

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form.

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on August 7, 2012 by the
Date prior to or same as filing date.

<u>Department of Human Services - Self-Sufficiency Programs</u>	<u>461</u>
Agency and Division	Administrative Rules Chapter Number
<u>Annette Tesch</u>	<u>Human Services Building, 500 Summer St NE - E48, Salem, OR 97301</u>
Rules Coordinator	Address
	<u>(503) 945-6067</u>
	Telephone

to become effective August 7, 2012 through February 3, 2013.
Date upon filing or later A maximum of 180 days including the effective date.

RULE CAPTION

Changing OARs affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

ADOPT:

AMEND: 461-145-0260

SUSPEND:

ORS 411.060, 411.070, 411.083, 411.404, 411.816, 412.014, 412.049
Stat. Auth.

25 USC 1408
Other Authority

ORS 411.060, 411.083, 411.404, 411.816, 412.014, 412.049
Stats. Implemented

RULE SUMMARY

OAR 461-145-0260 about the treatment of Indian (Native American) benefits in the determination of benefits for various self-sufficiency programs is being amended to change its statement of policy for the SNAP program in the treatment payments made under Public Law 93-134, Public Law 97-458, and Public Law 103-66. The rule had been incorrect under 25 USC 1408 by including an exclusion for income received in excess of \$2000 per year per individual from interested in trust or restricted lands. This amendment states that such income is counted in the SNAP program.

_____ Authorized Signer	
<u>Robert Trachtenberg</u>	<u>8/7/2012</u>
Printed Name	Date

A copy of the temporary rules can be accessed at the Self-Sufficiency Programs website:
http://www.dhs.state.or.us/policy/selfsufficiency/ar_search.htm

*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in the Rulemaking Action, and electronic copy of rules. ARC 940-2005

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Department of Human Services - Self-Sufficiency Programs

461

Agency and Division

Administrative Rules Chapter Number

In the Matter of: Amending OAR 461-145-0260.

Rule Caption: Changing OARs affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients

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

Other Authority: 25 USC 1408

Statutes Implemented: ORS 411.060, 411.083, 411.404, 411.816, 412.014, 412.049

Need for the Temporary Rule(s):

OAR 461-145-0260 needs to be amended to comply with 25 USC 1408 and ensure income is counted according appropriately in the SNAP program. This amendment brings the SNAP program into compliance with the statute by removing an exclusion for income received in excess of \$2000 per year per individual from interested in trust or restricted lands.

Documents Relied Upon (and where they are available):

None

Justification of Temporary Rule(s):

The Department finds that failure to act promptly by amending OAR 461-145-0260 will result in serious prejudice to the public interest and the Department because it could cause the incorrect calculation of SNAP benefits and compliance issues under federal law. This amendment cannot wait for the permanent rules process because benefits are established on an ongoing basis the Department would be adversely affected by remaining out of federal compliance.

Authorized Signer

Robert Trachtenberg

Printed Name

8/7/2012

Date

461-145-0260

Indian (Native American) Benefits

- (1) The following Indian (Native American) benefits are excluded:
 - (a) Indian lands held jointly with the tribe, or land that cannot be sold without the approval of the Bureau of Indian Affairs (BIA).
 - (b) Payments to Puyallup Tribe members from the trust funds established under Public Law 101-41.
 - (c) Payments from the Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act (Public Law 103-436).
- (2) Payments from the BIA are treated as follows:
 - (a) In the SNAP program, payments from the General Assistance program are counted as unearned income.
 - (b) In all programs except the SNAP program, payments from the General Assistance program are excluded.
 - (c) The treatment of educational income is covered by OAR 461-145-0150.
- (3) In the GA and GAM programs, Indian benefits described in sections (4) to (12) of this rule are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120), unless the client verifies that such benefits are excluded by the public law for state-funded programs.
- (4) In all programs except the GA and GAM programs, payments under Public Law 92-203 (Alaska Native Claim Settlement Act) are treated as follows:
 - (a) In the SNAP program, the entire payment is excluded.
 - (b) In all programs except the GA, GAM, and SNAP programs:
 - (A) Only the tax-exempt portion of the payment is excluded.
 - (B) The remainder of the payment is counted as unearned income.
- (5) In all programs except the GA and GAM programs, the following types of distributions provided under Public Law 100-241 (Alaska Native Claim Settlement Act) are excluded:
 - (a) Stock.
 - (b) A partnership interest.

- (c) Land or interest in land.
 - (d) An interest in a settlement trust.
 - (e) The first \$2,000 of each per-capita payment per year for each member of the *financial group* (see OAR 461-110-0530) who receives the payment. The amount over \$2,000 paid to each member of the *financial group* who receives the per-capita payment is counted as lump-sum income (see OAR 461-140-0120).
- (6) In all programs except the GA and GAM programs, the Department excludes Indian benefit payments when federal law requires an exclusion. These include payments under each of the following federal laws:
- (a) The Aroostook Band of Micmacs under Public Law 102-171.
 - (b) Blackfeet, Cherokee, Cheyenne, Chippewa, and Sioux tribes under Public Law 94-114, when the payment is from submarginal land held in trust by the United States.
 - (c) Blackfeet Indians under Public Law 92-254.
 - (d) Grand River Ottawa Indians under Public Law 94-540.
 - (e) Hopi or Navajo Indians under Public Law 93-531.
 - (f) Passamaquoddy Tribe and Penobscott Nation, including the Holton Band of Maliseet Indians, under the Indian Claims Settlement Act (Public Law 96-420).
 - (g) Umpqua Tribe Cow Creek Band under Public Law 100-139.
 - (h) Yakima Nation Confederated Tribes and Bands of the Mescalero Reservation Apache Tribe under Public Law 95-433.
- (7) In all programs except the GA, ~~and~~ GAM, and SNAP programs, payments received from trust or restricted lands under Public Law 93-134, Public Law 97-458, and Public Law 103-66 are excluded. **In the SNAP program, payments received from trust or restricted lands under 25 USC 1408 (Public Law 93-134, Public Law 97-458, and Public Law 103-66) are –**
- (a) **Excluded a resource.**
 - (b) **The first \$2,000 of each per-capita payment per year for each member of the *financial group* (see OAR 461-110-0530) who receives the payment is excluded as income.**

- (c) **The amount over \$2,000 per year paid to any member of the *financial group* is counted as *periodic income* (see OAR 461-140-0110).**
- (8) In all programs except the GA and GAM programs, payments to Seminole Tribe members under Public Law 101-277 are treated as follows:
 - (a) The first \$2,000 of each per-capita payment per year is excluded for each member of the *financial group* who receives the payment.
 - (b) The amount over \$2,000 paid to each member of the *financial group* who receives the per-capita payment is counted as lump-sum income (see OAR 461-140-0120).
- (9) In all programs except the GA and GAM programs, payments from the distribution of judgment funds to members of the Confederated Tribes of the Umatilla under Public Law 91-259 are treated as follows:
 - (a) The first \$2,000 of each per-capita payment per year is excluded for each member of the *financial group* who receives the payment.
 - (b) The amount over \$2,000 paid to each member of the *financial group* who receives the per-capita payment is counted as lump-sum income (see OAR 461-140-0120).
- (10) In all programs except the GA and GAM programs, payments for assets held in trust to the Sac and Fox Tribe of Oklahoma and Sac and Fox Tribe of the Mississippi in Iowa by the Indian Claims Commission under Public Law 94-189, Section 6 (The Sac and Fox Indian Claims Agreement) are treated as follows:
 - (a) The first \$2,000 of each per-capita payment per year is excluded for each member of the *financial group* who receives the payment.
 - (b) The amount over \$2,000 paid to each member of the *financial group* who receives the per-capita payment is counted as lump-sum income (see OAR 461-140-0120).
- (11) In all programs except the GA and GAM programs, payments from judgment funds held in trust by the U.S. Secretary of the Interior under Public Law 98-64 are excluded.
- (12) In all programs except the GA and GAM programs, Indian Child Welfare payments under Public Law 95-608 are excluded.
- (13) Tribal payments for child care are treated as follows:
 - (a) Provider-direct payments are counted as the provider's earned income.
 - (b) All client-direct payments are excluded.

- (14) In each program, any Indian benefit payments distributed by the tribe and not excluded for that program by public law are counted as unearned income.
- (15) Payments in the tribal-TANF program are counted in the same manner as TANF program payments under OAR 461-145-0410.
- (16) In the GA, GAM, OSIP, OSIPM, and QMB programs, Individual Indian Money (IIM) accounts are treated as follows:
 - (a) For a restricted account:
 - (A) A deposit required by the BIA is excluded as income and as a resource.
 - (B) A deposit not required by the BIA is counted or excluded as income in accordance with this chapter of rules based on the source of the deposit. The deposit is excluded as a resource.
 - (C) A withdrawal is treated in accordance with this chapter of rules based on the source of the funds withdrawn. When funds in the account include both excluded and non-excluded funds, the Department presumes that the non-excluded funds are withdrawn first.
 - (b) For an unrestricted account: Deposits and withdrawals are treated in accordance with this chapter of rules based on the source of the deposit or withdrawal. When funds in the account include both excluded and non-excluded funds, the Department presumes that the non-excluded funds are withdrawn first.

Stat. Auth.: ORS 411.060, 411.070, **411.083, 411.404**, 411.816, **412.014**, 412.049, ~~414.042~~
Stats. Implemented: ORS 411.060, ~~411.700~~, **411.083, 411.404**, 411.816, **412.014**, 412.049, ~~414.042~~