12-20

Secretary of State
Certificate and Order for Filing

PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on [December 20, 2010] by the
Date prior to or same as filing date

Department of Justice -- Division of Child Support | 137
Agency and Division | Administrative Rules Chapter Number

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to become effective [December 27, 2010]. Rulemaking Notice was published in the [November 2010] Oregon Bulletin.**
Date upon filing or later | Month and Year

DOJ 19-2010

RULE CAPTION

Modifying child support orders

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately (000-000-0000)
Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND: 137-055-3430

REPEAL: 137-055-3430(T)

RENUMBER:

AMEND & RENUMBER:

FILED
DEC 20 2010
ADMINISTRATIVE RULES DIVISION
SECRETARY OF STATE

Stat. Auth.: ORS 180.345, 416.455

Other Auth.:

Stats. Implemented: ORS 25.080, 25.287, 25.321 – 25.343, 107.108, 107.135, 416.425

RULE SUMMARY

OAR 137-055-3430 is amended to clarify criteria for modifying child support orders. Additionally, the rule is amended to clarify when the Child Support Program will process a modification request without regard as to whether the new calculation is in "substantial compliance" ($50 or 15%, whichever is less) with the child support guidelines.

Kate Cooper Richardson | Kate Cooper Richardson | 12/20/10
Authorized Signer | Printed name | Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. **The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday. ARC 930-2005

137-055-3430
Substantial Change in Circumstance Review and Modification of Child Support Order Amounts
(1) For purposes of this rule:
(a) The definitions provided in ORS 25.321, OAR 137-050-0750 and OAR 137-055-3420 apply;
(b) A "temporary modification" is an order entered under ORS 416.425(13), which suspends and temporarily modifies a support order based on a party's employment-related change of income; and
(c) "Employment-related change of income" includes but is not limited to reduced work hours, unpaid furloughs, loss of job and wage reductions. Employment-related change of income does not include a voluntary reduction of income or self-imposed curtailment of earning capacity, if it is shown that such action was not taken in good faith but was for the primary purpose of avoiding the support obligation. A party's employment-related change of income is considered to take place "during a period of significant unemployment" even if the change occurred prior to the Attorney General's determination under ORS 416.425(13)(b), as long as the effects of the employment-related change of income continue into the time period covered by the determination.
(2) Notwithstanding OAR 137-055-3420, proceedings may be initiated at any time to review and modify a support obligation based upon a substantial change in circumstance.
(3) The administrator will conduct a review based upon a request for a change of circumstance modification when:
(a) Oregon has jurisdiction to modify;
(b) The administrator:
(A) Receives a request for modification based upon a change of circumstance and at least 60 days have passed from the date the existing support order was entered, except for those cases where a review is requested pursuant to paragraphs (3)(c)(H) or (I);
(B) Determines that a temporary modification should be initiated based on receipt of a request from a party who has experienced an employment-related change of income; or
(C) Determines that a modification should be initiated based on the administrator's own motion; and
(c) At least one of the following criteria are met:
(A) A change in the written parenting time agreement or order has taken place;
(B) The financial or household circumstances of one or more of the parties are different now than they were at the time the order was entered;
(C) Social Security benefits received on behalf of a child due to a parent's disability or retirement were not previously considered in the order or they were considered in an action initiated before May 12, 2003;
(D) Veterans' benefits received on behalf of a child due to a parent's disability or retirement were not previously considered in the order or they were considered in an action initiated before May 12, 2003;
(E) Survivors' and Dependents' Education Assistance benefits received by the child or on behalf of the child were not previously considered in the order;
(F) Since the date of the last order, the obligor has been incarcerated, as defined in OAR 137-055-3300;

(G) The needs of the child(ren) have changed;
(H) There is a need to add or change medical support provisions for a child;
(I) A change in the physical custody of a minor child has taken place;
(J) An order is being modified to include a subsequent child of the parties or to remove a child of the parties; or
(K) A child between 18 and 20 years old does not qualify as a child attending school under ORS 107.108 and OAR 137-055-5110 and, pursuant to ORS 107.108(10), tiered order provisions must be added, removed or changed. Tiered order has the meaning given in OAR 137-055-1020.
(d) And the requesting party (if other than the administrator):
(A) Completes a written or verbal request for modification based upon a substantial change of circumstance;
(B) Pursuant to ORS 416.425, provides appropriate documentation for the criteria in subsection (c) of this section showing that a substantial change of circumstance has occurred; and
(C) Completes a Uniform Income Statement or Uniform Support Affidavit or, if a temporary modification, provides employment status and income information sufficient to permit the administrator to have a reasonable basis to make a determination.
(4) Sections (5) through (9) do not apply to temporary modifications.
(5) Upon receipt of a request for a review and modification, or upon the administrator's own initiative, the administrator will notify the parties of the review in writing, allowing the parties 30 days to provide information which may affect the support calculation.
(6) A request for review will be granted unless:
(a) The conditions in section (3) have not been met; or
(b) The review was requested due to one of the criteria in paragraphs (3)(c)(A) through (3)(c)(G), and the order is in substantial compliance with the guidelines. The determination of substantial compliance will be made as outlined in OAR 137-055-3420(1)(d), except as provided in section (7).
(7) The provisions of subsection (6)(b) do not apply if the new calculation:
(a) Includes consent by the parties as provided in OAR 137-050-0765;
(b) Includes compelling factors in the reasonable-in-cost limitation, as provided in OAR 137-050-0750(2)(a);
(c) Includes application of rebuttals, as provided in OAR 137-050-0760; or
(d) Is for a modification to consider receipt of Social Security or Veterans' benefits as provided in paragraphs (3)(c)(C) or (D).
(8) If the request for review is granted, the administrator will advise the parties of the presumed correct support amount. Notification may be by motion for modification and will include a request for hearing form. If there is an adult child on the case, the proposed modification will be a tiered order as defined in OAR 137-055-1020.
(9) If the order is found to be in substantial compliance, and at least 35 months have passed since the date the most recent support order took effect, the administrator will complete the request as provided in OAR 137-055-3420(9).
(10) Sections (11) and (12) apply only to temporary modifications.
(11) The administrator will, to the extent possible, gather information from the parties which could affect the support calculation by phone or other electronic means, including facsimile and e-mail. Parties may agree to accept service by e-mail, regular mail or any

other method.
(12) The administrator will advise the parties of the presumed correct support amount and may seek a consent order. Notification may be by motion for modification and will include a request for hearing form.
(13) If a request under this rule is denied, the administrator will notify the requesting party of the denial in writing within 30 days and inform the party of their right to file a motion for modification as provided in ORS 416.425. The administrator will advise the party on how to obtain the Oregon Judicial Department packet that has been prescribed for this purpose.
(14) No provision of this rule precludes the parties from obtaining the services of private legal counsel at any time to pursue modification of the support order pursuant to all applicable laws.
(15) If a request for review and modification is received because a change in the physical custody of the minor child(ren) has taken place, a party may also request a credit back to the date the change in physical custody took place in accordance with OAR 137-055-5510.
Stat. Auth.: ORS 180.345 and 416.455
Stats. Implemented: ORS 25.080, 25.287, 25.321 - 25.343, 107.108,107.135, 416.425