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RULES:

461-115-0704, 461-120-0125, 461-145-0915

AMEND: 461-115-0704

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RULE SUMMARY: OAR 461-115-0704 is being amended to clarify who may qualify for an extension to the ninety-day reasonable opportunity period. This change aligns OAR 461-115-0704 with federal policy. In addition, this rule is being amended to make the rule language more accurate and clearer for readers.

CHANGES TO RULE:

461-115-0704

Required Verification of Citizenship and ~~Ali~~Noncitizen Status; ~~OSIPM, OSIPM, and QMB~~

In the OSIP, OSIPM, and QMB programs:¶

(1) The Department must verify an individual's declaration of citizenship or qualified ~~ali~~noncitizen status (see OAR 461-120-0130):¶

(a) At initial application; ¶

(b) When a change is reported; and ¶

(c) When the Department has received reliable information indicating a potential change in the individual's citizenship or qualified ~~ali~~noncitizen status.¶

(2) The Department must verify citizenship through one of the following:¶

(a) A U.S. passport, including a U.S. Passport Card issued by the Department of State, without regard to any expiration date as long as such passport or card was issued without limitation.¶

(b) A Certificate of Naturalization.¶

(c) A Certificate of U.S. Citizenship.¶

(d) A valid state-issued driver's license if the state issuing the license requires proof of U.S. citizenship, or obtains and verifies a Social Security Number (SSN) from the applicant who is a citizen before issuing such license.¶

(e) Documentary evidence issued by a federally-recognized ~~Indian~~Indian or Alaska Native tribe identified in the Federal Register by the Bureau of Indian Affairs within the U.S. Department of the Interior, and including tribes located in a state that has an international border, which:¶

(A) Identifies the federally recognized ~~Indian~~Indian or Alaska Native tribe that issued the document;¶

(B) Identifies the individual by name; and¶

- (C) Confirms the individual's membership, enrollment, or affiliation with the tribe.¶
- (f) Documents described in subsection (e) of this section include, but are not limited to:¶
- (A) A tribal enrollment card.¶
- (B) A "Certificate of Degree of Indian or Alaska Native Blood."¶
- (C) A tribal census document.¶
- (D) Documents on tribal letterhead, issued under the signature of the appropriate tribal official, that meet the requirements of subsection (e) of this section.¶
- (g) A data match with the Social Security Administration.¶
- (3) If an individual does not provide documentary evidence from the list in section (2) of this rule, the following must be accepted as satisfactory evidence to establish citizenship if also accompanied by an identity document listed OAR 461-115-0700(6):¶
- (a) A U.S. public birth certificate showing birth in one of the 50 states, the District of Columbia, Guam, American Samoa, Swain's Island, Puerto Rico (if born on or after January 13, 1941), the Virgin Islands of the U.S. or the Commonwealth of the Northern Mariana Islands (CNMI) (if born after November 4, 1986 (CNMI local time)). The birth record document may be issued by a state, commonwealth, territory, or local jurisdiction. If the document shows the individual was born in Puerto Rico or the Northern Mariana Islands before the applicable date referenced in this paragraph, the individual may be a collectively naturalized citizen. The following will establish U.S. citizenship for collectively naturalized individuals:¶
- (A) Puerto Rico: Evidence of birth in Puerto Rico and the applicant's statement that the applicant was residing in the U.S., a U.S. possession, or Puerto Rico on January 13, 1941.¶
- (B) Northern Mariana Islands (NMI) (formerly part of the Trust Territory of the Pacific Islands (TTPI)):¶
- (i) Evidence of birth in the NMI, TTPI citizenship and residence in the NMI, the U.S., or a U.S. territory or possession on November 3, 1986 (NMI local time) and the applicant's statement that the applicant did not owe allegiance to a foreign State on November 4, 1986 (NMI local time).¶
- (ii) Evidence of TTPI citizenship, continuous residence in the NMI since before November 3, 1981 (NMI local time), voter registration before January 1, 1975, and the applicant's statement that the applicant did not owe allegiance to a foreign State on November 4, 1986 (NMI local time).¶
- (iii) Evidence of continuous domicile in the NMI since before January 1, 1974, and the applicant's statement that the applicant did not owe allegiance to a foreign State on November 4, 1986 (NMI local time). Note: If an individual entered the NMI as a nonimmigrant and lived in the NMI since January 1, 1974, this does not constitute continuous domicile and the individual is not a U.S. citizen.¶
- (b) At state option, a cross match with a state vital statistics agency documenting a record of birth.¶
- (c) A Certification of Report of Birth, issued to U.S. citizens who were born outside the U.S.¶
- (d) A Report of Birth Abroad of a U.S. Citizen.¶
- (e) A Certification of Birth in the United States.¶
- (f) A U.S. Citizen I.D. card.¶
- (g) A Northern Marianas Identification Card issued by the U.S. Department of Homeland Security (or predecessor agency).¶
- (h) A final adoption decree showing the child's name and U.S. place of birth, or if an adoption is not final, a statement from a state-approved adoption agency that shows the child's name and U.S. place of birth.¶
- (i) Evidence of U.S. Civil Service employment before June 1, 1976.¶
- (j) U.S. Military Record showing a U.S. place of birth.¶
- (k) A data match with the SAVE Program or any other process established by the Department of Homeland Security to verify that an individual is a citizen.¶
- (l) Documentation that a child meets the requirements of section 101 of the Child Citizenship Act of 2000 as amended (8 U.S.C. 1431).¶
- (m) Medical records, including, but not limited to, hospital, clinic, or doctor records or admission papers from a nursing facility, skilled care facility, or other institution that indicate a U.S. place of birth.¶
- (n) Life, health, or other insurance record that indicates a U.S. place of birth.¶
- (o) Official religious record recorded in the U.S. showing that the birth occurred in the U.S.¶
- (p) School records, including pre-school, Head Start and daycare, showing the child's name and U.S. place of birth.¶
- (q) Federal or state census record showing U.S. citizenship or a U.S. place of birth.¶
- (r) If the applicant does not have one of the documents listed in section (2) of this rule subsections (a) through (q) of this section, the applicant may submit an affidavit signed by another individual under penalty of perjury who can reasonably attest to the applicant's citizenship, and that contains the applicant's name, date of birth, and place of U.S. birth. The affidavit does not have to be notarized.¶
- (4) The following individuals who make a declaration of citizenship are exempt from the requirement to provide documentary evidence of citizenship:¶
- (a) Individuals receiving Supplemental Security Income (SSI).¶

- (b) Individuals entitled to or enrolled in any part of Medicare.¶
- (c) Individuals receiving ~~SSDI~~ Social Security Disability Insurance (SSDI).¶
- (d) Individuals who are in foster care and who are assisted under Title IV-B of the Act, and individuals who are beneficiaries of foster care maintenance or adoption assistance payments under Title IV-E of the Act.¶
- (e) Newborns of an assumed eligible individual (see OAR 461-135-0010).¶
- (5) The Department must attempt to verify a declaration by or on behalf of an individual of qualified ~~a~~ noncitizen status using an electronic service.¶
- (a) Individuals who make a declaration of qualified ~~a~~ noncitizen status are exempt from the requirement to provide documentary evidence if they are receiving SSI.¶
- (b) The Department must promptly resolve all discrepancies between the electronic information and information provided by the or on behalf of the individual and resubmit corrected information through the electronic service.¶
- (c) For purposes of verifying the veteran and active duty exemption from the five-year waiting period (see OAR 461-120-0125), the Department must verify that:¶
  - (A) The individual is an honorably discharged veteran.¶
  - (B) The individual is in active military duty status.¶
  - (C) The individual is a spouse (see OAR 461-001-0000), unmarried dependent child, or an un-remarried surviving spouse of an individual qualifying for this waiting period exemption.¶
  - (D) If the Department is unable to verify such status, the Department may accept self-attestation (see OAR 461-115-0700).¶
- (6) Individuals who declare non-qualified or undocumented ~~a~~ noncitizen status and who meet the criteria of OAR 461-135-1070 are not required to present an ~~Social Security Number~~ SN or verify ~~a~~ noncitizen status.¶
- (7) The Department must retain a record of having verified citizenship or ~~a~~ noncitizen status according to the applicable retention period.¶
- (8) Unless a change in citizenship has been reported, the Department may not re-verify or require the individual to re-verify at redetermination or upon a subsequent application following a break in coverage.¶
- (9) If the Department cannot promptly verify citizenship or qualified ~~a~~ noncitizen status:¶
  - (a) The Department must provide a reasonable opportunity period (see section (10) of this rule); and may not delay, deny, reduce, or terminate benefits for an individual who is otherwise eligible during the reasonable opportunity period.¶
  - (b) If a reasonable opportunity period is provided and the individual is otherwise eligible, the Department may approve benefits effective the month of in which the date of request falls.¶
- (10) Reasonable opportunity period.¶
  - (a) The Department must provide a reasonable opportunity period to individuals who declare citizenship or qualified ~~a~~ noncitizen status which the Department cannot independently verify.¶
  - (b) During this period, the Department must continue efforts to verify the individual's citizenship or qualified ~~a~~ noncitizen status.¶
  - (c) Notice of the reasonable opportunity period must be sent that is accessible to those with limited English proficiency and individuals with disabilities.¶
  - (d) The Department must assist individuals declaring citizenship who do not have an SSN with obtaining an SSN and attempt to verify citizenship once it is obtained.¶
  - (e) The Department must provide the individual with information about how to contact the electronic data source so that the individual can try to resolve inconsistencies that prevented electronic verification and then pursue electronic verification once the individual reports the inconsistencies have been resolved.¶
  - (f) The reasonable opportunity period begins on the date the reasonable opportunity period notice is received by the individual, which is considered to be five days after the date of the notice, unless the individual can show that the individual did not receive the notice within the five-day period.¶
  - (g) The reasonable opportunity period ends either when the Department verifies citizenship or qualified ~~a~~ noncitizen status, or 90 days from the date the notice is received, whichever is earlier ~~(an. For individuals who declare qualified noncitizen status, the reasonable opportunity period may be extended if the individual is making a good faith effort or the Department needs more time).~~¶
  - (h) If the reasonable opportunity period ends and the verification has not been received, the Department must take action within 30 days to terminate eligibility.

Statutory/Other Authority: ORS 409.050, 411.060, 411.402, 411.404, 411.706, 413.085, 414.685

Statutes/Other Implemented: ORS 409.010, 411.060, 411.402, 411.404, 411.706, 413.085, 414.685, 414.839, 42 CFR 435.956

RULE SUMMARY: OAR 461-120-0125 is being amended to change parole entry dates for citizens or nationals of Afghanistan who meet program noncitizen status requirements and to add more groups of individuals who will meet noncitizen status requirements, including special immigrant parolees with an SQ or SI visa category, special immigrant conditional permanent residents (CPR) paroled after July 31, 2021, and parents and legal guardians of the Afghans paroled into the U.S. between July 31, 2021, and September 30, 2023. This filing makes temporary changes to the rule permanent.

CHANGES TO RULE:

461-120-0125

Noncitizen Status Requirements ¶¶

An individual who must meet noncitizen status requirements under OAR 461-120-0110, must meet the noncitizen status requirements of the program for which they are applying. The requirements are listed in sections (2) through (6) of this rule.¶¶

(1) For purposes of this chapter of rules,¶¶

(a) In all programs, an individual is a "qualified noncitizen" if the individual is any of the following:¶¶

(A) An individual who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq).-¶¶

(B) An Iraqi or Afghan individual granted special immigrant visa status (SIV) under section 101(a)(27) of the INA. These individuals are lawfully admitted for permanent residence under the INA.¶¶

(C) An individual who is an "Amerasian" who is granted immigration status under section 584 of Public Law 100-202; the Foreign Operations, Export Financing, and Related Program Appropriations Act of 1988; as amended by Public Law 100-461. These individuals are lawfully admitted for permanent residence under the INA.¶¶

(D) An individual who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157).¶¶

(E) An individual who is granted asylum under section 208 of the INA (8 U.S.C. 1158).¶¶

(F) An individual who is a "Cuban or Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980).¶¶

(G) An individual who is a "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).¶¶

(H) An individual who is a family member of a "victim of a severe form of trafficking in persons" who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).¶¶

(I) An individual whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1253(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 1231(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996)).¶¶

(J) An individual who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year.¶¶

(K) An individual who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980.¶¶

(L) An individual who is a battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c), as determined by the U.S. Citizenship and Immigration Services (USCIS).¶¶

(b) In the OSIPM and QMB programs, in addition to subsection (a) of this section, an individual is a "qualified noncitizen" if the individual is from the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau who lawfully reside in the United States in accordance with the Compacts of Free Association. The provisions in this subsection are retroactively effective December 28, 2020.¶¶

(2) In all programs except the REF and REFM programs, an individual meets the noncitizen status requirements if the individual is one of the following:¶¶

(a) An Indigenous, First Nation, Inuit, Métis, or Aboriginal individual who is born in Canada to whom the provisions of section 289 of the INA (8 U.S.C. 1359) apply.¶¶

(b) A qualified noncitizen (see section (1) of this rule) who is any of the following:¶¶

(A) A veteran of the United States Armed Forces who was honorably discharged for reasons other than noncitizen status and who fulfilled the minimum active-duty service requirements described in 38 U.S.C. 5303A(d).¶¶

(B) A member of the United States Armed Forces on active duty (other than active duty for training).¶¶

(C) The spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in paragraphs (A) or (B) of this subsection.¶

(3) In the TA-DVS and TANF programs, an individual meets the noncitizen status requirements if the individual is one of the following:¶

(a) An individual who is a qualified noncitizen (see subsection (1)(a) of this rule).¶

(b) An individual who is a noncitizen who is currently experiencing domestic violence (see OAR 461-001-0000) or who has a safety concern related to domestic violence.¶

(c) Effective October 1, 2021 until March 31, 2023, or through the end of their parole, whichever is later:¶

(A) An individual who is a citizen or national of Afghanistan paroled into the U.S. between July 31, 2021 through September 30, 2022.¶

~~(B) 3.¶~~

(B) An unmarried child under the age of 21 or spouse of an individual listed in paragraph (A) of this subsection, who is paroled into the U.S. after September 30, 2022.¶

(C) A parent or legal guardian of an individual listed in paragraph (A) of this subsection, who is determined to be an unaccompanied child as defined by 6 U.S.C. § 279(g)(2), who is paroled into the U.S. after September 30, 2022.¶

(d) Effective October 1, 2021:¶

(A) An individual who is a citizen or national of Afghanistan who was granted Special Immigrant Conditional Permanent Resident status on or after July 31, 2021.¶

(B) An individual who is a citizen or national of Afghanistan who was granted Special Immigrant SQ/SI Parole status on or after July 31, 2021.¶

(C) An unmarried child under the age of 21 or spouse of an individual listed in paragraph (A) or (B) of this subsection.¶

(d) A parent or legal guardian of an individual listed in paragraph (A) or (B) of this subsection who is determined to be an unaccompanied child as defined by 6 U.S.C. § 279(g)(2).¶

(e) Effective May 21, 2022, through the end of their parole:¶

(A) An individual who was paroled into the U.S. between February 24, 2022, and September 30, 2023, and meets one of the following:¶

(i) Is a citizen or national of Ukraine.¶

(ii) Last habitually resided in Ukraine.¶

(B) An individual who was paroled after September 30, 2023, and who is one of the following:¶

(i) An unmarried child, defined in section 101(b) of the Immigration and Nationality Act (INA) (8 U.S.C. § 1101(b)), under the age of 21.¶

(ii) The spouse of an individual listed in paragraph (A) of subsection (d).¶

(C) An individual who was paroled into the U.S. after September 30, 2023, and is one of the following:¶

(i) A parent, legal guardian, or primary caregiver of an unaccompanied refugee minor, as defined in section 412(d)(2)(B) of the INA (8 U.S.C. § 1522(d)(2)(B)).¶

(ii) An unaccompanied child, as defined in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. § 279(g)(2)).¶

(4) In the OSIPM and QMB programs an individual meets the noncitizen status requirements if the individual meets any of the following:¶

(a) The individual has been granted a USCIS status listed under paragraphs (1)(a)(B) through (1)(a)(I) or paragraph (1)(b) of this rule.¶

(b) Effective October 1, 2009, the individual is a qualified noncitizen and is under 19 years of age.¶

(c) The individual was a qualified noncitizen before August 22, 1996.¶

(d) The individual has been granted a USCIS status listed under paragraphs (1)(a)(A), and (1)(a)(J) through (1)(a)(L) and meets one of the following:¶

(A) Physically entered the United States or was granted the USCIS status on or after August 22, 1996; and has been in the U.S. for five years beginning on the date the USCIS status was granted.¶

(B) Physically entered the United States before August 22, 1996 and was continuously present in the United States between August 22, 1996, and the date the USCIS status was granted. An individual is not continuously present in the United States if the individual is absent from the United States for more than 30 consecutive days or a total of more than 90 days between August 22, 1996 and the date the USCIS status was granted.¶

(e) The individual is under the age of 19 and is one of the following:¶

(A) An individual described in 8 CFR section 103.12(a)(4) who belongs to one of the following classes of noncitizens permitted to remain in the United States because the Attorney General has decided for humanitarian or other public policy reasons not to initiate deportation or exclusion proceedings or enforce departure:¶

(i) An individual currently in temporary resident status pursuant to section 210 or 245A of the INA (8 USC 1160 and 1255a);¶

(ii) An individual currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 USC

1229b);¶

(iii) An individual who is a "Cuban or Haitian entrant," as defined in section 202(b) Pub. L. 99-603 (8 USC 1255a), as amended;¶

(iv) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101-649 (8 USC 1255a), as amended;¶

(v) An individual currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;¶

(vi) An individual currently in deferred action status pursuant to Department of Homeland Security Operating Instruction OI 242.1(a)(22); or¶

(vii) An individual who is the spouse or child of a United States citizen whose visa petition has been approved and who has a pending application for adjustment of status.¶

(B) An individual in non-immigrant classifications under the INA who is permitted to remain in the U.S. for an indefinite period, including those individuals as specified in section 101(a)(15) of the INA (8 USC 1101).¶

(f) In the OSIPM program, is receiving Supplemental Security Income (SSI) benefits.¶

(g) In the QMB program, is receiving SSI and Medicare Part A benefits.¶

(h) Effective July 31, 2021 until March 31, 2023, or through the end of their parole, whichever is later:¶

(A) An individual who is a citizen or national of Afghanistan paroled into the U.S. between July 31, 2021 through September 30, 2022.¶

~~(B) 3.~~¶

(B) An unmarried child under the age of 21 or spouse of an individual listed in paragraph (A) of this subsection, who is paroled into the U.S. after September 30, 2022.¶

(C) A parent or legal guardian of an individual listed in paragraph (A) of this subsection, who is determined to be an unaccompanied child as defined by 6 U.S.C. § 279(g)(2), who is paroled into the U.S. after September 30, 2022.¶

(i) Effective July 31, 2021:¶

(A) An individual who is a citizen or national of Afghanistan who was granted Special Immigrant Conditional Permanent Resident status on or after July 31, 2021.¶

(B) An individual who is a citizen or national of Afghanistan who was granted Special Immigrant SQ/SI Parole status on or after July 31, 2021.¶

(C) An unmarried child under the age of 21 or spouse of an individual listed in paragraph (A) or (B) of this subsection.¶

(D) A parent or legal guardian of an individual listed in paragraph (A) or (B) of this subsection who is determined to be an unaccompanied child as defined by 6 U.S.C. § 279(g)(2).¶

(j) Effective February 24, 2022, through the end of their parole:¶

(A) An individual who was paroled into the U.S. between February 24, 2022, and September 30, 2023, and meets one of the following:¶

(i) Is a citizen or national of Ukraine.¶

(ii) Last habitually resided in Ukraine.¶

(B) An individual who was paroled after September 30, 2023, and who is one of the following:¶

(i) An unmarried child, defined in section 101(b) of the Immigration and Nationality Act (INA) (8 U.S.C. § 1101(b)), under the age of 21.¶

(ii) The spouse of an individual listed in paragraph (A) of subsection (d).¶

(C) An individual who was paroled into the U.S. after September 30, 2023, and is one of the following:¶

(i) A parent, legal guardian, or primary caregiver of an unaccompanied refugee minor, as defined in section 412(d)(2)(B) of the INA (8 U.S.C. § 1522(d)(2)(B)).¶

(ii) An unaccompanied child, as defined in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. § 279(g)(2)).¶

(5) In the REF and REF M programs, an individual meets the noncitizen status requirements if the individual is admitted lawfully under any of the following provisions of law:¶

(a) The individual has been granted a USCIS status listed under paragraphs (1)(a)(B) through (1)(a)(H).¶

(b) The individual has been paroled as a refugee or asylee under section 212(d)(5) of the Immigration and Nationality Act (INA) (8 USC 1182(d)(5)).¶

(c) Effective October 1, 2021 until March 31, 2023, or through the end of their parole, whichever is later:¶

(A) An individual who is a citizen or national of Afghanistan paroled into the U.S. between July 31, 2021 through September 30, 2022.¶

~~(B) 3.~~¶

(B) An unmarried child under the age of 21 or spouse of an individual listed in paragraph (A) of this subsection, who is paroled into the U.S. after September 30, 2023.¶

(C) A parent or legal guardian of an individual listed in paragraph (A) of this subsection, who is determined to be an unaccompanied child as defined by 6 U.S.C. § 279(g)(2), who is paroled into the U.S. after September 30, 2023.¶

(d) Effective October 1, 2021:¶

(A) An individual who is a citizen or national of Afghanistan who was granted Special Immigrant Conditional Permanent Resident status on or after July 31, 2021.

(B) An individual who is a citizen or national of Afghanistan who was granted Special Immigrant SQ/SI Parole status on or after July 31, 2021.

(C) An unmarried child under the age of 21 or spouse of an individual listed in paragraph (A) or (B) of this subsection.

(d) A parent or legal guardian of an individual listed in paragraph (A) or (B) of this subsection who is determined to be an unaccompanied child as defined by 6 U.S.C. § 279(g)(2).

(e) Effective May 21, 2022, through the end of their parole:

(A) An individual who was paroled into the U.S. between February 24, 2022, and September 30, 2023, and meets one of the following:

(i) Is a citizen or national of Ukraine.

(ii) Last habitually resided in Ukraine.

(B) An individual who was paroled after September 30, 2023, and who is one of the following:

(i) An unmarried child, defined in section 101(b) of the Immigration and Nationality Act (INA) (8 U.S.C. § 1101(b)), under the age of 21.

(ii) The spouse of an individual listed in paragraph (A) of subsection (d).

(C) An individual who was paroled into the U.S. after September 30, 2023, and is one of the following:

(i) A parent, legal guardian, or primary caregiver of an unaccompanied refugee minor, as defined in section 412(d)(2)(B) of the INA (8 U.S.C. § 1522(d)(2)(B)).

(ii) An unaccompanied child, as defined in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. § 279(g)(2)).

(6) In the SNAP program,

(a) An individual meets the noncitizen status requirements if the individual:

(A) Has been granted a USCIS status listed under paragraphs (1)(a)(B) through (1)(a)(I) of this rule.

(B) Has been granted a qualified noncitizen USCIS status and is under age 18.

(C) Has been granted a qualified noncitizen USCIS status and has a disability (see OAR 461-001-0015).

(D) Was born on or before August 22, 1931, and on August 22, 1996, was lawfully residing in the United States.

(E) Was a member of a Hmong or Highland Laotian Tribe at the time that the Tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (as defined in 38 U.S.C. 101), and is a noncitizen who is lawfully residing in the United States.

(F) Is a spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in paragraph (E) of this subsection.

(b) An individual meets the noncitizen status requirements when the individual has been granted a USCIS status listed under paragraph (1)(a)(A) or paragraphs (1)(a)(J) through (1)(a)(L) of this rule, and has completed one of the following:

(A) The individual has been residing in the United States for at least five years while a qualified noncitizen.

(B) The individual has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act, or can be credited with such qualifying quarters as provided under 8 U.S.C. 1645, subject to the following provisions:

(i) No quarter beginning after December 31, 1996, is a qualifying quarter if the individual received any federal, means-tested benefit during the quarter. Federal means-tested benefits include SNAP, TANF, and Medicaid (except emergency medical).

(ii) For the purpose of determining the number of qualifying quarters of coverage, an individual is credited with all of the quarters of coverage worked by a parent of the individual while the individual was under the age of 18 and all of the qualifying quarters worked by a spouse of the individual during their marriage, during the time the individual remains married to such spouse or such spouse is deceased.

(iii) A lawful permanent resident who would meet the noncitizen status requirements, except for a determination by the Social Security Administration (SSA) that the individual has fewer than 40 quarters of coverage, may be provisionally certified for SNAP program benefits while SSA investigates the number of quarters creditable to the individual. An individual provisionally certified under this section who is found by SSA, in its final administrative decision after investigation, not to have 40 qualifying quarters is not eligible for SNAP program benefits received while provisionally certified. The provisional certification is effective according to the rule on effective dates for opening benefits, OAR 461-180-0080. The provisional certification cannot run more than six months from the date of original determination by SSA that the individual does not have sufficient quarters.

(c) Effective October 1, 2021 until March 31, 2023, or through the end of their parole, whichever is later:

(A) An individual who is a citizen or national of Afghanistan paroled into the U.S. between July 31, 2021 through September 30, 2022.

~~(B3).~~

(B) An unmarried child under the age of 21 or spouse of an individual listed in paragraph (A) of this subsection, who is paroled into the U.S. after September 30, 2022.

(C) A parent or legal guardian of an individual listed in paragraph (A) of this subsection, who is determined to be an unaccompanied child as defined by 6 U.S.C. § 279(g)(2), who is paroled into the U.S. after September 30, 2022.

(d) Effective October 1, 2021.

(A) An individual who is a citizen or national of Afghanistan who was granted Special Immigrant Conditional Permanent Resident status on or after July 31, 2021.

(B) An individual who is a citizen or national of Afghanistan who was granted Special Immigrant SQ/SI Parole status on or after July 31, 2021.

(C) An unmarried child under the age of 21 or spouse of an individual listed in paragraph (A) or (B) of this subsection.

(D) A parent or legal guardian of an individual listed in paragraph (A) or (B) of this subsection who is determined to be an unaccompanied child as defined by 6 U.S.C. § 279(g)(2).

(e) Effective May 21, 2022, through the end of their parole.

(A) An individual who was paroled into the U.S. between February 24, 2022, and September 30, 2023, and meets one of the following:

(i) Is a citizen or national of Ukraine.

(ii) Last habitually resided in Ukraine.

(B) An individual who was paroled after September 30, 2023, and who is one of the following:

(i) An unmarried child, defined in section 101(b) of the Immigration and Nationality Act (INA) (8 U.S.C. § 1101(b)), under the age of 21.

(ii) The spouse of an individual listed in paragraph (A) of subsection (d).

(C) An individual who was paroled into the U.S. after September 30, 2023, and is one of the following:

(i) A parent, legal guardian, or primary caregiver of an unaccompanied refugee minor, as defined in section 412(d)(2)(B) of the INA (8 U.S.C. § 1522(d)(2)(B)).

(ii) An unaccompanied child, as defined in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. § 279(g)(2)).

Statutory/Other Authority: 409.050, 411.060, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 413.085, 414.231, 414.619

Statutes/Other Implemented: 411.060, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.231, 409.010, 411.070, 414.025, H.R. 133, 116th Cong. (2019-2020), Public Law 117-43, H.R. 7691, 117th Cong. (2021-2022)



AMEND: 461-145-0915

NOTICE FILED DATE: 07/27/2023

RULE SUMMARY: OAR 461-145-0915 is being amended to make clear that an individual with a business is still considered self-employed when their business is running at a loss and not making a profit. This rule is also being amended to update a rule reference.

CHANGES TO RULE:

461-145-0915

Self-Employment; General; ~~OSIP~~; OSIPM, QMB ¶

(1) For purposes of this rule:¶

(a) "Business entity" includes a sole proprietorship, a partnership, and an unincorporated limited liability company.¶

(b) "Principal" means an individual with significant authority in a "business entity" (see subsection (a) of this section), including a sole proprietor, a general partner in a partnership, or a member or manager of an unincorporated limited liability company.¶

(2) Notwithstanding any other sections of this rule:¶

(a) Homecare workers (see OAR 411-031-0020) paid by the Department are not self-employed.¶

(b) Providers considered an employee of an Aging and People with Disabilities, Office of Developmental Disabilities Services, or Oregon Health Authority benefit recipient, such as Independent Choices Program (see OAR 411-030-0100) providers, Personal Support Workers (see OAR 411-375-0000), and Personal Care Attendants (see OAR 410-172-0810~~776~~) are not self-employed.¶

(c) Child care providers (see OAR 461~~4~~-1675-04~~080~~) paid by the Department, adult foster home providers (see OAR 411-050-0602) paid by the Department, realty agents, and individuals who sell plasma, redeem beverage containers, pick mushrooms for sale, or engage in similar enterprises are considered self-employed.¶

(d) Self-employment does not include non-business activities such as property rentals (see OAR 461-145-0252) or renting a room out of the financial group's primary residence (see OAR 461-145-0340).¶

(3) Self-employment means active engagement in one's own business, trade, or profession, rather than earning a salary or wage paid by an employer or maintaining a passive ownership interest in a business entity. An individual is considered self-employed if the individual meets the criteria in subsection (2)(b) or section (5) of this rule.¶

(4) A principal (see subsection (1)(b) of this rule) of a corporation or incorporated limited liability company cannot be considered self-employed unless the criteria in either subsection (a) or (b) are met. All other payments for working or performing services for the corporation or holding corporate office are treated in accordance with OAR 461-145-0089 and OAR461-145-0130.¶

(a) The individual files taxes for the incorporated business entity as self-employed on their personal taxes, rather than as a corporation.¶

(b) The individual does not file taxes and meets the criteria in section (5)(c) of this rule.¶

(5) Except as provided in OAR 461-145-0089(3), an individual is self-employed for the purposes of this division of rules if the individual meets the requirements of one or more of (a), (b), or (c):¶

(a) Files taxes as self-employed for their business on their personal taxes.¶

(b) Is considered an independent contractor by the business.¶

(c) Meets all the following criteria:¶

(A) Is not required by the business to complete an IRS W-4 form;¶

(B) Is not required to pay federal income tax or FICA payments from their paycheck(s);¶

(C) Liability or workers' compensation insurance for the individual is not paid by the business;¶

(D) Meets at least one of the following:¶

(i) Creates or provides the products or services they sell, or¶

(ii) Sets the price for the products or services they sell;¶

(E) Is responsible for the business expenses and losses; and¶

(F) Receives profits from the business, or would receive profits from the business but the business is not making a profit.¶

(6) For a principal or any individual with an ownership interest in a business entity who cannot be considered self-employed using the criteria in this rule:¶

(a) See OAR 461-145-0089 for individuals who are not actively working in the business entity to determine how to treat income and resources.¶

(b) For individuals who are actively working for the business entity but do not have significant authority or responsibility for its success or failure:¶

(A) See OAR 461-145-0130 to determine how to treat income.¶

(B) See OAR 461-145-0089 to determine how to treat resources.¶

(7) For an individual who is considered self-employed:¶

(a) See OAR 461-145-0920 and 461-145-0930 to determine how to treat income from self-employment.¶

(b) See OAR 461-145-0600 to determine how to treat resources used in self-employment.

Statutory/Other Authority: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 413.085, 414.685

Statutes/Other Implemented: ~~ORS 409.010~~, 409.050, 411.060, 411.070, ~~411.400~~, 411.404, 411.706, 413.085, 414.685, ORS 409.010, 411.400, 414.839