

OFFICE OF THE SECRETARY OF STATE

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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 333  
OREGON HEALTH AUTHORITY  
PUBLIC HEALTH DIVISION

**FILED**

11/25/2024 10:43 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Updating dollar threshold for WIC mandatory participant disqualification

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/23/2024 5:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

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Filed By:  
Public Health Division  
Rules Coordinator

HEARING(S)

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

DATE: 12/16/2024

TIME: 10:00 AM

OFFICER: Staff

REMOTE HEARING DETAILS

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

PHONE NUMBER: 971-277-2343

CONFERENCE ID: 93312669

SPECIAL INSTRUCTIONS:

This hearing is being held remotely via Microsoft Teams. To provide oral (spoken) testimony during this hearing, please contact [publichealth.rules@odhsoha.oregon.gov](mailto:publichealth.rules@odhsoha.oregon.gov) to register and receive the link for the Microsoft Teams video conference via calendar appointment, or you may access the hearing using the meeting URL above. Alternatively, you may dial 971- 277-2343, Phone Conference ID 933 126 69# for audio (listen) only.

This hearing will close no later than 11:00AM but may close as early as 10:30AM if everyone who signs up to provide testimony has been heard from.

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

## NEED FOR THE RULE(S)

The Oregon Health Authority (OHA), Public Health Division is proposing to amend administrative rules in chapter 333, division 53 as they pertain to participants in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). On April 18, 2024, the Food and Nutrition Service (FNS), of the U.S. Department of Agriculture (USDA) published a final rule increasing the dollar threshold for disqualification when a claim is assessed against a participant resulting from a participant violation. The final rule increased the threshold from \$100 to \$1,000. OHA is updating Oregon Administrative Rules to be in alignment with the federal rules.

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## DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

7 CFR 246, available at: <https://www.ecfr.gov/current/title-7/subtitle-B/chapter-II/subchapter-A/part-246>

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

There are no anticipated racial equity concerns that would result from these proposed amendments. The proposed changes increase the dollar threshold for disqualification when a claim is assessed against a participant; this could have a positive equity impact as it would lessen the effect of minor violations on participant's access to benefits. Otherwise, the changes will not affect program operations.

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## FISCAL AND ECONOMIC IMPACT:

This rule change may have a negative fiscal impact on the WIC program as it increases the threshold of benefits that must be misused in order for WIC to disqualify a participant for one year.

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## 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 cost of compliance impact anticipated for other state agencies, units of local government and members of the public by the proposed changes as they only pertain to WIC participants.

(2)(a) Small businesses are not subject to the proposed rule change.

(b) No projected reporting, recordkeeping or other administrative activities required for compliance, including costs of professional services. Small businesses are not subject to the proposed rule change.

(c) No equipment, supplies, labor or increased administration required for compliance. Small businesses are not subject to the proposed rule change.

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

Small businesses were not involved in the development of the rule because they are not impacted by the proposed changes.

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## WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

Rulemaking is the result of federal legislation with no room for interpretation of the rule text.

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AMEND: 333-053-0080

RULE SUMMARY: Amend OAR 333-053-0080 to increase the dollar threshold for disqualification when a claim is assessed against a participant resulting from a participant violation, in order to align with changes made by the Food and Nutrition Service (FNS), of the U.S. Department of Agriculture (USDA).

CHANGES TO RULE:

333-053-0080

#### Participant Violations ¶¶

(1) During each certification visit, participants shall be informed of their rights and responsibilities, program rules and the sanctions issued should they intentionally violate a program rule.¶¶

(2) Whenever the ~~Authority~~Oregon Health Authority (Authority) assesses a claim of misappropriated ~~WIC~~Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) program benefits of \$1,000 or more resulting from a participant violation, assesses a claim for dual participation, or assesses a second or subsequent claim of any amount resulting from a participant violation, the Authority shall disqualify the participant for one year.¶¶

(3) A participant shall be issued a Notice of Non-compliance for the first instance; a six month disqualification from the program and issued a claim for the second instance; and a one year disqualification from the program and issued a claim for the third and any subsequent instance of the following violations:¶¶

(a) Simultaneously using his or her own WIC benefits and acting as a store cashier for the transaction if employed by or owns store;¶¶

(b) Destruction of vendor or farmer property during a WIC transaction;¶¶

(c) Verbal abuse of store, farmer, or farm stand employees or owners during a WIC or Farm Direct Nutrition Program (FDNP) transaction;¶¶

(d) Verbal abuse of state or local agency staff;¶¶

(e) Destruction of state or local agency property;¶¶

(f) Altering a food instrument;¶¶

(g) Returning foods purchased with a food instrument to a WIC vendor in exchange for money or different food unless they are receiving the identical item in exchange;¶¶

(h) Using or attempting to use a food instrument reported lost or stolen; or¶¶

(i) Redeeming a food instrument for unauthorized foods or formula.¶¶

(4) A participant shall be issued a Notice of Non-compliance and issued a claim for the first instance; and disqualified from the program for one year and issued a claim for the second and any subsequent instance of misrepresenting eligibility information to gain WIC or FDNP benefits.¶¶

(5) A participant shall be disqualified from the program for six months for the first instance and disqualified from the program for one year for the second or any subsequent instance of the following violations:¶¶

(a) Assaulting or using physical force, actual or threatened, against store, farmer, or farm stand employees or owners during a WIC or FDNP transaction; or¶¶

(b) Assaulting or using physical force, actual or threatened, against state or local agency staff.¶¶

(6) A participant shall be disqualified from the program for one year and issued a claim for the first and any subsequent instance of the following violations:¶¶

(a) Collusion with local agency staff to improperly obtain WIC program or FDNP benefits;¶¶

(b) Collusion with store staff to use a food instrument for the purchase of anything other than specifically indicated WIC program benefits;¶¶

(c) Theft of a food instrument;¶¶

(d) Buying, attempting to buy, exchanging, attempting to exchange, selling, or attempting to sell food or formula purchased with a food instrument for cash, credit, merchandise, favors, or other non-food items;¶¶

(e) Trafficking or attempting to traffic a food instrument; or¶¶

(f) Collusion with store staff to accept the return of food or formula purchased with a food instrument for cash, credit, merchandise, favors, or other non-food items.¶¶

(7) The Authority may decide not to impose a disqualification if, within 30 days of the date the letter was mailed demanding repayment, full restitution is made or a repayment schedule is agreed upon. In the case of a violation committed by the parent or caretaker of an infant or child participant, or by a participant under the age of 18, the Authority may approve the designation of a proxy in order to continue program benefits to these participants.¶¶

(8) Participants may reapply for benefits at any time after the disqualification period is over.

Statutory/Other Authority: ORS 413.500

Statutes/Other Implemented: ORS 413.500