

OREGON ADMINISTRATIVE RULES
OREGON HEALTH AUTHORITY, PUBLIC HEALTH DIVISION
CHAPTER 333

DIVISION 52

OREGON FARM DIRECT NUTRITION PROGRAM

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

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" for the purposes of the Oregon FDNP, 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.

~~(1920)~~ "Market" means a farmers' market that has a signed agreement with the Authority to participate in the FDNP.

~~(2021)~~ "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.

~~(2122)~~ "Market ~~s~~Season" means the time period in which FDNP checks may be transacted as determined by the Authority.

~~(2223)~~ "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.

~~(2324)~~ "Senior Participant" means an individual who meets all the eligibility components of the program and who receives FDNP checks.

~~(2425)~~ "SNAP" means the Supplemental Nutrition Assistance Program of the Food and Nutrition Services of the United States Department of Agriculture.

~~(2526)~~ "Trafficking" means the buying or exchanging of FDNP checks for cash, drugs, firearms, ~~or~~ alcohol, or any other ineligible item.

~~(2627)~~ "USDA" means the United States Department of Agriculture.

~~(2728)~~ "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.

~~(2829)~~ "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.

~~(3031)~~ "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.

~~(3132)~~ "WIC participant" means any pregnant, breastfeeding, or postpartum woman, infant, or child who meets ~~all of~~ all the eligibility components of the WIC FDNP and receives WIC FDNP checks.

Statutory/Other Authority: ORS 413.500

Statutes/Other Implemented: ORS 413.500

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~~ all 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

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~~ all 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 local~~ agency ~~staff where WIC benefits are received~~, 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

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

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~~ FDNP to verify eligibility; ~~and~~

(c) Complete the Oregon FDNP orientation; and

(de) 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

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

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-three~~ FDNP-eligible farmers participating in the market each year 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

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 an agreement~~ enter into an agreement.

Statutory/Other Authority: ORS 413.500

Statutes/Other Implemented: ORS 413.500

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, sex,

disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA~~age, sex or handicap~~, 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 their designees or the Oregon Department of Agriculture~~ 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 their designees or the Oregon Department of Agriculture~~.

(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

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, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA ~~age, sex or handicap~~, 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~~ or their designees ~~Oregon Department of Agriculture~~ 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, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA ~~age, sex or handicap~~, 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~~ or 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

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, Vendor Answer Line-office at ~~971-673-0040~~ (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 for investigation~~ 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

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) Markets and farmers may not be entitled to a hearing under the Administrative Procedures Act to challenge:

(a) The validity or appropriateness of the 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 check payment or claims.

(3) The Authority may, at its discretion, permit the market or farmer to continue participating in the program pending the outcome of an administrative hearing. The farmer may be required to repay funds for FDNP checks redeemed during the pendency of the hearing, depending on the hearing outcome.

(4) 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.

(5) 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.

(6) 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

Statutes/Other Implemented: ORS 413.500