet cherry industry. Each member will serve a three-year term. In the case of a mid-term resignation, the ODA Director shall appoint a replacement for the remainder of the term.

Oregon State University (OSU) and the Oregon Department of Agriculture (ODA), are represented on the commission by ex-officio non-voting members, designated by the OSU dean and the ODA Director, respectively.

Annually, at the last regular meeting of the commission at the end of the fiscal year, the group

will elect from its members a Chair, Vice Chair, and a Secretary-Treasurer who will serve until their successors are elected and qualified.

### **HOW TO APPLY OR REAPPLY**

Commissioners serve a three-year term and can reapply if they choose. ODA asks for applications from new applicants and those reapplying to be submitted by the end of March. The most current application can be found at [www.oda.direct/commissions](http://www.oda.direct/commissions), under Commodity commission application form—General.

The Director of the Oregon Department of Agriculture appoints all commodity commissioners. Each year, the Director appoints or reappoints an average of 60 commissioners. ODA's Commodity Commission Oversight Program (CCOP) assists the Director with the commissioner recruitment process. The ODA Director also has the authority to remove commissioners for inefficiency, neglect of duty, or misconduct in office. Whether newly appointed or reappointed, commissioners must swear or affirm an oath of office before they can vote at a meeting or act in their official capacity.

As a commissioner, you are a leader and a public official. In completing your oath of office, you agree to uphold the U.S. and Oregon constitutions, and Oregon's laws and policies. To familiarize you with some state policies, the state has developed a training website called [iLearnOregon.com](http://iLearnOregon.com). You are required to successfully complete training that is provided on some state policies.

### **AUTHORIZED ACTIVITIES FOR COMMODITY COMMISSIONS**

Commissions have specific authority: see ORS 576.304, ORS 577.290, and ORS 578.090. This includes the power to collect assessments. Hand in hand with the authority come certain responsibilities and liabilities. Violations of these responsibilities are punishable by law (ORS 576.991). Violations of the authority may also make commissioners personally liable. Unless otherwise restricted, the authority of commissions is to:

- **Establish and collect assessments on commodity sales.** The commission will set a schedule for assessments to be reported and paid by the first purchaser (ORS 576.325). All casual sales are exempt from assessment. The commission may define "casual sales" by rule. If the commission assesses on a unit basis, the assessment shall not exceed 1.5 percent of the industry average unit price received during the preceding three years, unless otherwise provided. [See ORS 576.325(4) (maximum assessments for specific commissions) and ORS 576.325(8) (assessments pursuant to a federal marketing order); See also ORS 577.512.] The first purchaser of the commodity, including those who live or work in another state, shall deduct the assessment from the producer's check.

- **Enforce penalties upon those who delay paying assessments.** The penalty for delay in submitting assessments is 10% of the amount due and 1 1/2% interest per month on any

unpaid balance (ORS 576.355). A commission may waive the penalty and interest when good cause is shown. In addition, ORS 576.365 allows for a penalty equal to twice the amount of the unrelinquished assessment, and for civil action against the person responsible for transmitting the assessment. The responsibility for submitting assessments extends to holding corporate directors and officers personally liable.

- **Prosecute, in the name of the State of Oregon, any suit or action for the collection of the assessment.** Use the Oregon Department of Justice Natural Resources Division attorney assigned to the commissions, the Oregon Department of Revenue (DOR), and/or private collection agencies to collect assessments owed to the commission. [ORS 576.304 (6)].

- **Cancel uncollectible assessments after all reasonable efforts have been made,** including those by the DOR or a private collection agency. The cancellation order must contain adequate information as to why the assessment cannot be collected. Canceling an uncollectible debt must comply with ORS 293.240 [ORS 576.392] and administrative rules.

- **Sue and be sued as a commission** [ORS 576.304 (5)].

- **Enter contracts for carrying out the duties of the commission** [ORS 576.304 (4); ORS 576.306; ORS 578.090].

- **Select and fund research projects and special studies, provide funds toward the purchase of facilities or equipment** (unless restricted through statute or other regulations) to accomplish the purpose of the commission [ORS 576.304 (11); ORS 577.290; ORS 578.090]. Examples of research: production-related projects, marketing studies, financial stability, or research on the effectiveness of the commission's programs.

- **Study legislation that affects the commodity industry** and act to protect or represent the best interests of the industry [ORS 576.304 (7)]. Commissions may educate the legislature and other elected officials about the specific needs of its industry; however, commissions cannot support or oppose a ballot measure or election of officials or fund any related activities. (The federal act that governs the Dairy Products commissions does not permit educating or lobbying.)

- **Appoint subordinate officers and employees of the commission,** prescribe their duties, and fix their compensation.

- **Cooperate with other agencies or organizations** engaged in activities like that of the commission; also, carry out joint programs with those agencies, other commodity commissions and/or organizations.

- **Act jointly and in cooperation with the federal government** in the administration of

programs deemed beneficial to the commodity industry in Oregon.

- **Fund scientific research**, which may be carried out by a private or public entity.
- **Approve and disseminate reliable information that shows the importance of the commodity to health, environment, and proper nutrition** [ORS 576.304 (12)]; commissions are responsible for circulating information pertaining to the commodities they represent.
- **Adopt, rescind, modify, or amend administrative rules** implementing the commission's powers and duties.
- **Contract for advertising and promotion of the commodity and strive to develop new markets**; a commission can and should look for new and innovative ideas to promote the commodity it represents.
- **Establish per diem stipend rates** for commissioners by adopting Administrative Rules as authorized by ORS 576.265, 577.260, 578.060. Commissioners can be paid a daily per diem stipend to compensate for each day spent on commission business. [The per diem stipend is subject to state and federal taxes, including Workers' Compensation. The per diem stipend is in addition to the meal and lodging per diem reimbursement to which commissioners are entitled when traveling on commission business. Commissioners must fill out travel expense reimbursement forms, attach any receipts and submit it to their commission office.
- **Furnish facilities, services, and materials** to other commodity commissions.
- **Receive gifts and grants** for purposes consistent with the powers conferred on the commission. A commission may apply for a grant to supply funding for research, education, or promotion of the commission's objectives.
- **Borrow money**, not more than its estimated revenue from the current year's crop, catch or animals [ORS 576.304(3)].

Violation of these responsibilities is punishable by law (ORS 576.991) and may also result in personal liability to commissioners.

### **COMMODITY COMMISSION "CANNOTS"**

As state entities, all commodity commissions have only the authority granted or necessarily implied by the statute that creates them. The law specifically prohibits certain activities. These include, but are not limited to, the following:

- A commodity commission cannot contribute to political action committees.



- A commodity commission cannot use public funds to support or oppose a ballot measure.
- A commodity commission cannot support or oppose candidates for public office.
- A commodity commission cannot “delegate their governmental authority to anyone other than an officer or employee of the commission.”
- A commodity commission cannot obtain legal advice from or pay legal fees to anyone other than the Oregon Attorney General (Department of Justice). If the Department of Justice does not have the expertise to advise on a specific matter, it will obtain assistance from the private sector. Commodity commissions pay an hourly fee for all attorney time.
- A commodity commission cannot organize profitable ventures.
- A commodity commission cannot form a corporation.
- A commodity commission cannot spend \$1,000 or more for personal services without a contract. A commodity commission may grant up to \$5,000 without using a Financial Assistance Agreement if specific criteria are met. The criteria are:  
The commission has received an official written request from the organization on their letterhead;  
The commission approves the request through a majority vote during a commission meeting and that the vote is recorded in the official minutes of the meeting;  
The organization sends an invoice for payment that is dated after the commission has approved the request; and  
The commission may then pay the invoice in a normal manner with a record of the amount paid entered into the commission's financial records under the applicable category.
- A commodity commissioner cannot violate state ethics law, ORS 244.
- A commodity commission cannot violate its own administrative rules.

Commissioners shall resign or be subject to vacating their position if any of the following occur:  
Two unexcused absences annually, or other neglect of duty in office;  
Use of the commission appointment for financial gain or to avoid financial detriment;  
Unauthorized use or disclosure of confidential information;  
Conduct in violation of Oregon government standards and practices laws (ORS 244, ethics);  
Misappropriation or misuse of commission funds; or  
Failure to satisfy one or more qualifications for appointment.

## **PUBLIC MEETINGS, QUORUMS, EXECUTIVE SESSIONS**

### **● Frequency and Notice**

The OSCC shall hold a minimum of (6) meetings a year, or more as needed, to conduct the business of the commission. Meetings shall be held at locations convenient for most assessment payers, and in a place that does not discriminate against any member of the public.<sup>1</sup> (See *generally* ORS 192.610 to ORS 192.690.) Meetings will usually be held in locations convenient to the growers. The annual Budget Hearing will be conducted before **June 6**. All meetings are open to the public.

Notice of upcoming meetings, including any committee meetings, will be sent via email or post/delivery service at least ten (10) calendar days<sup>2</sup> in advance of the meeting date to: ODA, OSU Extension Agency offices, and other entities and individuals who have requested notification. Meetings, and committee meetings, will be posted to the state of Oregon's website of public meetings at <http://www.oregon.gov/transparency>

The meeting notice must "include a list of the principal subjects anticipated to be considered at the meeting."<sup>3</sup> (See ORS 192.640(1)) Sending an agenda labeled as draft is a good practice.

If a commission meeting will include an executive session, the public notice must include a citation to the statutory authority for the executive session. See ORS 192.640(2); see *also* ORS 192.660(2) (listing authorized purposes for executive session).

The Administrator shall prepare a draft agenda in advance of commission meetings and review it with the Chair. Prior to the start of the meeting, any member of the commission may request an item be placed on the agenda, as may a member of the public. Time permitting, requested agenda items will be addressed at the meeting, or placed on the agenda of the next scheduled meeting. OSCC commissioners, ex-officio members, and others who submit a request will be sent the agenda, current financial statements, and minutes of the previous meeting at least ten (10) calendar days in advance of the meeting, for review purposes.

Meetings will be conducted in an orderly and businesslike manner, using Roberts Rules of Order, to be used as a guide when such rules are not superseded by the commission's rules or procedures. Votes must be conducted in public and reported in the minutes (See ORS 192.650; *37 Op Atty Gen 183 (1974)*). Proxy votes and secret ballots are not permitted.) Each commissioner shall have one vote when voting on business matters. A commissioner must be present to vote; this can be accomplished by participating in discussion and voting via telephone. Seven members constitute a quorum for this commission, and any action may only be approved upon a majority vote of the commission (i.e., six votes are required to approve any action regardless of the number of commissioners present). Dissenting votes on any action must be noted in the minutes of the meeting.

Commissions follow Oregon's Public Meetings Law (ORS 192.610-192.695). Oregon's Public

Meeting Law sets a policy that Oregon's form of government requires an informed public.

"Informed public" extends to commission assessment payers' and commodity processors' awareness of the deliberations and decisions of a commodity commission and the information used to reach decisions. All commodity commission meetings are open to the public except for executive sessions.

### ● **What is a Meeting under Oregon's Public Meetings Law?**

When a commodity commission needs to conduct business, a quorum is required. The law defines a meeting as commissioners (a public body of a governmental entity) convening to decide or to deliberate toward a decision on any matter, or to act. If a committee of a commission is going to meet to make a recommendation or to act on behalf of the full commission, the law requires that a public notice must be made – even if the committee does not make up a quorum of the commission.

All meetings are open to the public except executive sessions; read more below. (The law prohibits smoking during public meetings.)

### ● **What isn't a Public Meeting?**

If no deliberations of an Oregon commodity commission occur, you may attend a national, regional or state association gathering that the commodity commission or commissioners belong to. On-site inspection of any project or program such as research plots, county, or state fairs, and the like, are not public meetings.

### ● **Quorums and Voting**

A quorum must be present for the commissioners to vote. If a quorum is not present, the commissioners may hear reports.

**A quorum is a majority of the total number of commissioners set in administrative rule.**

When a commission has eleven members, a quorum is seven.

To pass a motion, a majority of the quorum must vote in favor of the motion. An abstention is treated as if it is a "no" vote.

Voting by proxy and by email are not permitted.

A commissioner may call in to a meeting and participate in voting if they have heard the discussion prior to the motion.

A quorum of the board shall not meet without public notice of a meeting if making a decision or taking action.

### ● **Meeting Locations**

Commission meetings shall be held within Oregon. When a meeting location is selected, the commission must consider the convenience of most people who are affected by the commission's decisions as well as the convenience of the location for people most likely to have business with the commission.

Public meetings can also be held via video-conferencing services such as Zoom or GoToMeeting. Telephone conference calls are another option that allows for public participation. Email is not an acceptable format since it does not permit real-time public participation.

Commissions may participate in meetings outside of Oregon. However, Oregon commodity commissions are not permitted to act or make decisions when out of state. Commissions shall not hold a meeting in a place that discriminates against any member of the public. The commission must comply with the Americans with Disabilities Act (ADA).

Frequent meeting places for commodity commissions include OSU extension offices, university classrooms, community colleges, commission office conference rooms, hotel meeting facilities, restaurants, conference rooms in organizations or businesses that have farmers, ranchers, or fish harvesters as customers.

#### ● **Acceptable Ways to Meet and Make Decisions**

**Face-to-face** meetings in a place that is ADA accessible when the public has been appropriately notified of the meeting and the draft agenda items.

**Telephone conference call or on-line meeting services** are permitted if the commission's meeting notice, draft agenda and the meeting provide a means for the public to "attend." Specifically, commissions will provide a toll-free conference call-in number or at least one means (a computer or laptop) for the public to participate in a meeting conducted through services like GoToMeeting, Zoom or through video conferencing.

#### ● **Non-Acceptable Ways to Meet and Make Decisions**

**Email** "meetings" and decisions are not permitted under Oregon's Public Meetings Law. Email does not provide a means for public participation.

#### ● **Types of Meetings and Public Notice**

**Regular Meetings** – Setting regular meeting dates allows assessment payers and other interested parties to anticipate when meetings will occur. (Your commission staff can propose the schedule based upon previous practice and provide the meeting dates for discussion.) Regular meeting dates may be changed if needed.

Your commission staff will provide public notice within a timeframe "reasonably calculated" to give notice. The CCOP advises no less than 14 days' notice and that commissions include a draft agenda so that interested people are informed and can plan to attend if interested.

**Special Meetings** – Only used for unanticipated commission business that must be acted upon before the next Regular Meeting. Provide at least 24 hours' notice to constituents, public and news media; read details in **Meeting notices** section.

**Emergency Meetings** – In the case of an actual emergency, a commission may meet as is appropriate to the circumstances. An actual emergency must justify the meeting -- matters related to public health and safety, for example. The meeting minutes must describe the emergency to justify why the meeting was held with less than 24 hours' notice. Provide public notice as appropriate for the circumstance.

**Committee meetings** – If the committee is making recommendation(s) to the commission or has been given the power to make decision(s) on behalf of the commission, public notice of the committee meeting must be given the same as if the full commission is meeting. Committees may meet and discuss issues and then present the summary of those discussions to the commission at a meeting noticed and held under the Public Meetings Law.

● **Executive sessions** - Executive sessions are limited to those listed in ORS 192.660(2). For commissions, the most frequently used executive sessions are for advice from the Attorney General's Office or personnel matters such as employee performance evaluation. Always consult with the CCOP manager and/or the Oregon Department of Justice well before an executive session.

Executive sessions need to be listed on a commission's agenda and include the specific law number and description.

Oregon's public meeting law calls for transparency. The media is permitted to attend executive sessions, and report on the reason listed on the agenda. The media cannot report on the discussion during an executive session.

An executive session is like those advertisements for Las Vegas: What's said in an executive session stays in executive session. Always exercise confidentiality about these matters. When an executive session discussion is talked about outside of the executive session, it can be reported by the media.

Commissioners **cannot take any action** (make motions or vote) during an executive session. After an executive session concludes, the meeting returns to regular session where motions may be introduced, seconded, and voted upon. All actions must be made in a public meeting.

● **Meeting notices and who the commission must notify:**

Meeting notices must include the date, time, and location of the meeting as well as a list of principal subjects (or an agenda titled *draft agenda*). The list or *draft agenda* needs to be as complete as possible. It's labeled as a draft to not limit the commission's ability to consider additional subjects. Include contact information and mention that at least 48 hours' notice to the commission office is required for requesting an interpreter for the hearing impaired.

Notices and draft agendas may be mailed or emailed. The law requires notice be provided to

all interested parties. For commissions, this includes assessment payers, processors, and other people who have requested them. Notice must also be provided to the news media.

Commissions are required to post advance notice of meetings on the Public Meetings Calendar that is part of Oregon's transparency website, <https://data.oregon.gov>

### **MEETING MINUTES**

Written minutes must give a "true reflection of the matters discussed at the meeting and the views of the participants." Per ORS 192.650, all minutes shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

All members of the governing body present;

All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition;

The results of all votes and, except for public bodies consisting of more than 25 members unless requested by a member of that body, the vote of each member by name;

The substance of any discussion on any matter; and

Subject to ORS 192.311 to 192.478 relating to public records, a reference to any document discussed at the meeting.

### **ANNUAL MEETING CALENDAR AT A GLANCE**

Unless there are special circumstances that require additional meetings (Rule Changes, Administrative staff changes, RFP needs) the commission meets six times during the year.

July – Start of the new fiscal year. Administration is preparing year-end reports and research priorities are set with Washington State Tree Fruit Association.

August – Regular commission meeting

September – No commission meeting

October - Regular commission meeting. Northwest Cherries provides season review.

November – Research Review, two days of research presentations and committee considerations for funding in the next fiscal year. No commission meeting

December – Regular commission meeting, discuss research project considerations presented by the committee.

January - No commission meeting

February - Regular commission Meeting

March - No commission meeting

April - Regular commission meeting. Begin budget planning for next fiscal year.

May - No commission meeting

June - Regular commission meeting, budget hearing, and election of new officers.

## **OREGON ETHICS LAW AND YOU**

As an appointee and a volunteer of a commodity commission, you are a public official. You might not have known, but there are approximately 200,000 public officials in Oregon. Public officials must be aware of and follow Oregon Ethics Law, ORS 244. It covers conflict of interest, gifts, nepotism, lobbying and other subjects.

As a public official you are personally responsible for complying with the provisions in the ethics laws. This means you must make a personal judgment in deciding such matters as the use of official position for personal financial gain; if offered a gift, be able to analyze the offer and decide if "something of value" can be accepted with or without restrictions; or when and how to disclose conflicts of interest. If you fail to comply with the ethics laws, a violation cannot be dismissed by placing the blame on the public entity that you represent. In addition to the ethics laws, your public entity may have policies and procedures that are more restrictive.

### **● Conflict of Interest**

The difference between an *actual* conflict of interest and a *potential* conflict of interest is determined by the words "**would**" and "**could**." You are met with an *actual* conflict of interest when you participate in an action, decision, or recommendation that **would** affect the financial interest of yourself, your relatives, or a business with which you or your relative is associated.

You are met with a *potential* conflict of interest when you participate in an action, decision, or recommendation that **could** affect the financial interest of yourself, your relatives, or a business with which you or your relative is associated.

Conflicts of interest are your actions, decisions, or recommendations made as a commissioner that causes a private financial benefit or detriment for you, your relatives, or a business you or your relative is associated with.

If you or your relative has an economic interest in a business, you must be constantly aware of whether that business entity is involved in or affected by your official actions, decisions, or recommendations. If such a business is directly or indirectly involved, a conflict of interest is *possible*.

### **● Questions to ask when faced with a conflict of interest**

Will the action, decision or recommendation have a financial effect on you, your relative, or a

business with which either are associated? Is the impact of the action, decision, or recommendation on your economic interest certain? Is it direct or indirect?

### ● **Disclosing Conflicts of Interest**

If you encounter an **actual** or **potential** conflict of interest, you will need to disclose it. Ask the person taking the meeting minutes to make sure your disclosure is included.

Publicly announce the nature of the **potential conflict** before you take any action as a public official.

When you have an **actual conflict** of interest, publicly announce the nature of the actual conflict. Then you must refrain from taking part in any discussion or debate on the issue related to the actual conflict. Do not vote on the issue. (If your vote is necessary to meet quorum requirements, you may vote but do not discuss or debate on the issue.)

- **Financial Benefits:** The following financial benefits are not prohibited and may be accepted. Some may also be accepted by your relative or a member of your household. [ORS 244.040(2)]
- **Reimbursement of Expenses:** You may accept payments from the commodity commission for reimbursement of expenses that you personally paid for while conducting the commodity commission's business. [ORS 244.040(2)]
- **Honorarium:** A payment or something of economic value given to you in exchange for services that you provide is an honorarium when the setting of the economic value has been prevented by custom or propriety. You are allowed to accept an honorarium if the value does not exceed \$50. Make sure you know how an honorarium is defined because there are many occasions when someone will offer you a financial benefit and call it an honorarium, but it does not meet the definition of honorarium. The services you provide may include but not be limited to speeches or other services provided in connection with an event. [ORS 244.040(2)(b)]
- **Awards for Professional Achievement:** You may accept an award, if you did not solicit the award, and the award is offered to recognize a professional achievement you made. [ORS 244.040(2)(d)]
- **Gifts:** You may accept gifts that do not exceed the limits specified in ORS 244.025. There are circumstances in which there are no limits on the quantity or aggregate value of gifts that you can accept. On the other hand, there are circumstances when the aggregate value of gifts you accept is restricted. There may also be reporting requirements that apply when you accept gifts.



## **WHAT TRAINING MUST I COMPLETE AS A COMMISSIONER?**

ORS 184.370 requires all new board and commission members, and executive directors of a small entity to complete online training administered by the Department of Administrative Services. To meet the requirement, an online training has been developed and is available within iLearnOregon, the state of Oregon's online training system.

Newly appointed commissioners and reappointed commissioners, here's what you need to know about accessing the training:

For those reappointed, the required training will be listed on the home page of your iLearn account.

Newly appointed: If you do not already have an iLearnOregon account, one will be created for you.

## **FISCAL POLICIES**

### **● Investment Policy**

The OSCC Administrator shall make investment decisions after consulting with and obtaining the approval of the commissioners. All funds are to be kept in accounts approved by the commission and in state-recognized institutions that are federally insured.

### **● Budget Preparation**

Each year, with the assistance of staff, the commission will estimate income and expenses for the annual budget. Staff will prepare a monthly financial statement and provide the latest at OSCC meetings.

### **● Request for Proposals (RFP)**

The RFP process is designed to create a fair, open, and competitive bidding process. It is the policy of the State to select contactors based on demonstrated qualifications and proven ability to perform services. A Department of Administrative Services Administrative Rule requires the commission to use the RFP process for services costing \$10,000 or more. The Commodity Commission Oversight Program Manager and the Department of Justice (DOJ) need to review RFPs before they are released.

Commissions may use an informal written bid process when the estimated cost is less than \$10,000. In the informal process, a commission shall obtain bids from three vendors and rank them before selecting a vendor.

Non-competitive negotiation for contracts may be used when:

The item or service is available from a single source, or the sole source has special skills that are only available based upon his/her expertise or situation;

Public need or emergency advises against a delay incident to competitive solicitation;

After soliciting several sources, competition is inadequate; or

The contract is a renewal of an existing contract (not expired) subject to approval by the commission. (See OAR 122-050-0030)

### ● **Contracts, Financial Assistance Agreements (FAAs), and Other Agreements**

The Oregon Department of Justice has worked with the Commodity Commission Program Manager to create templates for personal service contracts, FAAs, a Master Agreement with the Agricultural Research Foundation (ARF) at Oregon State University and the Task Orders that accompany the Master Agreement.

Before any work begins or service is provided, the commission needs to approve and fully execute all contracts, FAAs, Master Agreements, research project funding for Task Orders, interstate agreements (IAs), and intergovernmental agreements (IGAs). All required approvals and signatures must be obtained before work begins. Plan and allow three weeks for review and approval.

### ● **Required Approvals**

The Commodity Commission Program Manager must review all contracts, FAAs, Master Agreements, Task Orders and IAs, IGAs and the like, before the commission and the contractor or grantee or governmental entity signs them. Contracts and FAAs valued at \$150,000, and all IAs, also require DOJ review and legal sufficiency approval. Plan and allow three weeks for legal sufficiency review.

If a contract, agreement, or IA is amended and the goods and services will have value of \$150,000 or more during the term, then the document must be approved for legal sufficiency by DOJ before work covered by the amendment begins.

Master Agreements with ARF were first developed and utilized in 2015. Each commission needs to approve a motion that specifies the number of years (one to five) of the Master Agreement with ARF. If the Master Agreement template is not modified, the DOJ does not need to review it because the Master Agreement does not convey any funds. The Task Order is the document that is used annually by each commission to indicate which research projects the commission has approved for funding through ARF. Task Orders for research of \$150,000 or greater will be reviewed by both the DOJ and the Commodity Commission Program Manager. Task Orders may be amended if a commission approves additional research projects.

The Commodity Commission Program Manager must also review all amendments to or renewals of contracts, FAAs, and IAs before the amendment is signed and before the original contract term ends.

### ● **Requests for Financial, Product, and In-Kind Contributions**

Requests for financial, product donation, and in-kind contributions must be made in writing. Written requests must describe the project's intent and purpose, proposed budget, and timetable. The OSCC requires that such requests be made prior to commission meetings, and the OSCC is not obligated to decide on the day the request is made. Written requests must

describe the project and purpose, proposed budget, and timetable. Only those requests that will have a broad-based effect on the image of the Oregon cherry industry and are consistent with the OSCC mission statement will be considered. The OSCC may approve written requests for financial contributions only by a majority vote of the OSCC, which may take place via a publicly noticed telephone meeting.

The OSCC, as a matter of policy and law, prohibits political contributions and contributions to religious organizations.

Acknowledgment of OSCC contributions (such as on a printed program or in promotional material) is required and the acknowledgement must be pre-approved by the OSCC as a condition of receiving the contribution.

The Administrator and Promotion Contractor may approve and arrange product donation valued up to \$500 per entity, plus shipping costs that are paid by the commission only when the following steps have first taken place:

The commission must have:

approved involvement in the event, and

approved any contract, if one is necessary (for instance paying to participate in an event and providing product) and the contract must be fully signed by all parties, and

the product donation or related event must be in the commission-approved Operational Plan or approved as an amendment to the annual Operational Plan.

## **Expenditures**

### **● Checking Account**

All checks written on behalf of the OSCC, and drawn from commission accounts, shall have two signatures: Either (a) One signature shall be a staff member and one of a commissioner, who is designated as a check signer at the bank where the account is held; or (b) two commissioners, who are designated as check signers (*i.e. both signatures on the checks may not be staff members and the staff member who processes deposits should not be a check signer*). The commission must approve purchases outside of routine operational expenses and pre-approved events if the amount is over \$500.00.

### **● Wire Transfers and Certificates of Deposit**

Before any transaction occurs, the commission must approve all wire transfers of funds or transfer from Certificates of Deposit to another commission account.

### **● Receiving and Processing Funds / Assessments**

OSCC Administrative staff have set accounting practices that call for one individual to handle receipts (assessments and other income). All funds are recorded (in a computer program, document/ cash receipt book, and by photocopy) with date received, amount received, and payer. Staff safeguard and secure any documents or copies that include bank account

numbers or personal identification. Deposits are made into OSCC's bank account at least once a week, as needed. Confirmation of all deposits are made with a copy of the deposit slip stamped with date, time, and amount of deposit and a second verification mark in the deposit logbook.

Cash Disbursements: Accounts payable invoices and statements are processed by the OSCC Administrator. Checks are issued and presented with invoices attached for the required signatures. Two signatures are required on each check, at least one of which will be a commissioner.

● **Assessments**

OSCC collects assessments on all cherries sold in Oregon for fresh, brine, frozen and canned markets. The assessment fees are set prices set forth in the OSCC Administrative Rules. Income from assessments is used to fund all commission expenditures. Each line item listed in the annual budget reflects an expenditure necessary to the commission.

● **General Ledger Maintenance**

The OSCC Administrator is responsible for preparing monthly financial statements, including a balance sheet, statement of revenue and expenses, and comparative schedule of budget to actual, documenting all commission financial activity for that period. These are prepared in conformity with generally accepted accounting principles (GAAP) applicable to state governments and commodity commissions.

● **Year-end Financial Reporting**

Acting at the direction of the commission and staff, the Administrator will prepare state required fiscal year-end financial statements and other related reports. The Administrator will review the reports before they are submitted to the ODA and to the Secretary of State Audits Division.

● **Audit**

The commission is required to obtain an independent audit of its financial statement at least once every five years. To exercise the best level of their fiduciary responsibility, the commissioners may opt to contract for an independent audit each year. The commission will approve a motion to authorize entering a contract with a qualified municipal auditor. Oregon Administrative Rule 603-042-0010(4) outlines the procedures for obtaining and conducting an audit. ODA recommends that commissions seriously consider obtaining audits more frequently than once every five years.

● **Stipend**

Subject to the availability of funds, a stipend of \$151.00 per day will be paid to commissioners for any day or part of a day spent on official commission business.

## **TRAVEL, REIMBURSEMENT, AND CASH ADVANCES**

### **● Restriction on Travel Awards**

Any travel award earned during official commission business travel becomes the property of the commission and must be used only to reduce the cost of future travel, lodging, and meals related to commission business. This includes rewards, certificates, and the like offered by an airline, hotel or car rental agency to a traveler who is bumped from an oversold flight, overbooked hotel, or overbooked rental car. Using travel awards obtained while conducting commission business for personal travel constitutes personal gain and violates ORS 244, Oregon's ethics law.

### **● Reimbursement for Travel Expenses/Meals/Private Vehicle Use**

Commission employees, officers, and representatives shall receive reimbursement for their reasonable travel, lodging, tips, and other expenses incurred in the performance of their official duties. Reimbursement will be for expenses absolutely required to accomplish the official duty (see commission's OAR 656-040-0020). Any expenses related to a personal, or extended stay or expanded activities not related to official duty will be the personal responsibility of the individual involved.

Receipts are required to receive reimbursement for travel-meal expenses, provided meal cost is reasonable for the location. If a receipt is not provided, reimbursement will be at the *per diem* rate set by the U.S. General Services Administration for the location of an overnight stay. Meal receipts must be itemized; a credit card receipt for the total meal is not sufficient documentation. The names of those partaking in the meal and the nature of the business discussed must accompany the itemized receipt. When a receipt is unavailable or lost, the claimant must provide a written statement of the reason(s) for its failure to provide the receipt(s). In the absence of a satisfactory explanation, the commission may not approve a reimbursement request.

The commission's rate of mileage is intended to compensate you for the use of your personal vehicle. You will be reimbursed at the approved state rate for the most direct route mileage. Mileage to and from the airport may also be reimbursed when a personal vehicle is used to commence or return from official commission business.

All claims for reimbursement must be submitted to the commission no later than 90 days after the expense is incurred. All claims must be reported on the Oregon Sweet Cherry Commission expense sheet and all receipts for the incurred expense must be attached. The expense reimbursement form shall include an area where the commissioners and staff will indicate whether they received travel or credit card awards. The commission and staff shall ensure that reimbursements are made only when the traveler completes the travel/credit card award disclosure.

### ● **Private Vehicle Use for Commission Business**

If you use your own car for commission business, you must have a valid driver's license and carry full liability insurance coverage (personal injury and property damage) in at least the minimum amounts required by state law.

If you receive a traffic citation while driving on commission business, you will be responsible for any fines, court costs, safe driving classes, etc.

### ● **Private Vehicle Coverage**

When using a private vehicle on commission business, private auto insurance is always the primary coverage (it applies first). There is no commission coverage for property damage (collision or comprehensive coverages) to the private vehicle. The basic state vehicle liability coverage will apply as excess coverage to a private automobile liability insurance only while the vehicle is used solely for duly authorized official state business within state directives. The state does not provide PIP, UM, medical, physical, accident or comprehensive coverages.

### ● **Use of Rental Vehicles**

Use of rental vehicles is permitted and recommended for travel on a case-by-case basis. The use of a rental car versus your own vehicle will be determined based on the most cost-effective choice.

In addition, when renting a vehicle for commission business, you must:

have a valid driver's license;

be 21 years of age or older;

use the vehicle only for commission business;

limit the driver to only the authorized commission representative(s);

not carry unauthorized passengers;

agree that if you receive a traffic citation while driving the rental vehicle for any purpose, you will be responsible for any fines, court costs, etc.

in Oregon, use rental agency(ies) under contract to the state.

always purchase the supplemental insurance offered by the rental agency. (If you are involved in an accident this protects the commission, which is self-insured, from paying for a claim.);

and report any accident immediately to the commission.

### ● **Travel Cash Advance Requests**

A commissioner, employee, or authorized representative may request a cash advance for travel, which will be limited to the amount estimated for incidental travel expenses. The estimated travel expense requires pre-authorization. It must be signed by two of the commission's approved check signers, other than the requester.

Within 90 days of completion of travel, the commissioner or employee must submit a completed commission expense sheet detailing all expenditures. If the advance is less than expenses incurred, the commission will reimburse the employee the additional amount due. If

the advance is equal to the expenses incurred, the commission will reconcile the travel advance with the commission expense sheet. If the advance is more than expenses incurred, a cash repayment by the commissioner or employee is made to the commission and shall accompany the commission expense sheet.

If a commissioner or an employee would like to add vacation or other personal use on to a commission business trip, it is allowed where all of the following conditions exist:

The primary purpose of the trip is official business;

The employee uses, where necessary, his or her approved leave for the vacation or personal part of the trip; and

The commission does not incur any extra expenses beyond what it would normally incur had the trip occurred without any personal use coupled with the trip.

No extra per diem, stipend or pay/salary will be authorized for commissioners or employees when personal time or a vacation is coupled with a business trip.

### ● **Out of State Travel**

The commission must approve out-of-state travel in advance. The motion request needs to include the purpose of the travel, the destination, the number and names (when known) of those traveling. It is a good practice to include in the motion other details such as the number of days of anticipated travel. A report following out-of-state travel is to be made at the commission's discretion.

### **ALCOHOL POLICY**

The purpose of the OSCC is to market or promote cherries. Since entertaining can be an important part of marketing or promotion, serving alcohol may be involved in official commodity commission marketing or promotional functions. At all other regular meetings, or functions sponsored by the commission, the consumption of alcohol is not permitted. The following risk control plan sets minimum standards for the use of alcohol at these marketing or promotional functions. Other suggestions to minimize risk can be found in the Department of Administrative Services Alcohol Risk Control Policy 125-7-401.

Commission employees and commissioners are expected to limit alcohol consumption to two or less alcoholic beverages in one day when entertaining marketing/promotion guests only. This limitation is in place to maintain a professional image while serving as a representative of the OSCC and of the State of Oregon. All other representatives of the OSCC will be expected to conduct themselves in a professional manner at any sponsored event. The decision to drink belongs solely to the individual.

Self-service or open bars are not permitted at commission functions. Alcohol consumption will be limited to the immediate premises where the alcohol is being served. The premises will be inspected by the Commission Administrator prior to the event to reduce liability risk. A vendor licensed to serve alcoholic beverages shall be hired at all functions. The commission

shall:

- Verify that all alcohol servers hold service permits and have passed the Server Education course.
- Assure that enough alcohol servers will be present. Alcohol servers are instructed to observe patron behavior: not just mix and serve drinks.
- Assure that the servers are informed of OSCC standards and expectations for alcohol service and control, empowering them to cut off drinkers.
- Inform servers that there are no privileged drinkers. Those who are intoxicated will be identified by the server and taken home safely by taxi, or OSCC representative.
- Provide plentiful non-alcoholic beverages and a varied and steady supply of the sort of food that delay absorption of alcohol into the blood stream.
- Encourage attendees to bring a designated driver if they plan to consume alcoholic beverages.

### **ANNUAL REVIEW OF POLICIES AND PROCEDURES**

The commission shall review all Policies and Procedures at least once a year and adopt any needed changes.

### **OREGON LAW AND ADMINISTRATIVE RULES**

Oregon Revised Statutes provide the legal framework and authority for commodity commissions. The statutes may be changed at the request of a commission or another entity. A commission that wants to change the statute needs to communicate first with the assessment payers and the processors/handlers for the commodity to ensure awareness of the proposed change and to encourage collaboration and agreement within the commodity. ODA does not initiate changes to the commodity commission laws.

An administrative rule provides details related to the statute. They set forth procedures. Rules are binding and have the force of the law. They must align with the law without changing it.

Commission administrative rules specify things like:

Assessment rates [read ORS 576.325(4)];

The number of commissioners, term lengths and geographic representation;

When commission officers are elected and which officers are elected;

Reimbursement for commissioners' expenses;

Responding to public records requests; and

Other subjects as the law allows.

A commission can change, repeal, or adopt new rules.

Commissioners are encouraged to begin the administrative rule process by communicating proposed rules with those who will be affected. After discussing the proposed rules with constituents, a commission must list the matter on its agenda, then approve a motion that



authorizes their administrator, or designated rules coordinator, to begin rulemaking.

Through procedures developed by the Oregon Attorney General's Office, each commodity commission is required to notify commodity assessment payers, others who have requested it, certain legislators, and publish it in the Secretary of State's Bulletin. The notice must state the subject matters and purpose of the new or amended rule in enough detail to inform someone if their interest may be affected. The notice must also state the time, place, and manner an interested person may comment on the rule.

As part of the rule-making procedure, the commission must give interested parties a reasonable opportunity to submit comments on the proposed rule. The CCOP recommends holding a hearing because it takes very few objections requesting a hearing to cause a commission to have to refile its notice. (commissioner attendance at rules hearings is optional.) The commissioners receive a report from the hearings officer. Then, the commissioners need to act on a motion to make the rules permanent. Before voting to make the rules permanent, commissioners may modify the proposed rules to reflect what was learned from the hearings report.

On changes to assessment rates, most commissions have a not-to-exceed limit written in the law; a few have a specific rate set. Those with a specific rate in the law and those who want to exceed the limit cannot change it through the administrative rule process. Those commissions must go to the Legislature to request a change.

### **OREGON DEPARTMENT OF AGRICULTURE ROLE**

The commodity commission statutes require ODA to provide oversight to the commodity commissions. The oversight program manager represents the ODA Director as ex-officio, non-voting member of each commission. The oversight program acts as a resource to commissioners and commission staff. Feel free to consult with program staff about questions as well as ideas.

The oversight program communicates about ODA marketing and development plans as well as about other commissions' plans to foster collaboration. In addition, the oversight program reviews administrative rules, budgets, annual operational plans, contracts and manages other functions. ODA is required by law to review all contracts, etc. Oregon Department of Justice is required to review contracts, etc. that are in the amount of \$150,000 or greater.

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<sup>1</sup> The Oregon Public Meetings Law requires that a public meeting be held within the State in a place accessible to interested parties. As a matter of policy, the commission has determined that a location convenient to a majority of assessment payers meets this obligation.

<sup>2</sup> Oregon Meetings Law requires that notice of a public meeting must be “reasonably calculated to give actual notice of time and place to interested persons.” As a matter of policy, the commission has determined that at least ten calendar days prior to meeting is sufficient to meet this obligation.

<sup>3</sup> See ORS 192.640(1). As a general matter, this means that the list must be specific enough to reasonably alert a member of the public to a matter in which they may be interested (e.g., agenda may be sufficient as long as it contains specific versus general description – Not “approval of contract” but “approval of contract with XYZ company for marketing activities” is sufficient, or “approve multiple contracts for promotion,” or “approve agreements for multiple production-related research projects.” You can list the name of the vendor. You need to provide specific information, especially if you know it may be a controversial subject like increasing assessments.

<sup>4</sup> See ORS 192.650(1).

<sup>5</sup> The Oregon Public Meetings Law requires that a record of the meeting must be made available to the public “within a reasonable time after the meeting.” ORS 192.650(1). As a matter of policy and based upon advice from counsel, the ODA has determined that within three weeks meets this requirement.

<sup>6</sup> This is a legal requirement. See ORS 260.432 (prohibiting these actions); *see generally Oregonians Against Trapping*, 56 Or App 78 (1982) (explaining commodity commissions are not permitted to give funds to political action committees). A commission may not contract with an entity to take actions it does not have authority to do itself.