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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

SSP 37-2018

CHAPTER 461
DEPARTMENT OF HUMAN SERVICES
SELF-SUFFICIENCY PROGRAMS

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FILING CAPTION: Changing SNAP Employment and Training rules

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NEED FOR THE RULE(S):

OAR 461-130-0327 about good cause needs to be amended to align with federal regulations by expanding the reasons that are considered good cause in the SNAP program in the context of work requirements for able-bodied adults without dependents (ABAWDs).

OAR 461-135-0520 about time limits and work requirements for able-bodied adults without dependents (ABAWDs) in the SNAP program needs to be amended to align with federal regulations about SNAP clients who must meet work requirements to continue to receive SNAP benefits beyond the three-month time limit by adding six new SNAP time-limit (non-waivered) counties; removing these six counties from the time-limit exempt (waivered) category; updating the new 36-month time limit period and countable month dates; clarifying how SNAP defines self-employment; and expanding the SNAP time limit exemptions to include the reservation land of the Confederated Tribe of Grand Ronde.

OAR 461-190-0310 about limits to SNAP Employment and Training components and activities needs to be amended to support the Department's implementation of federal time-limits in the areas representing the new time limit counties -- Clatsop, Columbia, Crook, Deschutes, Jackson, Jefferson, Josephine, and Tillamook counties -- and the Department's contracts for these counties focusing on services for ABAWDs by terminating OFSET retroactive to September 30, 2018 in these counties.

OAR 461-190-0360 about special payments in the SNAP Employment and Training Programs needs to be amended to support the SNAP contracts that focus on services for ABAWDs by allowing Employment and Training contractors to authorize special payments and removing OFSET special payments from the rule.

JUSTIFICATION OF TEMPORARY FILING:

The Department finds that failure to act promptly by amending OAR 461-130-0327, OAR 461-135-0520, OAR 461-

190-0310, and OAR 461-190-0360 will result in serious prejudice to the public interest, the Department, and individuals subject to ABAWD requirements. The Department needs these rule changes and ABAWD implementation in effect by January 1, 2019, to comply with federal regulations. The new counties subject to the time limits were not counties approved for the waiver. Failure to comply with federal requirements would leave participants still subject to the federal ABAWD time limits and incur overpayments for benefits they were not eligible for (which can be a hardship to payback). Eligibility staff would also incur the added workload of writing overpayments and this would also result in an increased workload by the overpayment unit. OAR 461-130-0327 about good cause needs to be amended to align with federal regulations by expanding the reasons that are considered good cause in the SNAP program in the context of ABAWD work requirements. OAR 461-135-0520 about time limits and work requirements for ABAWDs in the SNAP program needs to be amended to align with federal regulations about SNAP clients who must meet work requirements to continue to receive SNAP benefits beyond the three-month time limit by adding six new SNAP time-limit (non-waivered) counties; removing these six counties from the time-limit exempt (waivered) category; updating the new 36-month time limit period and countable month dates; clarifying how SNAP defines self-employment; and expanding the SNAP time limit exemptions to include the reservation land of the Confederated Tribe of Grand Ronde. OAR 461-190-0310 about limits to SNAP Employment and Training components and activities needs to be amended to support the Department's implementation of federal time-limits in the areas representing the new time limit counties -- Clatsop, Columbia, Crook, Deschutes, Jackson, Jefferson, Josephine, and Tillamook counties -- and the Department's contracts for these counties focusing on services for ABAWDs by terminating OFSET retroactive to September 30, 2018 in these counties. OAR 461-190-0360 about special payments in the SNAP Employment and Training Programs needs to be amended to support the SNAP contracts that focus on services for ABAWDs by allowing Employment and Training contractors to authorize special payments and removing OFSET special payments from the rule.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

USDA Food and Nutrition Service, "ABAWD Time Limit Policy and Program Access", November 19, 2015 available at <http://www.fns.usda.gov/sites/default/files/snap/ABAWD-Time-Limit-Policy-and-Program-Access-Memo-Nov2015.pdf>

RULES:

461-130-0327, 461-135-0520, 461-190-0310, 461-190-0360

AMEND: 461-130-0327

RULE SUMMARY: OAR 461-461-130-0327 about good cause is being amended to expand the reasons that are considered good cause in the SNAP program in the context of work requirements for able-bodied adults without dependents (ABAWD). This amendment is intended to align with federal regulations.

CHANGES TO RULE:

461-130-0327
Good Cause ¶¶

In a Department program administered under OAR 461-130-0305 to OAR 461-130-0335 and OAR 461-135-0085 and OAR 461-135-0089:¶¶

(1) The Department does not require a participant to provide verification of "good cause" if providing the

- verification would expose the participant to increased risk of domestic violence (see OAR 461-001-0000).¶
- (2) If in making a determination under this rule a participant's physical or mental impairment is in question, the Department may require the participant to provide documentation from a qualified and appropriate medical professional.¶
- (3) A participant is granted "good cause" and not held to a penalty for failure to comply with a work program requirement, including an activity in a case plan (both terms defined in OAR 461-001-0025) in the following circumstances:¶
- (a) Participation in a required activity in a case plan would have an adverse effect on or risk to the participant's physical or mental health or would expose the participant to increased risk of domestic violence (see OAR 461-001-0000).¶
- (b) Except in the SNAP program, participation is likely to cause undue hardship for the dependent child (see OAR 461-001-0000) or the participant.¶
- (c) Appropriate child care, or day care for an individual in the household who has a disability (see OAR 461-001-0000 and 461-001-0015 as applicable) that substantially reduces or eliminates the individual's ability to care for himself or herself, cannot be obtained. "Appropriate child care" means that -¶
- (A) Both the provider and the place where care is provided meet health, safety, and provider requirements as required in OAR 461-165-0180;¶
- (B) The care accommodates the parent's work schedule; and¶
- (C) The care meets the specific needs of the dependent child, such as age and special-needs requirements.¶
- (d) Child care, or day care for an individual in the household group (see OAR 461-110-0210) who has a disability (see OAR 461-001-0000) that substantially reduces or eliminates the individual's ability to care for themselves, cannot be obtained within a reasonable distance. "Reasonable distance" means that the parent's total travel time from home to the child care provider and the workplace or JOBS activity will be no more than one hour either way unless a longer commute time is customary in the community.¶
- (e) The only child care, or day care for an individual in the household group who has a disability that substantially reduces or eliminates the individual's ability to care for themselves, that is available to the participant or in the participant's area is considered informal and unsuitable. "Informal and unsuitable" means the Department has not approved a provider as meeting its background check and health and safety standards ("informal"), and the criteria for appropriate child care in subsection (c) of this section are not met ("unsuitable").¶
- (f) Affordable child care arrangements, or day care for an individual in the household group who has a disability that substantially reduces or eliminates the individual's ability to care for themselves, cannot be obtained. "Affordable child care arrangements" means the expense to the parent or parents is less than ten percent of countable (see OAR 461-001-0000) income of the financial group (see OAR 461-110-0530).¶
- (g) The work attachment position or employment offered is vacant due to a strike, lockout, or other labor dispute.¶
- (h) The work attachment position or employment requires the participant to join a union, and the participant has religious objections to unions.¶
- (i) The participant belongs to a union and the employment violates the conditions of the participant's membership in the union.¶
- (j) The wage for the participant's current or potential job is:¶
- (A) Less than applicable minimum wage; or¶
- (B) If minimum wage laws do not apply, the wage (rate for piece work) is less than that normally paid for similar work.¶
- (k) The participant's prospective employer engages in employment practices that are illegally discriminatory on the basis of age, sex, race, religious or political belief, marital status, disability, sexual orientation, or ethnic origin.¶
- (l) The participant's engagement in a required activity in a case plan would prevent or interfere with the participant's engagement in an activity of the Grande Ronde Tribe's NEW program.¶
- (m) The participant's failure to engage is due to a circumstance beyond the participant's reasonable control.¶
- (n) When the failure to comply is caused by an aspect of the participant's disability, including the Department's

failure to provide a reasonable accommodation.¶¶

(o) The participant quits a job to accept another job with a monthly income at least equal to the monthly income of the first job.¶¶

(p) The Department determines there are no appropriate activities or necessary support services (see OAR 461-001-0025) to support an activity (see OAR 461-001-0025) in order for the participant to engage. ¶¶

(q) In the REF program:¶¶

(A) If the participant has no means of transportation and would have to walk an unreasonable distance to engage in their plan. An "unreasonable distance" is a distance that requires a commute of more than two hours each day. ¶¶

(B) If the hours or nature of the job interferes with the participant's religious observances, convictions, or beliefs.¶¶

(C) The service requirement or work site is in violation of applicable federal, state, or local health and safety standards.¶¶

(D) The daily hours of work and the weekly hours of work exceed those customary to the occupation.¶¶

(r) The participant enrolls into a registered pre-apprenticeship program approved by Bureau of Labor and Industries (BOLI).¶¶

(4) In the SNAP program, a participant is excused from not accepting employment or for leaving a job under the following circumstances:¶¶

(a) The hours or nature of the job interferes with the participant's religious observances, convictions, or beliefs.¶¶

(b) The participant accepts employment or enrolls at least half-time in any recognized school, training program, or institution of higher education that requires the participant to quit a job.¶¶

(c) A participant accepts employment or enrolls in school in another county, requiring the benefit group (see OAR 461-110-0750) to move and the participant to quit a job.¶¶

(d) A participant less than 60 years of age resigns, and the employer recognizes the resignation as retirement.¶¶

(e) The participant leaves a job to follow a type of employment that moves from one area to another, such as migrant labor or construction.¶¶

(f) The participant accepts a job that, for reasons beyond the control of the participant, does not materialize or results in fewer work hours or a lower wage than the participant's previous job.¶¶

(g) Work demands or conditions, such as not being paid for work or not being paid on schedule, make employment unreasonable.¶¶

(h) The wage for the participant's current or potential job is less than applicable minimum wage or, if minimum wage laws do not apply, the wage (rate for piece work) is less than that normally paid for similar work.¶¶

(i) The work schedule for the job in question does not conform to hours customary to the occupation or the hours worked each week are more than those customary to the occupation.¶¶

(j) The participant is not obligated to accept a job during the first 30 days of registration for employment if the job is not in the client's field of experience.¶¶

(k) The participant has no means of transportation and would have to walk an unreasonable distance to meet the participation requirement. An "unreasonable distance" is a distance that requires a commute of more than two hours each day. The participant must make a good-faith effort to secure the needed transportation.¶¶

(l) Lack of adequate child care for a child who is six years of age or older and less than 12 years of age.¶¶

(5) In the SNAP program, a participant may be excused from not meeting ABAWD work requirements (OAR 461-135-0520). "Good cause" may be granted to remove a countable month if a participant has been cooperating with their case plan (see OAR 461-001-0020), but is unable to complete the requirements due to one or more of the following unexpected circumstances. The circumstance must be beyond the control of the participant and occur during the countable month:¶¶

(a) Inclement weather.¶¶

(b) Transportation difficulties.¶¶

(c) Illness impacting ability to work.¶¶

(d) Tragic loss.

Statutory/Other Authority: ORS 409.050, 411.060, 411.816, 412.006, 412.009, 412.049

Statutes/Other Implemented: 7 USC 2029, 7 CFR 273.7, 7 CFR 273.24, 45 CFR 261.56, 411.816, ORS 409.010,

411.060, 411.117, ~~411.816~~, 412.006, 412.009, 412.049, 45 CFR ~~261.56~~ 261.567 USC 2015

AMEND: 461-135-0520

RULE SUMMARY: OAR 461-135-0520 about time limits and work requirements for able-bodied adults without dependents (ABAWD) in the SNAP program is being amended to add six new SNAP time-limit (non-waivered) counties; remove these six counties from the time-limit exempt (waivered) category; update the new 36-month time limit period and countable month dates; clarify how SNAP defines self-employment; and expand the SNAP time limit exemptions to include the reservation land of the Confederated Tribe of Grand Ronde. These amendments are intended to align with federal regulations about SNAP clients who must meet work requirements to continue to receive SNAP benefits beyond the three-month time limit.

CHANGES TO RULE:

461-135-0520

Time Limit and Special Requirements for ABAWD; SNAP ¶¶

This rule establishes the time limit and special requirements for receipt of SNAP benefits for certain adults.¶¶

(1) Unless the context indicates otherwise, the following definitions apply to rules in OAR chapter 461:¶¶

(a) "Able-bodied adult without dependents (ABAWD)" means an individual 18 years of age or over, but under the age of 50, without dependents. For the purpose of this definition, "without dependents" means there is no child (see OAR 461-001-0000) under the age of 18 years in the filing group (see OAR 461-110-0310 and 461-110-0370).¶¶

(b) "SNAP time-limit counties" means Oregon counties in which the limitation on eligibility (see OAR 461-001-0000) for SNAP benefits for ABAWD in section 6(o)(2) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o)(2)) applies. "SNAP time-limit counties" are Benton, Clackamas, ~~Lane~~Clatsop, Deschutes, Jackson, Lane, Linn, Marion, Multnomah, Polk, Tillamook, Washington, and Yamhill counties.¶¶

(c) "SNAP time-limit exempt counties" means Oregon counties in which the limitation on eligibility for SNAP benefits contained in section 6(o)(2) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o)(2)) does not apply per a waiver approved by the United States Department of Agriculture. "Exempt counties" are Baker, ~~Clatsop~~, Columbia, Coos, Crook, Curry, ~~Deschutes~~, Douglas, Gilliam, Grant, Harney, Hood River, ~~Jackson~~, Jefferson, Josephine, Klamath, Lake, Lincoln, Linn, Malheur, Marrow, ~~Polk~~, Sherman, ~~Tillamook~~, Umatilla, Union, Wallowa, Wasco, and Wheeler counties.¶¶

(d) "SNAP time-limit exempt counties" also means reservation lands of the Confederated Tribes of Grand Ronde Indians. The limitation on eligibility for SNAP benefits contained in section 6(o)(2) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o)(2)) does not apply per a waiver approved by the United States Department of Agriculture.¶¶

(2) Except as provided otherwise in this rule, an ABAWD who resides in one of the SNAP time-limit counties (see section (1) of this rule) is ineligible to receive food benefits as a member of any household after the individual received food benefits for three countable months (see section (3) of this rule) during January 1, 2016~~9~~ to December 31, 20~~18~~21~~8~~.¶¶

(3) "Countable months" means months within the 36-month period of January 1, 2016~~9~~ to December 31, 20~~18~~21~~8~~ in which an individual as a member of any household receives SNAP benefits in Oregon or in any other state, unless at least one of the following applies:¶¶

(a) The individual resided for any part of the month in one of the SNAP time-limit exempt counties (see section (1) of this rule).¶¶

(b) Benefits were prorated for the month.¶¶

(c) The individual was exempt from the SNAP time limit for any part of the month under OAR 461-130-0310(3)(a) or (b) for any of the following reasons:¶¶

(A) The individual resided in one of the SNAP time-limit exempt counties.¶¶

(B) The individual was pregnant.¶¶

(C) A child under the age of 18 years joined the filing group.¶¶

- (D) The individual met the criteria under OAR 461-130-0310(3)(a) or (b).¶
- (d) The individual participated in one or more of the activities in paragraphs (A) to (D) of this subsection for 20 hours per week averaged over the month. For purposes of this rule, 20 hours per week averaged monthly means 80 hours per month. (Activities may be combined in one month to meet the 20 hours per week averaged monthly requirement.)¶
- (A) Work for pay, in exchange for goods or services, or unpaid work as a volunteer.¶
- (i) Work in exchange for goods and services includes bartering and in-kind work.¶
- (ii) Unpaid or voluntary work hours must be verified by the employer.¶
- (iii) For self-employed individuals, countable income after deducting the costs of producing income (as described in OAR 461-145-0930(5)) must average at least the federal minimum wage times 20 hours per week.¶
- (B) Participate in a program under the Workforce Investment Act of 1998, Pub. L. No. 105-220, 112 Stat. 936 (1998).¶
- (C) Participate in a program under section 236 of the Trade Act of 1974, Pub. L. 93-618, 88 Stat. 2023, (1975) (19 U.S.C. 2296).¶
- (D) Comply with the employment and training requirements described in OAR 461-001-0020, 461-130-0305, and 461-130-0315. Work search activities must be combined with other work-related activities to equal 20 hours per week and may not exceed 9 hours per week.¶
- (e) The individual complied with the Workfare requirements in OAR 461-190-0500.¶
- (4) An ABAWD must submit evidence to the Department on the issue of whether a month is countable within 90 days following the last day of the month in question.¶
- (5) An ABAWD who is ineligible under section (2) of this rule but otherwise eligible may regain eligibility if the requirements of subsections (a) or (b) of this section are met. ¶
- (a) The individual becomes exempt under OAR 461-130-0310(3)(a). Eligibility regained under this subsection begins on the date the individual files a new application and continues as long as the individual is exempt and is otherwise eligible. If not eligible on the filing date (see OAR 461-115-0040), eligibility begins the date all other eligibility requirements are met.¶
- (b) The individual, during a consecutive 30-day period during which the individual is not receiving SNAP benefits, meets the requirements of subsection (3)(d) or (3)(e) of this rule.¶
- (A) Eligibility regained under this subsection begins on the date the individual files a new application and continues as long as the individual meets the requirements of subsection (3)(d) or (3)(e) of this rule and is otherwise eligible. If not eligible on the filing date, eligibility begins the date all other eligibility requirements are met.¶
- (B) There is no limit to how many times an individual may regain eligibility under this subsection during January 1, 2016~~9~~ to December 31, 2021~~8~~. ¶
- (c) See OAR 461-180-0010 to add an individual to an open SNAP case after the individual has regained eligibility under this section.¶
- (6) An individual who regains eligibility under section (5) of this rule and later fails to comply with the participation requirements of subsection (3)(d) or (3)(e) of this rule may receive a second set of food benefits for three consecutive countable months. The countable months are determined as follows:¶
- (a) If the individual stopped participation in a work program, countable months start when the Department notifies the individual he or she is no longer meeting the work requirement.¶
- (b) If the individual stopped participation in a work program, countable months start when the individual notifies the Department he or she is no longer meeting the work requirement.¶
- (c) If a change occurred which results in an individual becoming subject to the time limit in section (2) of this rule and the change was required to be reported under rules in OAR chapter 461, division 170, the countable months start when the change occurred.¶
- (d) If a change occurred which results in an individual becoming subject to the time limit and the change was not required to be reported under rules in OAR chapter 461, division 170, countable months start when the Department notifies the individual he or she must meet the work requirement.¶
- (e) An individual may only receive benefits without meeting the requirements of subsection (3)(d) or (3)(e) of this

rule for a total of six countable months during January 1, 2016~~9~~ to December 31, 2021~~8~~. ¶

(7) This section is a placeholder to establish criteria the Department will use to grant exemptions to ABAWD who are ineligible if the Department receives special exemptions from the Food and Nutrition Service.¶

(8) An ABAWD involved in the activities specified in subsection (3)(d) or (3)(e) of this rule or an activity listed in the individual's case plan (see OAR 461-001-0020) is eligible for support service payments necessary for transportation or other costs related to completing the activity as allowed by OAR 461-190-0360.

Statutory/Other Authority: ORS 409.050, 411.060, 411.070, 411.121, 411.816

Statutes/Other Implemented: 7 USC 2015, 7 USC 2029, 7 CFR 273.7, 7 CFR 273.24, ORS 409.010, 409.050, 411.060, 411.070, 411.121, 411.816, 411.825, 411.837

AMEND: 461-190-0310

RULE SUMMARY: OAR 461-190-0310 about limits to SNAP Employment and Training components and activities is being amended to terminate OFSET retroactive to September 30, 2018 in the areas representing the new time limit counties: Clatsop, Columbia, Crook, Deschutes, Jackson, Jefferson, Josephine, and Tillamook counties. This amendment supports the Department's implementation of federal time-limits in these counties, and the Department's contracts for these counties will focus on services for ABAWDs.

CHANGES TO RULE:

461-190-0310

Limits to SNAP Employment and Training Components and Activities ¶¶

(1) The SNAP Employment and Training Program for all clients except mandatory ABAWD living in SNAP time limit counties (see OAR 461-135-0520):¶¶

(a) In Multnomah and Washington Counties ends effective November 30, 2015.¶¶

(b) In Clackamas County ends effective September 30, 2016.¶¶

(c) In Benton, Lane, Lincoln, Linn, Marion, Polk and Yamhill Counties ends effective September 30, 2017.¶¶

(d) In Clatsop, Columbia, Crook, Deschutes, Jackson, Jefferson, Josephine, and Tillamook Counties ends effective September 30, 2018.¶¶

(e) Is not offered to clients served by APD or AAA offices.¶¶

(ef) Is voluntary for all other clients effective September 30, 2016.¶¶

(2) For an ABAWD (see OAR 461-135-0520) residing in one of the SNAP time limit counties:¶¶

(a) The case plan may not require more than 20 hours of activities per week.¶¶

(b) Except for Workforce Innovation and Opportunity Act (WIOA) (see OAR 461-001-0020) and Workfare (see OAR 461-190-0500), a client may not be required to participate in job search activities more than nine hours per week. The balance of the 20 hours per week must be in work-related or training (not job search) activities.¶¶

(c) The client may participate in a Workfare program under OAR 461-190-0500.

Statutory/Other Authority: ORS 411.816, ORS 409.050

Statutes/Other Implemented: ORS 411.816, 7 USC 2015, 7 USC 2029, 7 CFR 273.7, 7 CFR 273.24, ORS 409.010

AMEND: 461-190-0360

RULE SUMMARY: OAR 461-190-0360 about special payments in the SNAP Employment and Training Programs is being amended to allow Employment and Training contractors to authorize special payments and remove OFSET special payments from the rule. These changes support the contracts that focus on services for ABAWDs.

CHANGES TO RULE:

461-190-0360

Special Payments; SNAP Employment and Training Programs ¶¶

In the SNAP program:¶¶

~~(1) The Department~~For purposes of this rule, a "contractor" means any third-party entity that holds a contract with the Department to provide Employment and Training (E&T) services.¶¶

~~(2) The Department or contractor (see section (1) of this rule)~~ may authorize special payments to ~~the~~participants participating in one of the three SNAP Employment and Training programs described in OAR 461-001-0020 for transportation and other costs identified in the ~~the~~participant's case plan (see OAR 461-001-0020) subject to the provisions of this rule.¶¶

~~(a) Costs must be directly related to an approved component in the case plan and be reasonable and necessary.~~¶¶

~~(b) The Department or contractor~~ must consider lower cost alternatives.¶¶

~~(c) The Department or contractor~~ may deny, reduce, or close special payments when costs exceed the local district's ~~or contractor's~~ budget for employment and training.¶¶

~~(d) Special payments are not intended to replace other funding available in the community. The Department or the Employment and Training contractor and the~~ ~~the~~ participant must seek resources reasonably available to the ~~the~~ participant in order to comply with the requirements in the case plan.¶¶

~~(e) When this rule authorizes a special payment for transportation, and public transportation is available, the Department may issue bus passes or tickets to the client sufficient to enable the client to participate in the program activities identified in the case plan.~~¶¶

~~(2) In the 50 percent (50/50) reimbursement program:~~¶¶

~~(a) Funds may be used to pay for tuition and mandatory school fees charged to the general public. Funds may not be used to pay for state or local education entitlements.~~¶¶

~~(b) Special payments for job retention (see OAR 461-001-0020) is only available if the individual was participating in a component other than job retention prior to securing employment.~~¶¶

~~(3) In the OFSET program, the Department may authorize payment of not more than \$80 over an eight week participation period for transportation and other costs identified in the client's case plan. If necessary, the case plan is adjusted to ensure that OFSET program participation requirements may be fulfilled at no cost to the client.~~¶¶

~~(4) In one of the time limit counties (see OAR 461-135-0520), the Department may authorize payment of not more than \$100 a month to reimburse an ABAWD for transportation and other costs identified in the client's case plan. If necessary, the case plan is adjusted to ensure the ABAWD work requirements may be fulfilled at no cost to the client.~~

Statutory/Other Authority: ORS 409.050, ORS 411.121, ORS 411.816

Statutes/Other Implemented: 411.837, 7 USC 2015, 7 USC 2029, 7 CFR 273.7, 7 CFR 273.24, ORS 409.010, ORS 411.121, ORS 411.816, 411.825, 411.837