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SHEMIA FAGAN  
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CHERYL MYERS  
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ARCHIVES DIVISION  
STEPHANIE CLARK  
DIRECTOR  
  
800 SUMMER STREET NE  
SALEM, OR 97310  
503-373-0701

**TEMPORARY ADMINISTRATIVE ORDER**  
INCLUDING STATEMENT OF NEED & JUSTIFICATION

**SSP 1-2021**

CHAPTER 461  
DEPARTMENT OF HUMAN SERVICES  
SELF-SUFFICIENCY PROGRAMS

**FILED**  
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& LEGISLATIVE COUNSEL

FILING CAPTION: Temporary Amendments to Three Rules Impacting Self-Sufficiency Programs

EFFECTIVE DATE: 01/25/2021 THROUGH 07/23/2021

AGENCY APPROVED DATE: 01/22/2021

CONTACT: Meorah Solar  
503-602-7545  
meorah.a.solar@dhsosha.state.or.us

2885 Chad Drive  
Eugene, OR 97408

Filed By:  
Meorah Solar  
Rules Coordinator

**NEED FOR THE RULE(S):**

OAR 461-135-0520 about Time Limit and Special Requirements for ABAWD; SNAP, needs to be amended to bring the rule into alignment with current ODHS policies and waivers. This amendment makes clear that since October 1, 2020, no Oregon counties are SNAP time limit areas for Able Bodied Adults Without Dependents (ABAWD).

OAR 461-145-0087 about Coronavirus Aid, Relief, and Economic Security (CARES) Act, needs to be amended to add retroactive provisions regarding certain Self-Sufficiency Programs' treatment of certain CARES Act income. This amendment aligns the rule with recent Department decisions as well as program and federal guidance. This rule amendment will exclude FPUC income for certain families and individuals applying for certain program benefits.

OAR 461-190-0310 about Limits to the SNAP Training and Employment Program, needs to be amended to bring ODHS rule in alignment with current policy. This amendment reduces confusion for staff and the public.

**JUSTIFICATION OF TEMPORARY FILING:**

The Department finds that failure to act promptly by amending the three OARs in this filing will result in serious prejudice to the public interest, the Department, and clients of its programs. The Department needs to proceed by temporary rule due to the immediate nature of the pandemic in order to put into rule decisions made by and guidance received from federal and state government and ODHS program managers and analysts. Failure to act immediately will delay the OARs from coming into compliance with the the guidance and decisions. Failure to act immediately could also create conflict between agency OAR and agency action and guidance, creating confusion for staff and the public. This rule amendment enacts and makes clear critical and time-sensitive changes.

**DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:**

Food and Nutrition Service "Supplemental Nutrition Assistance Program (SNAP) – Oregon Request to Waive Able-

Bodied Adults Without Dependents (ABAWDs) Time Limit – Approval" available from SNAP Policy Analyst Team

Any documents regarding SNAP Training and Employment Program participant age requirements available from SNAP and Employment and Training Policy Analyst Team

Presidential Proclamation on Declaring a National Emergency, available here  
<https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novelcoronavirus-disease-covid-19-outbreak/>

USDA "Supplemental Nutrition Assistance Program – Questions and Answers, COVID-19, Set #1," available at  
<https://fns-prod.azureedge.net/sites/default/files/resource-files/SNAP-COVID-QA1.pdf>

Public Law 116-127 Families First Coronavirus Response Act, available at  
<https://www.congress.gov/116/plaws/publ127/PLAW-116publ127.htm>

Any Food and Nutrition Service guidance regarding treatment of Federal Pandemic Unemployment Compensation available from SNAP Policy Analyst Team

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**RULES:**

461-135-0520, 461-145-0087, 461-190-0310

**AMEND:** 461-135-0520

**RULE SUMMARY:** OAR 461-135-0520 about Time Limit and Special Requirements for ABAWD; SNAP, is being amended put ODHS policies implemented as early as October 1, 2020, into rule. These provisions remove any Oregon counties from being considered "SNAP time-limit areas" and establishes all Oregon counties as "exempt areas." These amendments were made due to the following: States may request Food and Nutrition Services approval to temporarily waive the time limit for a group of individuals in the State in the area in which the individuals reside. To be considered for approval, the request must be supported by corresponding data or evidence demonstrating that the requested area: (i) Has an unemployment rate of over 10 percent; or (ii) Does not have a sufficient number of jobs to provide employment for the individuals. A state may support a claim of insufficient jobs by submitting evidence that the State qualifies for extended unemployment benefits within the past 12 months. The Department of Labor's Trigger Notice No. 2020 – 17 shows the State's 13-week insured unemployment rate (IUR) was: (1) 5.56 percent and (2) 349 percent of the 13-week rate for the corresponding period in the two preceding years, making the State eligible for extended unemployment benefits, and thus also eligible to request a statewide waiver.

**CHANGES TO RULE:**

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. The provisions in this rule are retroactively effective October 1, 2020.¶

(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 areas" means areas of Oregon 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. There are no "SNAP time-limit areas" are Benton, Clackamas, Marion, Multnomah, and Washington counties in Oregon during October 1, 2020 to September 30, 2021.¶

(c) "SNAP time-limit exempt areas" means areas of Oregon 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 areas" are ~~Baker, Clatsop, Columbia, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Grant, Harney, Hood River, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Malheur, Morrow, Polk, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Wheeler, and Yamhill counties~~ all counties in Oregon during October 1, 2020 to September 30, 2021.¶

(2) Except as provided otherwise in this rule, an ABAWD who resides in one of the SNAP time-limit areas (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, 2019 to December 31, 2021.¶

(3) "Countable months" means months within the 36-month period of January 1, 2019 to December 31, 2021 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) Benefits were prorated for the month.¶

(b) The individual was exempt from the SNAP time limit for any part of the month for any of the following reasons:¶

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

(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).¶

(c) 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.¶

(d) 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~~ within 90 days following the month they received the countable month to show they were exempt or met the 80 hour activity requirement.¶

(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 subsection (3)(b) of this rule. 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)(c) or (3)(d) 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)(c) or (3)(d) 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, 2019 to December 31, 2021. ¶

(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)(c) or (3)(d) 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)(c) or (3)(d) of this rule for no more than a total of six countable months during January 1, 2019 to December 31, 2021. ¶

(7) This space is reserved for the use of discretionary exemptions, granted by the Food and Nutrition Service, for ABAWDs residing in certain SNAP time-limit areas who are at risk of having their benefits closed or reduced. Beginning April 1, 2020 to September 30, 2021, the Department is not granting discretionary exemptions.¶

(8) An ABAWD involved in the activities specified in subsection (3)(c) or (3)(d) 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~~ and 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: 461-145-0087

RULE SUMMARY: OAR 461-145-0087 about Coronavirus Aid, Relief, and Economic Security (CARES) Act, is being amended to retroactively amend how Federal Pandemic Compensation payments are treated for certain programs.

CHANGES TO RULE:

461-145-0087

Coronavirus Aid, Relief, and Economic Security (CARES) Act

(1) In all programs, Recovery Rebate payments authorized by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) are: ¶

(a) ~~An e~~Excluded assets (OAR 461-001-0000) in the month of receipt, ¶

(b) ~~An e~~Excluded assets for 12 full months starting with the month following the month of receipt, and ¶

(c) After the 12-month period, the remainder is countable (OAR 461-001-0000) as a resource. ¶

(2) Federal Pandemic Unemployment Compensation payments authorized by the CARES Act are treated as follows: ¶

~~(a) Assistance payments authorized by the CARES Act are not Disaster Unemployment Assistance (see OAR 461-145-0100) and are treated as follows: ¶~~

~~(a) Retroactive payments are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120), and ¶~~

~~(b) All other payments are counted as unearned income. ¶~~

~~(3) Retroactively effective January 1, 2021, Federal Pandemic Unemployment Compensation payments authorized by the CARES Act are treated as follows: ¶~~

~~(a) For all programs, Federal Pandemic Unemployment Compensation payments are not Disaster Unemployment Assistance (see OAR 461-145-0100). ¶~~

~~(b) In the GA and OSIPM programs, the payments are excluded as income and resource sets in the month of receipt. All funds remaining after the month of receipt are treated as a countable resource. ¶~~

~~(b) In the QM~~B~~ERDC, QMB, TANF, and TA-DVS programs, the payments are excluded assets. ¶~~

~~(c) In all other the DSNAP and SNAP programs, the payments are treated as unemployment compensation benefits (see OAR 461-145-0550). Federal Pandemic Unemployment Compensation payments are not Disaster Unemployment Assistance excluded assets in the month of receipt and the following nine months. All funds remaining after the exclusion period are a countable resource. ¶~~

~~(e) In all other programs. ¶~~

~~(A) Retroactive payments are counted as periodic or lump-sum income (see OAR 461-145-0110) and 461-140-0120), and ¶~~

~~(B) All other payments are counted as unearned income.~~

Statutory/Other Authority: ORS 411.060, 411.070, 411.083, 411.404, 411.816, 412.014, 412.049

Statutes/Other Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.816, 412.014, 412.049

AMEND: 461-190-0310

RULE SUMMARY: OAR 461-190-0310 about Limits to the SNAP Training and Employment Program, is being amended to expand the SNAP Training and Employment Program to 16 and 17 year olds that were previously excluded from participating.

CHANGES TO RULE:

461-190-0310

Limits to the SNAP Training and Employment Program ¶¶

- (1) The OFSET Program ends for all individuals effective September 30, 2019.¶¶
- (2) The SNAP Training and Employment Program (STEP) is available to individuals in the SNAP need group (see OAR 461-110-0630) who are:¶¶
  - (a) ~~16 or 17 years of age and the primary person (see OAR 461-001-0015) or 18 years of age and older, and~~¶¶
  - (b) Not Job Opportunity and Basic Skills (JOBS) program eligible.¶¶
- (3) For an ABAWD (see OAR 461-135-0520) residing in one of the SNAP time limit areas (see OAR 461-135-0520), the STEP components and activities must meet the following requirements:¶¶
  - (a) The case plan (see OAR 461-001-0020) 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), an individual may not be required to participate in job search (see OAR 461-001-0020) 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 individual 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