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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 333
OREGON HEALTH AUTHORITY
PUBLIC HEALTH DIVISION

FILED
03/25/2020 5:19 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Oregon Farm Direct Nutrition Program Administration

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/05/2020 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:
Brittany Hall
Rules Coordinator

HEARING(S)

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

DATE: 05/05/2020

TIME: 10:00 AM

OFFICER: Staff

ADDRESS: CALL-IN ONLY

Following direction from the Gov/CDC
public meetings are via conference call
Portland, OR 97232

SPECIAL INSTRUCTIONS:

Due to COVID-19, public hearings are
being held via conference call through
at least May 2020. To provide oral
testimony during this hearing, please
dial 1-877-873-8017, access code:
767068#

NEED FOR THE RULE(S):

The Oregon Health Authority, Public Health Division is proposing to amend administrative rules in chapter 333, division 52 as they pertain to the administration of the Oregon Farm Direct Nutrition Program. The amendments include a definition, definition clarifications, removal of the Oregon Department of Agriculture as a program administration partner, amendments to the eligibility criteria for Farmer's Market program authorization, and corrections to the non-discrimination statement according to federal regulations. These amendments are being made to address the cessation of the Oregon Department of Agriculture's role as a program administration partner, to add clarity to the program definitions, and to increase the eligibility of Oregon Farmers' Markets to apply for program authorization.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

7 CFR 246, Public Law 108-265

Both documents are available at <http://www.fns.usda.gov>

FISCAL AND ECONOMIC IMPACT:

There are no 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) There is no anticipated cost of compliance impact on other state agencies, units of local government and members of the public as a result of the proposed changes as they pertain to WIC vendor and farmer administration only. There is no cost of compliance impact on the Oregon Health Authority as a result of the proposed changes.

(2)(a) There are approximately 710 authorized farmers and 90 authorized farmers' markets subject to these rules.

(b) Authorized farmers and farmers' markets are already regularly monitored for program compliance and are notified multiple times in advance of their training requirements and training schedule, 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 consulted and included as members of the Rules Advisory Committee.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

333-052-0030, 333-052-0040, 333-052-0043, 333-052-0044, 333-052-0050, 333-052-0060, 333-052-0065, 333-052-0070, 333-052-0075, 333-052-0080, 333-052-0090, 333-052-0120

AMEND: 333-052-0030

RULE SUMMARY: Amend OAR 333-052-0030: Add Oregon Department of Human Services as a program partner.

CHANGES TO RULE:

333-052-0030

Program Overview ¶

(1) The purpose of the Oregon Farm Direct Nutrition Program (Oregon FDNP or FDNP) is to:

(a) Provide locally grown, fresh, nutritious, unprepared fruits, vegetables, and cut culinary herbs to women, infants, and children, who participate in the special supplemental nutrition program for women, infants, and children (WIC) and to low income seniors; and

(b) Expand the awareness and use of farmers' markets and farm stands where consumers can buy directly from the farmer.

(2) The Oregon FDNP is administered by Oregon Health Authority (Authority) in partnership with the Oregon Department of Agriculture and Oregon Department of Human Services.

Statutory/Other Authority: ORS 413.500

Statutes/Other Implemented: ORS 413.500

AMEND: 333-052-0040

RULE SUMMARY: Amend OAR 333-052-0040: Amend current definitions to clarify intent and add definition to clarify who is authorized to issue FDNP benefits.

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 Authority to designated terms and conditions.¶¶
- (3) "AAA" means Area Agency on Aging.¶¶
- (4) "ADRC" means Aging and Disability Resource Connection.¶¶
- (5) "APD" means Department of Human Services, Aging and People with Disabilities.¶¶
- (6) "Authority" means the Oregon Health Authority.¶¶
- (7) "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 FDNP; and is not currently disqualified.¶¶
- (8) "Check" means a negotiable financial instrument by which FDNP benefits are provided to participants.¶¶
- (9) "CMP" means a civil money penalty, which is a monetary penalty imposed against the farmer for noncompliance of FDNP rules.¶¶
- (10) "Disqualification" means the act of terminating the agreement of an authorized farmers' market, or farmer from the FDNP for noncompliance with program requirements.¶¶
- (11) "Eligible foods" means fresh, nutritious, unprepared, locally grown fruits and vegetables and cut culinary herbs for human consumption. ~~Eligible foods may not be processed or prepared beyond their natural state except for usual harvesting and cleaning processes. For example, checks cannot be used for honey, maple syrup, cider, nuts, seeds, plants, eggs, meat, cheese and seafood.~~¶¶
- (12) "Farm Direct Nutrition Program" or "FDNP" means the Oregon Farm Direct Nutrition Program (Oregon FDNP), 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, Food and Nutrition Services and administered by the State of Oregon.¶¶
- (13) "Farmer" means an individual who owns, leases, rents or sharecrops land to grow, cultivate or harvest crops on that land.¶¶
- (14) "Farmers' Market" ~~means a group of farmers for the purposes of the Oregon FDNP, means a group of farmers, including producers, who grow fruits, vegetables, and/or culinary herbs and~~ means a group of farmers, including producers, who grow fruits, vegetables, and/or culinary herbs and who assemble over the course of a year at a defined location for the purpose of selling their produce directly to consumers.¶¶
- (15) "Farm Stand" means a location at which a farmer sells produce directly to consumers.¶¶
- (16) "FDNP Participant" or "participant" means a senior participant or a WIC participant receiving FDNP benefits.¶¶
- (17) "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, Owyhee, Payette, Washington; Nevada - Humboldt, Washoe; Washington state - Asotin, Benton, Clark, Columbia, Cowlitz, Garfield, Klickitat, Pacific, Skamania, Wahkiakum, Walla Walla.¶¶
- (18) "Local WIC agency" means the agency or clinic where a WIC participant receives WIC services and benefits.¶¶
- (19) "Local WIC agency staff" means any local WIC agency staff authorized to issue FDNP benefits.¶¶
- (20) "Market" means a farmers' market that has a signed agreement with the Authority to participate in the FDNP.¶¶
- (20~~1~~) "Market Coordinator" means an individual designated by the farmers' market manager (or market board members) responsible for overseeing the market's participation in the FDNP.¶¶
- (21~~2~~) "Market ~~S~~season" means the time period in which FDNP checks may be transacted as determined by the

Authority.¶

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

(234) "Senior Participant" means an individual who meets all the eligibility components of the program and who receives FDNP checks.¶

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

(256) "Trafficking" means the buying or exchanging of FDNP checks for cash, drugs, firearms, ~~or~~ alcohol, or any other ineligible item.¶

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

(278) "Validating" means stamping the FDNP check in the designated box with the farmer identification number using the stamp provided by the Authority or a replacement stamp purchased by the farmer.¶

(289) "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.¶

(2930) "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.¶

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

(312) "WIC participant" means any pregnant, breastfeeding, or postpartum woman, infant, or child who meets all of the eligibility components of the WIC FDNP and receives WIC FDNP checks.

Statutory/Other Authority: ORS 413.500

Statutes/Other Implemented: ORS 413.500

AMEND: 333-052-0043

RULE SUMMARY: Amend OAR 333-052-0043: Grammatical change.

CHANGES TO RULE:

333-052-0043

Senior Participant Eligibility and Benefits ¶¶

(1) An individual is eligible for the Senior Farm Direct Nutrition Program (SFDNP) if the individual meets all of the following eligibility criteria on April 1 of the calendar year in which benefits are sought:¶¶

(a) Has income less than 138 percent of the Federal Poverty Level;¶¶

(b) Receives Medicaid or SNAP benefits;¶¶

(c) Is homeless or resides in their own home or rental property; and¶¶

(d) Is age 62 years or older.¶¶

(2) SFDNP benefits are limited and benefits will be distributed in an equitable manner but may not be distributed to all individuals who are eligible.¶¶

(3) The Authority shall inform eligible seniors each year of the available benefits and how the benefits will be distributed.¶¶

(4) SFDNP benefits are valid from June 1 through November 30 of the year in which benefits were issued.¶¶

(5) Lost or stolen SFDNP benefits will not be replaced.¶¶

(6) An individual who does not receive a benefit in any given year due to lack of sufficient funding to provide SFDNP benefits to all eligible seniors is not entitled to hearing rights.

Statutory/Other Authority: ORS 413.500

Statutes/Other Implemented: ORS 413.500

AMEND: 333-052-0044

RULE SUMMARY: Amend OAR 333-052-0044: Amend rule to clarify requirements for FDNP benefit issuance.

CHANGES TO RULE:

333-052-0044

WIC Participant Eligibility and Benefits ¶

(1) A WIC participant is eligible to receive WIC Farm Direct Nutrition Program (WIC FDNP) benefits if the participant meets all of the following eligibility criteria on the date of FDNP benefit issuance:¶

(a) Is currently receiving benefits under the WIC Program; and¶

(b) Belongs to any of the following WIC categories:¶

(A) A pregnant woman;¶

(B) A breastfeeding woman less than one year after delivery;¶

(C) A non-lactating post-partum woman less than six months after delivery;¶

(D) A child through the end of the month he or she turns five years of age; or¶

(E) An infant four months of age or older.¶

(2) WIC FDNP benefits are limited and benefits will be distributed in an equitable manner within participating local agencies but may not be distributed to all individuals who are eligible.¶

(3) The Authority will determine a standard benefit package per eligible individual and per family each year.¶

(4) WIC FDNP benefits will only be issued to the participant/caretaker in a face-to-face contact ~~at the~~by local WIC agency ~~where WIC benefits are received~~staff, and the participant/caretaker must receive a FDNP orientation when receiving checks for the first time in the current year.¶

(5) WIC FDNP benefits are valid from June 1 through November 30 of the year in which benefits were issued.¶

(6) Lost or stolen WIC FDNP benefits will not be replaced.¶

(7) Individuals who are denied WIC FDNP benefits may appeal the denial, but shall not receive WIC FDNP benefits while awaiting the decision.¶

(8) WIC participants whose WIC FDNP benefits are terminated may appeal the termination of benefits and shall continue to receive WIC FDNP benefits until the hearing official reaches a decision or the expiration of the current FDNP season, whichever occurs first.

Statutory/Other Authority: ORS 413.500

Statutes/Other Implemented: ORS 413.500

AMEND: 333-052-0050

RULE SUMMARY: Amend OAR 333-052-0050: Amend rule to clarify ineligible items.

CHANGES TO RULE:

333-052-0050

Eligible Foods ¶¶

(1) FDNP checks may be used to purchase only eligible foods.¶¶

(2) Ineligible items include, but are not limited to:¶¶

(a) Baked goods, cheeses, cider, crafts, dairy products, dried fruits, dried herbs, dried vegetables, eggs, non-edible flowers, fruit juices, honey, jams, jellies, meats, nuts, potted plants of any kind, potted herbs, seafood, seeds, and syrups.¶¶

(b) Fresh fruits, vegetables, and cut culinary herbs that are not locally grown.¶¶

(c) Processed or frozen fruits, vegetables, or cut culinary herbs.

Statutory/Other Authority: ORS 413.500

Statutes/Other Implemented: ORS 413.500

AMEND: 333-052-0060

RULE SUMMARY: Amend OAR 333-052-0060: Amend rule to remove the Oregon Department of Agriculture role in program administration.

CHANGES TO RULE:

333-052-0060

Farmer Participation ¶

(1) Only authorized farmers may accept FDNP checks from participants in exchange for eligible foods. Authorized farmers may not accept checks from unauthorized farmers.¶

(2) In order to be eligible for participation in the FDNP, a farmer applicant must:¶

(a) Own, lease, rent or sharecrop land to grow, cultivate, or harvest fruits, vegetables and cut herbs in Oregon or a bordering county in a contiguous state to sell fresh at a farmers' market or farm stand;¶

(b) Complete the farmer application and return it to the Oregon Department of Agriculture to verify eligibility ~~FDNP to verify eligibility;~~¶

(c) Complete the Oregon FDNP orientation; and¶

(ed) Agree to follow the terms and conditions of the farmer agreement.¶

(3) Applications will be used to determine authorization for FDNP.¶

(4) The Authority and the FDNP are not required to authorize all applicants.¶

(5) Any individual who purchases all the produce they plan to sell is considered a distributor and is not allowed to participate in the FDNP.

Statutory/Other Authority: ORS 413.500

Statutes/Other Implemented: ORS 413.500

AMEND: 333-052-0065

RULE SUMMARY: Amend OAR 333-052-0065: Amend rule to clarify that the application for authorization and agreement are two separate documents that require a signature.

CHANGES TO RULE:

333-052-0065

Farmer Agreements ¶

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

(2) The farmer agreement must include a requirement that the farmer comply with OAR 333-052-0030 to 333-052-0130, as applicable to farmers. ¶

(3) The farmer ~~application~~/agreement will be valid for no more than three years. ¶

(4) Neither the Authority nor the farmer is obligated to renew the agreement.

Statutory/Other Authority: ORS 413.500

Statutes/Other Implemented: ORS 413.500

AMEND: 333-052-0070

RULE SUMMARY: Amend OAR 333-052-0070: Amend rule to reduce the application requirements from five to three farmers participating in the farmers' market and clarify what requirements those three farmers must meet. Add the requirement to complete the Oregon FDNP orientation and add the requirement that at least one FDNP farmer is on-site during the farmers' market operating hours. These additions were required in the agreement and are being added to rule.

CHANGES TO RULE:

333-052-0070

Farmers Market Participation ¶

(1) In order to be eligible for participation in the FDNP a farmers' market applicant must:¶

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

(b) Have a minimum of ~~five FDNP-eligible farmers participating in the market each year;~~¶

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

~~(d) 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 Oregon FDNP orientation; ¶

(e) Ensure at least one FDNP authorized farmer is on-site during operating hours; and¶

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

(2) The Authority ~~and the FDNP are~~ is not required to authorize all applicants.

Statutory/Other Authority: ORS 413.500

Statutes/Other Implemented: ORS 413.500

AMEND: 333-052-0075

RULE SUMMARY: Amend OAR 333-052-0075: Amend rule to clarify that the application for authorization and agreement are two separate documents and clarify that an agreement does not have to be entered into, by either party after expiration.

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 OAR 333-052-0030 to 333-052-0130, 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 Authority nor the market has an obligation to ~~renew~~ enter into an agreement.

Statutory/Other Authority: ORS 413.500

Statutes/Other Implemented: ORS 413.500

AMEND: 333-052-0080

RULE SUMMARY: Amend OAR 333-052-0080: Remove the Oregon Department of Agriculture and amend the non-discrimination statement to mirror the federal regulation required non-discrimination statement.

CHANGES TO RULE:

333-052-0080

Farmer Participation Requirements, Violations and Sanctions ¶

(1) An authorized farmer must:¶

(a) Comply with FDNP requirements contained in 7 CFR 248 and 7 CFR 249 and the terms and conditions of the farmer application/agreement;¶

(b) Accept training on FDNP 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) Accept FDNP checks:¶

(A) For eligible foods only; and¶

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

(d) Prominently display the official FDNP sign provided by the Authority on each day of operation when at authorized farmers' markets or authorized farm stands;¶

(e) Provide FDNP clients with the full amount of product for the value of each FDNP check;¶

(f) Cooperate with staff from the Authority, ~~the Oregon Department of Agriculture~~, or their designees in monitoring for compliance with program requirements and provide information that the Authority or ~~the Oregon Department of Agriculture~~ their designees may require;¶

(g) 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, ~~age, sex or handicap~~ sex, 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 FDNP;¶

(h) Ensure that FDNP 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) Assure that all FDNP checks are stamped with the farmer's Authority-assigned identification number and properly endorsed before cashing or depositing at the farmer's financial institution;¶

(j) Deposit or cash FDNP checks at the authorized farmer's financial institution by the date determined by the Authority;¶

(k) Reimburse the Authority for FDNP checks 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 FDNP checks;¶

(n) Not charge sales tax on FDNP check purchases;¶

(o) Not seek restitution from FDNP participants for a check not paid by the Authority;¶

(p) Not give cash back for purchases that amount to less than the value of a check (providing change);¶

(q) Not use FDNP checks for any purpose other than deposit or cash at their financial institution; and¶

(r) Not accept FDNP checks from unauthorized farmers.¶

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

(a) Fails to:¶

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

(B) Accept training on FDNP 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 FDNP sign provided by the Authority on each day of operation when at authorized farmers' markets or authorized farm stands;¶

(D) Provide FDNP clients with the full amount of product for the value of each FDNP check;¶

- (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, ~~age, sex or handicap~~ sex, 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 FDNP;¶
 - (F) Ensure that FDNP shoppers receive equitable treatment, including the availability of produce that is of the same quality and no greater price than sold to other shoppers;¶
 - (G) Assure that all FDNP checks are stamped with the farmer's Authority-assigned identification number and properly endorsed before cashing or depositing at the farmer's financial institution;¶
 - (H) Deposit or cash FDNP checks at the authorized farmer's financial institution by the date determined by the Authority;¶
 - (I) Reimburse the Authority for FDNP checks that are improperly transacted;¶
 - (J) Cooperate with staff from the Authority, ~~the Oregon Department of Agriculture~~, or their designees in monitoring for compliance with program requirements and provide information that the Authority or the ~~Oregon Department of Agriculture~~ their designees may require;¶
 - (K) Respond to requests, implement corrective action, or comply with the terms in final orders as directed by the Authority.¶
- (b) Accepts FDNP checks:¶
 - (A) For ineligible foods;¶
 - (B) For invalid dates; or¶
 - (C) From an unauthorized farmer.¶
 - (c) Provides credit in exchange for FDNP checks;¶
 - (d) Charges sales tax on FDNP check purchases;¶
 - (e) Seeks restitution from FDNP participants for a check not paid by the Authority;¶
 - (f) Gives cash back for purchases that amount to less than the value of a check (providing change);¶
 - (g) Uses FDNP checks for any purpose other than deposit or cash at their financial institution.¶
- (3) Farmer sanctions:¶
 - (a) The Authority may issue a notification of non-compliance to an authorized farmer for an initial incident of:¶
 - (A) Accepting FDNP checks for ineligible foods;¶
 - (B) Failing to prominently display the official sign provided by the Authority, each market day when at authorized farmers' markets or authorized farm stands;¶
 - (C) Failing to provide FDNP clients with the full amount of product for the value of each FDNP check;¶
 - (D) Failing to ensure that FDNP 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 FDNP checks that are improperly transacted;¶
 - (F) Charging sales tax on FDNP check purchases;¶
 - (G) Seeking restitution from FDNP participants for checks not paid by the Authority;¶
 - (H) Giving cash back for purchases less than the value of the checks (providing change);¶
 - (I) Accepting FDNP checks 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 FDNP checks for any purpose other than deposit or cash at the authorized farmer's financial institution; and¶
 - (L) Failing to cooperate with staff from the Authority, ~~the Oregon Department of Agriculture~~, or their designees in monitoring for compliance with program requirements and failing to provide information that the Authority or the ~~Oregon Department of Agriculture~~ their designees may require.¶
 - (b) The Authority may disqualify a farmer for four season months, which may cross from the year during which the violation occurred into the following year for an initial incident of providing credit in exchange for FDNP checks.¶
 - (c) The Authority may disqualify a farmer for four season months, which may cross from the year during which the violation occurred into the following year, for second or subsequent incidents of:¶

- (A) Accepting FDNP checks for ineligible foods;¶
 - (B) Failing to prominently display the official sign provided by the Authority, each market day when at authorized farmers' markets or authorized farm stands;¶
 - (C) Failing to provide FDNP clients with the full amount of product for the value of each FDNP check;¶
 - (D) Failing to ensure that FDNP 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 FDNP check purchases;¶
 - (F) Seeking restitution from FDNP participants for checks not paid by the Authority;¶
 - (G) Using FDNP checks for any purpose other than deposit or cash at the authorized farmer's financial institution;¶
 - (H) Charging FDNP participants higher prices than other customers;¶
 - (I) Giving cash back for purchases less than the value of the checks (providing change);¶
 - (J) Accepting FDNP checks from an unauthorized farmer; and¶
 - (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 FDNP checks the season following second or subsequent incidents of:¶
- (A) Failing to reimburse the Authority for FDNP checks that are improperly transacted; or¶
 - (B) Failing to cooperate with staff from the Authority or the Oregon Department of Agriculture, or their designees in monitoring for compliance with program requirements and failing to provide information required to be submitted by the Authority or the Oregon Department of Agriculture or their designees.¶
- (e) The Authority may immediately disqualify a farmer from the FDNP program for the remainder of the current season and the entire following season for an initial incident of:¶
- (A) Trafficking in FDNP checks (exchanging checks for cash, controlled substances, tobacco products, firearms or alcohol) in any amount; or¶
 - (B) A USDA substantiated violation of laws regarding non-discrimination, and applicable USDA instructions.¶
- (f) FDNP checks that are not stamped with the farmer's Authority-assigned identification number will be returned to the farmer without payment;¶
- (g) FDNP checks redeemed outside the dates determined by the Authority will not be reimbursed; and¶
 - (h) FDNP checks redeemed by a farmer who has not been authorized will not be reimbursed.¶
- (4) Farmers who do not comply with FDNP 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 CMP in lieu of disqualification in the amount of 5 percent of the farmer's previous season FDNP 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 ~~15~~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 FDNP 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 Notice.¶
- (5) A farmer who commits fraud or abuse of the FDNP is subject to prosecution under applicable federal, state or local laws.

Statutory/Other Authority: ORS 413.500

Statutes/Other Implemented: ORS 413.500

AMEND: 333-052-0090

RULE SUMMARY: Amend OAR 333-052-0090: Amend rule to clarify authorized Farmers Market participation requirements, remove the Oregon Department of Agriculture and amend the non-discrimination statement to mirror the federal regulation required non-discrimination statement.

CHANGES TO RULE:

333-052-0090

Market Participation Requirements, Violations and Sanctions ¶

(1) An authorized market must:¶

- (a) Comply with FDNP requirements contained in 7 CFR 248 and 7 CFR 249, FDNP rules, and the terms and conditions of the market application ~~and the market agreement;~~¶
- (b) Ensure that an authorized FDNP farmer is present at the market during all market hours of operation;¶
- (c) Accept training on FDNP procedures and provide such training to market staff including volunteers ~~and eligible farmers on behalf of the Authority;~~¶
- (d) Cooperate in the Authority investigations of authorized farmers who:¶
 - (A) Redeem checks for ineligible foods;¶
 - (B) Charge FDNP customers higher prices than other customers;¶
 - (C) Accept checks outside the Authority determined market season;¶
 - (D) Give change for food purchased with FDNP checks (providing change);¶
 - (E) May not meet the definitions of "eligible farmer;" and¶
 - (F) Abuse any other program procedures.¶
- (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, ~~age, sex or handicap~~ sex, 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 FDNP;¶
- (f) Cooperate with staff from the Authority ~~or the Oregon Department of Agriculture~~, or their designees in monitoring for compliance with program requirements and provide information required to be submitted by the Authority ~~or the Oregon Department of Agriculture~~ their designees may require; 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 the FDNP rules if the market fails to:¶

- (a) Ensure that an authorized farmer is present at the market during all market hours of operation;¶
- (b) Accept training on FDNP procedures and provide such training to market staff including volunteers ~~and eligible farmers on behalf of the Authority;~~¶
- (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, ~~age, sex or handicap~~ sex, 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 FDNP;¶
- (e) Cooperate with staff from the Authority ~~or the Oregon Department of Agriculture~~, or their designees in monitoring for compliance with program requirements and provide information that the Authority or the ~~Oregon Department of Agriculture~~ their designees may require;¶
- (f) Notify the Authority when and if the market ceases operation prior to the end of the authorization period;¶
- (g) Be accountable for the actions of market staff, including volunteers, in the provision of foods and related activities; and¶
- (h) 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 FDNP procedures and provide such training to market staff including volunteers ~~and eligible farmers~~ on behalf of the Authority;¶
 - (C) Cooperate in the Authority investigations of authorized farmers;¶
 - (D) Cooperate with staff from the Authority, ~~the Oregon Department of Agriculture~~, or their designees in monitoring for compliance with program requirements and provide information that the Authority or the ~~Oregon Department of Agriculture~~ their designees may require; and¶
 - (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 failing to:¶
 - (A) Ensure that an authorized farmer is present at the market during all market hours of operations;¶
 - (B) Accept training on FDNP procedures and provide such training to market staff including volunteers ~~and eligible farmers~~ on behalf of the Authority;¶
 - (C) Cooperate in the Authority investigations of authorized farmers;¶
 - (D) Cooperate with staff from the Authority, ~~the Oregon Department of Agriculture~~, or their designees in monitoring for compliance with program requirements and failing to provide information required to be submitted by the Authority or the ~~Oregon Department of Agriculture~~ their designees; and¶
 - (E) Respond to requests, implement corrective action, and comply with the terms in final orders as directed by the Authority.¶
- (c) The Authority may immediately disqualify a market from the FDNP 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.¶
- (4) Markets who do not comply with FDNP 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 ~~15~~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 FDNP 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 FDNP is subject to prosecution under applicable federal, state or local laws.

Statutory/Other Authority: ORS 413.500

Statutes/Other Implemented: ORS 413.500

AMEND: 333-052-0120

RULE SUMMARY: Amend OAR 333-052-0120: Amend the rule to update position titles and program contact information for complaint notification. Amend the rule to remove the Oregon Department of Agriculture from program administration of complaints.

CHANGES TO RULE:

333-052-0120

Complaints ¶

(1) Anyone wishing to file a complaint against a FDNP participant, an authorized farmer, an authorized market, or the FDNP 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 office at ~~971-673-0040~~, Vendor Answer Line at (877) 807-0889.¶

(2) A local WIC clinic, APD office, ADRC, AAA 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 Authority receives a complaint alleging discrimination on the basis of race, color, national origin, age, sex or disability the Authority must automatically forward the complaint to USDA for investigation.¶

(4) Individuals alleging discrimination on the basis of race, color, national origin, age, sex or disability may also write directly to USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue SW, Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TTY).¶

(5) The Authority may refer complaints regarding farmers or markets to the Oregon Department of Agriculture FDNP 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

Statutes/Other Implemented: ORS 413.500