

OFFICE OF THE SECRETARY OF STATE

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 333
OREGON HEALTH AUTHORITY
PUBLIC HEALTH DIVISION

FILED

03/27/2024 11:33 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Farm Direct Nutrition Program: Removing agreement requirement for farmers markets

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 04/21/2024 5:00 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.

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Filed By:
Public Health Division
Rules Coordinator

HEARING(S)

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

DATE: 04/16/2024

TIME: 2:30 PM

OFFICER: Staff

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 971-277-2343

CONFERENCE ID: 953644086

SPECIAL INSTRUCTIONS:

This hearing is being held remotely via Microsoft Teams. To provide oral testimony during this hearing, please contact publichealth.rules@odhsoha.oregon.gov to register and receive the link for the Microsoft Teams video conference via calendar appointment, or you may access the hearing using the meeting URL above. Alternatively, you may dial 971-277-2343, Phone Conference ID 953 644 086# for audio only.

The hearing will close no later than 3:30 PM but may close as early as 3:00 PM if everyone who has signed up to testify has provided their testimony.

Accessibility Statement: For individuals with disabilities or individuals who speak a language other than English, OHA can provide free help. Some examples are: sign language and spoken language interpreters, real-time captioning, braille, large print, audio, and written materials in other languages. If you need help with these services, please contact the Public Health Division at 971-673-1222, 711 TTY or publichealth.rules@odhsoha.oregon.gov at least 48 hours before the meeting. All relay calls are accepted. To best ensure our ability to provide a modification please contact us if you are considering attending the meeting and require a modification. The earlier you make a request the more likely we can meet the need.

NEED FOR THE RULE(S)

The Oregon Health Authority (OHA), Public Health Division is proposing to amend administrative rules in chapter 333, division 52 as they pertain to farmers and farmers markets. The Farm Direct Nutrition Program will no longer require farmers markets to enter into an agreement with OHA to be listed in the program's shopping directory. OHA received clarification from the U.S. Department of Agriculture (USDA) that market agreements are not required; therefore, this proposed rule change will reduce the administrative burden for market representatives. The changes also add Nez Perce, Idaho as a county that borders Oregon, which had not previously been included due to an administrative error.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

7 CFR 248, available at <https://www.ecfr.gov/current/title-7/subtitle-B/chapter-II/subchapter-A/part-248>

7 CFR 249, available at <https://www.ecfr.gov/current/title-7/subtitle-B/chapter-II/subchapter-A/part-249>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

This amendment will reduce barriers that may have prevented participation in this program, particularly for farmers markets that are under-resourced or members of marginalized communities.

FISCAL AND ECONOMIC IMPACT:

There are anticipated increased sales for farmers markets not previously listed in the program's shopping directory. There are no other anticipated fiscal or economic impacts as a result of these proposed amendments.

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).

(1) OHA, other state agencies, units of local government and members of the public are not expected to be fiscally or economically impacted by the proposed changes as they only alleviate administrative burden and correct an administrative error.

(2)(a) There are approximately 700 authorized farms and 90 participating farmers markets subject to these rules. OHA does not collect information needed to accurately determine how many of these fall under the statutory definition of a small business.

(b) Authorized farms and farmers markets are regularly monitored for program compliance. The farmers markets themselves will no longer be monitored as separate entities, only the farmers at the markets. No additional reports, recordkeeping, administrative tasks, or costs are anticipated to comply with these amendments.

(c) Existing equipment, supplies, labor and administration will be adequate for compliance with these proposed amendments.

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

Small businesses were included as members of the Rules Advisory Committee.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

333-052-0040, 333-052-0070, 333-052-0075, 333-052-0080, 333-052-0090, 333-052-0100, 333-052-0110, 333-052-0120, 333-052-0130

AMEND: 333-052-0040

RULE SUMMARY: Amend OAR 333-052-0040 to remove references to markets in definitions of "agreement", "authorized", "civil money penalty", and "disqualification" because removing the authorization requirement for markets makes these definitions no longer apply to markets. Add Nez Perce county as an eligible county in the definition of "locally grown". Remove authorization requirement from the definition of "market" because OHA is no longer authorizing markets. Remove "market coordinator" definition because it was only relevant for authorized markets.

CHANGES TO RULE:

333-052-0040

Definitions ¶¶

- (1) "Adequate participant access" means there are authorized farmers sufficient for participant need.¶¶
- (2) "Agreement" means a written legal document binding the ~~market or~~ farmer and the Oregon Health Authority (Authority) to designated terms and conditions.¶¶
- (3) "Authority" means the Oregon Health Authority.¶¶
- (4) "Authorized" or "authorization" means an eligible farmer ~~or farmers market~~ has met the selection criteria and signed an agreement with the Authority allowing participation in Farm Direct and is not currently disqualified.¶¶
- (5) "Civil money penalty" means a monetary penalty imposed against the farmer ~~or farmers market~~ for noncompliance of ~~Program~~ the Oregon Farm Direct Nutrition Program (Program) rules.¶¶
- (6) "Disqualification" means the act of terminating the agreement of an authorized ~~farmers market, or~~ farmer from the Program for noncompliance with Program requirements.¶¶
- (7) "Eligible foods" means fresh, nutritious, unprepared, locally grown fruits and vegetables and cut culinary herbs for human consumption. Eligible foods does not include foods processed or prepared beyond their natural state except for usual harvesting and cleaning processes.¶¶
- (8) "Farm Direct Nutrition Program" or "Farm Direct" or "Program" means the Oregon Farm Direct Nutrition Program which is composed of the collective Senior Farm Direct Nutrition Program and WIC Farm Direct Nutrition Program, regulated by the United States Department of Agriculture (USDA), Food and Nutrition Service and administered by the State of Oregon.¶¶
- (9) "Farmer" means an individual who owns, leases, rents or sharecrops land to grow, cultivate or harvest crops on that land.¶¶
- (10) "Farmers market" for the purposes of Farm Direct, means a group of producers, including farmers who grow fruits, vegetables, or culinary herbs, who assemble over the course of a year at a defined location for the purpose of selling their produce directly to consumers.¶¶
- (11) "Farm stand" means a location at which a single farmer sells produce directly to consumers.¶¶
- (12) "Improperly transacted" means any submission not in accordance with Program rules or the agreement.¶¶
- (13) "Locally grown" means grown in the state of Oregon or in the following counties of a contiguous state: California - Del Norte, Modoc, Siskiyou; Idaho - Adams, Canyon, Idaho, Nez Perce, Owyhee, Payette, Washington; Nevada - Humboldt, Washoe; Washington state - Asotin, Benton, Clark, Columbia, Cowlitz, Garfield, Klickitat, Pacific, Skamania, Wahkiakum, Walla Walla.¶¶
- (14) "Local WIC agency" means the agency or clinic where a WIC participant receives WIC services and benefits.¶¶
- (15) "Local WIC agency staff" means any local WIC agency staff authorized to issue Farm Direct benefits.¶¶
- (16) "Market" means a farmers market ~~that has a signed agreement with the Authority to participate in Farm Direct.~~¶¶
- ~~(17) "Market coordinator" means an individual designated by the farmers market manager (or market board members) responsible for overseeing the market's participation in Farm Direct.¶¶~~
- ~~(18) ¶¶~~
- (17) "Market season" means the time period in which Farm Direct vouchers may be transacted as determined by the Authority.¶¶
- (19) "Participant" means a senior participant or a WIC participant receiving Program benefits.¶¶
- (20) "Program rules" means OAR 333-052-0030 through 333-052-0130.¶¶
- (21) "Senior Farm Direct Nutrition Program" means the Senior Farmers' Market Nutrition Program funded by USDA that provides senior participants with vouchers that can be used to buy eligible foods from an authorized

farmer.¶

(221) "Senior participant" means an individual who meets all the eligibility components of the Farm Direct program and who receives Farm Direct vouchers.¶

(232) "SNAP" means the Supplemental Nutrition Assistance Program of the Food and Nutrition Service of the United States Department of Agriculture.¶

(243) "Trafficking" means the buying or exchanging of a Farm Direct voucher for cash, drugs, firearms, alcohol, or any other ineligible item.¶

(254) "USDA" means the United States Department of Agriculture.¶

(265) "Violation" means an activity that is prohibited by OAR 333-052-0030 through 333-052-0090 and classified in OAR 333-052-0080 through 333-052-0130.¶

(276) "Voucher" means a negotiable financial instrument by which Farm Direct benefits are provided to participants.¶

(287) "WIC" or "WIC program" means the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) authorized by Section 17 of the Federal Child Nutrition Act of 1966, as amended, 42 U.S.C.

§1786.¶

(298) "WIC Farm Direct Nutrition Program" means the Farmers' Market Nutrition Program funded by USDA that provides WIC participants with vouchers that can be used to buy eligible foods from an authorized farmer.¶

(3029) "WIC participant" means an individual who meets all the eligibility components of WIC Farm Direct and receives Farm Direct vouchers.

Statutory/Other Authority: ORS 413.500, ORS 411.813

Statutes/Other Implemented: ORS 413.500, ORS 411.813

REPEAL: 333-052-0070

RULE SUMMARY: Repeal OAR 333-052-0070 – This rule is being repealed because OHA is no longer authorizing markets.

CHANGES TO RULE:

~~333-052-0070~~

~~Farmers Market Participation~~

~~(1) To be eligible for participation in the Farm Direct Nutrition Program a farmers market applicant must:~~

~~(a) Designate an individual to be the Farm Direct market coordinator who will be on-site during operating hours;~~

~~(b) Have a minimum of three farmers who sell locally grown fresh fruits, vegetables, and cut herbs;~~

~~(c) Operate on a consistent basis over the course of the season;~~

~~(d) Complete the Program orientation;~~

~~(e) Ensure at least one Farm Direct-authorized farmer is on-site during operating hours; and~~

~~(f) Agree to comply with all terms and conditions specified in the Program agreement.~~

~~(2) The Oregon Health Authority is not required to authorize all applicants.~~

~~Statutory/Other Authority: ORS 413.500, ORS 411.813~~

~~Statutes/Other Implemented: ORS 413.500, ORS 411.813~~

REPEAL: 333-052-0075

RULE SUMMARY: Repeal OAR 333-052-0075 – This rule is being repealed because OHA is no longer authorizing markets

CHANGES TO RULE:

~~333-052-0075~~

~~Farmers Market Agreements ¶¶~~

~~(1) A farmers market application and a market agreement must be signed by a representative who has legal authority to obligate the market.¶¶~~

~~(2) The market application and the market agreement both must include a requirement that the market:¶¶~~

~~(a) Comply with Program rules, as applicable to markets;¶¶~~

~~(b) Furnish the necessary personnel and services to conduct market activities; and¶¶~~

~~(c) Do all things necessary for or incidental to the performance of the work set forth in the market application and the market agreement.¶¶~~

~~(3) The market application and the market agreement will be valid for one market season.¶¶~~

~~(4) Neither the Oregon Health Authority (Authority) nor the market has an obligation to enter into an agreement.~~

~~Statutory/Other Authority: ORS 413.500, ORS 411.813~~

~~Statutes/Other Implemented: ORS 413.500, ORS 411.813~~

AMEND: 333-052-0080

RULE SUMMARY: Amend OAR 333-052-0080 to re-word the requirement to display signage to reflect the changes regarding market authorization

CHANGES TO RULE:

333-052-0080

Farmer Participation Requirements, Violations and Sanctions ¶¶

(1) An authorized farmer must:¶¶

(a) Comply with ~~Program~~the Oregon Farm Direct Nutrition Program (Program) requirements and standards in Program rules, 7 CFR 248, 7 CFR 249, and the terms and conditions of the farmer agreement;¶¶

(b) Complete training on Program requirements and ensure that all individuals working in the farmer's stall(s) at the farmers market(s) or farm stand(s) are trained on Program requirements;¶¶

(c) Accept Farm Direct vouchers:¶¶

(A) For eligible foods only; and¶¶

(B) Within the valid dates of the Program.¶¶

(d) Prominently display the official Program sign provided by the ~~Authority~~Oregon Health Authority (Authority) on each day of operation, ~~when at authorized farmers markets or authorized farm stands;~~ithin Program dates, when selling eligible produce.¶¶

(e) Provide Farm Direct participants with the full amount of product for the value of each Farm Direct voucher;¶¶

(f) Cooperate with staff from the ~~Oregon Health Authority (Authority)~~Authority or their designees in monitoring for compliance with Program requirements and provide documentation or information that the Authority or their designees may require;¶¶

(g) Comply with all state or federal laws regarding non-discrimination and applicable USDA instructions as described in 7 CFR 248.10 to ensure that no individual will, on the grounds of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA, be excluded from participation, be denied benefits, or be otherwise subjected to discrimination, under the Farm Direct Nutrition Program;¶¶

(h) Ensure that Farm Direct shoppers receive equitable treatment, including the availability of produce that is of the same quality and no greater price than sold to other shoppers;¶¶

(i) Register with the Authority's payment processor using the farm identifier provided by the Authority, prior to scanning vouchers for payment¶¶

(j) Process Farm Direct vouchers for payment by the date agreed to in the agreement;¶¶

(k) Reimburse the Authority for Farm Direct vouchers that are improperly transacted;¶¶

(l) Respond to requests, implement corrective action, and comply with the terms in final orders as directed by the Authority;¶¶

(m) Not provide credit in exchange for Farm Direct vouchers;¶¶

(n) Not charge sales tax on Farm Direct voucher purchases;¶¶

(o) Not seek restitution from Farm Direct participants for a voucher not paid by the Authority;¶¶

(p) Not give cash back for purchases that amount to less than the value of a Farm Direct voucher (provide change);¶¶

(q) Not use Farm Direct vouchers for any purpose other than to process for payment for eligible items; and¶¶

(r) Not accept Farm Direct vouchers from unauthorized farmers.¶¶

(2) A farmer is in violation of the Program if the farmer:¶¶

(a) Fails to:¶¶

(A) Comply with Program rules and the terms and conditions of the farmer application and the farmer agreement;¶¶

(B) Accept training on Program requirements and ensure that all individuals working in the farmer's stall(s) at the farmers market(s) or farm stand(s) are trained;¶¶

(C) Prominently display the official Program sign provided by the Authority on each day of operation, ~~when at authorized farmers markets or authorized farm stands;~~ithin Program dates, when selling eligible produce.¶¶

(D) Provide Farm Direct participants with the full amount of product for the value of each Farm Direct voucher;¶¶

(E) Comply with all state or federal laws regarding non-discrimination, and applicable USDA instructions to ensure that no individual will, on the grounds of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA, be excluded from participation, be denied benefits, or be otherwise subjected to discrimination, under the Farm Direct Nutrition Program;¶¶

(F) Ensure that Farm Direct participants receive equitable treatment, including the availability of produce that is

- of the same quality and no greater price than sold to other shoppers;¶
- (G) Register with the Authority's payment processor using the farm identifier provided by the Authority, prior to scanning vouchers for payment;¶
- (H) Process Farm Direct vouchers for payment by the date agreed to in the agreement entered into between the farmer and the Authority;¶
- (I) Reimburse the Authority for Farm Direct vouchers that are improperly transacted;¶
- (J) Cooperate with staff from the Authority or their designees in monitoring for compliance with Program requirements and provide information that the Authority or their designees may require; or¶
- (K) Respond to requests, implement corrective action, or comply with the terms in final orders as directed by the Authority.¶
- (b) Accepts Farm Direct vouchers:¶
- (A) For ineligible foods;¶
- (B) For invalid dates; or¶
- (C) From an unauthorized farmer.¶
- (c) Provides credit in exchange for Farm Direct vouchers;¶
- (d) Charges sales tax on Farm Direct voucher purchases;¶
- (e) Seeks restitution from Farm Direct participants for a voucher not paid by the Authority;¶
- (f) Gives cash back for purchases that amount to less than the value of a voucher (providing change); or¶
- (g) Uses Farm Direct vouchers for any purpose other than to process for payment.¶
- (3) Farmer sanctions:¶
- (a) The Authority may issue a notification of non-compliance to an authorized farmer for an initial incident of:¶
- (A) Accepting Farm Direct vouchers for ineligible foods;¶
- (B) Failing to prominently display the official sign provided by the Authority, on each market day when at authorized farmers markets or authorized farm stands day of operation, within Program dates, when selling eligible produce;¶
- (C) Failing to provide Farm Direct participants with the full amount of product for the value of each Farm Direct voucher;¶
- (D) Failing to ensure that Farm Direct shoppers receive equitable treatment, including the availability of produce that is of the same quality and no greater price than sold to other shoppers;¶
- (E) Failing to reimburse the Authority for Farm Direct vouchers that are improperly transacted;¶
- (F) Charging sales tax on Farm Direct purchases;¶
- (G) Seeking restitution from Farm Direct participants for vouchers not paid by the Authority;¶
- (H) Giving cash back for purchases less than the value of the vouchers (providing change);¶
- (I) Accepting Farm Direct vouchers from an unauthorized farmer;¶
- (J) Failing to respond to requests, implement corrective action, or comply with the terms in final orders as directed by the Authority;¶
- (K) Using Farm Direct vouchers for any purpose other than to process for payment; or¶
- (L) Failing to cooperate with staff from the Authority or their designees in monitoring for compliance with Program requirements and failing to provide information that the Authority or their designees may require.¶
- (b) The Authority may disqualify a farmer for four season months, which may continue from the year during which the violation occurred into the following year for an initial incident of providing credit in exchange for Farm Direct vouchers.¶
- (c) The Authority may disqualify a farmer for four season months, which may continue from the year during which the violation occurred into the following year, for second or subsequent incidents of:¶
- (A) Accepting Farm Direct vouchers for ineligible foods;¶
- (B) Failing to prominently display the official sign provided by the Authority, on each market day when at authorized farmers markets or authorized farm stands day of operation, within Program dates, when selling eligible produce;¶
- (C) Failing to provide Farm Direct participants with the full amount of product for the value of each Farm Direct voucher;¶
- (D) Failing to ensure that Farm Direct shoppers receive equitable treatment, including the availability of produce that is of the same quality and no greater price than sold to other shoppers;¶
- (E) Charging sales tax on Farm Direct voucher purchases;¶
- (F) Seeking restitution from Farm Direct participants for vouchers not paid by the Authority;¶
- (G) Using Farm Direct vouchers for any purpose other than to process for payment;¶
- (H) Charging Farm Direct participants higher prices than other customers;¶
- (I) Giving cash back for purchases less than the value of the vouchers (providing change);¶
- (J) Accepting Farm Direct vouchers from an unauthorized farmer; or¶
- (K) Failing to respond to requests, implement corrective action, or comply with the terms in final orders as

directed by the Authority.¶

(d) The Authority may not authorize farmers to accept Farm Direct vouchers the season following second or subsequent incidents of:¶

(A) Failing to reimburse the Authority for Farm Direct vouchers that are improperly transacted; or¶

(B) Failing to cooperate with staff from the Authority or their designees in monitoring for compliance with Program requirements and failing to provide information required to be submitted by the Authority or their designees.¶

(e) The Authority may immediately disqualify a farmer from the Program for the remainder of the current season and the entire following season for an initial incident of:¶

(A) Trafficking in Farm Direct vouchers (exchanging vouchers for cash, controlled substances, tobacco products, firearms or alcohol) in any amount; or¶

(B) A USDA substantiated violation of laws regarding non-discrimination or applicable USDA instructions.¶

(f) Farmers who are not authorized to participate in Farm Direct will not receive an Authority-assigned identification number and will not be paid for Farm Direct vouchers they attempt to process; and¶

(g) Farm Direct vouchers redeemed outside the dates identified on the voucher will not be reimbursed.¶

(4) Farmers who do not comply with Farm Direct requirements are subject to sanctions, including civil money penalties, in addition to, or in lieu of, disqualification.¶

(a) Prior to disqualifying a farmer, the Authority may determine if disqualification of the farmer would result in inadequate participant access. If the Authority determines that disqualification of the farmer would result in inadequate participant access, the Authority may impose a civil money penalty in lieu of disqualification in the amount of five percent of the farmer's previous season Farm Direct sales or \$250, whichever is greater.¶

(b) The Authority must give written notice to a farmer of an action proposed to be taken against a farmer, not less than 30 days before the effective date of the action. The notice must state what action is being taken, the effective date of the action, and the procedure for requesting a hearing.¶

(c) A farmer that has been disqualified from the Program may reapply at the end of the disqualification period.¶

(d) The Authority may accept a farmer's voluntary withdrawal from the Program as an alternative to disqualification. If a farmer chooses to withdraw in lieu of disqualification, the farmer may not apply for participation until the following year.¶

(e) The Authority will not reimburse farmers who have been disqualified or have withdrawn in lieu of disqualification.¶

(f) Civil money penalties must be paid to the Authority within the time period specified in the Order.¶

(5) A farmer who commits fraud or abuse of the Program is subject to prosecution under applicable federal, state or local laws.

Statutory/Other Authority: ORS 413.500, ORS 411.813

Statutes/Other Implemented: ORS 413.500, ORS 411.813

REPEAL: 333-052-0090

RULE SUMMARY: Repeal OAR 333-052-0090 – This rule is being repealed because OHA is no longer authorizing markets

CHANGES TO RULE:

~~333-052-0090~~

~~Market Participation Requirements, Violations and Sanctions~~

~~(1) An authorized market must:~~

~~(a) Comply with Farm Direct Nutrition Program standards and requirements contained in 7 CFR 248 and 7 CFR 249, Program rules, and the terms and conditions of the market application and the market agreement;~~

~~(b) Ensure that an authorized Farm Direct farmer is present at the market during all market hours of operation;~~

~~(c) Accept training on Program procedures and provide such training to market staff including volunteers on behalf of the Oregon Health Authority (Authority);~~

~~(d) Cooperate in the Authority investigations of authorized farmers who:~~

~~(A) Redeem vouchers for ineligible foods;~~

~~(B) Charge Farm Direct shoppers higher prices than other shoppers;~~

~~(C) Accept vouchers outside the Authority determined market season;~~

~~(D) Give change for food purchased with Farm Direct vouchers (providing change);~~

~~(E) May not meet the definitions of "eligible farmer;" or~~

~~(F) Abuse any other Program rules or standards.~~

~~(e) Comply with all state or federal laws regarding non-discrimination and applicable USDA instructions as described in 7 CFR 248.10 to ensure that no individual will, on the grounds of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA, be excluded from participation, be denied benefits, or be otherwise subjected to discrimination, under the Farm Direct Nutrition Program;~~

~~(f) Cooperate with staff from the Authority or their designees in monitoring for compliance with Program rules and provide information required to be submitted by the Authority or their designees; and~~

~~(g) Respond to requests, implement corrective action, and comply with the terms in final orders as directed by the Authority.~~

~~(2) A market is in violation of Program rules if the market fails to:~~

~~(a) Ensure that an authorized farmer is present at the market during all market hours of operation;~~

~~(b) Complete training on Program procedures and provide such training to market staff including volunteers;~~

~~(c) Cooperate in the Authority investigations of authorized farmers;~~

~~(d) Comply with all state or federal laws regarding non-discrimination, and applicable USDA instructions to ensure that no individual will, on the grounds of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA, be excluded from participation, be denied benefits, or be otherwise subjected to discrimination, under the Farm Direct Nutrition Program;~~

~~(e) Cooperate with staff from the Authority or their designees in monitoring for compliance with Program rules and provide information that the Authority or their designees may require;~~

~~(f) Notify the Authority when and if the market ceases operation prior to the end of the authorization period; or~~

~~(g) Respond to requests, implement corrective action, and comply with the terms in final orders as directed by the Authority.~~

~~(3) Market sanctions:~~

~~(a) The Authority may issue a notice of non-compliance to an authorized market for an initial incident of failing to:~~

~~(A) Ensure that an authorized farmer is present at the market during all market hours of operations;~~

~~(B) Accept training on Farm Direct procedures and provide such training to market staff including volunteers;~~

~~(C) Cooperate in the Authority investigations of authorized farmers;~~

~~(D) Cooperate with staff from the Authority or their designees in monitoring for compliance with Program rules and provide information that the Authority or their designees may require; or~~

~~(E) Respond to requests, implement corrective action, and comply with the terms in final orders as directed by the Authority.~~

~~(b) A market may not be authorized the following year if, within the current season, there is a second or subsequent occurrence of any action described in section (3)(a) of this rule.~~

~~(c) The Authority may immediately disqualify a market from the Program for the remainder of the current season and the entire following season for an initial incident of a USDA substantiated violation of laws regarding non-~~

discrimination, and applicable USDA instructions.¶

(d) The market is responsible, and may be sanctioned, for any action of market staff, including volunteers, in the provision of foods and related activities, and any violations by market staff are attributable to the market.¶

(4) Markets that do not comply with Program requirements are subject to sanctions.¶

(a) The Authority must give written notice to a market of an action proposed to be taken against a market, not less than 30 days before the effective date of the action. The notice must state what action is being taken, the effective date of the action, and the procedure for requesting a hearing;¶

(b) A market that has been disqualified from the Program may reapply at the end of the disqualification period; and¶

(c) The Authority may accept a market's voluntary withdrawal from the Program as an alternative to disqualification. If a market chooses to withdraw in lieu of disqualification, the market may not apply for participation until the following year.¶

(5) A market that commits fraud or abuse of the Program is subject to prosecution under applicable federal, state or local laws.

Statutory/Other Authority: ORS 413.500, ORS 411.813

Statutes/Other Implemented: ORS 413.500, ORS 411.813

AMEND: 333-052-0100

RULE SUMMARY: Amend OAR 333-052-0100 to remove references to authorized markets and market managers, which are no longer applicable because OHA is no longer authorizing markets.

CHANGES TO RULE:

333-052-0100

Oregon Health Authority Responsibilities ¶¶

The Oregon Health Authority (Authority) must:¶¶

- (1) Administer the Oregon Farm Direct Nutrition Program (Program) in accordance with 7 CFR 248 (Farmers' Market Nutrition Program) and 7 CFR 249 (Senior Farmers' Market Nutrition Program);¶¶
- (2) Distribute or facilitate distribution of Farm Direct vouchers to participants;¶¶
- (3) Assure payment to farmers for properly redeemed Farm Direct vouchers;¶¶
- (4) Assure that training is provided to ~~new market managers and~~ farmers who are new to the Program;¶¶
- (5) Assure that Program signs are provided to all authorized farmers; and¶¶
- (6) Monitor authorized farmers ~~and markets~~ for compliance with Program rules and agreements, and if necessary, impose sanctions.

Statutory/Other Authority: ORS 413.500, ORS 411.813

Statutes/Other Implemented: ORS 413.500, ORS 411.813

AMEND: 333-052-0110

RULE SUMMARY: Amend OAR 333-052-0110 to remove references to markets for monitoring requirements, which are no longer applicable because OHA is no longer authorizing markets

CHANGES TO RULE:

333-052-0110

Monitoring ¶¶

(1) The Oregon Health Authority (Authority) must monitor farmers ~~and markets~~ for compliance with applicable laws and rules, including on-site investigation of randomly selected farmers ~~and markets~~. ¶¶

(2) The Authority may conduct covert compliance buys of Farm Direct-authorized farmers for compliance with the Authority rules and regulations.

Statutory/Other Authority: ORS 413.500, ORS 411.813

Statutes/Other Implemented: ORS 413.500, ORS 411.813

AMEND: 333-052-0120

RULE SUMMARY: Amend OAR 333-052-0120 to remove references to authorized markets and market managers, which are no longer applicable because OHA is no longer authorizing markets, and specify that Farm Direct can receive complaints about farmers markets and farm stands.

CHANGES TO RULE:

333-052-0120

Complaints ¶

(1) Anyone wishing to file a complaint against a Farm Direct participant, an authorized farmer, ~~an authorized market, or the Program~~ farmers market, a farm stand, or the Oregon Farm Direct Nutrition Program (Program) may do so in the following manner:¶

(a) Send a written comment to the WIC Compliance & Civil Rights Coordinator at PO Box 14450, Portland, Oregon, 97293; or¶

(b) Call the state WIC, Vendor Answer Line at (877) 807-0889.¶

(2) A local WIC clinic, an Aging and Disability Services office, an Aging and Disability Resource Connection of Oregon office, or an Area Agency on Aging office ~~or market manager~~ may file a complaint on behalf of an individual who does not want to file a complaint independently.¶

(3) When the Oregon Health Authority (Authority) receives a complaint alleging discrimination on the basis of race, color, national origin, age, sex (including gender identity and sexual orientation) or disability the Authority must automatically forward the complaint to USDA, S. Department of Agriculture (USDA) for investigation.¶

(4) Individuals alleging discrimination on the basis of race, color, national origin, age, sex (including gender identity and sexual orientation) or disability may also write directly to USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, D.C. 20250-9410 or call (866) 632-9992.¶

(5) The Authority may refer complaints regarding ~~farmers or market,~~ farmers markets, or farm stands to the Oregon Farm Direct Nutrition Program for investigation.¶

(6) The identity of any individual filing a complaint will be kept confidential except to the extent necessary to conduct any investigation, hearing or judicial proceeding regarding the complaint.

Statutory/Other Authority: ORS 413.500, ORS 411.813

Statutes/Other Implemented: ORS 413.500, ORS 411.813

AMEND: 333-052-0130

RULE SUMMARY: Amend OAR 333-052-0130 to remove references to markets for appeals process, which are no longer applicable because OHA is no longer authorizing markets.

CHANGES TO RULE:

333-052-0130

Appeals ¶

- (1) ~~Markets and~~ Farmers are entitled to a hearing as provided by the Administrative Procedures Act (ORS chapter 183) for a denial of participation, imposition of a sanction, or disqualification. ¶
- (2) Individuals who do not receive a Farm Direct benefit are not entitled to a hearing if the non-award is based on funding. ¶
- (3) ~~Markets and~~ Farmers may not be entitled to a hearing under the Administrative Procedures Act to challenge: ¶
 - (a) The validity or appropriateness of the Oregon Health Authority (Authority)'s selection criteria for farmer ~~or market~~ participation; ¶
 - (b) The validity or appropriateness of the Authority's participant access determinations; ¶
 - (c) The duration or expiration of a farmer ~~or market~~ agreement; or ¶
 - (d) An Authority decision regarding a voucher payment or claims. ¶
- (4) The Authority may, at its discretion, permit the ~~market or~~ farmer to continue participating in Farm Direct pending the outcome of an administrative hearing. The farmer may be required to repay funds for Farm Direct vouchers redeemed during the pendency of the hearing, if the denial, sanction, or disqualification is affirmed. ¶
- (5) A request for a hearing must be in writing and must be received within 30 days from the date of the notice describing the proposed action. ¶
- (6) The request for hearing must include: ¶
 - (a) The name and address of the farmer ~~or market~~ requesting the hearing; ¶
 - (b) The name and address of the attorney representing the farmer ~~or market~~, if any; ¶
 - (c) The decision made or action taken by the Authority against the farmer ~~or market~~; ¶
 - (d) The reason the farmer ~~or market~~ disagrees with the decision or action; ¶
 - (e) Any special needs or requirements, such as, an interpreter or other special accommodations; and ¶
 - (f) An attached copy of the notice from the Authority. ¶
- (7) If a hearing is requested under subsection (1) of this rule, a final written decision must be made within 60 days from the date the request for a hearing was received by the WIC Operations Manager. The time for issuing a decision may be extended upon agreement by the parties.
Statutory/Other Authority: ORS 413.500, ORS 411.813
Statutes/Other Implemented: ORS 413.500, ORS 411.813